

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on :21.08.2014*
Judgment delivered on :28.08.2014.

+ CRL.A. 64/2003 & CrI.M.A. No.3431/2011
NASIM BANO

Through Appellant
Appellant with her counsel
Mr.Sanjay, Adv.

versus

THE STATE OF NCT OF DELHI

Through Respondent
Ms. Fizani Hussain, APP along
with SI Padam Singh.

+ CRL.A. 190/2003
GEETA & ANR.

Through Appellants
Appellants with their counsel
Mr.Sanjay, Adv.

versus

STATE

Through Respondent
Ms. Fizani Hussain, APP along
with SI Padam Singh.

+ CRL.A. 640/2003
MOHD. NAFIS

Through Appellant
Appellants with his counsel
Mr.Sanjay, Adv.

versus

THE STATE

Through Respondent
Ms. Fizani Hussain, APP along
with SI Padam Singh.

+ CRL.A. 708/2003 & CrI.M.A.No.3428/2011
NASEEM BANO ALIAS NASIM

..... Appellant
Through Appellants with her counsel
Mr.Sanjay, Adv.

versus

THE STATE

..... Respondent
Through Ms. Fizani Hussain, APP along
with SI Padam Singh.

+ CRL.A. 747/2003 & Crl. M.A.No.5999/2012
GEETA & ANR.

..... Appellants
Through Appellants with their counsel
Mr.Sanjay, Adv.

versus

STATE

..... Respondent
Through Ms. Fizani Hussain, APP along
with SI Padam Singh

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 These are five appeals relating to two FIRs. (i) FIR No.375/2001 has been registered under Sections 365/368/376/542/506/323/109/34 of the Indian Penal Code (IPC) and Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the 'said Act') against Naseem Bano, Mohd. Nafis, Manju and Geeta. On 08.01.2003 Manju, Geeta and Naseem Bano stood convicted under Sections

368/342/506-II/109/34 of the IPC and Section 3, 4, 5 & 6 of the said Act. Accused Mohd. Nafis stood convicted only for the offence under Section 4 of the said Act. Accused Naseem Bano, Geeta and Manju had been sentenced to undergo RI for a period of six months and to pay a fine of Rs.300/- and in default of payment of fine, to undergo SI for three months for the offence under Section 342 of the IPC; for offence under Section 323 of the IPC, they had been sentenced to undergo RI for a period of six months each; for the offence under Section 368 of the IPC, they had been sentenced to undergo RI for a period of five years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo SI for one year; for the offence under Section 506-II of the IPC, they had been sentenced to undergo RI for a period of six months and to pay fine of Rs.500/- and in default of payment of fine, to undergo SI three months; they had also been convicted under Sections 3, 4, 5 & 6 of the said Act. The maximum sentence awarded to them is RI seven years and a fine of Rs.5000/- and in default of payment of fine to undergo SI for one year. Accused Mohd. Nafis had been sentenced to undergo RI for a period of two years for the offence under Section 4 of the said Act.

(ii) FIR No. 456/2001 relating to the same incident was registered
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under Sections 363/365/376/368/372/342/323/506/406/109/34 of the IPC and Sections 3, 4, 5, 6 & 7 of the said Act against the aforementioned appellants, who were convicted under Section 372/373/34 of the IPC and Section 3, 4, 5, 6, & 7 of the said Act vide order of sentence dated 03.09.2003. Each of them had been sentenced to undergo RI for a period of 7 years and to pay a cumulative fine of Rs.43,000/- and in default of payment of fine to undergo total RI for a period of 10 months (being maximum period of punishment awarded in case of default under the offences for which they stood convicted).

2 In these appeals, applications had been filed by each of the appellants seeking permission of this Court that the sentences awarded to them in the separate FIRs i.e. FIR No.375/2001 & 456/2001 be permitted to run concurrently and the discretion has been prayed under Section 427 of the Cr.PC.

3 Relevant would it be to note that another FIR i.e. FIR No.45/2002 had been registered against Mohd Nafis (who stood acquitted vide order of Special Judge dated 22.12.2003) and one of the other co-accused Naseem Bano in which she stood convicted on 24.12.2003 under Sections 3, 4 & 5 of the said Act for which the maximum sentence

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awarded to her was RI five years as also a fine of Rs.5,000/- and in default of payment of fine to undergo SI for four months. Appeal against this conviction (Crl. Appeal No.121/2004) was disposed off vide order 17.11.2011. That appeal stood dismissed. Appellant Naseem Bano having completed her sentence in that FIR i.e. FIR No.45/2002 was released on 19.02.2013. This is reflected from the record.

4 This Court first has to deal with the submission of the appellants as to whether the sentences can be permitted to run concurrently. For this proposition, learned counsel for the appellants has placed reliance upon 1991 Crl. LJ 438 Azad Singh Vs. State, a judgment of a Bench of this Court which in turn had relied upon a Division Bench judgment of High Court of Madhya Pradesh reported as 1975 Crl. LJ 498 A.S. Naidu Vs. The State of Madhya Pradesh. The ratio of the aforementioned judgment was that under the provision of Section 427 of the Cr.PC, the sentences may be permitted to run concurrently. However, if the sentences are in default of payment of fine, those may be read in addition. The judgment of A.S. Naidu (supra) had noted that the powers of the High Court in making a subsequent sentence to run concurrently would not in any manner modify or alter the judgment as it would not affect the nature

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and quantum of the sentence; it being only a power pertaining to the manner of execution of the sentence; this power can be exercised at any stage; being an independent power of the Court, it can be exercised after the disposal of the case on its merits as it does not amount to a review of the judgment.

5 Facts of the instant case disclosed that FIR No.375/2001 had been registered on 03.10.2001 on the complaint that one 'S' (PW-1) could not be traced; she had gone missing; she was recovered from kotha No. 57, Second Floor, GB Road. A raid was conducted where apart from PW-1, other girls were also recovered. Naseem Bano, the owner of the kotha, Naseem Bano's husband Mohd. Nafis, Geeta and Manju were found a part of this flesh trade; they were all arrested and conviction followed qua the aforementioned persons. As noted supra, the conviction has not been challenged on its merits.

6 FIR No.456/2001 was registered on 20.12.2001 relating to the similar facts. Pursuant to the registration of this FIR, PW-1 'S' had been recovered from the same brothel i.e. kotha No. 57, GB Road wherein the role of the aforementioned appellants Naseem Bano, Mohd. Nafis, Manju and Geeta had surfaced. The conviction followed along with the sentences
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but as noted supra, this judgment has not been challenged on its merits.

The appellants are only praying that the sentences which had been awarded in the separate FIRs be permitted to run concurrently.

7 Section 427 of the Cr.PC reads herein 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.”

8 This Section creates an exception that in case of person already undergoing sentence of imprisonment, it provides that the first sentence which is passed must be given effect to first and the sentence passed subsequently shall follow after the expiration of the first sentence. Sub-section (1) however confers discretion upon the Court to direct that the

subsequent sentence shall run concurrently with the previous sentence; this discretion can be exercised [in terms of the ratio of A.S. Naidu(supra)] even after the disposal of the appeal or revision by the High Court. A Bench of this Court in the case of Azad Singh (supra) had relied upon the ratio of A.S. Naidu and had permitted the prayer made by the applicant in that case under Section 427 of the Cr.PC.

9 Keeping in view the facts of the instant case, where both the FIRs i.e. FIR No.456/2001 and FIR No.375/2001 arise out of the same incident; in the first FIR i.e. FIR No.375/2001 six girls were recovered from the brothel owned by appellant Naseem Bano and her accomplices and whereas in the second FIR i.e. FIR No.456/2001 , one girl was recovered from the same brothel and also keeping in view the additional fact that after the date of the conviction, the appellants (who were all present in Court at the time of hearing of the appeals), have reformed themselves and have not been found indulging in any further criminal activity (which position has been confirmed by the Investigating Officer who has made a positive statement in this regard), it would be a fit case where the Court should exercise its inherent powers and accordingly the substantive sentence of imprisonment awarded in aforementioned two cases
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be allowed to run concurrently. The prayer made under Section 427 of the Cr.PC is allowed.

10 In the case of Naseem Bano, this Court notes that the record reflects that she has been sentenced to undergo RI for a period of five years, which period she has already completed and was finally released from the jail on 19.02.2013 after undergoing incarceration in that FIR i.e. FIR No.45/2002. Her nominal roll in FIR No.456/2001 reflects that in that case out of a period of seven years which has been imposed upon her, she has undergone incarceration of one year, seven months and 18 days. The total incarceration undergone by Nasim Bano would now work out to be six years and almost eight months. The total period of incarceration awarded to appellant Nasim Bano in all the three FIRs was seven years each. Therefore, the period of incarceration already undergone by Nasim Bano is the sentenced imposed upon her.

11 In FIR No. 456/2001, nominal roll of appellant Mohd. Nafis reflects that he has undergone incarceration of three years, seven months and 29 days besides remissions earned of seven months and 14 days and as per FIR No.375/2001 sentence remaining is 2 months and 23 days (as reflected in nominal roll dated 22.08.2014) meaning thereby that he has

undergone a total incarceration of about six years one month and 20 days. The sentence awarded to appellant Mohd. Nafis in both FIRs i.e. FIR No. 456/2001 & FIR No.375/2001 was maximum seven years. The period of incarceration already undergone by Mohd Nafis is the sentenced imposed upon him.

12 In FIR No. 375/2001, nominal roll of appellant Geeta reflects that she has undergone incarceration of four years, five months and six days besides remissions earned of 11 months and 24 days. In FIR No.456/2001, she has undergone incarceration of about one year, seven months and 18 days meaning thereby that if both the FIRs counted together, she has undergone incarceration of six year, four months and 18 days. The total period of incarceration awarded to appellant Geeta in both the FIRs was seven years. The period of incarceration already undergone by Geeta is the sentenced imposed upon her

13 In FIR No. 375/2001, nominal roll of appellant Manju reflects that she has undergone incarceration of five years, six months and one day besides remissions earned of one year, four months and four days. In FIR No.456/2001, she has undergone incarceration of about one year and seven months meaning thereby that if both the FIRs counted

together, she has undergone incarceration of eight years, five months and 23 days. The total period of incarceration awarded to appellant Manju in both the FIRs was seven years each. The period of incarceration already undergone by appellant Geeta is the sentenced imposed upon her.

14 These appeals are disposed of in the above terms.

INDERMEET KAUR, J

AUGUST 28, 2014

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