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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**CRIMINAL WRIT PETITION NO.1036 OF 2018**

**Petitioners** : **1] Akash Rashtrapal Deshpande,**  
Aged 21 years, Convict,  
Central Prison, Nagpur.

**2] Nikunj @ Nikki Ramesh Sadhwani,**  
Aged 23 years, Convict,  
Central Prison, Nagpur.

**-- Versus --**

**Respondents** : **1] State of Maharashtra,**  
through its Secretary,  
Home Department, Mantralaya,  
Mumbai : 32.

**2] Jail Superintendent,**  
Nagpur Central Jail,  
Nagpur.

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*Shri Mir Nagman Ali, Advocate for the Petitioners.*  
*Mrs. Mayuri Deshmukh, A.P.P. for the Respondents/State.*

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**CORAM** : **SUNIL B. SHUKRE & S.M. MODAK, JJ.**

**RESERVED ON** : **4<sup>th</sup> FEBRUARY, 2019.**

**PRONOUNCED ON** : **15<sup>th</sup> FEBRUARY, 2019.**

**ORAL JUDGMENT :-** (Per S.M. Modak, J.)

**Rule.** Rule made returnable forthwith. Heard the learned  
Counsel for the parties finally by consent.

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02] The issue involved in this petition is about running of sentences of imprisonment inflicted on these two petitioners. There is a general rule to run the sentences consecutively. But, the Court has got power to direct the sentences to run concurrently.

03] Both these petitioners being convicted in different robbery cases by Magistrate Courts are praying for direction to run their sentences concurrently. Petitioner Nos.1 & 2 both were tried jointly and convicted in all seven cases, whereas, petitioner No.1 was tried individually in one case. Both were tried in four cases by the Chief Judicial Magistrate, Bhandara, whereas in two cases, both were tried together by the Judicial Magistrate First Class, Tumsar and in one case, petitioner No.1 was tried by the Judicial Magistrate First Class, Tumsar. For better understanding, the details of these cases are given below in the mentioned chart.

Sr. No.	Court's Name	R.C.C. No.	Date of Judgment	Conviction under Section	Punishment	Name of the accused
1	JMFC, Tumsar	125/2016	15/11/2017	392 IPC	R.I. for 3 Yrs. with fine Rs.5000/- I/d S.I. for 6 months	Akash Deshpande
2	JMFC, Tumsar	25/2017	15/11/2017	392 R/W 34 IPC	R.I. for 3 Yrs. with fine Rs.5000/- each I/d S.I. for 6 months	Nikunj Sadhawani Akash Deshpande
3	JMFC, Tumsar	26/2017	15/11/2017	392 R/W 34 IPC	R.I. for 3 Yrs. with fine Rs.5000/- each I/d S.I. for 6 months	Nikunj Sadhawani Akash Deshpande

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Sr. No.	Court's Name	R.C.C. No.	Date of Judgment	Conviction under Section	Punishment	Name of the accused
4	CJM, Bhandara	31/2017	03/05/2018	392 R/W 34 IPC	R.I. for 3 Yrs. with fine Rs.10000/- each l/d R.I. for 3 months	Nikunj Sadhawani Akash Deshpande
5	CJM, Bhandara	33/2017	05/05/2018	392 R/W 34 IPC	R.I. for 3 Yrs. with fine Rs.10000/- each l/d R.I. for 3 months	Nikunj Sadhawani Akash Deshpande
6	CJM, Bhandara	34/2017	03/05/2018	392 R/W 34 IPC	R.I. for 3 Yrs. with fine Rs.10000/- each l/d R.I. for 3 months	Nikunj Sadhawani Akash Deshpande
7	CJM, Bhandara	35/2017	04/05/2018	393 R/W 34 IPC	R.I. for 3 Yrs. with fine Rs.10000/- each l/d R.I. for 3 months	Nikunj Sadhawani Akash Deshpande
8	CJM, Bhandara	36/2017	04/05/2018	392 R/W 34 IPC	R.I. for 3 Yrs. with fine Rs.10000/- each l/d R.I. for 3 months	Nikunj Sadhawani Akash Deshpande

04] The petitioners heavily relied upon the provisions of Section 427 of the Code of Criminal Procedure. They also relied upon the judgment in case of Abidkhan @ Salman Mukhtar Khan Pathan vs. State of Maharashtra, reported in 2014 ALL MR (Cri) 1719, whereas the State insisted on consecutive running of sentences in view of chargesheets arising out of different incidents, time, places and victims.

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**PROVISIONS OF SECTION 427 OF CR.P.C. :**

05] Instead of reproducing the section, we are narrating the ingredients of the Section 427(1) as follows :

- (a) It presupposes two different sentences imposed in 2 different cases.
- (b) Accused is already undergoing sentence.
- (c) Accused is sentenced to imprisonment subsequently.

If the above conditions are fulfilled, section further says - Such imprisonment (awarded subsequently) shall commence to operate at the expiration of previous imprisonment.

Apart from laying down the general rule, sub-section (1) also lays down running of such sentences concurrently. Sub-section (1) gives such power to the Court.

06] Admittedly, petitioner No.1-Akash was convicted by the J.M.F.C., Tumsar singly in one case as well as jointly with petitioner No.2 Nikunj in two cases. It was on 15/11/2017 (RCC No.126/2016, RCC No.25/2017 and RCC No.26/2017 respectively). Whereas, both



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were convicted jointly in the month of May, 2018 in four cases by the C.J.M., Bhandara (which is altogether different Court situated away from Bhandara). Admittedly, the crimes involved in these cases are different and they have taken place at different places with different persons. So, issue before us is whether different crimes and conviction by two different Courts will dis-entitle the petitioners from claiming the benefit of concurrent sentence.

### **SENTENCING POLICY :**

07] Three issues are involved. One is the type of sentence that is to say only sentence of imprisonment or fine or both. Second is quantum of sentence and third is the manner of undergoing of sentence. As we know that there is no codified sentencing policy in India. We have got a maximum sentence laid down in some of the sections of the Indian Penal Code and some of the sections laid down the minimum sentence. However, there are no criteria how much will be the sentence and which will suit the ends of justice. There are various debates and reports suggesting codification of sentencing policy. Even “Committee on Reforms of Criminal Justice System” under the Chairmanship of Justice Malimath has recommended for codification of law on sentencing policy. Be that as it may, the quantum of sentence is not the issue



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before us. Ultimately, this is not the appeal/revision against the conviction filed by the petitioners.

08] So, issue before us is restricted to the manner of undergoing sentence. There is maximum imprisonment of 10 years and fine amount prescribed under Section 392 of I.P.C. Section 30 of Cr.P.C. and Section 64 of I.P.C. empowers the Court to lay default sentence if fine is not paid. Section 64 of I.P.C. clarifies further such default sentence is always in excess of other imprisonment. Whereas, Section 31 of Cr.P.C. deals with a contingency where a person is tried in the case involving different offences. There 'rule of consecutive sentence' is applicable. However, the Court may order concurrent running of sentence. We are dealing with a contingency about running of sentences imposed in different cases. That is how Section 427 of Cr.P.C. is relevant.

### **THEORIES OF PUNISHMENT :**

09] There are lots of study made on theories of punishment. In older days, a person coming in conflict with the law was considered as a criminal. It was true pending trial and even afterwards society members used to look at him with some bad

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motive. After passage of time and modernization, there is a shift in manner of treating the prisoners. The prisoner is considered as a human being and there is a focus on circumstances compelling him to contravene the law. There is also focus on rehabilitation of such prisoner. We would like to quote the words of world famous poet Oscar Wilde “every Saint has a past and every sinner has a future”.

10] We have tried to deal with the issue before us by applying these yardsticks. For that purpose, we have considered the evidence discussed by two Magistrate Courts (at Bhandara & Tumsar). We find both the petitioners were convicted of robbing various victims of ornaments. On the basis of evidence of witnesses including victim, panch, Investigation Officer etc., both have been convicted. They have been sentenced to 3 years imprisonment and fine of Rs.5,000/- (by Tumsar Court). There is default sentence too. Whereas, Bhandara Court has sentenced him to 3 years imprisonment and fine of Rs.10,000/-.

11] All the substantive sentences are to run consecutively. The petitioners were arrested in the month of November, 2016 by local Crime Branch, Bhandara. Total substantive sentence for



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petitioner No.1 comes to 24 years (3 years X 8 cases) and for petitioner No.2 comes to 21 years (3 years X 7 cases). So, as per consecutive theory of sentence, petitioner Nos.1 & 2 will be out of jail almost in the year 2040 & 2037.

12] We admit that both these petitioners have robbed the individuals by way of committing profession only. They were not satisfied on robbing few persons. They must have done it for earning. They have adopted wrong mode. They must have now realized that they got nothing except incarceration and losing the company of family and society. The petitioners are aged about 21 and 23 years of age respectively. So, when they will come out of jail (in the year 2040 & 2037), they will be 45 years old. This factor perturbed us more. So, reformatory theory of punishment compels us to take lenient view of the matter. We do not want the young age of petitioners to be spoiled by keeping them in jail. Till this time, they must have realized the lesson for the sin committed by them. So, we are inclined to convert their sentences to concurrent from consecutive.

### **PRECEDENTS :**

13] We are fortified in this view as per the judgment in case of



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Abidkhan @ Salman Mukhtar Khan Pathan vs. State of Maharashtra, reported in 2014 ALL MR (Cri) 1719 (in which Justice Shukre authored the judgment). Three cases were tried and convicted by one Court. (Metropolitan Magistrate), whereas in case before us, two different Magistrate Courts (from two places) tried and convicted these petitioners. This is the only distinguishable factor. Otherwise, the observation made therein are perfectly applicable to the case before us.

14] We are also fortified in taking this view on the basis of judgment delivered by Hon'ble Supreme Court. In case of Benson vs. State of Kerala, reported in (2016) 10 SCC 307, Hon'ble Supreme converted the sentence into concurrent sentences. There were almost 11 cases.

### **APPROACH OF TRIAL COURT :**

15] It is true that Bhandara Court and Tumsar may or may not be aware of cases pending in two different Courts. But, it is certain that both these Courts are fully aware of cases dealt with by them. Can we say that these two courts are unaware about legal provisions contained in section 427 of Cr.P.C. These two Courts

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have not given them the benefit of concurrent theory of sentences. These two Courts are fully aware about the provisions of Probation of Offenders Act and they have denied the benefit to the petitioners.

16] Ultimately, the Judicial Officers dealing with the case is also having human element on it. So, while convicting the petitioners, they must be having “repetitive tendency of these petitioners while committing these offences” in their mind. They were fully justified in denying them benefits of concurrent theory. The theory of deterrence must have weighed with their mind. But what we feel is that the trial Courts are unaware of these provisions of law. We say so because there is no discussion on this issue. Judge may consciously deny benefit. But, it must be reflected from the judgment. In case of Abidkhan, there was direction to place the matter before Registrar General. In order to sensitize the Judges in the State of Maharashtra, we feel some more needs to be done. Hence, we intend to direct the Registrar (Judicial) to circulate this judgment amongst all Judges in State of Maharashtra. We hope the Judges of trial Court and the appellate Court will consider the provisions of Section 427 of Cr.P.C. while dealing with the issue of sentence. Ultimately, it is the discretion of the concerned Judge

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whether to grant him benefit or not. It depends upon facts of each case. But it should not happen that due to ignorance of this provision of law, a rightful convict may be denied benefit of this provision of law.

**CONSTITUTIONAL COURT'S VIEW :**

17] Trial Court is fact finding Court and is required to deal with right of under trial. As such, the issue of concurrent sentence could have been decided by the appellate Court if the petitioners could have preferred appeals. Appellate Court is justified in dealing such an issue while exercising power of appellate Court in an appeal preferred under Section 374 of the Cr.P.C. We are not told about preference of an appeal on behalf of petitioners.

18] No doubt there is onerous responsibility on constitutional Courts to protect the right of citizen pending trial and post trial. This Court come across various petitions of convicted accused persons dealing with their rights of release till completion of their sentence. It includes furlough, parole, remission, premature release. This Court is required to deal with these issues from broader perspective. There is a shift in focus to deal with rights of

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convicted accused persons. They still continue to be human being. The focus is to give their opportunity to meet relatives and to breathe fresh air. That is how theory of reformation plays a dominant role. So, we have looked to this issue from this angle.

### **REFORMATION :**

19] Both the petitioners will be set free after they will serve the sentence. We are conscious that status of undertrial and convicted person is different in jail. We know about conducting various training programmes at jail under different schemes. We are sure that jail authorities at Nagpur must have made arrangement for training of these petitioners. If it is not made, we direct them to arrange for training so that it will be beneficial to them to earn livelihood after release from jail.

### **WRIT JURISDICTION :**

20] We are conscious of the fact that we have not dealt with any appeal/revision by a convicted person. We are conscious of the fact that in two referred judgments, remedies of appeal and revision were already exhausted. But, we are not inclined to refuse



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relief in writ jurisdiction simply for the reason of non-exhaustion of appeal/ revision having regard to the nature of issue which lies at the base of this petition, which is of taking away of individual's liberty, without application of mind to the factors relevant. So, we are inclined to allow this petition.

**DEFAULT SENTENCE :**

21] In no way, however, we intend to interfere in imprisonment inflicted for default in payment of fine. Section 64 of I.P.C. says of separate running of default sentence. So, the petitioners will be required to undergo default sentence if they will fail to pay the fine. At the same time, we want to clarify that default sentence will run consecutively without being affected by any of these observations. We intend to pass following order :

- (i) Writ petition is allowed.
- (ii) Substantive sentences of imprisonment on these petitioners by the Court of J.M.F.C., Bhandara and Tumsar to run concurrently (details of which are given at Page Nos.2 & 3).



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- (iii) Petitioners to undergo default sentence (in case of need) consecutively.
- (iv) Superintendent, Nagpur Central Prison, is directed to arrange for occupation/vocation training of these petitioners, if it is not arranged earlier.
- (v) Rule is made absolute in the above terms.

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**(S.M. Modak, J.)**

**(Sunil B. Shukre, J.)**