



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**Cr. Appeal Nos. 52 of 2012 & 124 of 2012.**

**Reserved on: April 06, 2015.**

**Decided on: April 08, 2015.**

**1. Cr. Appeal No. 52 of 2012.**

Pratap Singh

Versus

State of H.P.

.....Appellant.

.....Respondent.

**2. Cr. Appeal No. 124 of 2012.**

Partap Singh

Versus

State of H.P.

.....Appellant.

.....Respondent.

*Coram*

*The Hon'ble Mr. Justice Rajiv Sharma, Judge.*

*Whether approved for reporting?*

*Yes.*

For the appellant(s): M/S. Anoop Chitkara and Satyen Vaidya, Advocates.

For the respondent: Mr. Parmod Thakur, Addl. AG.

**Justice Rajiv Sharma, J.**

Since common questions of law and facts are involved in these appeals, both these appeals were taken up together for hearing. However, in order to maintain clarity, the facts in each appeal are being taken into consideration separately.

2. These appeals are directed against the judgment dated 23.1.2012, rendered by the learned Special Judge (Forests), Shimla, H.P, in Corruption Case No. 11-S/7 of 2008 and also judgment dated 28.3.2012 in Corruption Case No. 12-S/7 of 2008.

**Cr. Appeal No. 52 of 2012.**

3. The appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offences punishable under Sections 420, 409, 467, 468, 471, 477 A IPC and Section 13(2) of the Prevention of

Corruption Act, 1988, has been convicted and sentenced to undergo imprisonment for two years and a fine of Rs. 10,000/- and in default of payment of fine, to further undergo imprisonment for six months under Section 409 IPC. The accused was further sentenced to imprisonment for one year and a fine of Rs. 10,000/- and in default of payment of fine to further undergo imprisonment for six months under Section 477-A IPC and under Section 13(2) of the P.C. Act to undergo imprisonment for one year and to pay a fine of Rs. 10,000/- and in default of payment of fine, to further undergo imprisonment for six months. The sentences were ordered to run concurrently.

4. The case of the prosecution, in a nut shell, is that the accused while functioning as Naib Tehsildar, Dodra Kawar, during the year 2000-01 held various additional charges of the offices, including Sub Treasury Office of Dodra Kawar, Block primary Education Office, Principal of Govt. Senior School, Kawar, Headmaster, Govt. High School Dodra and Jaskoon and Headmaster of Govt. Middle School Jakha and was entrusted with cash amounting to Rs. 92,936/- in respect of bills No. 17, 28, 73, 84, 95, 97, 98 and 100 concerning purchase of stationary and other articles and transportation thereof in respect of Block Primary Schools. The Vigilance Department received complaint and an inquiry was initiated. Thereafter, Inspector, Narata Ram conducted the enquiry. He gave the report that the accused while functioning as Naib Tehsildar and exercising powers of DDO in respect of Education Department, committed criminal breach of trust

and embezzled Rs. 92,936/- (2000-01) and also forged documents and used them as genuine and made false entries of accounts. The entries of payments were made on the same date but there was ~~no~~ voucher supporting the same. The entries were false and accounts were defalcated. An amount of Rs. 27,000/- was stated to be drawn for purchase of fuel wood, however, no such supply was ever made and amount was misappropriated. The investigation was completed and the challan was put up after completing all the codal formalities.

5. The prosecution, in order to prove its case, has examined as many as 28 witnesses. The accused was also examined under Section 313 Cr.P.C. He has denied the prosecution case. The learned trial Court convicted and sentenced the accused, as noticed hereinabove.

6. Mr. Anoop Chitkara, Advocate, appearing on behalf of the accused, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. Parmod Thakur, learned Addl. AG, for the State has supported the judgment of the learned trial Court dated 23.1.2012.

7. I have heard learned counsel for both the sides and gone through the records of the case carefully.

8. Sh. Hardyal Singh, PW-1 has testified that he remained posted in the office of BPEO, Dodra Kawar as JBT. He remained posted in that office from 2003. Accused was working as Niab Tehsildar and BPEO. He had produced the attendance register of Central Primary School Kawar

from August, 2001 to September, 2004. According to him, the attested copy of challan dated 31.3.2004 for Rs. 4646/- in respect of Manoj Kumar and pay bill for December, 1990 which was unsigned were taken into possession vide memorandum Ext. PW-1/A. He proved copy of challan Ext. PW-1/B and bill Ext. PW-1/C.

9. Smt. Sunita, PW-2 testified that she remained in the office of BPEO Dodra Kawar, as Clerk in the year 1998. Accused was working as BPEO. She was working as daily wager. She was doing diary dispatch work. Sh. Ram Dutt, teacher used to prepare the bills. Authority was in her name for withdrawal of money from the treasury. She used to make the payment on the same day. She did not know BPEO could have made the authority in her name. In the treasury cash register, she used to sign. She was not conversant with the cash book. She used to disburse the payments.

10. Sh. Ram Dutt Sharma, PW-3, deposed that he remained posted as JBT in Govt. Primary School Kiterwari from 1999 to 2001. He was well conversant with the handwriting and signatures of the accused. He identified bill No. 31/2000 dated 8.8.2000 which was prepared by him vide Ext. PW-3/A. He also prepared bill No. 84 dated 6.1.2001 Ext. PW-3/B, Bill No. 95 dated 31.3.2001 Ext. PW-3/C, Bill No. 97 dated 31.3.2001 Ext PW-3/D, Bill No. 98 dated 31.3.2001 Ext. PW-3/D and Bill No. 100 dated 31.3.2001 Ext. PW-3/F. These bills were signed by the accused. He had also identified Bill No. 17 dated 23.6.2000 Ext. PW-3/G and bill No. 28

Ext. PW-3/H. He also identified cash book Ext. PW-3/J and also payment at page 7 and entries Ext. PW-3/K. He has also seen page Nos. 30 and 31 vide Ext. PW-3/M and Ext. PW-3/N. These have been attested by accused Partap Singh. The entry at page No. 34 was also attested by accused vide Ext. PW-3/O. Vouchers A-1 to A-13 were not attested by the DDO. In his cross-examination, he admitted that the payment was made, vouchers were annexed by accused himself. He was not aware that recipients used to sign the vouchers as well. In the school, stock register was maintained by the Center Head Teacher. He admitted that during his tenure whatever work was done, payment was received by the claimants. He also testified in his cross-examination that accused as D.D.O. was responsible for all departments in the Dodra Kawar.

11. Sh. Chandu Lal, PW-4 and Sh. Arun Kumar, PW-5 were declared hostile.

12. Sh. Som Nath, PW-6 testified that he is running Sharma General Store at Novbahar since 1989. He identified bill Ext. A-40. These articles were supplied by him. He denied the suggestion that Ext. A-40 was not issued by them. He also denied that writing on bill Ext. A-40 is in his hand writing or in the hand writing of his brother.

13. Sh. Dev Lal, PW-7 deposed that in the year 1997-98, he got the school white washed and also transported books etc. to the school and received the payment.

14. Sh. Thampi Singh, PW-8 deposed that he transported the material book etc. from Natwari to Kawar Jiskoon schools and executed receipts Ext. A-26 and A-27. Sh. Chaman Lal, PW-9 testified that he is running a Karyana shop for the last 20 years. He has not signed A-23. Sh. Bhagat Singh, PW-10 has sent record to Vigilance department through letter Ext. PW-10/A. Sh. Jagdish Chand, PW-11 has proved extract Ext. PW-11/A. Sh. Dharam Singh, PW-12 has proved memorandum Ext. PW-12/A and PW-12/B. Sh. Shri Lal, PW-13 has proved memorandum Ext. PW-13/A. Sh. Sarva Singh, PW-14 has proved abstract of register Ext. PW-14/B. Ms. Santosh Kumari, PW-15 has proved memorandum Ext. PW-15/A. Sh. Gian Chand, PW-16 has proved memorandum Ext. A-35. Sh. Ram Pal, PW-17 has proved memorandum Ext. PW-17/A. Sh. Rajinder Lal, PW-18 has proved original memorandum Ext. PW-18/A. Sh. Barji Ram, PW-19 was declared hostile. Sh. Ramesh Kumar, PW-20 has proved Ext. PW-20/A and PW-21/A. Sh. Susheel Kumar, PW-21 has proved memorandum Ext. PW-21/A. Sh. Kallu Ram, PW-22 stated that he had supplied fuel wood to various schools of Dodra Kawar. He had received payments and issued the receipts. He had signed receipt Ext. A-22. According to him, perhaps, he had received a sum of Rs. 27,000/-. Sh. Gian Chand, PW-23 deposed that he had received payment of Rs. 1385/-. He had signed bill Ext A-28 and receipt Ext. A-29. Sh. Serva Nand, PW-24 has proved the abstract Ext. PW-24/B. Sh. Sunil Kumar, PW-25 has proved memorandum Ext. PW-25/A and Ext. PW-8/B. Sh. Partap Singh,

PW-26 has proved memorandum Ext. PW-26/A. Sh. Naratta Ram, PW-27 was the Investigating Officer. According to him, he has seized fuel registers produced by Hardyal Singh, Shiv Lal, Sarva Nand, Santosh Kumari, Ram Pal and Dharam Singh. He sent these documents alongwith the specimen writings and signatures to FSL, Junga for comparison. He recorded the statement of Rajinder Lal mark Z-1. He also recorded statements of Barji Ram, Sushil Kumar, Kallu Ram, Gian Chand and Sarva Nand. In his cross-examination, he deposed that the contractors had received the payments. Sh. Anant Ram, PW-28 has partly investigated the case. He has seized receipt Ext. A-27. He proved copy of FIR Ext. PW-28/A.

15. Bill Ext. PW-3/G for Rs. 14,750/- was drawn for office expenses and it was drawn in the name of P.S. Ranaut. The entries in the cash book Ext. PW-3/J at page 7 was made showing Rs. 14750/- as having been drawn against bill No. 17 on 23.6.2000 and payment was shown to have been made at page 7 of the cash book on 23.6.2000 itself. However, in the column of particulars, there is nothing to show that to which firm and to which person the payment was made. The accused had infact drawn payment vide bill No. 17 Ext. PW-3/G, however, the receipt was not obtained.

16. A sum of Rs. 3205/- was drawn by Sh. P.S. Ranaut as BPEO through bill Ext. PW-3/C i.e. bill NO. 95 dated 31.3.2001. In the cash book, at page No. 34, a sum of Rs. 3205/- was received and on the same day, payment was shown. However, in the column of particulars, there is

no detail as to whom the payment was made. The entries are Ext. PW-3/O in cash book Ext. PW-3/J. The accused has not denied the withdrawal of money and also the payment in the cash book.

17. A sum of Rs. 6457/- was drawn through bill No. 97 dated 31.3.2001 Ext. PW-3/D. It was drawn in the name of P.S. Ranaut as BPEO and entry was made in the cash book as receipt of the money at page No. 34 and amount was drawn for office expenses. The payment was shown to have been made on 31.3.2001 itself. The entries are Ext. PW-3/O and in the cash book Ext. PW-3/J. The accused has drawn Rs. 6457/- but could not account for the same.

18. A sum of Rs. 1000/- was drawn vide bill No. 100 dated 31.3.2001 vide Ext. PW-3/F and the amount was entered in the cash book on 31.3.2001. It was shown to have been paid on 31.3.2001 itself. The entry in the cash book did not show to whom the payment was made. There is no evidence to prove that the payment was in fact made.

19. A sum of Rs. 63,380/- was drawn vide bill No. 98 dated 31.3.2001 Ext. PW-3/F as office expenses in the name of P.S. Ranaut, Naib Tehsildar and on the same day the payment was received and entered on receipt side of the cash book at page No. 34 as per the details in Ext. PW-3/O. The accused has admitted to have received the money but he did not know to whom the payment was made.

20. The explanation advanced by the accused cannot be accepted. The prosecution has proved the entrustment of money to the accused. The

accused was also charged under Section 477-A IPC. Accused Partap Singh Ranaut, while functioning as BPEO, Dodra Kawar, has withdrawn a sum of Rs. 14750/- vide bill No. 17 dated 23.6.2000 and payment was shown to have been made in the cash book as per page No. 7 Ext. PW-3/O. However, there are no vouchers and receipts. Similarly, a sum of Rs. 100/- was drawn vide bill No. 100 Ext. PW-3/F and payment was shown at page 34 vide entries at Ext. PW-3/O. Similarly, he has withdrawn Rs. 63,380/- for office expenses vide bill no. 98 Ext. PW-3/E and payment was shown in the cash book. The entries are Ext. PW-3/O. There are no vouchers showing the payment. It was the duty of the accused, being DDO, to make entries correctly duly supported by the documents. The prosecution has fully proved the case against the accused and accused has rightly been convicted and sentenced, as noticed hereinabove, under Section 409, 477-A IPC and under Section 13(2) of the Prevention of Corruption Act, 1988.

**Cr. Appeal No. 124 of 2012.**

21. The appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offences punishable under Sections 420, 409, 467, 468, 471, 477-A IPC and Section 13(2) of the Prevention of Corruption Act, 1988, has been convicted and sentenced to undergo imprisonment for one year and a fine of Rs. 10,000/- and in default of payment of fine to further undergo imprisonment for six months under Section 477-A IPC and under Section 13(2) of the P.C. Act to undergo imprisonment for one year and to pay a fine of Rs. 10,000/- and in default

of payment of fine, to further undergo imprisonment for six months. The sentences were ordered to run concurrently.

22. The case of the prosecution, in a nut shell, is that the accused while functioning as Naib Tehsildar, Dodra Kawar, during the year 2001-02, held various additional charges of the offices, including Sub Treasury Office of Dodra Kawar, Block Primary Education Office, Principal of Govt. Sr. School, Kawar, Headmaster, Govt. High School Dodra and Jaskoon and Headmaster of Govt. Middle School Jakha and was entrusted with cash amounting to Rs. 2, 27,473/- in respect of bills No. 26, 27, 28, 37, 38, 39, 40, 52, 53, 54, 55, 56, 57, 63 and one receipt amounting to Rs. 600/- concerning the purchases of stationary and other articles and transportation thereof in respect of Block Primary Schools. The Vigilance Department received complaint and an inquiry was initiated. Thereafter, Inspector, Narata Ram conducted the enquiry. The investigation was completed and the challan was put up after completing all the codal formalities.

23. The prosecution, in order to prove its case, has examined as many as 33 witnesses. The accused was also examined under Section 313 Cr.P.C. He has denied the prosecution case. The learned trial Court convicted and sentenced the accused, as noticed hereinabove.

24. Mr. Satyen Vaidya, Advocate, appearing on behalf of the accused, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. Parmod Thakur,

Addl. AG, for the State has supported the judgment of the learned trial Court dated 28.3.2012.

25. I have heard learned counsel for both the sides and gone through the records of the case carefully.

26. Sh. Deep Ram, PW-1 has deposed that he never went to Natwarh for carrying the articles. Sh. Krishan Chand, PW-2 has proved proforma-invoice Ext. PW-2/A and PW-2/B. Sh. Atul Latwa, PW-3 deposed that he has issued bill Ext. PW-3/A and its receipt Ext. PW-3/B. Sh. Thampi Singh, PW-4 deposed that he has executed receipts Ext. PW-4/A and Ext. PW-4/B. Sh. Yashwani Kumar, PW-5 deposed that he has prepared bill No. 26 dated 20.10.2001. He identified the signatures of the accused. The same is Ext. PW-5/F. He also prepared bill No. 40 dated 20.10.2001 Ext. PW-5/G. He also identified signatures of accused Partap Singh on documents mentioned in his statement. He also identified signatures of the accused on cash book pages 199, 31 to 38 Ext. A-57 to A-72.

72. Sh. Surinder Singh, PW-6 deposed that he has prepared bill No. 26, dated 20.10.2001 Ext. PW-6/A, PW-6/A-11, A-15, A-18, A-44, A-47 and A-55.

He had written page No. 77 Ext. PW-6/C and made entry at page No. 38 of the cash book Ext PW-5/A. By the time the bill was drawn, bills had not been received and payment was shown to have been received in the name of Partap Singh accused. He has made these entries at the instance of accused. Sh. Hratap Singh Negi, PW-7 has proved extract of register Ext. PW-7/A. Sh. Gurmit Singh, PW-8 has proved receipts Ext. PW-8/B to

PW-8/D. Sh. Uttam Lal, PW-9 deposed that whatever material was received in the School, it was entered in the register. Sh. Ramesh Chand, PW-10 has proved bill Ext. PW-10/A and receipt Ext. PW-10/B. Sh. Yogesh Arya, PW-11 identified bills supplied for stationary articles and payment received. Sh. Mehar Chand, PW-12 has proved memorandum Ext. PW-12/A. Sh. Jai Lal, PW-13 has proved memorandum Ext. PW-5/B. Sh. Sant Ram, PW-14 and Sh. Bhagat Singh, PW-15 are formal witnesses. Sh. Ram Dutt Sharma, PW-16, deposed that cash used to remain with the DDO. The contingency bills Ext. PW-16/A, PW-16/B, A-1, A-3, PW-5/F, PW-6/A and A-44 were prepared by him. Ms. Sunita, PW-17 stated that Ram Dutt was teacher. His services were being requisitioned for assistance. She used to draw money from the treasury. She used to disburse payment and she never maintained the cash book. Sh. Ram Lal, PW-18 has proved memo Ext. PW-18/A. Ms. Santosh Kumari, PW-19 has proved memo Ext. PW-19/A. Sh. Sarva Singh, PW-20 has proved memo Ext. PW-20/A. Sh. Jagdish, PW-21 deposed that he supplied books to BPO Dodra Kawar on 26.5.2001 valuing Rs. 54,051/-. The books were received by Ram Dutt, Teacher. Sh. Sri Lal, PW-22, has proved memo Ext. PW-22/A. Sh. Sunil Kumar, PW-23, has proved memo Ext. PW-23/A. Sh. Partap Singh, PW-24, has proved memo Ext. PW-24/A. Ms. Sulkshana Devi, PW-25, has proved Ext. PW-25/A. Sh. Ramesh Kumar, PW-26 has proved stock register Ext. PW-26/B. Sh. Sarva Nand, PW-27 has proved PW-27/A and PW-27/B. Sh. Sushil Kumar, PW-28 has proved stock

register Ext. PW-28/A and PW-28/B. Sh. Rajinder Lal, PW-29, has proved memo Ext. PW-29/A. Sh. Vinod Kumar, PW-30 has proved copy of FIR Ext. PW-30/B. Sh. Lal Man, PW-31, has proved copy of FSL report Ext. PW-31/B. Sh. Anant Ram, PW-32, deposed that he had seized the record from Govt. School, Kawar through memo Ext. PW-12/A. He had also seized record and vouchers from Govt. School Jiskoon on 23.11.2006 through memo Ext. PW-5/B. Sh. Naratta Ram, PW-33, testified that he seized records from GPS Lagnoo through memo Ext. PW-18/A and from GPS Chamdar through memo Ext. PW-19/A. He also seized record from GOPS Jakha through memo Ext. PW-20/A. The record from GPS Jiskoon was seized through memo Ext. PW-22/A. He also made the statement the manner in which the record was seized. In his cross-examination, he admitted that the accused was dealing with five departments.

27. Sh. Satyen Vaidya, Advocate, has vehemently argued that the items were received and payments were duly made. There is a detailed procedure, the manner in which the payment is to be made as per the H.P. Financial Rules, 1971. The payment is to be made after the receipt of the material and the receipt is to be obtained after the payment is made.

28. Now, as far as bill No. 26 dated 20.10.2001 is concerned, it was drawn in favour of Sharma General Store, Rahman, Deep Chand and Thampi Singh but payment was received as per the cash book by accused himself. There was no mention that the payment was made to these persons. Bill No. 27 Ext. A-11 was drawn in favour of M/S Himachal

Emporium but payment in the cash book was shown to have been received by Pratap Singh Ranaut and cash book did not show that the payment was ever made to M/S Himachal Emporium but bills were obtained from M/S Latawa Furnishers. However, Latawa Furnishers were never claimant and no payment was shown to have been made to Latawa Furnishers in the cash book. The sanction order Ext. A-19 showed payment was drawn favouring Raj Pal Stationery and bills were that of Gian Bhandar (Ext. A-20 to A-43). The cash book did not show that either Raj Pal Stationers or Gian Bhandar were paid the money but the payment was received by Pratap Singh Ranaut himself. Bill No. 38 was drawn and claimant was M/S Himachal Emporium, sanction was Ext. A-46. However, payment was received by accused and bill was of M/S Latawa Furnishers in the cash book. As far as bill No. 39 Ext. A-47 is concerned, the material was received but account books were not maintained in conformity with the financial rules and did not reflect the true picture of the transactions. The appellant could not withdraw the amount in his name. The withdraw of the amount in his own name amounts to misconduct.

29. Mr. Satyen Vaidya, Advocate, submits that taking into consideration the peculiar facts and circumstances of the case, the sentence imposed in Corruption case No. 12-S/2008, may be ordered to run concurrently. There is sufficient force in his contention since the accused was involved in two financial years i.e. 2000-01 and 2001-02. He was admittedly looking after more than 5-6 departments.

30. Their lordships in the case of **V.K. Bansal vrs. State of Haryana and another**, reported in **(2013) 7 SCC 211**, have held that Court should exercise its discretion judicially and not mechanically in each case, having regard to nature of offence and particular fact situation while exercising discretion under Section 427(1) to direct sentences to run concurrently. It has been held as under:

“10. We are in the case at hand concerned more with the nature of power available to the Court under Section 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations, one falling under the proviso to sub-section (1) to Section 427, the second falling under sub-section (2) thereof and the third where the Court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any strait jacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section Page 8 8 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.”

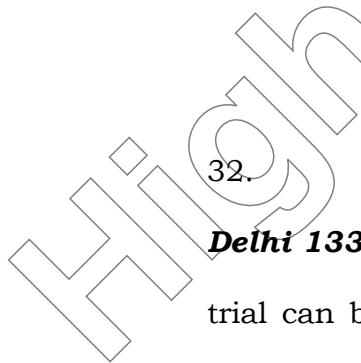
31. In the case of **A. S. Naidu vrs. The State of Madhya Pradesh**, reported in **1975 Cri.L.J. 498**, the Division Bench has held that the High Court can exercise its discretion under sub-section (1) of Section 397 and direct the sentence awarded in a subsequent trial to run concurrently with the sentence awarded in a previous trial, even after the appeals or revisions preferred by the convict against his conviction in the said trials have been dismissed. It has been held as under:

"[9] Having come to the conclusion that Sub-section (1) of Section 397 of the Code confers an independent power on the Court to direct a subsequent sentence to run concurrently with the sentence in an earlier case, the question of exercising the power under its inherent jurisdiction does not arise. We may here mention that the learned counsel for the State invited our attention to the decision of a Division Bench of this Court in *Dhyan-Singh v. The State of Madhya Pradesh Misc. Cri. C. No. 157 of 1970, D/- 20-3-1971* (Madh Pra), in which it has been held that the power to release an accused on probation of good conduct cannot be exercised after the delivery of judgment. This decision cannot, however, be considered as an authority on the question whether the power under Sub-section (1) of Section 397 of the Code can be exercised after the delivery of judgment. An order releasing an offender after due admonition under Section 3 of the said Act or an order releasing an offender on probation of good conduct under Section 4 is passed in lieu of sentence. Section 9 of the Act provides that where the offender fails to observe the conditions of the bond, he may be awarded a sentence for the original offence. Thus, an order under the Act is in lieu of sentence and, being a matter pertaining to the award of sentence, must be passed when sentence is awarded and not at a later stage. The aforesaid decision has, therefore, no bearing on the question posed for consideration in this case.

[10] To sum up, we hold that subsection (1) of Section 397 of the Code confers an independent power on the Court to direct a subsequent sentence awarded in a case to run concurrently with the sentence awarded in an earlier case, which can be exercised even after the disposal of the case on merits since it does not involve any review of the judgment on merits."

In the case of ***Amar Nath vrs. Alfa***, reported in ***AIR 1969 Delhi 133***, the learned Single Judge has held that sentence in subsequent trial can be ordered to run concurrently with previous one. It has been held as under:

"4. It will be seen that section 397, as it now stands, gives power to a Court to direct that a subsequent sentence shall run concurrently with a previous sentence. Before the amendment of the Code in the year 1923, except where several sentences were passed at one trial or where in the case of a



youthful offender, section 32 of the Reformatory Schools Act, 1897 (VIII of 1897) applied, there was no provision by which a subsequent sentence could be made to run concurrently with a previous sentence. Section 397, prior to its amendment in that year, was in the following terms:

"When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in Its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced."

8. Under section 397 of the Code It was competent for the Magistrate, First Class, Chamba, to order that the subsequent sentence shall run concurrently with the previous sentence. Shri K. C. Pandit, learned counsel for State, also did not support the recommendation made by the learned Additional Sessions Judge."

33. In the case of ***Sadashiv Chhokha Sable vrs. State of Maharashtra***, reported in ***1993 Cri. L.J. 1469***, the Division Bench of the Bombay High Court has held that a person sentenced to imprisonment must, for the purpose of S. 427, be deemed to be undergoing that sentence from the very moment the sentence is passed. The accused may be on bail or in custody in the earlier case at the time of passing of the subsequent sentence. It has been held as under:

"6. We must notice that the learned Public Prosecutor for the State had contended that Section 427 Cr.P.C. is not attracted in the instant matter because the petitioner was not "undergoing a sentence of imprisonment" as contemplated

under that provision, when subsequent sentence was awarded. According to him, unless the offender is physically in jail to suffer the sentence of imprisonment at the time of subsequent sentence, Section 427(1) cannot be pressed into service. In our view, such an approach to the provision would not be object oriented. Normal principle is that sentences should take effect immediately on conviction. Criminal Procedure Code provides that where several sentences are passed, such sentences should run one after the other i.e. consecutively unless the Court directs otherwise i.e. concurrently. A person sentenced to imprisonment must, for the purpose of Section 427, be deemed to be undergoing that sentence from the very moment the sentence is passed. The accused may be on bail or in custody in the earlier case at the time of passing of the subsequent sentence. There cannot be legislative intention to deny the benefit of the provision even in a deserving case by virtue of the only fact that the convict is on bail or in custody or could not be taken within the portals of prison for some genuine reason. Literal construction on the terminology "undergoing a sentence of imprisonment" as suggested on behalf of the State - would lead to absurd results specially where two separate sentences are awarded one after the other on one day in two different trials. Either the learned Judge would not exercise the discretion only because in the earlier case he had not gone inside the jail by that time or he will have to actually send the convict inside the jail for some time, and call him back immediately to pronounce judgment in the second case. We do not think such a absurd and farcical situation was intended by the legislature."

34. In the instant case, the accused has been enlarged on bail for the previous conviction.

35. Mr. Anoop Chitkara, Advocate, has vehemently argued that since his client was to look after many departments as DDO, lenient view may be taken. There is merit in his contention. Mr. Satyen Vaidya, Advocate, has also argued that since his client has been convicted in Corruption case No. 12-S/7 of 2008 for the financial year 2001-02, the

sentence imposed in Corruption Case No. 11-S/7 of 2008 may be ordered to run concurrently.

36. Accordingly, Cr. Appeal No. 52 of 2012 is partly allowed. The sentence imposed upon the appellant under Section 409 IPC is reduced to one year but the fine is increased to Rs. 50,000/- and in default of payment of fine, the accused shall suffer further imprisonment for three months. Cr. Appeal No. 124 of 2012 is dismissed. The sentence imposed upon the appellant in Corruption Case No. 12-S/7 of 2008 is ordered to run concurrently with the earlier sentence imposed in Corruption Case No. 11-S/7 of 2008.

April 08, 2015,  
(karan)

( Rajiv Sharma ),  
Judge.

High Court