

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.392 of 1998

Arising Out of Special Case No. 23 Year- 1987, C.B.I. (South) District- Patna

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Bakshi Pankaj Kumar Sinha, son of late Bakshi Harihar Prasad Singh, resident of village-Murar, P.S. Murar, District-Buxar.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 395 of 1998

Arising Out of Special Case No.23 Year-1987, C.B.I. (South) District- PATNA

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Prabhanjan Kumar Pandey, son of late Ramadhin Pandey, resident of Shree Geeta Mandir, 1st Floor, Fustakalaya Road, Buxar, District-Bhojpur.

.... Appellant/s

Versus

State of Bihar Thro.C.B.I.

.... Respondent/s

Appearance :

(In CR. APP (SJ) No. 392 of 1998)

For the Appellant/s : Mr. Surendra Kr. Singh-Advocate
Miss. Tulika Singh
Miss. Sudha Chandra

For the C.B.I. : Mr. Bipin Kumar Sinha- SCCBI

(In CR. APP (SJ) No. 395 of 1998)

For the Appellant/s : Mr. Suraj Narayan Pd. Sinha-Sr. Advocate
Mr. Mahindra Kumar Sinha
Mr. Rohit Kumar

For the C.B.I. : Mr. Bipin Kumar Sinha-SCCBI.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 20-02-2015

Criminal Appeal No.392 of 1998 wherein Bakshi

Pankaj Kumar Sinha is the appellant as well as Criminal Appeal

No.395 of 1998 wherein Prabhanjan Kumar Pandey is the appellant

originate commonly against the judgment of conviction and sentence



dated 19.09.1998 passed by the Special Judge, C.B.I., South, Patna in Special Case no.23 of 1987. Whereby and whereunder both the appellants have been found guilty for an offence punishable under Sections 420, 409, 468, 471, 477-A I.P.C., 5(I) (c) & (d) of the Prevention of Corruption Act and further been inflicted composite sentence of two years and a fine of Rs.20,000/- separately and independently and in default of payment of fine, to undergo rigorous imprisonment for one year additionally, as such heard analogously and are being disposed of by a common judgment.

2. Inspector of Police, Central Bureau of Investigation, on getting confidential information that accused Prabhanjan Kumar Pandey while discharging his function as Branch Manager, Unbas Branch of “Bhojpur Rohtas Gramin Bank” during financial year 1985-86 entered into criminal conspiracy with accused Bakshi Pankaj Kumar Singh, Clerk-Cum-Cashier of the said Branch along with others, misused their status and by such activity, cheated the bank to the tune of Rs.3,82,800/-. While discharging their duty, Prabhanjan Kumar Pandey being Manager, was entrusted to receive deposits, made advance and recover the same as per norms of the bank while Bakshi Pankaj Kumar Sinha was to make entry in the cashbook as well as disburse the cash, entrusted to him.

It has further been alleged that Prabhanjan Kumar

Pandey in conspiracy with Bakshi Pankaj Kumar Sinha withdrew Rs.20,000/- on 06.04.1985 from Allahabad Bank, Itarhi and misappropriated the same. No entry was made in the cashbook of the bank. The aforesaid amount was withdrawn on account of maintaining current account with Allahabad Bank, Itarhi.

It has further been alleged that both the accused have misappropriated Rs.20,000/- by making bogus payment of Rs.5,000/- each from four savings bank account bearing no.1913, 1919, 1928, 1932 on 13.01.1986.

It has further been alleged that both the accused persons withdrew Rs.3,82,800/- through suspense account fraudulently and dishonestly and subsequently, those amounts were adjusted by the various loan accounts without supporting bills, stamp, receipt and accordingly, R.C. No.16 of 1987 was registered under Section 120(B), 409, 420, 477(A) I.P.C. and 5(2) read with Section 5(1)(c)(d) of the P. C. Act.

3. After completing investigation, chargesheet was submitted against both the appellants whereupon, Special Case no.23 of 1987 was numbered followed with conduction and completion of trial in a manner, the subject matter of instant appeal.

4. The defence, as is evident from mode of cross-examination as well as statement under Section 313 of the Cr.P.C. is

that of innocence as well as complete denial of occurrence. However, neither any DW nor any document has been exhibited on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether ten PWs, out of whom, PW-1, Lal Mohan Ram, PW-2 Savita Bhuinya, PW-3 Ashwini Kumar, PW-4 Ranjan Mohan, PW-5 Sukh Lal Ram, PW-6 Azadi Ram, PW-7 Pujan Ram, PW-8 Sakal Dev Prasad, PW-9 Binyendu Bibhusan Ojha, PW-10 Rajni Ranjan Sahai as well as had also exhibited the documents as Exhibit-1, carbon copy of letter, Exhibit-2 bearer cheque no.-J 009077, Exhibit-2/A counter-foil, Exhibit-3 to 3/A signature of accused P. K. Pandey and B.K.P. Sinha on account opening application, Exhibit-3/B to 3/C signature of both accused on specimen signature card, Exhibit-4 page of dated 6.4.1985 in cashbook register, Exhibit-4/A page dated 8.4.1985 in cashbook register, Exhibit-5 to 5/3 four account opening form no.1928, 1919, 1913, 1932, Exhibit-6 to 6/C four withdrawal slip dated 13.01.1986, Exhibit-7 to 7/C signature of P. K. Pandey on four withdrawal slip dated 13.01.1986, Exhibit-8 page dated 13.01.1986 on cashbook register, Exhibit-9 sanction order, Exhibit-7/d to Exhibit-7/k signature of accused P. K. Pandey on four account opening form on photo and L.T.I. attested, Exhibit-7/l to 7/o signature of accused B. K. P. Sinha on four withdrawal slip dated 13.01.1986,



Exhibit-10 to 10/C four ledger sheet no.1913, 1919, 1928 and 1932, Exhibit-11 passbook of current A/c no.55, Exhibit-12 statement of A/c of current A/c no.55, Exhibit-13 cashier register of dated 12.12.1984 to 18.04.1985, Exhibit-13/A cash scroll book dated 25.06.1984 to 27.06.1985, Exhibit-14 Intry dated 06.04.1985 on page no.77 in cash scroll book, Exhibit-15 seizer memo, Exhibit-16 to 16/B loan application three sheet, Exhibit-17 to 17/B signature of accused P. K. Pandey on the loan application, Exhibit-18 to 18/B debit transfer voucher, Exhibit-19 to 19/B credit voucher, Exhibit-20 to 20/B signature of P. K. Pandey on plain loan application, Exhibit-19/c credit transfer voucher, Exhibit-18/c credit transfer voucher, Exhibit-21 inspection report, Exhibit-22 to 22/C attested copy of main ledger, Exhibit-23 signature on F.I.R., Exhibit-24 endorsement on F.I.R. and Exhibit-15 to 15/5 seizer memo. At the other end, neither any DW nor any kind of document has been led on behalf of defence.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellants that the judgment impugned did not satisfy the mandate of law and on account thereof, is fit to be set aside. In order to press the aforesaid point, it has been submitted that requirements of judgment is properly laid down under Section 354 of the Cr.P.C. which, the Courts are expected to adhere. After going through the judgment impugned,



it is apparent that learned lower Court in cryptic manner, dealt with the materials as if, it was a burden, which was to be discharged anyhow. Neither the oral evidence has been dealt with in proper way nor the relevancy of exhibits. Not only this, the learned lower Court failed to draw its conclusion in appropriate manner coupled with the fact that also failed to assign reason. Therefore, convicting the appellants for the offences enumerated in the judgment without any legal, valid, edification conclusion is found non-permissible in the eye of law.

7. It has also been submitted that as per Section 354(1)(c) Cr.P.C., it happens to be obligatory on the part of the Court to satisfy itself over each and every penal provision whereunder an accused is found guilty wherefor, the convict be sentenced. Furthermore, as per Section 31 of the Cr.P.C. running of sentences, in case the accused is held guilty and sentenced for more than one offence, either concurrently or consecutively. In the present case, the learned lower Court neither directed the sentences to run concurrently nor consecutively after inflicting separate sentence for each Section whereunder appellants have been found guilty. Instead thereof, had inflicted composite sentence, unknown in the eye of law. Not only this, by such action, the learned lower Court failed to inflict proper sentence for the offences separately as well as independently

whereunder appellants have been found guilty.

8. It has also been submitted on behalf of appellants that on account of adopting such kind of illegal procedure as well as dealing the prosecution evidence in mechanical manner, has caused prejudice to the appellants and on account thereof, the judgment impugned is fit to be set aside.

9. At the other end, the learned counsel representing C.B.I. has submitted that appellants, though raised but failed to substantiate the event of “prejudice”, because of the fact that prosecution has succeeded in proving its case beyond all reasonable doubt as well as the learned lower Court took pain to deal with the evidence while holding appellants guilty for the offence, whereunder they have been found. It has further been submitted that trial was conducted in accordance with law. Therefore, no prejudice has been caused to the appellants. It has also been submitted that Court is not under obligation to reiterate the evidence of each and every PWs line by line rather the materials having been adduced as well as the evidence in its entirety and the gist thereof, is to be minutely observed by the Court in order to come to the conclusion. The judgment impugned more particularly Para-7 and onward deals with relevant documents including oral evidence sufficient for pin-pointing the appellants as author of crime as well as to hold the appellants guilty

and on account thereof, held the appellants guilty under so many provisions of Indian Penal Code including that of Section 5 of the P. C. Act whereunder they both were charged.

10. It has also been submitted that the appellants have been found guilty independently under different Sections of Penal Code as well as under P. C. Act. However, a composite order of sentence has been inflicted for all the offences whereunder they have been found guilty taking lenient view, based upon submission made on behalf of appellants as well as considering other aspect visualizing from the record.

11. It has also been submitted that aforesaid event will not render the judgment as illegal rather appears to be irregular and is curable under Section 465 of the Cr.P.C. It has also been submitted that it is not obligatory on the part of the Court to inflict sentences for each and every Section separately whereunder an accused is found guilty. The purpose will be served, in case, there happens to be single sentence relating to the offences whereunder found guilty, affiliated with maximum sentence.

12. It has also been submitted that whenever there happens to be prosecution for more than one offences and the accused is found guilty therefor and is accordingly sentenced, the running of sentences is to be either concurrent or consecutive. The theme of

concurrent suggest the same event that of composite and in the aforesaid background, the word composite, will not change the running of sentence than that of concurrent. Hence the judgment of conviction and sentence recorded by the learned trial Court is fit to be confirmed.

13. Section 354 of the Cr.P.C. takes care of the identity, requirement, ingredients of the judgment and deals with the heading “language and contents of judgment”. For better appreciation, the same is quoted below:-

354. Language and contents of judgment.

(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,—(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of

two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and

the reasons for the decision.

14. Basically, as has been found after going through the section, requirement of elaborate discussion, with cogent reasoning in the language of the Court, the conclusion arrived at by the Court with regard to points in determination so that, either of the parties should not feel vexed, perplexed or pre-judicial on account of vagueness relating to the finding, so recorded by the Court.

15. Proceeding further, in terms of Section 354(1)(c) of the Cr.P.C., an obligation has been cast over the Court to specify the offence intermingled with the Section either of the Indian Penal Code or other law whereunder an accused is found guilty as well as the sentence having inflicted therefor. That means to say, the section explicit clear-cut finding followed with infliction of sentence independently.

16. It is needless to remind that more than one accused may be prosecuted in likewise manner, for the offences attracting more than one penal provision including that of punishable under any special law under one trial in terms of Section 223 Cr.P.C. That happens to be reason behind presence of Section 354 (1)(c) of the Cr.P.C., whereunder Court is saddled with a task to trace out offences whereunder accused is found guilty as well as infliction of sentence therefor.

17. From the judgment impugned, it is apparent that learned lower Court had identified both the appellants to be guilty for an offence punishable under Section 420, 409, 468, 471, 477(A) I.P.C. as well as Section 5(1)(c) (d) of the P.C. Act, however, inflicted composite sentence.

18. Section 53 of the I.P.C. categorizes the punishment as firstly-death, secondly-imprisonment for life (thirdly- re-pelled) fourthly- imprisonment, which is of two descriptions (a) rigorous (b) simple, fifthly-forfeiture of property, sixthly- fine.

19. Section 71 of the I.P.C. guards with regard to infliction of maximum period of sentence in case, a convict is found guilty for several offences as well as mode of infliction of sentence. For better appreciation the same is quoted below:-

71. Limit of punishment of offence made up of several offences.--Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.1[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which*

one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, he offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences].

20. At the present moment, it would also be relevant to see Section 31 of the Cr.P.C. which speaks with regard to mode of infliction of sentence against conviction having under several offences. For better appreciation, the same is quoted below:-

31. Sentence 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 a 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.

21. After going through Section 31 of the Cr.P.C., it is evident that sentencing policy has been bifurcated in two parts in order to facilitate its execution. The first one is concurrently and the second one consecutively. Concurrently, as it denotes, permits all the sentences so inflicted against the convict for different offences to run in same sequence while the consecutive mode of sentence speaks commencement of later after saturation of former.

22. Here it looks desirable to say that neither concurrent nor consecutive has been defined in the Section, and so, it should be taken into account as per dictionary meaning.

1) Concurrent-Converging, meeting, intersecting, running together at a point, occurring, arising or operating at the same time

often in relationship, conjunction, association or co-operation.

2) Consecutive- Following especially in a series i.e. one right after the other often with small intervening intervals, successive, sequent, having no interval or break, continuous.

At the present juncture, it looks appropriate to take meaning of composite-

Composite- something that is made up of diverse element.

23. From the judgment impugned, it is apparent that the learned lower Court had neither inflicted sentence for each of the offences whereunder both the appellants have been found guilty independently and further, directing to run the sentences concurrently or consecutively, however, instead thereof, passed a composite sentence for all the offences whereunder both the appellants have been found guilty. Virtually, the word composite is not at all found its presence either in Section 354 of the Cr.P.C. or under Section 53 as well as 71 of the I.P.C. read with Section 31 of the Cr.P.C. Furthermore, from the meaning of composite, it is evident that composite did not satisfy the ingredient of concurrent consecutive.

24. In Brij Nandan and others-Applicants v. Emperor reported in A.I.R. (35) 1948 Allahabad 136, the aforesaid situation was perceived wherein, it has been observed:-

3. It is argued on behalf of the applicants that the error on the part of the trial Court in not specifying the sections under which the applicants had been convicted and in not passing separate sentences upon them for each offence, has in fact occasioned a failure of justice, and that the error cannot therefore be cured by S.537, Criminal P. C. I accept the contention. By not specifying the different sections of the Indian Penal Code under which each applicant was convicted and by not passing a separate sentence for each offence the trial Court was unable to apply its mind to the case of each applicant separately and judging the extent of each applicant's guilt and determining what sentences should be passed upon them for each offence.

25. The aforesaid principle was subject to consideration under Murlidhar Dalmia, Applicant v. State reported in A.I.R. 1953 Allahabad 245 and the Division Bench, after analyzing the aforesaid issue concluded as:-

28. It would appear from the above that none of the cases in which it was held that the maintenance of the sentence of imprisonment passed by a trial Court ostensibly as a joint sentence for the various offences proved against the accused amounted to an enhancement of the sentence refers to anything in

the Code of Criminal Procedure or in the Penal Code to support the conclusion, references being only to some cases decided prior to 1898 when the law was different, and that even two of those cases, namely, those reported in Queen-Empress v. Hanma, 22 Bom. 760 and Ramzan Kunjra v. Ramkhelawan Chowbe, 24 Cal. 316 did not really lay this down. No case other than the one reported in Brij Nandan v. Emperor, 1947 All. L. J. 593, is referred to in support of the contention that the mere passing of one sentence in cases in which an accused was convicted of several offences would vitiate the trial. We, therefore, hold that the single sentence of imprisonment for the various offences for which an accused is convicted does not vitiate the trial, unless there had been a failure of justice and that the maintenance of that sentence by an appellate or revisional Court, even when the accused is acquitted of the offences convicted of, will not amount to an enhancement of the sentence and that such a sentence should be interpreted to mean that the trial Court awarded identically the same sentence for each of the offences of which the accused was convicted, provided of course that such a sentence was within the maximum limits of the

sentence provided by law for that offence, and that the trial Court had ordered the sentences to run concurrently and that in cases where such a sentence went beyond the maximum limit of imprisonment provided for any of the offences of which the accused was convicted, the sentence for that offence would be deemed to be the maximum provided by law for that offence. We further hold that a composite sentence of fine should be treated to be made up of separate sentences of fine, equal in amount, for each of the offences of which the accused had been convicted, provided that such amount is not more than the maximum allowed under that offence.

26. In *Rajendra Singh @ Mannu & another etc. appellant vs. State of West Bengal* reported in 2004 Cr. L.J. 4023, the Division Bench (Calcutta High Court) had considered this aspect in following way:-

18. It is worthwhile to point out that as required under Clause (c) of sub-section (1) of Section 354, Cr. P.C. it is imperative that for each separate conviction there should be a separate sentence. The sentence in the case of a conviction is a part of the judgment. Conviction of several persons charged with different offences without specifying different

sections of the Indian Penal Code and passing combined sentence is illegal. In the present case, though all the accused persons barring accused B. Rambabu and Dipak Bera were charged under Section 302/1208 and 302/34, I.P.C. and in addition accused Sanjay Thakur alias Ram Naresh was charged u/S. 25/27 Arms Act and accused B. Rambabu and Dipak Bera were charged under Section 302/1208, I.P.C., they were all convicted under Section 302/1298/34 I.P.C. and in addition accused Sanjay was convicted under Section 25/27 Arms Act and all were sentenced to suffer life imprisonment each and to pay fine of Rs. 10,000/- each i/d to S.I. for three months each, and in addition a combined sentence of 4 years R.I. under Sections 25/27 Arms Act and to pay fine of Rs. 3000/- i/d to three months imprisonment (without specifying the nature of imprisonment i.e. R.I. or S.I.) was passed upon accused Sanjay Thakur. The said sentence cannot be said to be proper and valid. Moreover, as regards sentence of fine, the sentence of death or of life imprisonment being an extreme penalty, adding sentence of fine is hardly calculated to serve any social purpose, as was held by the Apex Court in the decisions reported in AIR 1987 SC 692

and 1977 Cri LJ 992 (SC).

27. In *Lalpekkima v. State of Mizoram* and another reported in 2009 Cri .L. J. 3279 wherein petitioner confessed guilt for an offence punishable under Section 448, 354, 427 of the I.P.C. whereupon trial Court convicted the petitioner in each of the charges and conjointly awarded a sentence of three years and fine of Rs.5,00/- in default thirty days simple imprisonment, the judgment was set aside on the ground that trial Magistrate ought to have awarded separate punishment as provided therefor instead conjointly awarding the sentence and found it in contravention of Section 31 of the Cr.P.C.

28. It is apparent from the texture of judgment impugned that the trial Court had not sentenced the appellants for any particular offence rather sentenced the appellants for all the offences whereunder they have been found guilty in composite way which, admittedly has got no reference under any of the relevant provisions. Furthermore, it is apparent that there happens to be conflicting judicial pronouncement of the Division Bench of the two different High Courts as well as having absence of authoritative pronouncement by our own High Court on this score, needs so and for that, a question of law is formulated, “whether composite sentence is permissible in a case where accused is found guilty under more than one Penal Section”.

29. Accordingly, I am of the view that for having authoritative view on this very score, the matter is to be decided by the Division Bench and for that, office is directed to list after obtaining permission from Hon’ble the Chief Justice.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated- 20.02.2015
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