

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1681 OF 2019

Syed Noor s/o Syed Ibrahim,
Age : 47 years, Occu. Nil,
Convict NoC-8658, at present
in Central Prison, Harsool,
Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through Secretary,
Home Department,
Mantralaya, Mumbai
2. The Superintendent of
Central Prison,
Harsool, Aurangabad

RESPONDENTS

Smt. A.N. Ansari, Advocate (appointed) for
the petitioner

Mr. K.S. Patil, A.P.P. for the respondents/State

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

DATE : 19th NOVEMBER, 2019

JUDGMENT (PER : T.V. NALAWADE, J.) :

1. Rule. Rule made returnable forthwith and with
the consent of learned counsel for the petitioner and
learned A.P.P., heard finally.
2. The petitioner — convict had sent an

application through Jail Superintendent, Central Prison, Aurangabad whereby he had requested to decide as to whether the sentences awarded to him in Sessions Case No. 117 of 2001 need to be treated as concurrent or he will have to undergo the sentences one after another i.e. consecutively.

3. The petitioner is convicted for the offences punishable under Sections 498-A and 306 of the Indian Penal Code (For short, "IPC"). He has been sentenced to suffer rigorous imprisonment for three years for the offence under Section 498-A of IPC. For the offence punishable under Section 306 of IPC, sentence of rigorous imprisonment for five years has been awarded to the petitioner. The trial Court has not mentioned in its order as to whether the substantive sentences will run concurrently or they are to be undergone by the petitioner consecutively. The appeal filed by the petitioner against the judgment of conviction and sentence in this Court was dismissed. The point now raised was not raised in the appeal which came to be decided by this Court. The judgment passed by this Court was taken upto the Supreme Court of India. However, apparently this point was not raised before the

Supreme Court and the Supreme Court also dismissed the proceedings. Since the petitioner is behind the bars, the counsel was appointed through High Court Legal Services Sub-Committee, Aurangabad and she was supplied with all the papers and thereafter, she was heard.

4. The learned counsel (appointed) for the petitioner placed reliance on the observations made by the Supreme Court in the case of *Gagan Kumar V. State of Punjab 2019 DGLS(SC) 255*. In that case, the accused was convicted and sentenced for the offences punishable under Sections 279 and 304-A of IPC. The learned Judicial Magistrate First Class had not mentioned in the order as to whether two sentences awarded to the accused under the aforesaid two provisions would run concurrently or consecutively. The matter was taken to the High Court. However, this point was not touched. Before the Apex Court, this point was raised and the Apex Court held that in view of the provision of Section 31 of the Code of Criminal Procedure, the sentences awarded to the accused by the Magistrate will run concurrently. The relevant observations made by the Apex Court in paragraphs No.17, 20 and 21 of the judgment read as follows:-

"17. In such a situation, it was necessary for the Magistrate to have specified in the order by taking recourse to Section 31 of the Code as to whether the punishment of sentence of imprisonment so awarded by her for each offence would run concurrently or consecutively.

20. As mentioned above, the appellant was convicted and accordingly punished with a sentence to undergo two years rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount to further undergo one month simple imprisonment under Section 304-A and 6 months rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount to further undergo 15 days simple imprisonment under Section 279 IPC.

21. In our view, having regard to the facts and circumstances of the case and keeping in view the nature of controversy involved in the case, both the aforementioned sentences awarded by the Magistrate to the appellant would run "concurrently".

5. The learned A.P.P., on the other hand, placed reliance on the observations made by the Apex Court in the case of ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti V. Assistant Collector of Customs (Prevention), Ahmedabad and others AIR 1988 SC 2143.*** The facts in that case were different and the provision of Section 427 of the Code of Criminal Procedure was required to be considered. The accused had pleaded guilty in both the cases. The Apex Court laid down that the sentences in

such circumstances would run consecutively and not concurrently. Thus, there were two separate cases and hence, different provision was used.

6. In view of the provision of Section 31 of the Code of Criminal Procedure and Section 71 of the IPC, when an accused in a case is tried for different offences, which are connected with each other and he is convicted and sentenced separately for each offence, the sentences would ordinarily run concurrently. In view of the observations made by the Apex Court in the case of **Gagan Kumar** (supra), this Court holds that the sentences awarded to the accused would run concurrently. This Court holds that if the Court awarding the sentences wants to see that the sentences should run consecutively, such mention needs to be there in the operative order in view of the provision of Section 31 of the Code of Criminal Procedure. If there is no such mention and offences have connection with each other like in the present matter, then it needs to be presumed that the sentences are to run concurrently.

7. The aforesaid point was not touched by this Court in the appeal proceedings. This Court holds that in such circumstances, writ jurisdiction can be used by

the High Court. To meet the ends of justice and to correct the mistake, the relief claimed in the present Writ Petition needs to be granted.

8. In the result, Criminal Writ Petition is allowed in terms of prayer clause (B). Rule is made absolute in those terms. We quantify the fees of the learned counsel (appointed) for the petitioner at Rs.5000/- (Rupees Five Thousand) to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

[S.M. GAVHANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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