

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1249 OF 2018

IN

CRIMINAL APPEAL NO.1033 OF 2012

Jalindersing A. Kalyani

...Applicant.

Vs.

The State of Maharashtra

...Respondent.

Mr. Vikas Shivarkar for the Applicant.

Shri. S.S.Hulke, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE 14th December, 2018

PC :

1. This is an application for modification of the Judgment and Order dated 20.4.2018 passed by this Court in Criminal Appeal No.1033 of 2012.
2. Heard the learned counsel for the applicant and the learned APP. Perused the record.
3. The applicant is convicted under Section 395 and 457 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years on each count and to pay a total fine of Rs.10,000/- by the learned

Additional Sessions Judge Pune in Sessions Case No.160 of 2008 arising out of CR No.218/2006 registered with Bhosri Police Station, Pune. The Criminal Appeal No. 1033 of 2012 preferred by the applicant has been dismissed by this Court by its Judgment and Order dated 20.04.2018 and the conviction and sentence imposed by the Trial Court has been upheld.

4. Mr. Shivarkar, the learned counsel appearing for the applicant submitted that, the Trial Court has not specified, whether the sentences imposed upon the applicant under Sections 395 and 457 of the Indian Penal Code to run concurrently or consecutively. This Court has dismissed the appeal of the applicant thereby upholding the conviction and sentence imposed upon the applicant by the Trial Court. He submitted that, this Court also did not specify about the same while rejecting the appeal and therefore, the said Judgment and Order may suitably be modified and the sentence imposed upon the applicant may be directed to run concurrently.

5. The learned APP, vehemently opposed the application and submitted that, the applicant was/is also involved in 12 other crimes of similar nature. He submitted that the applicant along with other accused persons has formed a gang, who indulged into commission of dacoity, particularly

in the midnight, in the vicinity of Pune city. He therefore submitted that, the sentence imposed upon the applicant may be directed to run consecutively so as to have a deterrent in the criminality of the applicant. He therefore prayed that the present application may be rejected.

6. As noted by the Trial Court in the impugned Judgment and Order dated 28.4.2012, the applicant along with other accused persons committed dacoity in the house of the victims in the wee hours of 22.6.2006 i.e. between 3.00 a.m. to 4.00 a.m. This Court in paragraph No. 6 of its Judgment has observed that, the modus-operandi adopted by the applicant along with other accused is undoubtedly serious in nature and does not deserve any leniency. The applicant is also involved in other 12 crimes of similar nature along with other accused persons. Thus, it is apparent that, the applicant is a hardened criminal and as per record, commission of dacoity or robbery is the only source of his livelihood. It further appears from record that, though the applicant has undergone sentence in some other crimes, the reformatory theory of punishment did not have any effect on him.

7. As noted earlier the applicant is a hardened criminal and therefore, in

the interest of justice and the society at large, it is desirable in the present case that, sentences imposed upon the applicant, to run consecutively i.e. after the applicant undergoes the first sentence under Section 395 of the Indian Penal Code, he shall further undergo sentence under Section 457 of the Indian Penal Code.

Application is accordingly disposed off in the aforesaid terms.

(A.S. GADKARI, J.)