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Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 382 OF 2010

Abdul Hamid Abdul Rehman Chougule alias .Appellant
Baban Konkani

Vs.

The State of Maharashtra .Respondent

WITH
CRIMINAL APPEAL NO. 630 OF 2006

Abdul Hamid alias Baban Konkani alias .Appellant
Arif Abdul Rehman Chaugule

Vs.

The State of Maharashtra .Respondent

Mr. Amin H. Solkar, Advocate, for the Appellant **in both matters**
Mr. S. V. Gavand, APP, for the Respondent – State **in both matters**

CORAM : REVATI MOHITE DERE, J.

DATE : 25.04.2019

P.C.

. Heard learned counsel for the parties.

2. The Appellant – Abdul Konkani in the aforesaid Appeals has been convicted by the learned Sessions Court in three separate Criminal cases :-

In S. C. No. 339 of 2002,

- for the offences punishable under Sections 392 and 394 of the Indian Penal Code, to suffer maximum imprisonment (RI) of ten years for one of the offence. The Appellant has also been directed to pay fine amounts for each of the offences.

In S. C. No. 1106 of 1998,

- for the offences punishable under Section 395 r/w 397 and 450 r/w 120-B r/w 34 of the Indian Penal Code, to suffer maximum imprisonment (RI) of seven years, for one of the offence. The Appellant is also directed to pay fine amounts for each of the offences for which he was convicted.

In S. C. No. 391 of 1999,

- for the offences punishable under Sections 452, 395, 397, 341, 342, 427, 450 r/w 34 to suffer maximum imprisonment (RI) of seven years, for one of the offence. The Appellant has also been directed to pay fine amounts for each of the offences for which he was convicted.

3. Learned counsel for the Appellant submits that the case of the Appellant is squarely covered by the Judgment of this Court (Coram : V. M. Kanade, J.) dated 11.10.2010 passed in three Appeals filed by co-accused – Mohammed Yasin alias Abu Mohammed Nasir Shaikh (Cri. Appeal No. 970 of 2009 with Cri. Appeal No. 42 of 2006 with Cri. Appeal No. 47 of 2006).

4. Learned APP does not dispute the same.

5. Perused the papers, in particular, the Judgment dated 11.10.2010 passed by this Court. It is not in dispute that the Appellant is not challenging the aforesaid Appeals on merits. Nor, is it in dispute, that the Appellant has not challenged his conviction and sentence imposed by the trial Court, in S. C. No. 391 of 1999. The Appellant is only praying that the sentences awarded by the trial Court in the aforesaid three cases be directed to run concurrently, in all the three cases mentioned hereinabove. He submits that no such order was passed by the trial Court as contemplated under Section 427 of the Cr. P. C., stating whether

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the sentences are to run consecutively or concurrently. It is not in dispute that the Appellant – Abdul Konkani has undergone the entire sentence imposed by the trial Court in S. C. No. 339 of 2002. Learned counsel for the Appellant states that the Appellant has paid fine in all the three cases, as directed by the trial Court. This Court (Coram : V. M. Kanade, J.) in its Judgment dated 11.10.2010, relying on the observations of the Full Bench has observed that there is a discretion vested in the Court under Section 427 of the Cr. P. C. and that the said discretion has to be exercised judicially after taking into consideration various factors such as gravity of the offence, and circumstances under which the offence was committed. After considering the Full Bench Judgment, this Court (Coram : V. M. Kanade, J.) in the Appeals filed by co-accused – Mohammed Shaikh, taking into consideration the facts of the case, granted benefit to the Appellant therein, of Section 427 of the Cr.P.C. and directed that the sentences awarded by the trial Court in the said three Criminal cases be directed to run concurrently from the date of the offences.

6. It is not in dispute, that the case of the Appellant - Abdul Konkani is squarely covered by the said Judgment passed by this Court in the Appeals preferred by co-accused – Mohammed Shaikh. The Appellant herein has also not contested the aforesaid Appeals on merits. He only prays that the sentences be directed to run concurrently instead of consecutively in all the three cases.

7. In view of what is stated above, all the sentences awarded in the 3 cases are directed to run concurrently from the date of the first offence. Since the maximum sentence imposed is of ten years in S. C. No. 339 of 2002, which is already undergone by the Appellant, the Appellant need not further undergo sentences in the other two cases i. e. S. C. Nos. 1106 of 1998 and 391 of 1999.

8. The Appeals are, accordingly, disposed of.

9. It is made clear, that the conviction and sentences awarded in all the three Sessions Cases i. e. 339 of 2002, 1106 of 1998 and 391 of 1999 is maintained. However, only the sentences

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are directed to run concurrently. Fine amounts in all the three cases, if not paid, appropriate steps to be taken by the trial Court. In view of what is stated above, bail bonds of the Appellant in Cri. Appeal No. 630 of 2006 stand cancelled. It is also clarified that as the Appellant has already undergone the entire sentence imposed by the trial Court in S. C. No. 339 of 2002, the Appellant need not surrender.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)