# O.M Cherian @ Thankachan vs State Of Kerala & Ors on 11 November, 2014

## Equivalent citations: AIR 2015 SUPREME COURT 303, 2014 AIR SCW 6471, (2015) 146 ALLINDCAS 252 (SC), AIR 2015 SC( CRI) 176, (2014) 4 KER LT 678, (2015) 1 JLJR 107, (2015) 1 BOMCR(CRI) 24, (2015) 1 ALD(CRL) 644, (2015) 2 MADLW(CRI) 644, (2015) 60 OCR 1, (2015) 1 PAT LJR 174, (2014) 4 CURCRIR 473, 2015 (2) SCC 501, (2014) 12 SCALE 636, (2015) 4 MH LJ (CRI) 87, (2014) 4 KER LJ 535, (2014) 4 MAD LJ(CRI) 622, (2015) 89 ALLCRIC 62, (2015) 1 CAL LJ 39, (2014) 4 CRIMES 262, (2015) 2 RAJ LW 1644, (2014) 4 RECCRIR 922, (2015) 1 UC 128, (2015) 1 ALLCRILR 332, (2015) 119 CUT LT 373, 2015 (2) SCC (CRI) 123

## Author: R. Banumathi

## Bench: R. Banumathi, Adarsh Kumar Goel, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2387 OF 2014
(Arising out of SLP (Crl.) No. 2487/2014)

O.M. CHERIAN @ THANKACHAN …..Appellant

Versus

STATE OF KERALA & ORS. ….Respondents

J U D G M E N T

R. Banumathi, J.

Leave granted.

2. This appeal arises out of the judgment dated 27.11.2013 passed in Crl. Appeal No. 910/2006 by which the High Court of Kerala confirmed the conviction of the appellant/1st accused under Sections 498A and 306 IPC and also the sentence of imprisonment imposed on him.

3. Briefly stated, case of the prosecution is that the 1st accused married Lillikutty and their marriage was solemnized on 11.2.1988 and they continued their stay in House bearing No. MP. VIII/84 of Karulayai Amsom along with other accused, who are the father, mother and brother of the appellant. The allegation levelled is that in the matrimonial house, the appellant/1st accused and other accused ill-treated and tortured Lillikutty, compelling her to take the extreme step of putting an end to her life by committing suicide. During the marital life, Lillikutty had a premature delivery. When she became pregnant again in 1993, it is alleged that A-1 provided her with some tablets and Lillikutty had a miscarriage. During her marital life Lillikutty delivered a child who did not live long. On 23.2.1996 Lillikutty poured kerosene oil on herself and also drank some, which was later cleared away. On 23.2.1996, a mediation talk had been scheduled and PW-1 and the relatives of Lillikutty were also to attend the mediation talks but when the meeting was so scheduled, Lillikutty committed suicide by hanging. On the first information by PW-1, a neighbour of the accused, law was set in motion. Initially FIR was registered for unnatural death under Section 174 Cr.P.C. and on subsequent complaint, the same was altered to one for the offences punishable under Sections 498A and 306 IPC. PW-4 conducted autopsy and submitted the post- mortem report. PW-14, investigating officer, had taken up the investigation and seized the documents and material objects and examined the witnesses and laid the charge sheet against the appellant and other accused. In the trial court, PWs 1 to 15 were examined and Exs. P-1 to P- 25 were marked and MOs 1 to 18 were identified. The accused were questioned under Section 313 Cr.P.C. and they denied all the incriminating evidence and circumstances brought out in evidence against them.

4. Upon consideration of evidence, the trial court convicted the appellant/1st accused under Section 498A IPC and sentenced him to undergo two years of rigorous imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo further imprisonment of one year. For the offence punishable under Section 306 IPC, the trial court sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/- and in default of payment of fine, to undergo further imprisonment of three years. The substantive sentences of the appellant were ordered to run consecutively. Accused 2 to 4 were convicted under Section 498A IPC and were sentenced to undergo imprisonment for two years and to pay fine of Rs. 5,000/- with default clause of one year. The High Court confirmed the conviction and also the sentence of imprisonment imposed upon all the accused.

5. Being aggrieved, the appellant/1st accused has preferred this appeal. This Court issued notice only on the limited question as to whether the sentence can be made to run concurrently, instead of running consecutively. This Court by order dated 18.7.2014 observed that Section 31 Cr.P.C. was not noticed by this Court in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti vs. Asstt. Collector of Customs (Prevention), Ahmedabad & Anr. (1988) 4 SCC 183 and referred the matter to be considered by a larger Bench in order to settle the law and thus, the matter is before us. The order of Reference is as follows:

> “The petitioner herein was concurrently convicted for offences under Section 498A and Section 306 IPC and sentenced to undergo rigorous imprisonment for 2 years and 7 years respectively on the above-mentioned two counts apart from paying certain amounts of fine, the details of which may not be necessary.

Both the Courts directed that the sentences should run consecutively.

By an order dated 31st March, 2014, notice was issued limited only to the question whether the direction whereby the sentences were ordered to run consecutively is legally tenable.

Learned counsel for the petitioner has placed reliance on the judgments of this Court in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti vs. Assistant Collector of Customs (Prevention), Ahmedabad and Another (1988) 4 SCC 183 and Manoj alias Panu vs. State of Haryana (2014) 2 SCC 153 and argued that when an accused is found guilty of more than one offence at the same trial, though separate conviction is recorded on each of the different charges and different sentences are imposed, such sentences are required to be directed to run concurrently.

This Court in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti case (supra) at para (10) held as under:

'The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different." In Manoj alias Panu vs. State of Haryana (supra) the Bench simply followed the earlier judgment.

From the judgment in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti case (supra), it appears that Section 31 of the Criminal Procedure Code was not noticed by this Court when this Court observed as extracted above.

Section 31 (1) of the Cr. P.C. reads as follows:-

31. Sentence in cases of conviction of several offences at one trial.

'(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.' (2)..... (3)....." Therefore, the statutory stipulation is clear that normally sentences in such cases are to run consecutively.

Hence we find it difficult for us to accept the statement of law made in the above mentioned two cases. We, therefore, deem it appropriate that the matter be considered by a Bench of appropriate strength to settle the law. We direct the Registry to place the papers before Hon'ble the Chief Justice

of India for appropriate orders."

6. Learned counsel for the appellant Mr. Jayanth Muthraj contended that when a person is convicted at one trial for two or more offences, Section 31 Cr.P.C. vests a discretion in the Court to direct that the punishment shall run concurrently and in the present case the trial court and the appellate court have not properly exercised such discretionary power vested in them. Learned counsel submitted that the section provides that where several sentences are imposed for two or more offences, such sentences will run one after the other in such order as Court directs, unless the Court directs running of punishments concurrently and the Court's discretion to order concurrent running of sentences is not in any manner restricted. It was contended that there is no reason to presume that general rule is that sentences will run one after the other and exception is that punishments will run concurrently. He further submitted that the judicial guideline in Mohd. Akhtar Hussain is in no way in conflict with Section 31 Cr.P.C.

7. We have heard Ms. Bina Madhavan learned counsel appearing for the respondent–State of Kerala also, who supported the view taken by the courts below. Learned counsel placed reliance on the recent judgment of this Court in Duryodhan Rout v. State of Orissa, 2014 (8) SCALE 96.

8. We have given our thoughtful consideration to the matter and perused the materials on record.

9. Section 31 Cr.P.C. relates to the quantum of punishment that the court has jurisdiction to pass where the accused is convicted for two or more offences at one trial. Section 31 Cr.P.C. reads as follows:-

> "S.31. Sentence in cases of conviction of several offences at one trial.. –(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.
>
> (2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:
>
> Provided that— in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;
>
> the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

> (3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

10. Section 31 Cr.P.C. relates to the quantum of punishment which may be legally passed when there is (a) one trial and (b) the accused is convicted of "two or more offences". Section 31 Cr.P.C. says that subject to the provisions of Section 71 IPC, Court may pass separate sentences for two or more offences of which the accused is found guilty, but the aggregate punishment must not exceed the limit fixed in the proviso

(a) and (b) of sub-section (2) of Section 31 Cr.P.C. In Section 31(1) Cr.P.C., since the word "may" is used, in our considered view, when a person is convicted for two or more offences at one trial, the court may exercise its discretion in directing that the sentence for each offence may either run consecutively or concurrently subject to the provisions of Section 71 IPC. But the aggregate must not exceed the limit fixed in proviso (a) and (b) of sub-section (2) of Section 31 Cr.P.C. that is – (i) it should not exceed 14 years and (ii) it cannot exceed twice the maximum imprisonment awardable by the sentencing court for a single offence.

11. The words "unless the court directs that such punishments shall run concurrently" occurring in sub-section (1) of Section 31, make it clear that Section 31 Cr.P.C. vests a discretion in the Court to direct that the punishment shall run concurrently, when the accused is convicted at one trial for two or more offences. It is manifest from Section 31 Cr.P.C. that the Court has the power and discretion to issue a direction for concurrent running of the sentences when the accused is convicted at one trial for two or more offences. Section 31 Cr.P.C. authorizes the passing of concurrent sentences in cases of substantive sentences of imprisonment. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the convict may have been sentenced.

12. The words in Section 31 Cr.P.C "....sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct" indicate that in case, the Court directs sentences to run one after the other, the Court has to specify the order in which the sentences are to run. If the Court directs running of sentences concurrently, order of running of sentences is not required to be mentioned. Discretion to order running of sentences concurrently or consecutively is judicial discretion of the Court which is to be exercised as per established law of sentencing. The court before exercising its discretion under Section 31 Cr.P.C. is required to consider the totality of the facts and circumstances of those offences against the accused while deciding whether sentences are to run consecutively or concurrently.

13. Section 31 (1) Cr.P.C. enjoins a further direction by the court to specify the order in which one particular sentence shall commence after the expiration of the other. Difficulties arise when the Courts impose sentence of imprisonment for life and also sentences of imprisonment for fixed term. In such cases, if the Court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of Section 31 (1) Cr.P.C. There is no question of the

convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are imposed on the convict, necessarily, Court has to direct those sentences to run concurrently.

14. The opening words "in the case of consecutive sentences" in sub- section (2) of Section 31 Cr.P.C. make it clear that this sub-section refers to a case in which "consecutive sentences" are ordered. The provision says that if an aggregate punishment for several offences is found to be in excess of punishment which the Court is competent to inflict on a conviction of single offence, it shall not be necessary for the Court to send the offender for trial before a higher court. Proviso (a) is added to sub-section (2) of Section 31 Cr.P.C. to limit the aggregate of sentences - that in no case, the aggregate of consecutive sentences passed against an accused shall exceed fourteen years. "Fourteen years rule" contained in clause (a) of the proviso to Section 31 (2) Cr.P.C. may not be applicable in relation to sentence of imprisonment for life, since imprisonment for life means the convict will remain in jail till the end of his normal life.

15. In Ramesh Chilwal vs. State of Uttarakhand (2012) 11 SCC 629, the accused was convicted under Section 302 IPC and sentenced to undergo imprisonment for life. Accused was also convicted under Sections 2/3 [3(1)] of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 and sentenced to undergo rigorous imprisonment for ten years and under Section 27 of the Arms Act sentenced to further undergo rigorous imprisonment for seven years. Considering the fact that the trial court had awarded life sentence under Section 302 IPC, this Court directed that all sentences imposed under Section 302 IPC, Sections 2/3 [3(1)] of the Gangsters Act and Section 27 of the Arms Act to run concurrently.

16. When the prosecution is based on single transaction where it constitutes two or more offences, sentences are to run concurrently. Imposing separate sentences, when the acts constituting different offences form part of the single transaction is not justified. So far as the benefit available to the accused to have the sentences to run concurrently of several offences based on single transaction, in V.K. Bansal vs. State of Haryana & Anr. (2013) 7 SCC 211, in which one of us (Justice T.S. Thakur) was a member, this Court held as under:-

> "... we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor."

17. This Court in the case of Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti vs. Asstt. Collector of Customs (Prevention) Ahmedabad and Anr., (1988) 4 SCC 183, recognized the basic rule of conviction arising out of a single transaction justifying the concurrent running of the sentences. The

following passage in this regard is relevant to be noted :-

> "The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different." In Manoj alias Panu vs. State of Haryana, (2014) 2 SCC 153, the Bench followed Mohd. Akhtar Hussain's case.

18. While referring the matter to a larger Bench, the Bench observed that in Mohd. Akhtar Hussain's case, Section 31 Cr.P.C. was not noticed by this Court. It is to be pointed out that in Mohd. Akhtar Hussain's case and Manoj's case, the appellants who were convicted for different counts of offences arose out of a single transaction, favouring the exercise of discretion to the benefit of the accused that the sentences shall run concurrently. Those decisions are not cases arising out of conviction at one trial of two or more offences and therefore, reference to Section 31 Cr.P.C. in those cases was not necessitated.

19. As pointed out earlier, Section 31 Cr.P.C. deals with quantum of punishment which may be legally passed when there is - (a) one trial and

(b) the accused is convicted of two or more offences. Ambit of Section 31 is wide, covering not only single transaction constituting two or more offences but also offences arising out of two or more transactions. In the two judgments in Mohd. Akhtar Hussain and Manoj (supra), the issue that fell for consideration was the imposition of sentence for two or more offences arising out of the single transaction. It is in that context, in those cases, this Court held that the sentences shall run concurrently.

20. Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

21. Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct. We also do not find any conflict in earlier judgment in Mohd. Akhtar Hussain and Section 31 Cr.P.C.

22. Having answered the reference, the merits of the matter can be gone into by the referring Bench; but we consider it appropriate to dispose of the appeal itself to avoid any further delay. Adverting to the present case, the learned counsel for the appellant contended that the facts and circumstances of the case were not kept in view to invoke the discretion for concurrent running of sentences. It was submitted that appellant is employed in Gulf countries and between 1988–1996, the appellant visited India only four times and there could not have been any continuous harassment on his part and in the said facts and circumstances of the case, the trial court and the High Court ought to have judiciously exercised their discretion in directing sentences to run concurrently and therefore, prayer for intervention of this Court was made.

23. The trial court directed the sentences imposed on the appellant/accused under Sections 498A and 306 IPC to run consecutively, which was affirmed by the High Court. When the trial court declines to exercise its discretion under Section 31 Cr.P.C. in issuing direction for concurrent running of sentences, normally the appellate court will not interfere, unless the refusal to exercise such discretion is shown to be arbitrary or unreasonable. When the trial court as well as the appellate court declined to exercise their discretion, normally we would have refrained from interfering with such direction of the courts for consecutive running of sentences. But in the facts and circumstances of the present case, in our view, the sentences imposed on the appellant could be ordered to be run concurrently. At the time of marriage, the appellant was employed as a Painter at Delhi and after marriage, it is stated that the appellant had secured an employment in Gulf countries and used to visit India once in two years only. It is brought on evidence that in a period of eight years from 1988–1996, he came on leave to India for only four times and finally he visited India while he was on leave during January- February 1996. The appellant also appears to have taken efforts for mediation to settle the differences and the mediation was scheduled to take place on 23.2.1996; but Lillikutty committed suicide on the same day. Keeping in view the totality of the facts and circumstances of the case, the sentences imposed on the appellant for the offences punishable under Sections 498A and 306 IPC are ordered to run concurrently and the appeal is disposed of with the above modifications.

24. The reference is answered accordingly and the appeal allowed in part to the extent as indicated above.

……J. (T.S. Thakur) ……J. (Adarsh Kumar Goel) .....J. (R. Banumathi) New Delhi, November 11, 2014

---