

Form No: HCJD/C.

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 3954 of 2017.

Muhammad Azam.

Vs.

Federation of Pakistan and others.

***Petitioner's by. M/s Afzaal Qadeer Satti & Javed Akhtar
Kiani, Advocates.***

***Respondent's by. Raja Khalid Mehmood, Deputy Attorney
General.***

Date of decision. 05.12.2017.

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AAMER FAROOQ, J.- The facts, in brief, are that the petitioner was implicated in FIR(s) No. 691 dated 28.11.2011 under section 489-F PPC; FIR No. 326 dated 30.09.2012 under section 489-F PPC and FIR No. 168 dated 06.04.2009 under section 489-F PPC of police station Shalimar Islamabad; he was arrested and the trial in the referred offences commenced. Meanwhile, a suit for recovery was also filed against the petitioner, which was decided against the petitioner vide judgment & decree dated 29.09.2011.

2. In the execution proceedings arising out of said judgment and decree, the petitioner was arrested and he was awarded civil imprisonment on 10.05.2016 for a period of one year. The trial in the above referred FIR(s) culminated in conviction of the petitioner and resultantly he was awarded sentence of 15 months simple imprisonment alongwith fine of Rs. 10,000/- in each criminal case.

The civil prison of the petitioner commenced from 10.05.2016 and was to be concluded on 10.05.2017. The sentence in the criminal cases commenced on 26.07.2016 for a period of 15 months. After the lapse of 15 months from 26.07.2016, the petitioner was not released, hence, he filed a petition before the Sessions Court which decided the matter on 23.10.2017 and was dismissed.

3. Learned counsel for the petitioner, *inter alia*, contended that the sentences in the civil prison and criminal cases were to run concurrently, in light of law laid down by the Hon'ble Supreme Court in case reported as "**Mst. Shahista Bibi v. Superintendent, Central Jail**" (PLD 2015 SC 15).

4. The learned Deputy Attorney General, *inter alia*, contended that unless ordered specifically the sentences run consecutively; since the sentence in the civil prison as well as the punishment awarded by the trial court had been separately made and were not ordered to be concurrent, therefore, they shall run consecutively; hence the order by the learned Sessions Judge does not suffer from any illegality. Reliance was placed on case reported as "**Ghous Bakhsh v. The State**" (2012 P Cr. LJ 1028).

5. The petitioner is aggrieved of dismissal of his petition by respondent No. 6 and seeks release in light of the fact that the sentence awarded in the civil prison for one year as well as in the criminal cases stands completed. Respondent No.5 committed the petitioner to civil imprisonment for one year vide order dated 10.05.2016. Likewise, the petitioner confessed the commission of the offences under section 489-F PPC in the aforementioned FIR(s), therefore, he was convicted and awarded sentence of one year and three months and fine of Rs. 30,000/- vide order dated 26.07.2016. In the referred order the learned trial court i.e. respondent No. 4 ordered that the sentences shall run concurrently, meaning thereby that the punishment awarded in all

the three FIR(s) vide order dated 26.07.2016 was to run concurrently. It is not borne out from the bare reading of orders dated 26.07.2016 that the fact regarding the petitioner serving civil prison was before the learned trial court while observing that sentences shall run concurrently and it meant civil prison as well.

6. Section 397 Cr.P.C provides the court with the power to sentence a person already sentenced for another offence. The referred Section reads as follows:-

“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.”

7. The bare perusal of the above provision of law shows that when a person already undergoing a sentence of imprisonment, is sentenced to imprisonment, such imprisonment shall commence at the expiration of earlier imprisonment, unless the court directs that the subsequent sentences shall run concurrently with such previous sentence. In this behalf the Hon'ble Lahore High Court in case reported as ***“Dr. Azhar Ata Malik v. Chairman NAB”*** (2008 YLR 952) observed that if a person is already undergoing sentence and he was convicted and sentenced in different case then unless court directs otherwise the sentence so awarded has to

commence on the expiration of the sentence which he was already undergoing; running of sentences concurrently is a general rule while concurrent sentence is an exception; it was further observed that court may direct the sentences to run concurrently if the earlier case in which the person undergoing sentence is connected with other transactions are similar in nature. Similarly, in case reported as "**Ghous Bakhsh v. The State**" (2012 P Cr. L J 1028) the Hon'ble Division Bench of Balochistan High Court observed that where 02 and more offences were not connected and had taken place at different places and against different persons High Court could neither in exercise of powers under section 561-A Cr.P.C nor under Article 199 of the Constitution direct or substitute and order for running subsequent sentence concurrently with the previous sentence. In case of "**Muhammad Hussain v. The State**" (PLD 2015 Sindh 284) the Division Bench of Hon'ble Sindh High Court observed that the word used in section 397 Cr.P.C is court which includes the Appellate Court and even a Revisional Court. In case of "**Faiz Ahmed v. Shafiq Ur Rehman**" (2013 SCMR 583) the Hon'ble Supreme Court of Pakistan held that where all the offences for which accused was convicted had been committed in the one and the same transaction it could serve the interest of justice if all the sentences of imprisonment passed against the accused were ordered to run concurrently with each other in case of "**Shaheen Tahir v. Superintendent, Central Jail, Faisalabad**" (PLD 2008 Lahore 497) the Division Bench of Hon'ble Lahore High Court held that sentence awarded by competent Court can only be reversed by appellate court or court of competent jurisdiction under section 561-A Cr.P.C but not under the constitutional jurisdiction. It was further observed that a High Court in ICA in such a situation can only interpret relevant provision of law and ensure that Authorities acted as required under the law.

8. To the contrary the Hon'ble Lahore High Court in case reported as "**Nadeem v. The State**" (2010 P Cr. L J 1681) observed

High Court while exercising power under section 561-A Cr.P.C can order the same and such exercise of power by High Court would not amount to review or modification of the judgment which would remain intact regarding the conviction of sentence as the matter of sentences to run was ancillary to the question of punishment.

9. The petition filed by the petitioner before respondent No.2 though did not mention any provision of law under which it was filed but the same could be taken as an application under Section 435 Cr.P.C. The said provision reads as follows:-

“435. Power to call for records of inferior courts. The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending examination of the record.

Explanation. All Magistrates shall be deemed to be inferior to the Session Judge for the purposes of this sub-section.”

The bare reading of the above provision shows that the Court of Sessions can examine the record of any proceedings before any inferior criminal Court for the purpose of satisfying as to the correctness, legality or propriety of any finding, sentence or order. In this behalf the explanation to the Section provides that all Magistrates shall be deemed to be inferior to the Sessions Judge for the purpose of Section 435(1). Respondent No.2, hence had the jurisdiction to correct any error in the orders passed by respondent No.4.

10. Respondent No.4 while passing judgment and awarding sentence, it seems, was not aware of order of civil Court regarding committing the petitioner to civil prison. The transactions in respect of which the petitioner was convicted and sentenced by respondent No.4 and order by executing Court committing petitioner to civil prison are the same. In such facts and circumstances it is just and proper that both terms should run concurrently. Reliance is placed on case reported as "**Mst. Shaista Bibi vs. Superintendent Central Jail**" (PLD 2015 SC 15).

11. There is another aspect of the matter that under Section 397 Cr.P.C the two or more sentences run consecutively unless ordered otherwise. The order committing the petitioner to civil prison cannot be said to be a sentence for a criminal offence. It is not a sentence, hence Section 397 Cr.P.C as such is not applicable. Under Section 51 of Code of Civil Procedure, 1908 one of the modes through which a Decree can be executed is arrest and detention of the judgement debtor. Under Section 55 ibid a judgement debtor may be arrested in execution of a decree and brought before the Court which may make an order for his detention in civil prison suffer simple imprisonment for a period not exceeding one year.

12. In view of above, the instant petition is allowed and order dated 23.10.2017 passed by respondent No.6 is set aside; consequently the respondent No.2 is directed to release the petitioner forthwith, as he has completed the sentence awarded, in aforementioned criminal cases as well as one year detention, to enforce execution, also stands complete; if he is not required or serving sentence in a case other than the ones mentioned above.

(AAJMER FAROOQ)
JUDGE

Shakeel Afzal

Approved For Reporting