

CWP No.12408 of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.12408 of 2015**

**Date of Decision: August 17<sup>th</sup>, 2015**

**Kuldeep Singh**

...Petitioner

Versus

**State of Haryana & another**

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Raj Kapoor Malik, Advocate  
for the petitioner.

Mr. G.S. Wasu, Addl. Advocate General, Haryana.

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**AUGUSTINE GEORGE MASIH, J.:**

Petitioner was named in FIR No.97 dated 29.09.1997, registered at Police Station G.R.P.S., Sirsa, but during investigation, was found innocent and thereafter, was summoned under Section 319 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') to face trial. After trial, he was convicted and sentenced under Section 307 of Indian Penal Code (hereinafter referred to as 'IPC') to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹20,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of two years and under Section 148 read with Section 149 IPC to undergo rigorous imprisonment for three years, in Session Case No.3 of 1998/2002, vide judgment and order dated 07.04.2003 (Annexure P-1) passed by the Additional

Sessions Judge, Sirsa.

2. Appeal preferred by the petitioner in this Court i.e. Criminal Appeal No.S-929-SB of 2003, 'Kuldeep Singh son of Jagga Singh Vs. State of Haryana', was decided by this Court vide judgment dated 13.02.2014 (Annexure P-2), in which, conviction under Sections 307 and 148 read with Section 149 IPC has been upheld, however, this Court has interfered in the quantum of sentence under Section 307 IPC only, by reducing it to rigorous imprisonment for a period of 3 years from 10 years. The appeal stands dismissed except for the modification in sentence for offence punishable under Section 307 IPC.

3. Now, the petitioner has approached this Court praying for issuance a writ of mandamus directing the respondents to release the petitioner from jail as he has undergone the period of sentence of 3 years rigorous imprisonment including remissions awarded for the offences under Sections 307 and 148 read with Section 149 IPC.

4. Counsel for the petitioner submits that while imposing the sentence vide order dated 07.04.2013, the trial Court did not mention as to whether the sentences awarded under different sections would run consecutively or concurrently. Similarly, in the appeal which was preferred by the petitioner i.e. Criminal Appeal No. S-929-SB of 2003, it has not been specified in this regard. Counsel submits that although the High Court had not interfered on the quantum of sentence for offence punishable under Section 148 read with Section 149 IPC, but for offence under Section 307 IPC, it was

reduced to 3 years from the original 10 years sentence for the reason that the complainant had compromised the matter with the petitioner which was treated as a mitigating circumstance. Another circumstance which weighed on the mind of the Court was that the occurrence took place in September, 1997 and a period of 16 years had elapsed since the date of incidence. Since the sentence for Section 148 read with Section 149 IPC is 3 years and for Section 307 IPC is also 3 years, these sentences should be treated to run concurrently and not consecutively in the absence of any specific mention thereof in the order sentencing the petitioner. Counsel contends that during petitioner's confinement in Jail, he has earned remissions because of his good conduct. By giving credit of remissions earned, petitioner has completed his sentence of 3 years on 03.06.2015 and the further custody of the petitioner in District Jail, Sirsa, is illegal and therefore, an order releasing him be passed by this Court.

5. Counsel for the petitioner has referred to the judgments of Hon'ble Supreme Court in Nagaraj Rao Vs. Central Bureau of Investigation 2015 (1) RCR (Criminal) 915, Manoj alias Panu Vs. State of Haryana 2014 (2) SCC 153, O.M. Cherian @ Thankachan Vs. State of Kerala and others 2014 (4) RCR (Criminal) 922 and Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and others 1988 (4) SCC 183, to contend that where the accused has committed different offences under single transaction, the sentences must run

concurrently and not consecutively. Reliance has also been placed on the judgment of the Rajasthan High Court in **Smt Mehraj Bibi Vs. State of Rajasthan and another 2009 (2) W.L.C. (Raj.) 419.** He, thus, contends that the writ petition deserves to be allowed.

6. Counsel for the State, on the other hand, contends that the present writ petition is not maintainable in the light of the fact that the appeal has already been preferred by the petitioner against the order of conviction and sentence, wherein High Court has interfered to the limited extent on the quantum of sentence qua Section 307 IPC only, while upholding the conviction and sentence under Section 148 read with Section 149 IPC. He states that, if, the petitioner had any grievance with regard to the sentence as has been imposed, he should have either pressed the same in the appeal or should have approached the Hon'ble Supreme Court. The judgment passed by this Court in Criminal Appeal No.S-929-SB of 2003 having attained finality cannot be now gone into by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India and if such an exercise is undertaken by this Court, it would amount to review of the judgment which is not permissible in law.

7. He contends that language of Section 31 of the Cr.P.C. in itself is clear and leaves no doubt that where several punishments are imposed consisting of imprisonment for different offences at one trial, such punishments to commence one after the expiration of the other i.e. consecutive, unless the Court directs that such punishments shall run concurrently. In the present case, neither the

trial Court nor the Appellate Court had stated that the punishments shall run concurrently and therefore, the sentences shall run consecutively. He, however, admits that the petitioner has completed 3 years' sentence on the basis of the remissions earned by him but submits that since he has been sentenced under Section 307 IPC for 3 years and under Section 148 read with Section 149 IPC for 3 years which would total to 6 years, he has not completed the said sentence which has been imposed by the Appellate Court.

8. In support of these contentions, he has placed reliance upon the Full Bench judgment of this Court in **Jang Singh Vs. State of Punjab, 2008 (1) RCR (Criminal) 323,** where this Court has held that the direction to make sentences to run concurrently can be exercised by the trial Court or the Appellate Court or the Revisional Court at the time of exercising trial, appellate or revisional jurisdiction. It may not be open for persons to seek a direction for making the sentence to run concurrently by moving an application under Section 482 and 427 of Criminal Procedure Code and drawing strength from this ratio, counsel contends that this Court would not exercise its jurisdiction under Articles 226/227 as well.

9. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

10. Should the sentences run concurrently where punishments have been imposed for two or more offences for which a person stands convicted in one trial but the Court fails to specify as

to whether those punishments are to run consecutively or concurrently is the question to be decided in this writ petition.

11. Reference to Section 31 Cr.P.C. is necessary, which relates to the sentences on conviction of several offences in a trial and quantum of punishment that the Court have jurisdiction to pass is necessary. The same reads as follows:-

***“Section 31. Sentences in cases of conviction of several offences at one trial.***

*(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860 ), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.*

*(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that-*

*(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;*

*(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.*

*(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”*

12. The answer to the question, as has been posed above, is available in the recent Larger Bench (3 Judges) Judgment of the Hon'ble Supreme Court in **O.M. Cherian @ Thankachan Vs. State of Kerala and others 2014 (4) RCR 922**, where, reference was made on the question, “Whether the direction whereby the sentences were ordered to run consecutively is legally tenable?”

The referral bench had doubted the statement of law made in the judgments of the Supreme Court in **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and others 1988 (4) SCC 183** and **Manoj alias Panu Vs. State of Haryana 2014 (2) SCC 153**, as in its opinion, it appeared that Section 31 Cr.P.C. was not noticed by the Court.

13. The provisions of Section 31 Cr.P.C. have been dealt with in detail in para 10 to 14 and 18 to 21 which read as follows:-

*“10. Section 31 Cr.P.C. relates to the quantum of punishment which may be legally passed when there is (a) one trial and (b) the accused is convicted of “two or more offences”. Section 31 Cr.P.C. says that subject to the provisions of Section 71 IPC, Court may pass separate sentences for two or more offences of which the accused is found guilty, but the aggregate punishment must not exceed the limit fixed in the*

*proviso (a) and (b) of sub-section (2) of Section 31 Cr.P.C. In Section 31(1) Cr.P.C., since the word “may” is used, in our considered view, when a person is convicted for two or more offences at one trial, the court may exercise its discretion in directing that the sentence for each offence may either run consecutively or concurrently subject to the provisions of Section 71 IPC. But the aggregate must not exceed the limit fixed in proviso (a) and (b) of sub-section (2) of Section 31 Cr.P.C. that is – (i) it should not exceed 14 years and (ii) it cannot exceed twice the maximum imprisonment awardable by the sentencing court for a single offence.*

**11.** *The words “unless the court directs that such punishments shall run concurrently” occurring in sub-section (1) of Section 31, make it clear that Section 31 Cr.P.C. vests a discretion in the Court to direct that the punishment shall run concurrently, when the accused is convicted at one trial for two or more offences. It is manifest from Section 31 Cr.P.C. that the Court has the power and discretion to issue a direction for concurrent running of the sentences when the accused is convicted at one trial for two or more offences. Section 31 Cr.P.C. authorizes the passing of concurrent sentences in cases of substantive sentences of imprisonment. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the convict may have been sentenced.*

**12.** *The words in Section 31 Cr.P.C “....sentence him for such offences, to the several punishments*

*prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct” indicate that in case, the Court directs sentences to run one after the other, the Court has to specify the order in which the sentences are to run. If the Court directs running of sentences concurrently, order of running of sentences is not required to be mentioned. Discretion to order running of sentences concurrently or consecutively is judicial discretion of the Court which is to be exercised as per established law of sentencing. The court before exercising its discretion under Section 31 Cr.P.C. is required to consider the totality of the facts and circumstances of those offences against the accused while deciding whether sentences are to run consecutively or concurrently.*

**13.** *Section 31 (1) Cr.P.C. enjoins a further direction by the court to specify the order in which one particular sentence shall commence after the expiration of the other. Difficulties arise when the Courts impose sentence of imprisonment for life and also sentences of imprisonment for fixed term. In such cases, if the Court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of Section 31 (1) Cr.P.C. There is no question of the convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the*

*end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are imposed on the convict, necessarily, Court has to direct those sentences to run concurrently.*

**14.** *The opening words “in the case of consecutive sentences” in sub-section (2) of Section 31 Cr.P.C. make it clear that this sub-section refers to a case in which “consecutive sentences” are ordered. The provision says that if an aggregate punishment for several offences is found to be in excess of punishment which the Court is competent to inflict on a conviction of single offence, it shall not be necessary for the Court to send the offender for trial before a higher court. Proviso (a) is added to sub-section (2) of Section 31 Cr.P.C. to limit the aggregate of sentences - that in no case, the aggregate of consecutive sentences passed against an accused shall exceed fourteen years. “Fourteen years rule” contained in clause (a) of the proviso to Section 31 (2) Cr.P.C. may not be applicable in relation to sentence of imprisonment for life, since imprisonment for life means the convict will remain in jail till the end of his normal life.*

**15.** XX XX XX XX

**16.** XX XX XX XX

**17.** XX XX XX XX

**18.** *While referring the matter to a larger Bench, the Bench observed that in Mohd. Akhtar Hussain’s case, Section 31 Cr.P.C. was not noticed by this Court. It is to be pointed out that in Mohd. Akhtar*

*Hussain's case and Manoj's case, the appellants who were convicted for different counts of offences arose out of a single transaction, favouring the exercise of discretion to the benefit of the accused that the sentences shall run concurrently. Those decisions are not cases arising out of conviction at one trial of two or more offences and therefore, reference to Section 31 Cr.P.C. in those cases was not necessitated.*

**19.** *As pointed out earlier, Section 31 Cr.P.C. deals with quantum of punishment which may be legally passed when there is - (a) one trial and (b) the accused is convicted of two or more offences. Ambit of Section 31 is wide, covering not only single transaction constituting two or more offences but also offences arising out of two or more transactions. In the two judgments in Mohd. Akhtar Hussain and Manoj (supra), the issue that fell for consideration was the imposition of sentence for two or more offences arising out of the single transaction. It is in that context, in those cases, this Court held that the sentences shall run concurrently.*

**20.** *Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for*

*concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.*

*21. Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct. We also do not find any conflict in earlier judgment in Mohd. Akhtar Hussain and Section 31 Cr.P.C.” (emphasis applied)*

**14.** In view of the above, it is clear that if the Court has not directed that the sentences shall run concurrently, then the sentence will run consecutively by operation of Section 31 (1) Cr.P.C. The question as mentioned in para 10 above stands answered accordingly.

**15.** Consequently, in the present case, where the Court has not directed the sentences to run concurrently, in the light of the law laid down by the Hon'ble Supreme Court referred to above, the sentences will run consecutively. The petitioner is, thus, not entitled to the relief of release from prison as prayed for.

16. Counsel for the State has raised an objection with regard to the maintainability of the writ petition which needs to be decided.

17. It is not disputed that the conviction and sentence of the petitioner has attained finality as the decision of this Court in Criminal Appeal No. S-929-SB of 2013 has not been challenged, according to which, the petitioner stands sentenced to 3 years rigorous imprisonment under Section 307 IPC and to undergo rigorous imprisonment for 3 years under Section 148 read with Section 149 IPC. The Full Bench judgment of this Court in *Jang Singh's* case (supra), on which reliance has been placed by the counsel for the respondents, holds by relying upon the judgment of the Hon'ble Supreme Court in **M.R. Kudva Vs. State of Andhra Pradesh, 2007 (1) RCR (Criminal 868** and **Ammavasi and another Vs. Inspector of Police, Valliyanaur and others, AIR 2000 Supreme Court 3544** that if the trial Court does not pass any direction for making the sentences to run concurrently and the appeal or revision against the said decision is also decided, then it may not be open to the person to seek such direction for making the sentences to run concurrently by moving an application under Section 482 and 427 of Cr.P.C. The discretion though is available with the trial Court, Appellate Court or the Revisional Court while holding trial or entertaining appeal or revision but would not so be available to be exercised in isolation when application in this regard is moved either under Section 482 or 427 Cr.P.C.

18. The Full Bench judgment referred to above, was not

dealing with the powers of the High Court under Articles 226/227 of the Constitution of India. Exercise of its extraordinary jurisdiction by the High Court to the extent of superintendence under Articles 226/227 may not be available in a case where the remedy of appeal/revision to the High Court or before the Supreme Court has been exhausted but where such remedy has not been availed of, it cannot be said that the jurisdiction of the High Court would be barred. However, in the present case, the petitioner having exhausted his remedy of appeal upto the High Court and the conviction and sentence having attained finality as he has not challenged the said order, the present writ petition would not be maintainable.

**19.** In view of the above, the writ petition is dismissed as not maintainable as also on merit.

**August 17<sup>th</sup>, 2015**  
*Harish*

**( AUGUSTINE GEORGE MASIH )**  
**JUDGE**