SUPREME COURT OF INDIA

State of Punjab

Vs.

Madan Lal

Crl.A.No.529 of 2004

(Dr. Arijit Pasayat, Lokeshwar Singh Panta and P. Sathasivam JJ.)

05.03.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. The State of Punjab is in appeal against the judgment of a learned Single Judge of the Punjab and Haryana High Court allowing the application filed in terms of Section 482 read with Section 427 of the *Code of Criminal Procedure, 1973* (in short the `Code'). The prayer was to the effect that the quantum of punishment awarded may be permitted to run concurrently in respect of the three convictions and sentences imposed.

2. The convictions were in terms of Section 138 of the *Negotiable Instruments Act, 1881* (in short the `Act'). The High Court noted that all the transactions related to the family of the respondent and the matter related to different cheques issued by the respondent to the complainant party. For this purpose separate complaints were filed. The High Court accordingly directed that the sentences imposed by learned Additional Sessions Judge, Ludhiana and Sub Divisional Judicial Magistrate, Khanna were to run concurrently.

3. According to the State the judgment of the High Court is erroneous.

4. In the impugned judgment of the High Court, reference was made to the decision of this court in *Mohd. Akthar alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmadabad and Others*[1] wherein it was held as under :- "The basic rule of thumb over the years has been the so called transactions rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offence is shot the same or the facts constituting the two offences are quite different."

5. The majority view in *State of Maharashtra v. Najakat alias Mubarak Ali*[2] was to similar effect. Paragraphs 14 to 18 in the above case it was held as follows:

"14. The purpose of Section 428 of the Code is also for advancing amelioration to the prisoner. We may point out that the section does not contain any indication that if the prisoner was in jail as an under-trial prisoner in a second case the benefit envisaged in the section would be denied to him in respect of the second case. However, learned counsel for the appellant contended that the words of the same case in the section would afford sufficient indication that the benefit is intended to cover only for one case and not more than that. It must be remembered that the ideology enshrined in Section 428 was introduced for the first time only in the Code of Criminal Procedure, 1973. For understanding the contours of the legislative measure involved in that section, it is advantageous to have a look at the Objects and Reasons for bringing the above legislative provision. We therefore extract the same here: " The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as under-trial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as under-trial prisoner. Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs. The new clause provides for the setting off of the period of detention as an under-trial prisoner against the sentence of imprisonment imposed on him. The Committee trusts that the provision contained in the new clause would go a long way to mitigate the evil." (Emphasis supplied)

15. The purpose is therefore clear that the convicted person is given the right to reckon the period of his sentence of imprisonment from the date he was in jail as an under-trial prisoner. In other words, the period of his being in jail as an under-trial prisoner would be added as a part of the period of imprisonment to which he is sentenced. We may now decipher the two requisites postulated in Section 428 of the Code: (1) During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period. (2) He should have been sentenced to a term of imprisonment in that case. 16. If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, inquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words "if any" in the Section amplifies that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. In other words, if the convict was in prison, for whatever reason, during the stages of investigation, inquiry or trial of a particular case and was later convicted and sentenced to any term of

imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him.

17. In the above context it is apposite to point out that very often it happens when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other count as well.

18. Reading Section 428 of the Code in the above perspective, the words `of the same case' are not to be understood as suggesting that the set off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words "of the same case" were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words."

(Per Justice Thomas)

6. Justice Phukan agreed with the view expressed by Justice Thomas and observed in Para 44 as follows:

"The only question which according to me needs consideration is the true effect of the expression "same case" as appearing in Section 428 of the Code of Criminal Procedure. The provision is couched in clear and unambiguous language and states that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be one undergone by him during investigation, enquiry or trial in connection with the "same case" in which he has been convicted. Any other period which is not connected with the said case cannot be said to be reckonable for set off. The view of learned Brother Mr. Justice Thomas according to me accords the legislative intent. Acceptance of any other view would mean necessary (sic necessarily) either adding or subtracting words to the existing provision, which would not be a proper procedure to be adopted while interpreting the provision in question."

7. Above being the position, the appeal is without merit, deserves dismissal which we direct.

[1] *(AIR 1988 SC 2143)*

[2] *[2001(6) SCC 311]*