



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946

CRL.MC NO.8795 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 20.11.2017 IN CC NO.343
OF 2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS - II,
MAVELIKKARA

PETITIONER/8th ACCUSED:

B.AJAI,
AGED 29 YEARS
S/O K.BABU, CHIRAYIL VEEDU, KAYAMKULAM M/W 36,
CHIRAKKADAVAM MURI, KAYAMKULAM VILLAGE,
ALLEPPEY, PIN - 690572.

BY ADVS.
M.R.SARIN
M.R.SASITH
P.SANTHOSHKUMAR (KARUMKULAM)
PARVATHI KRISHNA
ANJANA SURESH.E
RIYA KOCHUMMAN
MAHALEKSHMY P.S
SOORAJ S
LEKSHMI S.R
SAUMYA.P.S
AJI S.
ANASWARA K.P.
RADHIKAKRISHNA
SITHARA HAMZA KIZHAKOOT
REETHU JACOB
SUNIL JOSEPH



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M.S.THOMAS
KARUNA SANKAR
LIDHIYA GEORGE
ANJU THOMAS.M
NANMA.B.B
NABIL KHADER

RESPONDENTS/STATE:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 THE STATION HOUSE OFFICER
KURATHIKADU POLICE STATION, ALAPPUZHA, PIN - 690107

*ADDL.R3 STATION HOUSE OFFICER
SPECIAL CELL POLICE STATION,
INDRAPRASTHA MARG, NEAR ITO BUS STOP IP ESTATE
NEW DELHI - 110002

(*ADDL.R3 IS IMPEADED AS ADDITIONAL RESPONDENT NO.
3 VIDE ORDER DATED 09.1.2025 IN CRL MA 1/2024 IN
CRL MC 8795/2024)

BY ADVS.
A.R.L.SUNDARESAN, ASGI
K.S.PRENJITH KUMAR, CENTRAL GOVERNMENT COUNSEL
C.N.PRABHAKARAN, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
17.02.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



O R D E R

Dated, this the 17th day of February, 2025

The petitioner herein is the 8th accused, who has been convicted in C.C.No.343/2015 of the Judicial First Class Magistrate Court-II, Mavelikkara for the offences under Sections 143, 147, 148, 452, 324, 506(ii) and 109, read with Section 149 of the Penal Code and Section 27(1) of the Arms Act.

2. Annexure-A3 is the judgment. Petitioner was previously convicted in another case by the learned Special Judge, N.D.P.S, New Delhi in a case arising from F.I.R. No.4/2015 of the Special Cell. In that case, he was convicted to undergo rigorous imprisonment for a period of 10 years and fine of ₹ 1 lakh. The judgment is produced at Annexure-A5. The grievance of the petitioner is that though the factum of previous conviction was brought to the notice of learned Magistrate - as could be seen from Annexure-A3 - still, the benevolent provision of Section 427 has not been invoked by the learned Magistrate. According to the learned counsel, the



same is a mistake committed by the Magistrate, which is liable to be corrected. Learned counsel would point out that the Magistrate should have invoked Section 427 Cr.P.C *suo moto* and failure to do so, cannot impact the rights of the petitioner. Learned counsel relies on the maxim '*actus curiae neminem gravabit*' as has been successfully pressed into service in ***Jang Singh v. Brij Lal and Others*** [AIR 1966 SC 1631]. Learned counsel also relied upon a recent judgment of the Hon'ble Supreme Court in ***Iqram v. State of Uttar Pradesh*** [(2023) 3 SCC 184].

3. Per contra, this application was seriously opposed by the learned Senior Public Prosecutor. Referring to Section 427, learned Senior Public Prosecutor would submit that consecutive run of sentence is the rule, whereas there should be a specific direction for the sentence to run concurrently. Learned Senior Public Prosecutor relied upon the judgments of this Court in ***Jomon George v. State of Kerala and another*** [2022 (3) KHC 391] and also ***Sivanandan v. State of Kerala and Others*** [2021 (4) KHC 375].



4. Learned Additional Solicitor General of India, Sri.A.R.L Sundaresan, duly instructed by Sri.K.S.Prenjith Kumar, learned Central Government Counsel would submit that the period of previous conviction expired on 13.01.2025 and the petitioner/accused was released on that date.

5. Having heard the learned counsel appearing for the respective parties, this Court finds little merit in the instant CrI.M.C. As rightly pointed out by the learned Senior Public Prosecutor, Section 427 Cr.P.C contemplates consecutive running of sentences in a case, where a person who is already undergoing sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment or imprisonment for life. The exception is contained in a situation, where the Court, which awards the subsequent conviction, directs that the subsequent sentence will run concurrently with the previous sentence. Except in such situation where there is a specific direction by the Court, the sentences are to run consecutively. In the instant case, it is not in dispute that no such direction was granted by the subsequent Court, which



convicted the petitioner/accused, despite the factum of his previous conviction being brought to the notice. That can only be taken as a conscious call taken by the learned Magistrate. In the circumstances, the petitioner's claim has no legs in law.

6. That apart, this Court also notice that the offences in question has no semblance of connection with each other. Both crimes are two different, independent instances. The previous conviction was with respect to the offences under Sections 29 and 21(c) of the N.D.P.S Act. There, the petitioner/accused was convicted by a Sessions Court at Delhi; whereas, the instant crime is with respect to the various offences under the Penal Code, as also, under Section 27(1) of the Arms Act, wherein the conviction has been entered into by the Judicial First Class Magistrate Court-II, Mavelikkara. The transactions are completely different. There exists no room for giving concurrency, insofar as the running of punishment is concerned. In *Mohd. Zahid v. State through NCB* [(2022) 12 SCC 426], the Hon'ble Supreme Court after interpreting



Section 427 Cr.P.C, *inter alia* held as a principle of law that, where there are different transactions, different crime numbers and cases have been decided by different judgments, concurrent sentence, as a general rule, cannot be awarded under Section 427 Cr.P.C. The contention that the learned Magistrate should have been *suo moto* invoked Section 427, is far-fetched and not liable to be recognised in law. There arises no occasion to apply the maxim '*actus curiae neminem gravabit*'. This Court cannot perceive any mistake, whatsoever, on the part of the Court, so as to give solace to the petitioner. Finally, as regards the judgment of the Hon'ble Supreme Court in *Iqram* (supra), this Court notice that, that was a case where the appellant was charged with 9 distinct F.I.Rs involving theft of electricity equipment, wherein the trial court issued no direction allowing subsequent sentences to run concurrently. Term imprisonment for a period of two years with a fine of ₹ 1,000/- each was awarded in 9 cases. The Supreme Court found that the appellant will have to undergo imprisonment for a total period of 18 years in 9 cases, unless Section 427 is invoked to direct the sentences



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to run concurrently. The fact situation dealt with in *Iqram* (supra) has no semblance, whatsoever, with the facts at hand, wherefore the law laid down in *Iqram* (supra) cannot be pressed into service by the petitioner profitably.

In the circumstances, this Cr1.M.C. will stand dismissed.

Sd/-

C.JAYACHANDRAN, JUDGE

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APPENDIX OF CRL.MC 8795/2024

PETITIONER'S ANNEXURES:

- ANNEXURE A1 THE TRUE COPY OF THE F.I.R IN CRIME
465/2013 OF KARUTHIKODE POLICE STATION,
ALAPPUZHA DATED 26.07.2013
- ANNEXURE A2 THE TRUE COPY OF THE FINAL REPORT IN CRIME
465/2013 OF KARUTHIKODE POLICE STATION,
FILED BY 3RD RESPONDENT BEFORE JUDICIAL
FIRST CLASS MAGISTRATE COURT-II,
MAVELIKKARA
- ANNEXURE A3 THE TRUE COPY OF THE JUDGEMENT IN CC NO
343/2015 ON THE FILE OF JUDICIAL FIRST
CLASS MAGISTRATE COURT-II, MAVELLIKARA
DATED 20.11.2017
- ANNEXURE A4 THE CERTIFIED COPY OF THE COURT
PROCEEDINGS IN CC NO.343/2015 IN JUDICIAL
MAGISTRATE COURT-II, MAVELLIKARA
20.11.2017.
- ANNEXURE A5 THE TYPED COPY OF THE JUDGEMENT PASSED BY
THE SPECIAL JUDGE NDPS NEW DELHI IN FIR NO
4/2015 PS SPECIAL CELL DATED 17.10.2015