

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.1017 of 2016**

Arising Out of PS.Case No.-154 Year- 2013 Thana -MASRAKH District- SARAN

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Mina Devi wife of Arjun Rai @ Arjun Prasad Yadav

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Mr. Pranav Kumar, Advocate

For the Respondent : Mr. Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA  
PRATAP SINGH**

**and**

**HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

2      19-10-2016              Heard, learned counsel for the appellant upon the defect so pointed out by the office regarding maintainability of the instant appeal, before Division Bench as, it has been pointed out to be maintainable as “Single Judge” by the office. However, learned senior counsel for the appellant has controverted this aspect of the matter. Drawing the attention towards section 31 of the Code of Criminal Procedure (herein after referred to as ‘the Cr.P.C’) it has been submitted by the learned counsel appearing on behalf of the appellant that running sentences have been prescribed thereunder either “concurrent” or “consecutive”. In the aforesaid background, it has been submitted that as there has been a consecutive finding with regard to the running of the sentences for the offences



inflicted by the learned lower court, then in that event, all the sentences whatsoever been inflicted, would have to be merged, for the purpose of directing the appellant to undergo imprisonment, which the appellant is bound to suffer and that being so, the matter would have been taken up by the Division Bench, as it exceeds the period within the preview of Single Judge.

Furthermore, it has also been submitted that as per the High court Rules, Chapter II Rule 15, it is apparent that whenever the sentence happens to be more than 10 years, then in that event, the Criminal appeal has to be heard by the Division bench. In the present context, learned senior counsel appearing for the appellant also referred to Rule 10 of the Chapter II. Apart from this, the learned senior counsel for the appellant also referred to Chapter XII Rule 36 proviso and in order to substantiate his plea, has submitted that only, the sentences having been covered within the span of upto 10 years, is to be laid before the Single bench. Because of the fact that the sentences, on account of being consecutive in nature, covers the time span of 17 years, therefore, it should be heard by the Division bench and so, the defects, pointed by the office, be ignored.



Trial of several offences is permissible within one proceeding and if so identified, the court after concluding, further finding the accused to be guilty of different offences, would inflict sentences independently and during course thereof, in terms of section 31 of the Cr.P.C. the court has to consider whether the sentences, which are to be inflicted against the convicts, are to run concurrent or consecutive. As such, running of sentences is to be guided in terms of section 31 of the Cr.P.C.

Infliction of sentences and maintainability of an appeal are two different things and that happens to be the reason behind that while considering the maintainability of the appeal, no provision has been made under Cr.P.C. for clubbing of sentences, save and except under section 376 Cr.P.C. whereunder, even the sentences having been inflicted for minor offences, have been allowed to be clubbed together. As per sections 374 Cr.P.C. whenever sentences having been passed more than seven years, the appeal is to be preferred before the High court. As is evident, neither under High Court Rules, nor under Cr.P.C., save and except 376 (proviso) Cr.P.C., clubbing of sentence is permissible, on account thereof, even the sentences having been directed to run consecutively would not

permit clubbing, and that being so, the sentence is to be identified independently, whereupon, the appeal is to be placed before the Single Judge. At the present moment, learned counsel for the appellant has submitted that the appeal is the continuation of trial. Again, the aforesaid theme has got no relevancy for the present purpose in the background of the fact, that for the present purpose the same would not have any adverse impact over the controversy persisting. That being so, it is held that the instant appeal would lie before a Single Judge, and as such the defects pointed out by the office is found legal one. So, let this appeal be listed before the single bench, in case other defects, if any, are removed.

**(Samarendra Pratap Singh, J)**

**(Aditya Kumar Trivedi, J)**

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