



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2024 / 25TH ASWINA, 1946

CRL.MC NO. 5468 OF 2024

AGAINST SC NO.437 OF 2009 OF ADDITIONAL SESSIONS COURT - II,

MANJERI

PETITIONER/ACCUSED:

ALI @ ALIYAR  
AGED 52 YEARS, S/O. VEERANKUTTY,  
PANGANIKKADAN HOUSE,  
VELLILA P.O., MANKADA,  
MALAPPURAM DISTRICT, PIN - 679324

BY ADV K.RAKESH

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM, KOCHI, PIN - 682031
- 2 THE SUPERINTENDENT  
CENTRAL PRISON AND CORRECTIONAL HOME,  
THAVANOOR,  
MALAPPURAM DISTRICT, PIN - 679573

SMT. SREEJA V., PUBLIC PROSECUTOR  
SMT.MITHA SUDHINDRAN, AMICUS CURIAE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
09.10.2024, THE COURT ON 17.10.2024 PASSED THE FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****-----  
CrI.M.C No.5468 of 2024  
-----**Dated this the 17<sup>th</sup> day of October, 2024**ORDER**

A person already undergoing a sentence of imprisonment for life, if subsequently sentenced to imprisonment for a term, would the subsequent sentence run concurrently or consecutively, in the absence of a specific direction in the judgment? The aforesaid question arises for resolution in this petition under section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C').

2. Petitioner is a life convict and has been in prison for the last 13 years. In the meantime, he was convicted in two other cases, both for offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and was sentenced to imprisonment for a term. In one of the subsequent two cases, he was convicted for a prison offence as well. However, in the subsequent two judgments, there was no direction that the sentences would run concurrently with the earlier life sentence. Due to the absence of such a direction, petitioner is being denied the grant of ordinary leave from the prison, as the subsequent sentences are for the offences under the NDPS Act. If the sentences had



run concurrently, petitioner would have been eligible for being considered for the grant of ordinary leave, while, if it runs consecutively until the sentence for the NDPS offence is undergone, he will not be so eligible. The question raised in the prefatory paragraph arises in the above circumstances.

3. Considering the importance of the question involved, this Court appointed Adv. Mitha Sudhindran as Amicus Curiae to assist the court.

4. I have heard Sri. K.Rakesh, the learned counsel for the petitioner and Smt.Sreeja V., the learned Public Prosecutor. Adv. Mitha Sudhindran, the learned Amicus Curiae, also addressed the court.

5. While petitioner was undergoing sentence of imprisonment for life, he was convicted on 17.09.2014 for an offence under Section 20(b)(ii)A of the NDPS Act for seven days and again on 09.01.2020 for the offence under Section 27(b) of the NDPS Act, apart from Section 86(1) of the Kerala Prisons and Correctional Services (Management) Act, 2010 (for short 'the Prisons Act') and was sentenced to undergo imprisonment for six months. Until 2023, petitioner was being granted the benefit of ordinary leave. However, by virtue of the amendment to Rule 7 of the Kerala Prisons and Correctional Services (Management) Rules, 2014, the prison authorities started denying ordinary leave to the petitioner due to his conviction under the NDPS Act. Ordinary leave is



denied stating that the sentence of imprisonment for the subsequent two convictions under the NDPS Act was not ordered to run concurrently and since those sentences have not expired he is ineligible for ordinary leave.

6. Section 427 Cr.P.C deals with the situations when the sentences are to run consecutively or concurrently. Section 427 Cr.P.C reads as below:

**"427. Sentence on offender already sentenced for another offence.**

*(1). When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence :*

*Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.*

*(2). When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."*

7. As per Section 427(1) Cr.P.C, sentences imposed upon an



accused, if not specifically directed, would run consecutively. However, section 427(2) makes a departure and provides that if the first conviction imposes a sentence of imprisonment for life, the subsequent sentences, whether it has been for a term or for life, would run concurrently. The distinction between Section 427(1) and 427(2) is that under sub-section (1) the first sentence of imprisonment imposed ought to be only for a term and not for life, while under sub-section (2), the first sentence imposed ought to have been for life. When the first conviction is for life, the subsequent sentences, irrespective of whether it is for life or only for a term, will run concurrently by statutory operation, even without a declaration by the court.

8. In the decision in **Ranjit Singh v. Union Territory of Chandigarh and Another** [(1991) 4 SCC 304] the Supreme Court had considered the legal position and observed that "*Sub-section (1) of Section 427 CrPC provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, sub-section (1) of Section 427 CrPC deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the Court directs the subsequent sentence to run concurrently*



*with the previous sentence. Obviously, in cases covered by sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life.....the earlier sentence of imprisonment for life being understood to mean as sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the Court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the Court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the Court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the Court directs it to run concurrently. The meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is, therefore, clear."*

9. Similarly, in the decision in **Gopakumar v. State of Kerala and Another** [2008 (2) KLT 246] a learned Single Judge of this Court categorically stated that no declaration by the court is necessary if the facts attract sub-section (2) of Section 427 Cr.P.C and the prison



authorities are bound to comply with the law and treat the subsequent sentence as concurrent.

10. On a consideration of the above decisions and circumstances in the instant case, it is evident that, even without a declaration or direction by a court of law, the sentences imposed on the petitioner subsequently ought to run concurrently. Unfortunately, despite this Court having earlier itself, specifically observed that a declaration is not necessary, the prison authorities have not taken the said proposition of law into reckoning. All the more disheartening is the circumstance that when a letter was issued by the prisoner to the District Judge, pointing out his entitlement, which letter was forwarded to the Registry of this Court, the prisoner was directed to knock at the doors of this Court on its judicial side to get such a declaration. Even the Registry of this Court failed to note the settled law on the issue. As correctly pointed out by the learned Amicus Curiae, the prisoner remains a helpless lot.

11. In view of the above, it is declared that the sentence of imprisonment imposed upon the petitioner in the two subsequent crimes i.e. in C.C.No.346/2013 on the files of the Judicial First Class Magistrate Court-I, Manjeri and C.C. No.1112/2019 on the files of the Judicial First Class Magistrate Court-I, Kannur shall run concurrently with the sentence of imprisonment imposed in S.C. No.437/2009 on the files of the Additional Sessions Court-II, Manjeri. Before parting with the case,



this Court records its deep appreciation for the efforts put in by Adv. Mitha Sudhindran, the learned Amicus Curiae.

The criminal miscellaneous case is allowed as above.

**Sd/-**

**BECHU KURIAN THOMAS  
JUDGE**

vps





APPENDIX OF CRL.MC 5468/2024

**PETITIONER'S/S' ANNEXURES**

- Annexure A**                    A TRUE COPY OF THE JUDGMENT IN C.C.NO.346/2013 OF J.F.C.M-I, MANJERI DATED 17-9-2014
- Annexure B**                    A TRUE COPY OF THE JUDGMENT DATED 9-1-2020 IN C.C.NO.1112/2019 OF J.F.C.M-I, KANNUR
- Annexure C**                    TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE DISTRICT JUDGE, MANJERI DATED, NIL
- Annexure D**                    A TRUE COPY OF THE COMMUNICATION DATED 22-5-2024 ISSUED BY THE REGISTRAR (JUDICIAL) OF THIS HON'BLE COURT TO THE 2ND RESPONDENT