

J U D G M E N T S H E E T
IN THE PESHAWAR HIGH COURT
JUDICIAL DEPARTMENT.

Criminal Appeal No.808-P/2022
with Cr.M.No.546-P/2022

Converted into

Cr.M (Quashment Petition) No. -P of 2022

J U D G M E N T

Date of hearing	:	20th September, 2022
Petitioner(s) Shafiq-ur-Rehman & Abdul Latif alias Latif)	: By	Mr. Danial Khan Chamkani, Advocate.
Respondents(s) (State)	: By	Syed Sikandar Hayat Shah, Additional Advocate General.
Complainant (Mursaleen)	: By	In person.

QAISER RASHID KHAN, CJ.- Keeping in view the fact that the prayers of the convicts Shafiq-ur-Rehman and Abdul Latif alias Latif (*hereinafter called as “the convicts-petitioners*) seeking the conversion of their sentence of payment of compensation amount into simple imprisonment of six months and also for the consolidation of their multiple sentences in different trials cannot be looked into by this court in its appellate jurisdiction having become functus officio after dismissing their appeals against convictions, we, in the peculiar facts and circumstances of the case and in the interest of justice, while exercising inherent powers under section 561-A CrPC convert this appeal into Cr.M (Quashment petition)

and in turn direct the office to make necessary entries in the relevant registers as well as in the heading of the petition.

2. In essence, the grievance of the convicts-petitioners is that despite completing their sentences, still they have not been released merely due to non-payment of compensation amount and by treating their sentences consecutively as against concurrently.

3. Brief but relevant facts of the case are that convicts-petitioners being charged in a criminal case FIR No.267 dated 01.04.2010 under section 302 / 324 / 34 PPC of Police Station Saddar, district Mardan faced trial and after its conclusion, they were convicted under section 302(b) PPC for the murder of Sultan, Ali Askar and Mukhtiar and accordingly sentenced to imprisonment for life (on three counts) with the direction to pay Rs.3,00,000/- to the legal heirs of each of the deceased as compensation. Likewise, they were also convicted under section 324 PPC for attempting at the lives of complainant Mursaleen, Irfaq, Attaullah son of Kareem Khan and Attaullah son of Fazal Rabi and in turn sentenced to imprisonment for ten years with a fine of Rs.50,000/- each or in default thereof to further undergo simple imprisonment for six months. However, benefit of section 382-B, CrPC was extended to the convicts-petitioners and their sentences were ordered to run concurrently vide judgment dated 07.03.2012.

After the arrest of the convict-petitioner Shafiq-ur-Rehman, the weapon of offence was recovered from his immediate possession and besides the ibid FIR, he was also booked in a separate FIR No.270 dated 01.04.2010 under section 13 of the Arms Ordinance of Police Station Saddar, district Mardan. After full-dressed trial, he was also convicted under section 13 AO and accordingly sentenced to three years R.I., with a fine of Rs.5,000/- or in default thereof to further undergo one month S.I. Benefit of section 382-B CrPC was however extended to him vide judgment dated 07.03.2012.

Whereas both the convicts-petitioners moved Criminal Appeal No.168-P/2012 against their conviction under sections 302 / 324 PPC, the convict-petitioner Shafiq-ur-Rehman also moved a separate Criminal Appeal No.176-P/2012 against his conviction under section 13 of the Arms Ordinance before this court, which were dismissed by this court vide separate judgments dated 16.07.2015 with certain modifications in the judgment of the learned trial court, impugned in Criminal Appeal No.168-P/2012. Hence, the instant petition.

4. So far as the first prayer regarding conversion of sentence of payment of compensation amount into simple imprisonment is concerned, the learned counsel for the convicts-petitioners has not seriously raised this issue during the course of arguments, hence, left unattended.

5. Now coming to the second prayer qua treating their sentences to be concurrent in different trials, suffice it to say that from the above narrated facts of the case, only convict-petitioner Shafiq-ur-Rehman is pressing hard such plea because he had faced two trials in different FIRs, which were the outcome of one and the same transaction and accordingly had been convicted and sentenced thereunder separately, which is not the case of the convict-petitioner Abdul Latif alias Latif as he had only faced trial in one FIR and was accordingly convicted thereunder. Hence, we confine our findings only to the extent of the convict-petitioner Shafiq-ur-Rehman.

6. The gist of the arguments of the learned counsel for the convict-petitioner is that the relief under section 397 CrPC, which somehow was not earlier granted to the convict-petitioner during the trial or appellate stage can be extended by this court even at this stage while exercising powers under section 561-A CrPC.

Such submissions are not seriously objected to by the learned Additional Advocate General representing the State.

7. The moot question before us is that as to whether sentences in two different trials, which were of course outcome of one and the same transaction, can be consolidated

or for that matter run concurrently. Section 397 CrPC deals with this proposition, which reads as under:-

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.

8. Granted that as per the first portion of the ibid section of law, the subsequent sentence to a convict already undergoing a sentence has to commence after the expiry of the previous sentence but simultaneously its later part leaves it to the discretion of the court whereby it may direct for treating the sentences to run concurrently.

9. Another crucial question is as to whether an issue, which was not addressed to by both the learned trial court and the learned appellate court can be tackled / resolved at this stage?. The answer is “Yes”. Section 397 CrPC attends to such a situation. In this respect, wisdom is safely sought from the judgments of the Hon’ble Supreme Court of Pakistan reported as **Rahib Ali vs. the State (2018 SCMR 418); Sajjad Ikram & others vs. Sikandar Hayat & others (2016**

SCMR 467) & Mst. Shahista Bibi & another vs. Superintendent, Central Jail, Mach & others (PLD 2015 SC 15). For ready reference, the relevant portions thereof are

as under:-

Rahib Ali vs. the State (2018 SCMR 418)

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-A, Cr.P.C. 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 order such multiple sentences in same transaction/trial or in a

separate and subsequent trial to run concurrently.

Sajjad Ikram & others vs. Sikandar Hayat & others (2016 SCMR 467)

12. The aggregate of punishment of imprisonment for several offences at one trial were deemed to be a single sentence. However, the position of an accused person is different who while already undergoing a sentence of imprisonment for life, is subsequently convicted and sentenced in another trial. Such subsequent sentence in view of section 397, Cr.P.C. would commence at the expiration of imprisonment for life for which he had been previously sentenced but even then in such cases, the said provision expressly enables the Court to direct that the subsequent sentence would run concurrently with the previous sentence. It is clear from section 397, Cr.P.C. that the Court, while analyzing the facts and circumstances of every case, is competent to direct that sentences in two different trials would run concurrently. In that eventuality, the Court has wide power to direct that sentences in one trial would run concurrently. The provision of section 397, CrP.C. confers wide discretion on the Court to extend such benefit to the accused in a case of peculiar nature, like the present one. Thus extending the beneficial provision in favour of the appellant, would clearly meet the end of justice. We, therefore, observe that there is nothing wrong in treating the sentences of imprisonment for life of the convict/appellants on three counts to run concurrently, in view of facts and circumstances discussed above.

Mst. Shahista Bibi & another vs. Superintendent, Central Jail, Mach & others (PLD 2015 SC 15)

8. Besides the provisions of section 35, Cr.P.C. the provisions of section 397, Cr.P.C. altogether provide entirely a different proposition widening the scope of discretion of the Court to direct that sentences of imprisonment or that of life imprisonment awarded at the same trial or at two different trials but successively, shall run concurrently. Once the Legislation has conferred the above discretion in the Court then in hardship cases, Courts are required to seriously take into consideration the same to the benefit of the accused so that to minimize and liquidate the hardship treatment, the accused person is to get and to liquidate the same as far as possible. In a situation like the present one, the Court of law cannot fold up its hands to deny the benefit of the said beneficial provision to an accused person because denial in such a case would amount to a ruthless treatment to him/her and he/she would certainly die while undergoing such long imprisonment in prison. Thus, the benefit conferred upon the appellant/appellants through amnesty given by the Government, if the benefit of directing the sentences to run concurrently is denied to him/them, would brought at naught and ultimately the object of the same would be squarely defeated and that too, under the circumstances when the provision of S.397, Cr.P.C. confers wide discretion on the Court and unfettered one to extend such benefit to the accused in a case of peculiar nature like the present one. Thus,

construing the beneficial provision in favour of the accused would clearly meet the ends of justice and interpreting the same to the contrary would certainly defeat the same.

10. On the touchstone of the supra judgments of the apex court and keeping in view the relevant provision of law, we have come to the safe conclusion that the convict-petitioner Shafiq-ur-Rehman is entitled to the relief, asked for within the meaning of section 397 CrPC.

11. Accordingly, we admit and partially allow this petition and in turn hold that the sentences of the convict-petitioner Shafiq-ur-Rehman shall be deemed to have run ‘concurrently’ in both the trials. Cr.M is disposed of accordingly. A copy of this judgment be endorsed to the Superintendent, Central Prison, Mardan for information and compliance.

Announced
20. 09. 2022

CHIEF JUSTICE

J U D G E

(Fayaz) (D.B) Justice Qaiser Rashid Khan, CJ & Justice Ijaz Anwar, J