

P.N. Mohanan Nair vs State Of Kerala on 11 July, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3238, AIR 2017 SC (CRIMINAL) 1129, 2017 (3) AJR 552, (2017) 68 OCR 52, (2017) 3 CRILR(RAJ) 874, (2017) 3 RECCRIR 646, (2017) 3 CURCRIR 276, (2017) 7 SCALE 639, (2017) 2 ALD(CRL) 943, (2017) 179 ALLINDCAS 158 (SC), 2017 CRILR(SC MAH GUJ) 874, (2017) 4 ALLCRILR 48, 2017 CRILR(SC&MP) 874, (2017) 4 CRIMES 62, 2018 (1) SCC (CRI) 194, (2017) 101 ALLCRIC 623, 2017 (180) AIC (SOC) 31 (SC), 2017 (3) KLT SN 58 (SC), 2018 (103) ACC (SOC) 25 (SC)

Author: Navin Sinha

Bench: Navin Sinha, Ranjan Gogoi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1102-1104 OF 2017
(Arising out of S.L.P.(CrI.)Nos.2034-2036 of 2016)

P.N. MOHANAN NAIR

.....APPELLANT(s)

Versus

STATE OF KERALA

.....RESPONDENT(s)

ORDER

NAVIN SINHA, J.

Leave granted.

2. The substantive appeals against convictions were dismissed as withdrawn on 09.12.2016. Liberty was however granted, to approach this court again if required. On the application made, the special leave petition was resurrected.

3. The short question of law for consideration is, if the offences essentially constitute a single transaction, but have been split up by the prosecution into three separate cases, will the sentences imposed individually, run concurrently or consecutively? The issue stands covered by the decisions

in V.K. Bansal vs. State of Haryana and Another, (2013) 7 SCC 211 followed in Shyam Pal vs. Dayawati Besoya, (2016) 10 SCC 761 and Benson vs. State of Kerala, (2016) 10 SCC

307.

4. The appellant was a Peon in the office of Sub Registrar, Vazhoor. He was alleged to have misappropriated Rs.92,225/- from public funds during 1995-1996, without making remittance in the Sub Treasury, creating false challans showing remittance. The Prosecution initiated under Sections 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as “the Act”) and under Sections 409, 465 and 471, I.P.C. was split up in three different cases, for the period 07.07.1992 to 29.12.1992 registered as C.C. No.21/2002, for the period 21.10.1994 to 31.07.1995 registered as C.C. No.22/2002 and for the period 12.12.1995 to 30.08.1996 C.C. No.23/2002 was registered. The three cases were tried jointly and common evidence was recorded.

5. The Enquiry Commissioner and Special Judge, Thrissur, by a common judgment convicted the appellant to one year rigorous imprisonment under Sections 13(2) read with 13(1)(c) and 13(1)(d) of the Act in each one of them, along with fine of Rs.15,000/-, Rs.30,000/- and Rs.50,000/- respectively. The conviction was further under Section 409 I.P.C to one year rigorous imprisonment in each, as also three months rigorous imprisonment each, under Sections 465 and 471 I.P.C. The substantive sentences in each case were directed to run concurrently.

6. Learned counsel for the appellant submits that the allegations for misappropriation were for one transaction, in a block period, for a quantified sum. The appellant will have to undergo the sentences consecutively for each conviction, after the earlier sentence in a case exhausted itself. The appellant is 68 years old. Reference was made to Section 427(1) Cr.P.C. and Shyam Pal (supra) to contend that the sentences awarded individually ought to be directed to run concurrently.

7. Learned counsel for the respondent, referring to Section 31 Cr.P.C. submits that each case was a separate prosecution, relating to a different time period, and for a different sum. It is only in a case where a person is tried in respect of two or more offences in a single transaction, that the sentence can be directed to run concurrently.

8. We have considered the respective submissions, and are of the opinion, that essentially the allegations constituted a single transaction, between the same parties for a block period, split up by the prosecution, presumably for its convenience, into three different cases. The evidence also was common, and so is the conviction. Section 427(1), Cr.P.C. stipulates that where a person undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, it shall commence at the expiration of the imprisonment previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. The jurisdiction being discretionary must be exercised on fair and just principles in the facts of a case.

9. We do not consider it necessary to further elucidate or enter into an exposition of the law, in view of the precedents noticed above. Suffice it to observe that in the facts of the case, the exercise of

discretion under Section 427(1) Code of Criminal Procedure, mandates that the substantive sentences imposed upon the appellant in the three separate prosecutions, are directed to run concurrently, except the default sentence, if the fine by way of compensation as imposed has not been paid by him. The appellant would naturally be entitled to all consequential reliefs for release from custody as available in law based on the present discussion.

10. The appeals stand disposed.

.....J. (Ranjan Gogoi)J. (Navin Sinha) New Delhi, July 11, 2017 ITEM NO.1501 COURT NO.4 SECTION II-B (For Judgment) S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS PETITIONS FOR SPECIAL LEAVE TO APPEAL (CRL.)NOS.2034-2036/2016 ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 13/11/2015 IN CRLA NOS. 980/2005, 981/2005 AND 982/2005 PASSED BY THE HIGH COURT OF KERALA AT ERNAKULAM) P.N. MOHANAN NAIR Petitioner(s) VERSUS STATE OF KERALA Respondent(s) Date : 11-07-2017 These appeals were called for pronouncement of judgment today.

For petitioner(s) Mr. V. K. Sidharthan, AOR

For Respondent(s) Mr. C. K. Sasi, AOR

Hon'ble Mr. Justice Navin Sinha pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Ranjan Gogoi and His Lordship.

Leave granted.

The appeals stand disposed in terms of the signed judgment.

Pending application(s), if any, stand disposed of.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
BRANCH OFFICER

(Signed non-reportable judgment is placed on the file.)