



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1148 OF 2024

Sikandar Govind Kale] .. Petitioner
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.Atharva Dandekar a/w Hitendra Parab and Padmini Ainapure for the
Petitioner.

Dr.Ashvini Takalkar, APP for the State.

Mr.B.M. Tadavi, Jailor Gr. II, Kolhapur Central Prison, present.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, J**

DATE : 27th JUNE, 2024.

JUDGMENT (PER BHARATI DANGRE, J) :

1] The Petitioner stood convicted in 14 criminal cases which had invoked Sections 454, 457, 428, 511, 380 read with 34 of the Indian Penal Code, by the Court of Judicial Magistrate First Class, Kolhapur, all the Judgments being pronounced on 18.02.2019.

The conviction in each of the case was based on the admission of guilt recorded by the Magistrate and on being found guilty of having committed the offence with which he was charged, the Petitioner was sentenced to undergo Rigorous Imprisonment for two years, sentence in each criminal case being directed to run concurrently with that in other criminal cases.

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In addition, a fine was imposed upon him in all 14 cases and he was directed to deposit a fine of Rs.5,000/- on being convicted under Section 454 of the IPC, Rs.10,000/- for conviction under Section 457 of the IPC and Rs.5,000/- for being convicted under Section 380, with the default sentences being stipulated in the respective Judgments.

The total fine imposed upon the Petitioner in all the cases amounts to Rs.2,65,000/-.

2] The Petitioner is constrained to approach this Court, with a contention that he has served his substantive sentence, but since he was not able to afford the amount of fine due to poverty, he is facing the prospect of being incarcerated for further period of 9 years, and undergo imprisonment in default of fine.

By invoking inherent jurisdiction of this Court under Section 482 of the Cr.P.C., the Petitioner seek reduction of sentence in default of fine by restricting it to the period of imprisonment already undergone and for his release forthwith.

It is specifically pleaded in the Petition that due to poverty and inability to offer the payment of fine, he is incarcerated and is deprived of his fundamental right to life and dignity enshrined in Article 21 of the Constitution of India.

3] We have heard the learned counsel Mr. Atharva Dandekar alongwith Mr.Hitendra Parab for the Petitioner and Dr.Ashvini Takalkar, the learned APP for the State.

By consent of parties, we deem it appropriate to issue rule, which is made returnable forthwith.

By consent of the respective counsel, the Petition is heard finally at the stage of admission.

4] Mr.Dandekar has assertively submitted that the Petitioner was arraigned as accused No.5 and 6 in the 14 criminal cases, which were tried before the Judicial Magistrate First Class, Kolhapur, arose out of different CRs registered in different Police Stations, where he came to be arrested on different dates.

A chart containing the details of these cases and substantive sentences imposed upon him alongwith the amount of fine and the imprisonment in default is annexed at Exhibit A to the Petition, which we deem appropriate to reproduce :-

Sr. No.	Police Station CR NO. RCC NO.	Accused No. & Offence	Date of Arrest	Substantive sentence	Fine	Imprisonment in default
1	Gokul Police Stn. CR No.40/2017 RCC No.95/2018	Accused No.5 Offence u/s 454, 457, 380 r/w 34 IPC	13.09.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC RI for 2 years u/s 380 IPC RI for 1 year	5000/- 10,000/- 5000/-	
2	Rajarampuri Police Stn. CR No.149/2017 RCC No.330/2018	Accused No.5 Offence u/s 454,380 r/w 34 IPC	21.12.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r.w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
3	Junarajawada Police Stn. CR No.105/2017 RCC NO.87/2018	Accused No.5 Offence u/s 454,457, 380 r/w 34 IPC	24.10.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC RI for 2 years u/s 380 IPC RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
4	Rajarampuri Police Stn. CR NO.288/2016 RCC No.885/2018	Accused No.5 Offence u/s 457, 380 r/w 34 IPC	01.11.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
5	Juna Rajwada Police Stn. CR NO.114/2017 RCC No.517/2018	Accused No.5 Offence u/s 457, 428, 380 r/w 34	25.10.2017	u/s. 457 IPC r/w 34 RI for 2 years u/s 428 IPC	10,000/- -	3 months SI

		IPC		r/w 34 RI for 6 months u/s 380 IPC r/w 34 RI for 1 year	5000/-	3 months SI
6	Juna Rajwada Police Stn. CR No. 290/2016 RCC No.112/2018	Accused No.5 Offence u/s 454,457, 380 r/w 34 IPC	25.10.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
7	Juna Rajwada Police Stn. CR NO.87/2017 RCC NO.110/2018	Accused No.5 offence u/s 454, 457, 380 r/w 34 IPC	25.10.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
8	Rajaram Puri Police Stn. CR No.159/2017 RCC No.331/2018	Accused No.5 offence u/s 457, 380, r/w 34 of IPC	09.03.2018	u/s. 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	10,000/- 5,000/-	3 months SI 3 months SI
9	Rajaram Puri Police Stn. CR No.14/2017, RCC No.284/2018	Accused No.6 Offence u/s 454, 457, 380 r/w 34 IPC	22.08.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
10	Juna Rajwada Police Stn. CR NO.119/2017 RCC No.317/2018	Accused No.6 Offence u/s 454,457, 380, 511 r/w 34 IPC	31.08.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year u/s 511 of IPC r/w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
11	Gandhi Nagar Police Stn. CR NO.92/2017 RCC No.786/2018.	Accused No.5 Offence u/s 457, 380 r/w 34 IPC	04.10.2017	u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	10,000/- 5,000/-	3 months SI 3 months SI

12	Shahupuri Police Stn. CR No.37/2017 RCC No.835/2018	Accused No.5 Offence u/s 454, 457, 380 r/w 34 IPC	28.07.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
13	Rajarampuri Police Stn. CR NO.61/2017 RCC No.220/2018	Accused No.6 offence u/s 454,457, 380,411 r/w 34 IPC	29.08.2017	u/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI
14	Rajarampuri Police Stn. CR No.87/2017, RCC no.54/2018	Accused No.5 offence u/s 454, 457, 380 r/w 34 IPC	31.10.2017	U/s. 454 IPC r/w 34 RI for 1 year u/s 457 IPC r/w 34 RI for 2 years u/s 380 IPC r/w 34 RI for 1 year	5,000/- 10,000/- 5000/-	3 months SI 3 months SI 3 months SI

5] Mr.Dandekar, the learned counsel for the Petitioner would submit that in all the cases the Petitioner appeared before the Magistrate, admitted his guilt, and the counsel for the Petitioner was heard on sentence, and a request was made that the penalty should be imposed, which should commensurate to his guilt, and the accused should be released by considering the sentence already undergone.

6] On consideration of the gravity of the offence and by taking note of the fact that the accused was incarcerated for one year, five months and five days, on rendering the finding of guilt, he was sentenced to undergo imprisonment for having committed offence under Section 454, 457 and 380 of the Indian Penal Code, all sentences being directed to run concurrently.

In addition, fine was also imposed on him, with a default clause, contemplating that failure to deposit the fine, he shall undergo further imprisonment for the period that was specified against each of the sentence.

7] All the 14 Judgments passed by the learned Magistrate are placed on record and it can be noted that the Petitioner was first arrested on 13.09.2017 in connection with CR No.40/2017 (resulting in RCC No.95/2018) and thereafter he was shown in custody in other cases.

In any case, from 13.09.2017, the Petitioner remained incarcerated. The first concurrent sentence imposed upon the Petitioner ended on 13.09.2019 and the last concurrent sentence on 09.03.2020. The Petitioner has, thus, served the entire substantive sentences imposed upon him in all 14 cases.

8] Since the Judgments also impose a fine, being to the tune of Rs.2,65,000/-, on account of abject poverty, the Petitioner a young lad of 24 years at the relevant time, in absence of any source of income, was unable to deposit the fine and the consequences of the same, as per the Judgments delivered by the learned Magistrate in 14 cases, would warrant his further detention for 9 years and this is despite the fact that the period of imprisonment under the last substantive sentence awarded to him has come to an end on 09.03.2020.

Despite undergoing the substantive sentence, he continue to be in jail for undergoing the default imprisonment, as he is unable to deposit the fine and it is in these circumstances, when he has now reached the age of 30 years, he request for his release, as according to the calculation of the Petitioner, he would be entitled to be released,

on undergoing the default sentences in February, 2028, after having spent 11 years of imprisonment, when in fact the substantive sentence imposed upon him was to last only for a period of two years.

Praying that this amount to abuse of the process and by submitting that the object of criminal justice system should be reformatory and not retributive, Mr. Dandekar has argued that the punishment should not be disproportionate to the offence and his penury would cause great hardship to him, if his incarceration is stretched to 11 years on account of default to pay the fine. This consequence of his further detention and that too for such a long period is argued to be violative of his right to live with dignity.

The learned counsel would place reliance upon the decision of this Court in ***Aslam Salim Shaikh vs. State of Maharashtra & Anr.*** (Criminal WP No.3157/2022) decided on 17.07.2023, where this Court had pronounced upon the sentencing policy prevalent in the country and has cautioned that any sentence imposed by the Court must maintain a proper balance between the deterrent and reformatory objects of the policy and ensure that the object is sufficiently achieved.

9] We have heard Dr. Takalkar, the learned APP who would oppose the relief and she would place reliance upon the decision of the apex Court in the case of ***Sharad Hiru Kolambe vs. State of Maharashtra & Ors., AIR OnLine 2018 SC 289***, to buttress her submission that there is no power in the court to order the default sentences to run concurrently and it is her submission that when a default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay the amount and according to the learned APP, the above decision has sealed the position of law.

10] While dealing with litigation involving a profound issue of Constitutional and International Law, which was noted to have raised challenge to the nascent champions of human rights in India, in respect of the civil debtor, whose personal liberty is imperiled by the judicial process contemplated in Section 51 (Proviso) and Order 21 Rule 37 of the Code of Civil Procedure, the eminent Justice V.R. Krishna Iyer in **Jolly George Varghese and Another vs. The Bank of Cochin**¹, in his inimitable style pronounced upon the said question.

Referring to the report of Central Law Commission, while dealing with Section 51 of the CPC, as to whether this mode of execution should be retained on the statute book in view of the provision in International covenant on civil and political rights prohibiting imprisonment for a non performance of a contract, he pertinently observed thus :-

“Imprisonment is not to be ordered merely because, like shylock, the creditor says; “I crave the Law, the penalty and forfeit my bond”.”

The law thus recognize the principle that, “mercy is reasonable in the time of affliction as clouds of rain in the time of drought.”

We concur with the Law Commission in construction of Section 51 of the CPC. It follows the quondom affluence and current indigence without intervening dishonesty or bad faith in liquidating his liability can be consistent with Article 11 of the covenant, because then no detention is permissible under Section 51 of CPC.”

The most pertinent observation by Justice Krishnaiyer V.R. equally applies in the the present case and we deem it appropriate to reproduce the same,

“To be poor, in this land of Daridranarayan, is no crime and to

¹ (1980)2 SCC 360

recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his willful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means, such as medical bills or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the covenant. But this is precisely the interpretation we have put on the proviso to Section 51 of CPC and the lethal blow of Article 21 cannot strike down the provision as now interpreted.”

11] The Petitioner, continue to be incarcerated despite undergoing substantive sentence imposed upon him and upon its completion he deserved his release back on 09.03.2020, but today i.e. on 27.06.2024 he continue to be incarcerated for not being able to pay the fine imposed upon him, which is not a small amount but a whopping sum of Rs.2,65,000/- .

12] The learned counsel for the Petitioner has placed reliance upon the decision in the case of **Aslam Salim Shaikh** (*supra*), where this Court exercised its duty as a protector of the fundamental right of life and liberty, on the ground that if it did not, then it will amount to serious miscarriage of justice.

In the background facts that the Petitioner, aged 30 years, prayed for a direction that the sentences of the imprisonment awarded to him by different Courts in 41 cases should run concurrently and praying for setting aside of the fine amount of Rs.1,26,400/- (total) passed by various Courts in 41 cases, the Petitioner being in custody since 03.12.2014, upon reproducing the details of these 41 cases, the Division Bench determined the legality and sustainability of the relief sought.

After referring to Section 427 (1) Cr.P.C. a provision contemplating, that upon undergoing the sentence of imprisonment on a subsequent conviction, imposed upon a person, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced unless the Court direct that the subsequent sentences shall run concurrently with the previous sentence. Noting that the discretion to be exercised by the court shall be exercised judiciously depending upon the nature of offence or the offences committed, and the fact that the sentence have not been specifically directed to run concurrently, the Division Bench made the following pertinent observation :-

“7. The sentencing policy of criminal jurisprudence mandates Courts to pass such sentences as would meet its primary twin objects of deterrence and re-formation. The deterrent effect of a sentence is to prevent the commission of a similar offence by the convict by confining him to jail and to prevent the prospective offenders from committing such a crime. Infact, compensation some times can be said to have such a deterrent effect. However, the same would depend upon the facts of each case. The sentence of imprisonment should also have a reformative aim, inasmuch as, it should not demoralize the offender and infact, the offender should be given an opportunity depending on the nature of offence to improve himself. Thus, any sentence imposed by any Courts must maintain a proper balance between the deterrent and reformative objects of a sentencing policy and must ensure that the said object is sufficiently met.”

Noting that from the chart produce if the Petitioner was required to undergo imprisonment in all the aforesaid cases, who would be compelled to suffer incarceration for approximately 83 years, 3 months and 5 days and since he was not in a position to pay fine, the default sentence to be undergone by him would be further added by 10 years, 1 month and 26 days, totaling to 93 years 5 months; a sentence more than what a life convict would have undergone for murder.

Referring this, as amounting to travesty of justice, the Court

exercised its discretion to prevent miscarriage of justice in case of an accused, who suffered conviction for committing an offence of theft and by invoking the power available under Section 482 of the Cr.P.C., the Petitioner was directed to be released forthwith, on declaring that he has undergone sentence in all 41 cases, by imparting real and substantial justice to him, which definitely was the bounden duty of the Court.

13] The aforesaid observations clearly cover the case of the Petitioner and though Dr.Takalkar has placed reliance on the decision of the Apex Court in case of **Sharad Hiru Kolambe** (*supra*), where it is held, that the default sentence shall not be merged with or allowed to run concurrently with the substantive sentence, the Apex Court referred to Section 30 and Section 427 of the Cr.P.C. and by taking review of the law holding the field, inferred that as against Section 21 and 427 of the Cr.P.C. which deal with substantive sentences and empower the Courts in certain cases to direct concurrent running of more than one sentences, no such specification is available in Section 64 of the IPC and in Section 30 of the Code or any other provision dealing with the power to impose the sentence of “imprisonment for non payment of fine” or in connection with the default sentences as is normally known.

Posing a query whether such non specification is accidental or is there any idea behind not permitting concurrent running of default sentences, the argument to permit it being done, and while rejecting the submission regarding the concurrent running of default sentences as it cannot be directed to run concurrently, considering the financial condition of the Appellant, by adopting a sympathetic approach upon the quantum of default sentence, the relief was granted in favour of the Appellant by reducing the aggregate default sentence to four months

and in respect of three counts of offences punishable under MCOC by restricting the fine to Rs.15,00,000/- cumulative with default sentence of 3 years in the aggregate.

14] Applying the aforesaid principle to the present Petitioner before us, as he has undergone the entire substantive sentence imposed upon him and for want of sufficient source to pay the fine amount, he is presently incarcerated as his detention is necessary for undergoing the default sentences, in lieu of the deposit of fine. If he is directed to undergo entire default sentence, he will be required to be incarcerated for a further period of 9 years, which in our consideration would amount to travesty of justice.

It is not in dispute that the Petitioner belongs financial weaker class of the society and that is the specific reason why he is continued to be in jail for last 4 years as he has not been able to arrange for the amount of fine.

In terms of the decision of the Apex Court in Sharad (supra) the sentences in lieu of deposit of fine definitely cannot be directed to run concurrently as a result, after he undergoes the default sentence in one case for one offence, he will have to undergo default sentence in other.

15] The Magistrate has imposed fine amount of Rs.10,000/- on the Petitioner on being convicted under Section 457 of the IPC and Rs.5,000/- for conviction under Section 454 and 380 of the IPC.

In all the three sections, i.e. 454, 457 and 380 of the IPC , the accused on being found guilty is liable to pay fine, but the aforesaid sections do not prescribe the amount of fine and in such a situation Section 64 of the IPC comes into force which reads thus :

“64.Sentence of imprisonment for non-payment of fine -

[In every case, of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable [with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,]

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.”

Section 64 of the IPC prescribe sentence of imprisonment for non payment of fine and in every case, of an offence punishable with imprisonment as well as fine, it shall be competent for the Court to prescribe the sentence that the accused will undergo in default of fine with the only restriction, that the imprisonment so imposed shall not be in excess of any other imprisonment to which he may have been sentenced or to which he may liable under commutation of sentence, and that is the specific reason that the default sentence awarded to the Petitioner, is undergoing 3 months Simple Imprisonment for each offence in each case.

16] Section 30 of the Code of Criminal Procedure, 1973, in addition, prescribe that the sentence of imprisonment awarded in default of fine may be in addition to a substantive sentence of imprisonment, for the maximum term which is awardable by the Magistrate under Section 29 of the Code.

Since it is not permissible to direct the concurrent running of the default sentences, and since we find that the fine imposed on recording conviction under Section 457 i.e. Rs.10,000/- is excessive,

we deem it appropriate to reduce the same to Rs.5,000/-.

In addition, taking into consideration the financial position of the Petitioner as he is unable to deposit the fine, we find that the imposition of default sentences of 3 months on each count is on higher scale and we deem it appropriate, to direct that by considering his detention in prison above May 2020 should be considered as default sentence undergone, in lieu of the fine imposed in all the 14 cases, on all three counts i.e. Section 454, 457 and 380 of the IPC.

Thus, by directing the reduction of fine amount on being convicted for offence under Section 457 to Rs.5,000/-, in the interest of justice, we deem it appropriate that the incarceration suffered by the Petitioner on undergoing substantive sentences imposed on him in 14 cases from May 2020, till the date of passing of this order, shall be considered to be the default sentence undergone by him for not paying the fine.

17] We must keep in mind that alongwith the justice, magnanimity is one of the “twin peaks” of moral virtue and “Justice is not an artificial virtue”, but it necessarily embrace magnanimity and in exercise of inherent jurisdiction vested in us, to prevent the abuse of process of law, in favour of the Petitioner, who merely because of his inability to pay the huge amount of fine continue to be incarcerated, we deem it appropriate to direct his release by reducing the sentence of imprisonment, in default to the period of imprisonment already undergone by him till the date of passing of the order.

We direct release of the Petitioner from Jail forthwith and from this moment, he shall be set at liberty.

The learned APP shall communicate this order to the Jail Superintendent, Kalamba Central Prison, Karveer, Kolhapur, where the

Petitioner is presently detained and the Jail Superintendent shall act upon the authenticated copy of this order and release the Petitioner forthwith.

Petition is made absolute in the aforesaid terms.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]