

Benson vs State Of Kerala on 3 October, 2016

Equivalent citations: AIRONLINE 2016 SC 19

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, Dipak Misra

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 958 OF 2016
(Arising out of SLP (Criminal) No.3757 of 2016)

Benson

...Appellant

Versus

State of Kerala

... Respondent

With

CRIMINAL APPEAL NO. 960 OF 2016
(Arising out of SLP(Criminal) No.3759 of 2016)

CRIMINAL APPEAL NO. 959 OF 2016
(Arising out of SLP(Criminal) No.3758 of 2016)

and

CRIMINAL APPEAL NO. 957 OF 2016
(Arising out of SLP(Criminal) No.3756 of 2016)

J U D G M E N T

Uday Umesh Lalit, J.

Leave granted. These appeals by Special Leave arise out of judgments and orders passed by the High Court of Kerala in Criminal Revision Petition Nos. (i) 808 of 2015 on 16.09.2015, (ii) 859 of 2015 on 16.09.2015, (iii) 858 of 2015 on 14.09.2015 and (iv) 670 of 2015 on 17.09.2015.

On the allegation that the appellant was involved in committing thefts he was charged of having

committed offences on different occasions and was separately tried in i) CC No.158 of 2004 before Judicial Magistrate First Class, Chavakkad for offences punishable under Section 379, 414 read with 34 IPC, ii) CC No.1039 of 2003 by Judicial Magistrate First Class, Chavakkad for offences punishable under Section 379, 414 read with 34 IPC,

iii) CC No.390 of 2004 by Judicial Magistrate First Class, Chavakkad for offences punishable under Section 379, 414 read with 34 IPC and (iv) CC No.1168 of 2006 by Judicial Magistrate First Class, Kunnankulam. By separate judgments, the appellant was convicted and sentenced in each of the aforesaid crimes. The respective appeals preferred by the appellant were dismissed by the Sessions Judge, Thrissur. The appellant filed Criminal Revision Petitions in the High Court which were also dismissed. The following chart would disclose the relevant details:-

These matters came up on 22.04.2016 when this Court noted the submissions of the learned counsel for the appellant regarding concurrent running of sentences and issued notice to the State. The learned counsel appearing for the State has produced before us communication dated 27.05.2016 from the Director General of Prisons and Correctional Services, which is as under:-

“PRISONS HEADQUARTERS, THIRUVANANTHAPURAM Dated: 27.05.2016
WP1-9606/2016 From The Director General of Prisons & Correctional Services.

To The Law Officer, Office of the Resident Commissioner, Travancore Palace,
Kasturba Gandhi Marg, New Delhi – 110 001.

Sir, Sub: Prisons – Prisons Headquarters, Kerala - Supreme Court case – SLP (Crl)
CRLMP No.6727/2016/Benson vs. State of Kerala – reg.

Ref: Lr. No.38749/B1/2016/Home dtd.19/05/2016 Attention is invited to the subject & reference cited. I may furnish the details called for vide reference is noted below:

Conviction Details	Sl.	Case No., Court	Sentence Details	No.	and Warrant Date
1 CC 613/03 Sentenced to undergo RI for 3 years u/s 379	1	CC 613/03	Sentenced to undergo RI for 3 years u/s 379	1	JFCM I, Thrissur
IPC Wdt.20-11-2003 Set off 97 days. At large bail period -153		Wdt.20-11-2003	Set off 97 days. At large bail period -153		days.
2 CC 533/04 Sentenced to undergo RI for 2 years u/s 392	2	CC 533/04	Sentenced to undergo RI for 2 years u/s 392	2	JFMC II, Thrissur
IPC Wdt.8-6-2005 Set off 521 days.		Wdt.8-6-2005	Set off 521 days.		
3 CC 529/04 Sentenced to undergo RI for 3 years u/s 392	3	CC 529/04	Sentenced to undergo RI for 3 years u/s 392	3	JFMC II, Thrissur
IPC Wdt.18-6-2005 Set off 493 days		Wdt.18-6-2005	Set off 493 days		
4 CC 1270/13 JFCM Sentenced to undergo RI for 2 years + fine	4	CC 1270/13 JFCM	Sentenced to undergo RI for 2 years + fine	4	Changanassery
Rs.5000/- i/d SI for 1 month u/s 380 IPC,		Wdt.18-6-2005	RI for 2 years + fine		
Rs.5,000/- i/d SI for			1 month u/s 457 IPC (Concurrently) Set of		
5 CC 1115/03 JFCM Sentenced to undergo RI for 2 years + fine	5	CC 1115/03 JFCM	Sentenced to undergo RI for 2 years + fine	5	Irinjalakkuda
Rs.2,000/- i/d SI for 2 months u/s 379 IPC		Wdt. 4-7-2005	Set off 402 days		
6 CC 932/05 Sentenced to undergo RI for 2 years + fine	6	CC 932/05	Sentenced to undergo RI for 2 years + fine	6	JFMC
Irinjalakuda Rs.2,000/- i/d SI for 2 months u/s 379 IPC		Wdt.4-7-2005	Set off		
465 days					
7 CC 171/05 Sentenced to undergo RI for 5 years u/s 392	7	CC 171/05	Sentenced to undergo RI for 5 years u/s 392	7	ADSJ

Adhoc II | IPC, RI for 3 years u/s 120(B) IPC | | | Kottayam | (Concurrently) Set off 418 days. | | | Wdt.25-11-2005 | | | 8 | CC 274/06 | Sentenced to undergo SI for 3 years u/s 205 | | | JFCM Kodungallur | IPC | | | Wdt.30-9-2008 | Set off 414 days | | 9 | CC 158/04 | Sentenced to undergo RI for 2 years + fine | | | JFCM Chavakkad | Rs.1,000/- i/d SI for 3 months u/s 379 IPC, | | | Wdt.28-6-2006 | RI for 2 years u/s 414 IPC (Concurrently) | | | Set off 347 days | | 10 | CC 1039/03 JFCM | Sentenced to undergo RI for 2 years + fine | | | Chavakkad | Rs.1,000/- i/d SI for 3 months u/s 379 IPC, | | | Wdt. 28-6-2006 | RI for 2 years u/s 414 IPC (Concurrently) | | | Set off 240 days | | 11 | CC 390/04 | Sentenced to undergo RI for 2 years + fine | | | JFCM Chavakkad | Rs.1,000/- i/d SI for 3 months u/s 379 IPC, | | | Wdt.28-6-2006 | RI for 2 years u/s 414 IPC (Concurrently) | | | Set off 141 days | | 12 | CC 1168/06 | Sentenced to undergo RI for 1 year + fine | | | JFCM | Rs.1,000 i/d SI for 2 months u/s 379 r/w 34 | | | Kunnamangalam | IPC Set off 14 days | | | Wdt.31-12-2008 | | | Sentence Calculation | | S. | Case No. | Sentence Calculation | No. | | | | 1st Sentence | 20-11-2003 | | 1 | CC 613/03 | Started | | | JFCM I, Thrissur | | | | Sentence 3 years | 19-11-2006 | | | Set Off 97 days | 14-08-2006 | | | At large 153 days | 14-01-2007 | | 2 | CC 533/04 | 2nd Sentence | 14-01-2007 | | | JFCM II, Thrissur | Started | | | | Sentence 2 years | 14-01-2007 | | | Set off 521 days | 12-08-2009 | | 3 | CC 529/04 | 3rd Sentence | 12-08-2009 | | | JFCM II, Thrissur | Started | | | | Sentence 3 years | 12-08-2010 | | | Set off 493 days | 06-04-2009 | | 4 | CC 1270/13 JFCM | 4th Sentence | 06-04-2009 | | | Changanassery | Started | | | | Sentence 2 years | 06-04-2011 | | | Set off 348 days | 23-04-2010 | | 5 | CC 115/03 JFCM | 5th Sentence | 23-04-2010 | | | Irinjalakkuda | Started | | | | Sentence 2 years | 23-04-2012 | | | Set off 402 days | 18-03-2011 | | 6 | CC 932/05 | 6th Sentence | 18-03-2011 | | | JFCM Irinjalakuda | Started | | | | Sentence 2 years | 18-03-2013 | | | Set off 465 days | 09-12-2011 | | 7 | SC 171/05 | 7th Sentence | 09-12-2011 | | | ADSJ Adhoc II, | Started | | | Kottayam | | | | Sentence 5 years | 09-12-2016 | | | Set off 418 days | 18-10-2015 | | 8 | CC 274/06 | 8th Sentence | 18-10-2015 | | | JFCM Kodungallur | Started | | | | Sentence 3 years | 18-10-2018 | | | Set off 414 days | 30-08-2017 | | 9 | CC 158/04 | 9th Sentence | 30-08-2017 | | | JFCM Chavakkad | Started | | | | Sentence 2 years | 30-08-2019 | | | Set off 347 days | 17-09-2018 | | 10 | CC 1039/03 JFCM | 10th Sentence | 17-9-2018 | | | Chavakkad | Started | | | | Sentence 2 years | 17-09-2020 | | | Set off 240 days | 21-01-2020 | | 11 | CC 390/04 | 11th Sentence | 21-01-2020 | | | JFCM | Started | | | Chavakkad | | | | Sentence 2 years | 21-01-2022 | | | Set off 141 days | 02-09-2021 | | 12 | CC 1168/06 | 12th Sentence | 02-09-2021 | | | JFCM | Started | | | Kunnamangalam | | | | Sentence 1 year | 02-09-2022 | | | Set off 14 days | 19-08-2022 | | | Fine Sentence | 19-10-2022 (F4) | | | Details | 19-12-2022 | | | (F5) | | | | 19-02-2023 | | | | (F6) | | | | 19-05-2023 | | | | (F9) | | | | 19-08-2023 (F10) | | | | 19-11-2023 | | | | (11) | | | | 19-05-2024 | | | | (F12) | As per the records, he will spend 12 years 3 months and 8 days in prison as on 31/07/2016.

His date of expiry of substantive sentence falls on 19-08-2022 without any remission. He has already earned 3 years 10 months 27 days remission as on 26-05-16. He has to pay fine of Rs.18,000/- in various cases in default he has to undergo 1 year 5 months

in Jail.

Yours faithfully, Sd/-

Director General of Prisons & Correctional Services” According to the aforesaid communication, the appellant stands convicted and sentenced in 12 different matters including the present matters which appear at Serial Nos.9, 10, 11 and 12 in the chart. Going by the sentence calculation, the sentence in the 9th case would begin on 30.08.2017 and finally, the sentence in the 12th case, after getting all benefits of set off, would be over on 02.09.2022.

Section 427 of the Code of Criminal Procedure, 1973 is as under:-

“427. Sentence on offender already sentenced for another offence. – (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment 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 122 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.

(2)When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.” In terms of sub-section (1) of Section 427, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced.

Going by this normal principle, the sentence chart indicated in the communication dated 27.05.2016 is quite correct. However this normal rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.

In V.K.Bansal v. State of Haryana and Another[1] it was stated by this Court:

“It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. There is no cut

and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.” This Court then went on to club various crimes in respect of which sentences were imposed upon the appellant therein in three groups; i) the first having 12 cases, ii) the second having 2 cases and iii) the third having a single case. This Court directed that substantive sentences within first two groups would run inter se concurrently and the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively. The benefit was confined only in respect of substantive sentences and no qua sentences in default.

We have gone through the record and considered rival submissions. We do not find anything incorrect in the assessment made by the Courts below and in our view the orders of conviction recorded against the appellant in the present cases are quite correct. We also do not find anything wrong in the quantum of sentence imposed in respect of the respective crimes. However going by the sentence calculation, the sentence imposed in respect of the first crime started with effect from 20.11.2003 and the last sentence would be over by 19.08.2022, which would effectively mean that the total length of sentences in aggregate would be around 19 years. We are not concerned with first eight matters and sentences imposed in respect of those crimes. The sentence in respect of 8th crime is presently running against the appellant and would be over on 30.08.2017.

The maximum sentence in respect of the present crimes is two years’ rigorous imprisonment. As per the record, these crimes were committed on the same day. Having considered the matters, we deem it appropriate to direct that the sentences imposed in each of the cases, i.e. (i) CC No.158 of 2004, (ii) CC No. 1039 of 2003, (iii) CC No. 390 of 2004 and (iv) CC No. 1168 of 2006 namely those at Sl.Nos.9 to 12 respectively as indicated in the sentence chart in the communication dated 27.05.2016 shall run concurrently with the sentence imposed in Crime No.8 which is currently operative. We grant this benefit in respect of substantive sentences to the appellant but maintain the sentences of fine and the default sentences. If the fine as imposed is not deposited, the default sentence or sentences will run consecutively and not concurrently.

The appeals are thus allowed in part and the orders of sentences stand modified accordingly.

.....J. (Dipak Misra)J. (Uday Umesh Lalit) New
Delhi, October 03, 2016

(2013) 7 SCC 211

|C.C.No./ |Date |Date of |Crl. Appeal|Crl. |SLP | |Offence |of |Conviction |No. |R.P. |No. | |
|occurrence |and Sentence | |No. in| | | |by Judicial | |the | | | |Magistrate | |High | | | |First
Class | |Court | | |158/2004 |03.06.2003 |28.06.06, |533/2012 |808/ |SLP | |in the Court | |RI for
2 |decided on |2015 |(Crl.)| |of Judicial | |years and |15.11.2012 | |3757/ | |Magistrate | |fine of |by
Sessions| |2016 | |First Class | |Rs.1,000/- |Judge, | | |(in short | |for offence |Thrissur | | |
|JMFC), | |u/s 379 IPC | | | |Chavakkad/ | |and RI for 2 | | | |U/s 379, 414 | |years u/s 414| | |
|r/w 34 of IPC | |ID RI for 3 | | | | |months | | | |1039/2003 |03.06.2003 |28.06.06, |759/2011
|859/ |SLP | |in the Court | |RI for 2 |decided on |2015 |(Crl.)| |of JMFC, | |years and |17.09.2012 |
|3759/ | |Chavakkad/ | |fine of |by Sessions| |2016 | |U/s 379, 414 | |Rs.1,000/- |Judge, | | |r/w 34
of IPC | |for offence |Thrissur | | | | |u/s 379 IPC | | | | |and RI for 2 | | | | |years for | | | | |
|offence u/s | | | | |414 IPC, ID | | | | |RI for 3 | | | | |months. | | | |390/2004 |03.06.2003
|28.06.06, |761/2011 |858/ |SLP | |in the Court | |RI for 2 |decided on |2015 |(Crl.)| |of JMFC, |
|years and |04.08.2012 | |3758/ | |Chavakkad/ | |fine of |by Sessions| |2016 | |U/s 379, 414 |
|Rs.1,000/- |Judge, | | |r/w 34 of IPC | |for offence |Thrissur | | | | |u/s 379 IPC | | | | |and RI
for 2 | | | | |years u/s 414| | | | |ID RI for 3 | | | | |months | | | |1168/2006 |03.06.2003
|31.12.08, |461/2011 |670/ |SLP | |in the Court | |RI for 1 year|decided on |2005 |(Crl.)| |of JMFC, |
|and fine of |30.09.2011 | |3756/ | |Kunnamkulam/ | |Rs.1,000/- ID|by Sessions| |2016 | |U/s 379
r/w 34| |SI for 6 |Judge, | | | |of IPC | |months |Thrissur | | |