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

% *Date of Decision : November 07, 2017*

+ **CRL.A. 825/2013**

PANKAJ @ DEEPAK BISWAS

..... Appellant

Through: Mr.Ajay Verma & Mr.Narsingh
Narain, Advocates

versus

STATE (GOVT. OF NCT) DELHI

..... Respondent

Through: Ms.Rajni Gupta, APP for the
State

PRATIBHA RANI, J. (ORAL)

CRL.A. 825/2013 & CRL.M.A.13105/2017

1. Learned counsel for the appellant on instruction submits that the appellant is not pressing his appeal on merits. His prayer is limited to the extent that sentence awarded to the appellant may be ordered to run concurrently.

2. Vide impugned judgment dated 13th February, 2013, the appellant was held guilty for committing the offence punishable under Section 376 IPC, 376/109 IPC, 368 IPC and under Sections 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956. While passing the order on sentence dated 19th February, 2013 the family circumstances of the appellant were considered by the learned Trial Court but the prayer for taking a lenient view was rejected for the following reasons:-

“9. The fact that the convict has two minor children, who are at present lodged at Nirmal Chhaya and have nobody to look after them, does not persuade me to impose a lighter sentence upon the convict. Admittedly, the wife of the convict is also undergoing a jail term in similar offence. It is therefore apparent that the convict and his wife had been consciously running a sex trade. They have been bringing minor unsuspecting girls from West Bengal and throwing them into prostitution in Delhi. They knew what they are doing is not only immoral but illegal. They should have cared for the children but they did not do so. They were the parents of a daughter and should have realized what would they feel if somebody had done same thing to their own daughter. They did not care for the future of their children and continued their illegal activities. Therefore, the convict cannot now be heard to say that he should be dealt with leniency for the reason that there is body to look after his two minor children.

10. The convict is, therefore, sentenced as below:-

(i) to rigorous imprisonment for a period of 10 years for the offence punishable u/s 376 IPC with a fine of ₹50,000/-. He shall suffer further imprisonment for a period of one year in case of non-payment of fine.

(ii) to rigorous imprisonment for a period of 7 years for the offence punishable u/s. 376/109 IPC with a fine of ₹50,000/-. He shall suffer further imprisonment for a period of one year in case of non-payment of fine.

(iii) to rigorous imprisonment for a period of 7 years for the offence punishable u/s. 368 IPC with a fine of ₹50,000/-. He shall suffer further imprisonment for a period of one year in case of non-payment of fine.

(iv) to rigorous imprisonment for a period of 7 years for the offence punishable u/s. 4 of the Immoral Traffic (Prevention) Act, 1956 with a fine of ₹1,000/-. He shall suffer further imprisonment for a period of one month in case of non-payment of fine.

(v) to rigorous imprisonment for a period of 7 years for the offence punishable u/s. 5 of the Immoral Traffic (Prevention) Act, 1956 with a fine of ₹2,000/-. He shall suffer further imprisonment for a period of one month in case of non-payment of fine.

(vi) to rigorous imprisonment for a period of 10 years for the offence punishable u/s. 6 of the Immoral Traffic (Prevention) Act, 1956 with a fine of ₹50,000/-. He shall suffer further imprisonment for a period of one year in case of non-payment of fine.

11. The sentences at Srl.No.(ii), (iii), (iv), (v) and (vi) shall run concurrently and shall start after the sentence at Srl.No.(i) comes to end. In other words, the convict shall first complete the sentence at Srl.No.(i) and then all other sentences shall start running concurrently.”

3. Learned counsel for the appellant has relied upon the decision of Hon'ble Supreme Court reported as **“O.M.Cherian alias Thankachan Vs. State of Kerala and Others”**, (2015) 2 SCC 501 wherein the principles governing the exercise of discretion for imposition of sentences for two or more offence at one trial were laid down as under:-

“16. When the prosecution is based on single transaction where it constitutes two or more offences, sentences are to run concurrently. Imposing separate sentences, when

the acts constituting different offences form part of the single transaction is not justified. So far as the benefit available to the accused to have the sentences to run concurrently of several offences based on single transaction, in [V.K. Bansal vs. State of Haryana & Anr.](#) (2013) 7 SCC 211, in which one of us (Justice T.S. Thakur) was a member, this Court held as under:-

“... we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

17. This Court in the case of Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti vs. Asstt. Collector of Customs (Prevention) Ahmedabad and Anr., (1988) 4 SCC 183, recognized the basic rule of conviction arising out of a single transaction justifying the concurrent running of the sentences.

The following passage in this regard is relevant to be noted :-

“The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

In Manoj alias [Panu vs. State of Haryana](#), (2014) 2 SCC 153, the Bench followed Mohd. Akhtar Hussain’s case.

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.”

4. Reverting to the facts of the instant case while passing order on sentence and exercising judicial discretion that sentences at Srl.No.(ii), (iii), (iv), (v) and (vi) shall run concurrently and shall start after the sentence at Srl.No.(i) comes to end, learned Trial Court has not assigned any reason as to why all the sentences were not ordered to run concurrently.

5. Taking into consideration that the appellant had been convicted at one trial for the offences under Section 376/109/368 IPC and Sections 4/5/6 of Immoral Traffic (Prevention) Act, 1956 for which separate sentences have been awarded, it is directed that all the sentences awarded to the appellant shall run concurrently.

6. The appeal stands disposed of in above terms.

7. LCR be sent back alongwith copy of this order.

8. A copy of this order be sent to the concerned Jail Superintendent for information.

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PRATIBHA RANI, J.

NOVEMBER 07, 2017

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