

JUDGMENT SHEET

LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI JUDICIAL DEPARTMENT

Crl.Misc.No.729-M of 2024

Sher Afzal

Vs. The State etc

Date of hearing: 29.05.2024
Petitioner/convict Malik Waheed Anjum,
by: Advocate.
State by:- Mr. Sajjad Ahmad Bhatti,
DPG.
Complainant by:- Muhammad Bashir Paracha,
Advocate.

SADAQAT ALI KHAN, J. Sher Afzal

(**petitioner**) being convict seeks an order to run concurrently his sentences of imprisonment awarded to him in two different following trials/cases.

2. The petitioner was convicted and awarded death sentence in case FIR No.72 Dated 26.06.2005 u/s 302 P.S. Jand, Attock by the trial Court *vide* judgment dated 23.12.2009, on the same date i.e. 23.12.2009, he was also convicted and sentenced to death in case FIR No.145 Dated 30.09.2006 u/ss 302 & 34 PPC P.S. Jand, Attock.

3. Death sentence of the petitioner in case FIR No.72 of 2005 mentioned above has not been confirmed and converted into imprisonment for life by the Division Bench of this Court *vide* judgment dated 10.02.2016 (**Crl.A.No.539 of 2009**) but death sentence of the petitioner in case FIR No.145 of 2006 stated above has been confirmed by the Division Bench of this Court *vide* judgment dated 10.02.2016 (**Crl.A.No.540 & M.R.No.88 of 2009**) which was challenged before the Supreme Court of Pakistan and has been converted into imprisonment for life *vide* judgment dated 03.01.2022 (**Crl.A.No.450 of 2019**) but record shows

that it was not brought into the notice of the Supreme Court of Pakistan that other Crl.A.No.451 of 2019 filed by the petitioner against his conviction and sentence of life imprisonment was also pending and benefit of section 397 Cr.P.C has also not been requested. Thereafter, Crl.A.No.451 of 2019 was disposed of being not pressed by the Supreme Court of Pakistan *vide* judgment dated 06.11.2023 in order to avail remedy before the High Court by filing of writ petition in view of provisions of Section.397 Cr.P.C. seeking order to run concurrently both the sentences of imprisonment of the petitioner discussed above.

4. Relevant section 397 Cr.P.C. in this respect is hereby reproduced:-

[397. Sentence on offender already sentenced for another offence. When a person, already undergoing a sentence of imprisonment or imprisonment for life, is sentenced to imprisonment, or imprisonment for life, such imprisonment, or imprisonment for life shall commence at the expiration of the imprisonment, or imprisonment for life 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 123 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.]

5. The said provision of law expressly enables the Court to direct that subsequent sentence of the convict would run concurrently with the previous sentence. It has been clarified in section 397 Cr.P.C that the Court while analyzing the facts and circumstances of every case is competent to direct that the sentences of a convict in two different trials would run concurrently. The provisions of section 397 Cr.P.C. confer wide discretion on the Court to extend such benefit to the convict in a case of peculiar nature. In a situation like the present one,

the Court of law cannot fold up its hands to deny the benefit of the said beneficial provision to convict because such denial would amount to ruthless treatment to him and would certainly jeopardize his life undergoing such a long imprisonment and benefit conferred upon the petitioner by the Court from death to imprisonment for life certainly evaporates if discretion of directing the sentences to run concurrently is denied to him rather would bring at naught and ultimately the object of the same would squarely be defeated and that too, under the circumstances when the provisions of S.397 Cr.P.C. bestows wide discretion on the Court and unfettered one to extend such benefit to the convict in a case of a peculiar nature like the present one. Thus, construing the beneficial provisions in favour of the convict would clearly meets the ends of justice and interpreting the same to the contrary would certainly defeat the same. The legislation under the provision of section 397 Cr.P.C. is quite compassionate having tender feelings and has empowered the courts to order the subsequent sentence to run concurrently to the previous sentence of a convict. This is the entire discretion and appanage of the Court to exercise its powers moderately and judiciously. When the universal principle of law is to be given effect in case of punishment, it is for the Courts to struggle and favour in order to interpret the law where liberty of convict is to be given preference instead of curtail it without animated reasons and justness.

6. Once the legislation has conferred the above discretion upon the Court then in hardship cases, Courts are required to take into consideration the

same with immense seriousness to the benefit of a convict to minimize and liquidate the hardship treatment.

7. Extending the benefit of beneficial provision in favour of the petitioner would clearly meet the ends of justice, therefore, in view of the facts and circumstances of this case, this Court observes that there is no wrong and harm in treating both the sentences of imprisonment for life of the petitioner to run concurrently.

8. In cases where sentences of convict in different trial have not been ordered to run concurrently rather trials, appellate and revisional courts are silent on this point, then in appropriate cases as in present case inherit jurisdiction of this Court in terms of section 561-A Cr.P.C. read with section 397 Cr.P.C. can be invoked, provided, of course, where the superior Court of Appeal specifically and consciously has not denied the benefit of provisions of section 397 Cr.P.C. **(2018 SCMR 418 “RAHIB ALI V. The STATE”)**.

9. In view of above, this petition is allowed, it is directed that sentences of the petitioner in case FIR No.72 dated 26.06.2005 u/s 302 PPC P.S. Jand, Attock and FIR No.145 dated 30.09.2006 u/ss 302 & 34 PPC P.S. Jand, Attock shall run concurrently with benefit of section 382-B Cr.P.C.

(CH.ABDUL AZIZ)
JUDGE

SADAQAT ALI KHAN)
JUDGE

Approved for Reporting

Judge

Judge