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

+ W.P.(CRL) 3054/2016

SMT KIRAN MEHLAWAT

..... Petitioner

Through: Mr. M.L. Yadav, Advocate

versus

STATE

..... Respondent

Through: Mr. Jamal Akhtar, Adv for Mr. Rahul Mehra, Standing Counsel, GNCTD with ASI Ram Roop, PS Subhash Place

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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28.11.2016

I have heard learned counsel for the petitioner and Mr. Akhtar on behalf of the learned Standing Counsel for the State.

The petitioner has preferred the present writ petition to seek a declaration that the two life sentence awarded to him by the Trial Court in two different cases, namely, FIR No.428/1996 under Section 394/397/302/203/34 IPC registered at PS Saraswati Vihar and FIR No.52/1998 under Section 365/364A/392/412/342/120B IPC, PS Model Town should run concurrently.

The conviction and substantive sentence awarded to the petitioner in the aforesaid two cases was maintained by this court and by the Supreme Court. The petitioner had in the appeals also raised the issue with regard to two sentences awarded to him running concurrently by placing reliance on Section 427(2) Cr PC, which reads as follows:

“When a person already undergone 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”.

However, it appears that the Division Bench while disposing of the Criminal Appeal No.515/2001 along with other connected appeal being Criminal Appeal 533/2001 did not modify the sentence and maintained the sentence awarded to the petitioner.

The submission of learned counsel for the petitioner is that section 427(2) Cr PC has received the consideration by the Supreme Court in ***Muthuramalingam & Ors. v. State, rep by Insp of Police*** in CrI A Nos.231-33/2009, wherein the Supreme Court has held that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.

The submission of the petitioner is that following the aforesaid decision, this court in ***Jagangir & Ikka & Ibrahim v. State*** in W.P. (CrI.) No.1400/2016 disposed of the writ petition directing that the sentence of

imprisonment for life shall run concurrently and not conclusively, and that the same would be super imposed over the first sentence for life as per law declared by the Supreme Court on the aforesaid decision of the Constitution Bench.

Taking note of the aforesaid aspects, the matter had been directed to be placed before the Division Bench vide order dated 17.11.2016. The Division Bench has, however, directed that the matter be placed before this court vide order dated 21.11.2016.

In view of the aforesaid position, the writ petition is allowed. It is directed that the two life sentences awarded to the petitioner in the aforesaid two cases, namely, FIR No.428/1996 under Section 394/397/302/203/34 IPC registered at PS Saraswati Vihar and FIR No.52/1998 under Section 365/364A/392/412/342/120B IPC, PS Model Town shall run concurrently and not consecutively.

Petition stands disposed of. Dasti.

VIPIN SANGHI, J

NOVEMBER 28, 2016

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