

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Dost Muhammad Khan

Criminal Petition No.169 of 2017

Against the judgment dated 14.10.2016 passed
by Sindh High Court, Hyderabad Circuit, in CrI.
Misc. Application No.D-430 of 2015

Rahib Ali

Petitioner (s)

VERSUS

The State

Respondent(s)

For the Petitioner (s) : Mr. Amjad Ali Sahito, ASC
Mr. Ghulam Rasool Mangi, AOR

For the Respondent(s) : Mr. Abdullah Rajput, Addl. AG

Date of Hearing : 30.10.2017

ORDER

Mushir Alam, J.- Rahib Ali, convict/petitioner has impugned the order dated 14.10.2016 passed by learned bench of the High Court, whereby his application under section 397 read with section 561-A Cr.P.C seeking an order to compute two conviction sentences awarded in two different set of proceedings by two different courts to run concurrently, which application was declined on the ground, *inter alia*, that in one set of proceedings Supreme Court while enhancing the sentence from 14 years to life did not ordered the sentence in both the cases to run concurrently, therefore, it is not open for the High Court to order concurrent running of sentences in two different set of proceedings.

2. Learned counsel for the petitioner contends that it is now settled position in law that Courts ordinarily order running of two separate convictions recorded in two different set of trials by two different courts to be run concurrently, irrespective whether such conviction has been maintained, enhanced or modified by the appellate and or revisional Courts as the case may be, in any manner, whatsoever. Learned Additional Advocate General, in attendance concedes to such legal position.

3. We have heard the learned counsel for the petitioner as well as learned Advocate General and perused the record.

4. In order to appreciate the contention of the learned counsel convictions recorded against the appellant in two separate trials are as follows:-

- i. **Crime Nos.23/1999**, P.S. Tando Yousuf on 24.7.1999 & 62/1999 P.S. B-Section Latifabad on 28.11.1999 resulting in special case No.24/2000, U/s. 365-A PPC, 7-B ATA & 20 H.Ord., wherein he was found guilty alongwith his accomplice under section 6(2)(e) Anti-Terrorism Act and was ordered to imprisonment for life and forfeiture of their properties alongwith the offence under section 392 PPC and further sentenced to undergo Imprisonment for ten years and fine of Rs.50,000/- each and one year imprisonment more in case of default in payment of fine. Appeals bearing Nos.98, 99 & 100/2001 alongwith Jail Appeal No.9 of 2002 were preferred wherein the judgment of the trial Court was maintained by the Sindh High Court. The Appellant preferred Cr. As. No.418 & 419 of 2002, before this Court, resulted in extension of benefit U/s 382-B Cr.P.C. for sentence awarded under Sec.7 of the ATA & 392 of PPC to be run concurrently vide judgment dated 21.10.2011.
- ii. **Crime No.01/2000**, P.S. Bhatti Nagar U/s 365-A PPC & U/s 7(b) ATA 1997 in criminal case No.25/2002, wherein he alongwith his accomplices was convicted for 14 years and fine of Rs.100,000/- each and in default an imprisonment of one year. Appeals bearing Nos.11 & 12 of 2002 were preferred to the High Court by the accused wherein the sentences were maintained. On approach to the Honourable Supreme Court of Pakistan by way of Criminal Appeal No.420 of 2002 it was held that legal sentence under Section 365-A PPC, could not be less than life, which was accordingly enhanced to life imprisonment alongwith forfeiture of property, benefit U/s 382-B Cr.P.C. for sentences awarded under Sec.7 of the ATA & 392 of PPC was however given to be run concurrently vide judgment dated 02.02.2012

5. As noted in the first mentioned Crime No.23/1999 registered at Police Station *Tando Yousuf* on 24.7.1999 and Crime No. 62/1999 registered at Police Station 'B' Section, *Latifabad* on 28.11.1999 converted into Special Case No.24/2000 dated 24.11.2001, wherein conviction and sentence was handed down by the learned Judge Anti Terrorism Court, Hyderabad, under *section 365-A PPC* read with *section 7-B ATA* and *section 20 Haddood Ordinance*, to imprisonment for life, which conviction was maintained upto this Court in Criminal Appeals No.418 and 419 of 2002, benefit of section 382-B Cr.P.C was also extended and for the sentence awarded under section 7 of the ATA and section 392 PPC both were ordered to run concurrently. In instant matter the Petitioner who faced trial in another crime No.1/2000 registered at Police Station *Bhitai Nagar*, Hyderabad, tried as Special Case No.24 and 25/2000 respectively, wherein he was sentenced to 14

years, which was maintained by the High Court, when it came up for consideration in Criminal Appeal No.420 of 2002, before this Court, it was noted that 14 years sentence for kidnapping for ransom recorded by the trial Court and affirmed by the High Court is not a legal sentence, as the sentence for an offence under section 365-A PPC is either "*death or imprisonment for life and forfeiture of property.*" Consequently this court while affirming the conviction enhanced the sentence to life imprisonment alongwith forfeiture of properties and maintained amount of fine as provided for under the charging provision, this Court also ordered running of all the sentences awarded by the trial court, at one trial was ordered to run concurrently, which direction was in consonance with section 35 of the Cr.P.C

6. It seems that neither at the time of conviction in subsequent trial in criminal case No.25/2002 by the trial Court, nor at the time when his Criminal Appeals No.11 and 12 of 2002 were heard and decided on 21.5.2002 by the High Court and nor, at the time of hearing of Criminal Appeal No.420 of 2002 before this Court the petitioner herein and the Prosecutor General did not laid any information that the petitioner is already serving out life sentence awarded earlier in special case No.24/2000. Apparently, for this reason no direction in the nature of consolidation of sentences handed down in two separate trials was made.

7. In instant case after the conviction in second trial was maintained by this court, jail authority informed the Petitioner that life sentences awarded in two cases would run consecutively as there is no direction by the court to treat two separate life sentences to run concurrently, which mean that he would under go life sentence twice successively or one after the other, which prompted him to make application to the High Court under section 397 Cr.P.C read with Section 561-A Cr.P.C, seeking direction to treat life sentences awarded in two separate trial to run concurrently. The Application was dismissed by the High Court vide impugned order on the ground *inter-alia* "*that the final convictions are based upon order/s as passed by the Honourable Supreme Court wherein one was enhanced. Without going into question of non disclosure of the earlier punishment reasons of which other than oversight may have been presented being not to disclose the chequered history of the accused in order to avoid any negative effect. We are of the understanding that it is not open for this court to order for concurrent*

running of both the sentences finally passed by the Hon'able Supreme Court of Pakistan and in the circumstances this application is dismissed".

8. The question before us is that when sentence for imprisonment life or lesser sentence, in a subsequent trial is maintained or modified by the appellate or revisional Court, whether the Court seized of the subsequent trial or appeal arising there from after handing down conviction could order clubbing of two sentences one inflicted and undergoing in earlier trial with that inflicted in subsequent trial? Generally a sentence of imprisonment (subject to sections 381, 401 and 426-Cr.P.C) comes into effect the moment it is passed and unless the trial, appellate or revisional Court as the case may be orders consolidated computation of several conviction sentences passed in singular trial, the sentences run in a row, successively one after the other, however, section 35 of the Cr.P.C enables the trial and or higher Courts of appeal to order consolidation of several imprisonment sentences in the same trial

9. However, where an offender is serving out a substantive sentence of imprisonment is also subsequently convicted for any other offence(s) in another trial(s); per section 397 Cr.P.C later sentence(s) for imprisonment would generally commence at the expiration of earlier sentence(s) or putting it in other words sentences in several trial awarded to an offender/convict in successive trials would run back to back one after the expiration of other, unless the court directs that the subsequent sentence shall run concurrently with the sentence passed in earlier trial. Exception to this rule is in where the offender is serving out sentence of imprisonment in lieu or in default of payment of fine. Neither the trial nor the appellate or revisional courts have any jurisdiction to order consolidation of multiple sentences in lieu of fine. Multiple sentences of fine in a trial in lieu of fine in same or different cases would run successively (see section 64 to 70 PPC).

10. In cases where the subsequent conviction and sentence handed down by the trial court and for that matter the Appellate and or Revisional Court, is silent as to consolidation of two or more sentences or otherwise against a convict already undergoing a sentence; than in appropriate cases inherent jurisdiction of the High Court in terms of section 561-A Cr.P.C read with 397 Cr.P.C could always be invoked. In the case of Ammavasai Vs. Inispector of Police, 2000(9) SCC 759 Supreme

Court India also held that consolidation of sentences against the same accused in various cases is permissible.

11. Present controversy is confined only to the extent of power of the courts to order concurrent running of multiple sentences passed in one and or more than one trial(s). Jurisdiction of the Courts to order multiple sentences in one trial to run concurrently or otherwise came up for consideration in number of cases including, Ghulam Haider versus The State (1984 SCMR 887), in said case accused was awarded death sentence under section 302 PPC on three Counts, death sentence was converted into for life on three count and ordered to be run concurrently by this court. In the case of Javail Shaikh v. the State (1985 SCMR 153) life sentence under Section 302 PPC and, 7 years under section 307 PPC were ordered to run concurrently. In Juma Khan and another versus The State (1986 SCMR 1573), convicts were sentenced to death on two count by the trial court, High Court maintained the conviction but reduced the sentence to life on each count without specifying whether the sentence would run consecutively or concurrently. Jail petition was also dismissed by this court. Convicts, on being informed by the jail authority that they would have to undergo two terms of 25 years each one after the other; moved High Court under section 561-A Cr.P.C to seek clarification on such count. The application was dismissed on the ground, *inter-alia*, that it cannot review the conviction as it was maintained by Supreme Court. This is exactly what has happened in the case in hand. This court when approached by the convicts, (relying on the case of *Javaid Shaikh, supra*) held that under section 35 of the Cr.P.C the total period of imprisonment at one trial cannot exceed 25 years, if the sentence imposed on the petitioner in this case are allowed to take affect consecutively the sentence would exceed 25 years, which it was held, is not permitted by section 35 *ibid*. In Muhammad Ittefaq versus The State (1986 SCMR 1627) this court maintained sentence for life on two counts and one for seven years as handed down by the trial court and no direction was made for the concurrent running of sentence either by the trial, or this Court. However, subsequently on criminal miscellaneous application in exercise of power under section 35(2) Cr.P.C the omission was rectified and this Court (relying on *Javaid Shaikh, supra*) ordered that three sentences two for life and one for seven years in same trial to run concurrently. In case of Khan Zaman Khan and others versus The State (1987 SCMR 1382), where the High court maintained

the conviction but modified the sentence one from death to life imprisonment on two count and the sentences were ordered to run consecutively. In appeal this court exercising enabling power under section 35 (2) Cr.P.C and following above cited cases ordered the sentences to run concurrently. In Faiz Ahmed and another versus Shafiq-ur-Reham and another (2013 SCMR 583) and in Muhammad Sharif versus The State (2014 SCMR 668 (Order on Suo Moto Review Petition) where convicts were sentenced on more than one count this Court in consideration of fact that multiple offences committed by the offender in a sequel of same transaction could be convicted and sentences for each of the offences charged and proved against him under respective penal provisions separately, however; multiple sentences for numerous offences in one trial, as could be seen from the precedents noted above, is treated as a single sentence for the purposes of appeal [see section 35(3) Cr.P.C] and generally multiple sentences of imprisonment run consecutively unless ordered to run concurrently, is being consistently followed as rule of thumb.

12. Generally, where a convict is undergoing sentence in earlier conviction and later in a separate trial(s) stand convicted and sentenced for imprisonment for life or otherwise for a shorter term, sentence in subsequent trial commences after sentence in earlier trial is exhausted. However, the trial court seized of subsequent trial and the Appellate Courts in appeal arising there from are empowered under section 397 Cr.P.C to direct that the subsequent sentence(s) to run conjointly with previous sentence(s) of imprisonment of life or otherwise as the case may be. In the cases cited as Mst. Zubaida versus Falak Sher and others (2007 SCMR 548), this Court attending to question of multiple convictions in more than one crime and trial took charitable view of Section 397 Cr.P.C, while declining leave; observed that section 397 Cr.P.C empowers the court to direct the subsequent sentence would run concurrently with the previous sentence. In the case of, Shahista Bibi and another versus Superintendant, Central Jail, MACH and 2 others (PLD 2015 Supreme Court 15) this court examined provisions of section 35 Cr. P.C together with section 397 Cr.P.C also took charitable view and adopted interpretation beneficial to the accused by ordering concurrent running of sentence in two different trials. In a more recent pronouncement in the case of Sajjad Ikrram and others versus Sikandar Hayat and others (2016 SCMR 467) this Court at page 473 held that

“The provisions of section 397 Cr.P.C confers wide discretion on the court to extend such benefit to the accused in case of peculiar nature” and court further observed “that there is nothing wrong in treating the sentence of imprisonment for life of convict/appellants on three count to run concurrently.”

13. In view of the discussion made above, position that emerges is that the Courts in Pakistan generally take charitable view in the matter of sentences affecting deprivation of life or liberty of a person and unless some aggravating circumstances do not permit so, liberally exercise enabling power under section 35 and section 397 Cr.P.C respectively to order concurrent running of sentence in one trial and so also consolidation of earlier sentence while handing down sentence of imprisonment in a subsequent trial.

14. Taking stock of the legal position as noted above, examining the case in hand, in the first mentioned crime, the petitioner was convicted for life sentence and in the second mentioned case his 14 years imprisonment sentence was enhanced by this Court to life imprisonment. Treating and computing life sentences in two different trial/transactions to run consecutively or second sentence after the exhaustion of the first mentioned life sentence would be in negation of section 57 of PPC, as amended, which prescribes that sentence of imprisonment for life corresponds to maximum imprisonment for 25 years and in any case cannot be less than 15 years (per Rule 140 of the *Pakistan Prison Rules 1978*); after earning remissions as may be extended by the executive functionaries from time to time but subject to section 401 Cr.P.C, Rule 216 and Rule 218 of the *Pakistan Prison Rules, 1978*.

15. Learned Counsel for the Petitioner/convicts concedes that at the time of proceeding with the second conviction before this court earlier conviction was not brought to the notice of this Court nor there was anything on record for this Court to take into consideration the earlier conviction while handing down sentence to life in Criminal Appeal No.420 of 2002 on 28.8.2012 otherwise the Court would have considered and ordered running of the imprisonment sentence to run concurrently. However sentence in lieu of fine attached to a substantive sentence of imprisonment for life or otherwise would run after the substantive sentence(s) are exhausted. Courts have no jurisdiction to order sentence of fine to run concurrently with substantive sentence(s), for the simple

reason that imprisonment in lieu of or, in default in payment of fine is not a sentence but a penalty, which a convict sustain as a consequence for non payment of fine the (see also section 64 to 70 P.P.C). Courts, however, are empowered under section 388 Cr.P.C to regulate the recovery of fine, in instalment by releasing offender on completion of substantive sentence of imprisonment, on furnishing bond and or surety as may be ordered by the court.

16. Before parting with this judgment, we may well observe that section 35, Cr.P.C subject to section 71 of Pakistan Penal Code empowers not only the trial Court to hand down several Punishment/sentences to a person charged for multiple offence in same trial and in its discretion direct that such convection/sentence may run concurrently (per proviso thereto, in no case be more than 14 years in aggregate) even the Appellate Court while hearing the appeal against the conviction may direct several sentences/punishment handed down in same trial; to run concurrently. Whereas section 397 Cr.P.C; enables and empowers the trial, and or Appellate/Revisional court, as the case may be, in a subsequent trial or in appeal or revision arising out of subsequent trial to order for the consolidation of sentence in subsequent trial with the sentence(s) handed down in earlier trial(s) as may be maintained or modified in appeal/revision arising there from. In case earlier conviction was not brought to the notice of the at the time of handing down the subsequent conviction sentence the Trial or Appellate/Revisional Court could exercise such jurisdiction even after the sentence of imprisonment in subsequent trial is announced in exercise of its inherent jurisdiction under section 561-ACr/PC read with section 397 Cr.P.C, provided of course, where the trial, or superior courts of appeal have specifically and consciously ordered the sentences either in same trial or in subsequent trial to run consecutively.

17. In the light of discussion made above, there remains no doubt that the High Court and so also this Court have jurisdiction under section 561-A read with section 35 and or section 397 Cr.P.C as the case may to ordered such multiple sentences in same transaction/trial or in a separate and subsequent trial to run concurrently.

18. It seems that when Criminal Appeal No.420 of 2002 arising out of consolidated judgment dated 21.5.2002 (arising out of Criminal Appeals No.11 and 12 of 2002 from the judgment of the High Court) came up for hearing

neither the petitioner herein nor the Prosecutor General informed this Court that the petitioner had been tried in earlier crime of similar nature, has been sentenced to life, which conviction and sentence of imprisonment was maintained by this Court, apparently for this reason no direction or order to treat sentences of imprisonment awarded in separate and successive trial to run concurrently was made.

19. In this view of the matter, we would convert this petition into appeal and allow and direct that sentences awarded in both the trials as detailed in paragraph 4 above to be run concurrently.

JUDGE

JUDGE

Islamabad, the
30th October, 2017
Arshed

Approved for Reporting