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M.R. KUDVA

v.

STATE OF ANDHRA PRADESH

DECEMBER 15, 2006

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Code of Criminal Procedure, 1973:

C

s.487 r/w s.482—Sentence in two different criminal cases—Prayed in separate and independent proceeding to run concurrently—Held, s.487 having not been invoked in original cases nor in appeals, separate application before High Court after dismissal of Special Leave Petition by Supreme Court, was not maintainable—s.482 not an appropriate remedy in the case—Sentencing—Penal Code, 1860—ss. 120-B, 420, 468, 471—Prevention of

D

Corruption Act, 1947—s.5(1).

E

Appellant, a Bank Manager, was convicted in two criminal cases u/ss. 120B/420/467/471 IPC read with s.5 (1) of the Prevention of Corruption Act, 1947. He was awarded rigorous imprisonment for 18 months in the first case and 2 years in the second case. His appeals in both the cases were dismissed by the High Court, so also the Special Leave Petitions by the Supreme Court. Thereafter he filed a petition purported to be under sections 482/487 of the Code of Criminal Procedure, 1973 before the High Court praying that the sentences imposed upon him in both the cases be directed to run concurrently. On dismissal of the said application, the accused filed the present appeal.

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Dismissing the appeal, the Court

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HELD:1.1. In the instant case, the provision of s.427 of the Code of Criminal Procedure, 1973 was neither invoked in the original cases nor in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the trial Judge, nor the High Court while passing the judgments of conviction and

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sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. [1146-D-F] A

Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and Anr., [1988] 4 SCC 183, referred to. B

Ammavassi and Anr. v. Inspector of Police, Valliyanpur and Ors., AIR [2000] SC 3544, distinguished.

1.2. The Sessions Judge while passing the judgment and conviction in Criminal Case No. 5 of 1993 took note of the fact that the appellant had been convicted in Criminal Case No. 9 of 1992 also. He, however, categorically opined that the accused did not deserve any sympathy. [1145-D] C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1330 of 2006. D

From the final Judgment and Order dated 17.10.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Petition No. 3917/2005.

V.B. Joshi for the Appellant. E

A. Sharan, A.S.G., Amit Pawan, P. Parmeshwaran and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted. F

Application of the provision of Section 427 of the Code of Criminal Procedure, 1973 (for short, 'the Code') falls for consideration in this appeal which arises out of a judgment and order dated 17.10.2005 passed by a learned Single Judge of the High Court of Andhra Pradesh in Criminal Petition No. 3917 of 2005. G

Appellant was a bank employee. He worked as a Manager in Syndicate Bank at its Branch at Abid Road, Hyderabad. His job was to advance loans. Allegedly, in one case he sanctioned a loan to a customer for Black & White Television, while the scheme was for something else. In another case he H

- A sanctioned a loan for obtaining plots from the Housing Society. The Central Bureau of Investigation (CBI) had also filed chargesheets against the appellant in both the cases. Two cases were, thus, came to be registered against him; one being Criminal Case No. 9 of 1992 and another being Criminal Case No. 5 of 1993. The judgment in the first case was pronounced by the Special Judge, C.B.I. Court on 04.07.1997 whereby and whereunder he was convicted
- B for commission of offences punishable under Sections 120B/420, 468, 471 of the Indian Penal Code (IPC) read with Section 5(1) of the Prevention of Corruption Act, 1947. He was sentenced to undergo 18 months' rigorous imprisonment. Different amounts of fines for offences punishable under Sections 120B/420, 468, 471 IPC and Section 5(1) of the Prevention of
- C Corruption Act, 1947 were also imposed. By a judgment of conviction and sentence dated 06.08.1997, the Special Judge, CBI, found him guilty for commission of offences punishable under Sections 120B/420, 468, 471 read with Section 5(1) of the Prevention of Corruption Act, 1947 in Criminal Case No. 5 of 1993 and sentenced him to undergo rigorous imprisonment for two years. Different amounts of fines for offences punishable under the said
- D sections were also imposed against him.

- Appeals preferred thereagainst before the High Court of Andhra Pradesh were registered as Criminal Appeal No. 792 of 1997 and Criminal Appeal No. 894 of 1997 respectively. The appeals were dismissed by a judgments and orders dated 30.12.2004 and 20.01.2005 respectively. Special Leave Petitions
- E filed thereagainst have also been dismissed by this Court by an order dated 11.05.2005. Appellant thereafter filed an application before the High Court purported to be under Sections 482/427 of the Code of Criminal Procedure, praying, inter alia, therein that the sentences imposed upon him in both the
- F cases be directed to run concurrently. The said application has been rejected by the High Court by reason of the impugned judgment.

- Mr. V.B. Joshi, the learned counsel appearing on behalf of the appellant, would, inter alia, submit that having regard to the facts and circumstances of this case and particularly in view of the fact that the nature of offence in both the cases being the same, the High Court should have directed that sentences
- G imposed upon the appellant to run concurrently and not consecutively.

Section 427 of the Code of Criminal Procedure reads as under :

- “427. Sentence on offender already sentenced for another offence.-
- (1) When a person already undergoing a sentence of imprisonment
- H is sentenced on a subsequent conviction to imprisonment or

imprisonment for life, such imprisonment or 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."

The learned Sessions Judge while passing the judgment and conviction in Criminal Case No. 5 of 1993 took note of the fact that the appellant had been convicted in Criminal Case No. 9 of 1992 also. He, however, categorically opined that the accused did not deserve any sympathy. The appellant was convicted under all the charges levelled against him and sentenced him to undergo rigorous imprisonment for different periods. For commission of the offences punishable under Section 420 IPC, he was sentenced to undergo rigorous imprisonment for two years. The sentences of imprisonment imposed upon him, however, were directed to run concurrently.

Although according to the appellant, the High Court heard both the matters almost at the same time, no such prayer appears to have been made, nor the same fell for consideration by the High Court. The Special Leave Petitions filed by the appellant, as noticed hereinbefore, have also been dismissed.

Strong reliance has been placed by Mr. Joshi on a decision of this Court in *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and Anr.*, [1988] 4 SCC 183. Therein the court upheld a contention that if a given transaction constitutes two offences under the enactments, generally it would be wrong to impose consecutive sentences. It was, however, opined that it would be proper and legitimate to have concurrent sentences; but at the same time, it was held that the said rule would have no application if the facts constituting the same offences are quite different. The said decision, therefore, in view of the fact

- A that the appellant has been convicted in two distinct and different offences, runs counter to the submission of Mr. Joshi.

- B Reliance has also been placed by *Mr. Joshi in Ammvassi and Anr. v. Inspector of Police, Valliyanur and Ors.*, AIR (2000) SC 3544. Therein, the appellants were convicted in four-five different cases, during a period of three to four months. The appellants therein claimed benefit under Section 427 of the Code in order to avoid undergoing imprisonment of a total period of 28 or 35 years in jail. This Court opined that 14 years rigorous imprisonment would meet the ends of justice. It is, therefore, clear that even in that case whereas Section 427 of the Code was applied in three cases, but in two cases, the sentences were directed to run consecutively.

C The said decisions, therefore, are not the authorities for the proposition that it is incumbent upon the court to direct in a case of this nature that both the sentences shall run concurrently and not consecutively.

- D However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal.
- E Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the Trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed.

R.P.

Appeal dismissed.