

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI WRIT PETITION NO. 3526 OF 2017

Walmiki Kachru thorat ...Petitioner

Versus

The State of Maharashtra ...Respondent

Mr. Tejas Prakash Hilage, for the petitioner.
Ms. Sangita Shinde, APP for the State.

CORAM: RANJIT MORE &
N. J. JAMADAR, JJ
DATED: 23rd AUGUST, 2019

PC:-

1. Heard.
2. By the judgment and order dated 11th September, 2012, in Session Case No.96 of 2009, the learned Additional Sessions Judge, Kalyan, convicted the petitioner for the offence punishable under Sections 376, 302, 201 read with Section 34 of the Indian Penal Code. For the offence punishable under Section 376, the petitioner was sentenced to suffer rigorous imprisonment for 10 years and fine of Rs.1,000/-, in default, rigorous imprisonment for six months; for the offence punishable under Section 302, life imprisonment and fine of Rs.1,000/-, in default, rigorous imprisonment for six months and for the offence punishable under Section 201, rigorous imprisonment for three years and fine of Rs.500/-, in default, rigorous imprisonment for

one month, respectively. The substantive sentences were directed to run consecutively. The petitioner preferred Criminal Appeal No.727 of 2013 through jail challenging the said order of Additional Sessions Judge. The appeal came to be dismissed by the Division Bench of this Court by judgment and order dated 19th November, 2014.

3. Thereafter the petitioner has filed present petition through jail with a prayer that the sentence passed in Sessions Case No.96 of 2009, be directed to run concurrently under Section 31 of Criminal Procedure Code or under Section 71 of Indian Penal Code or under Section 427(2) of Criminal Procedure Code.

4. We have perused the order of the learned Additional Session Judge in Sessions Case as well as order of Division Bench of this Court in Criminal Appeal, as referred above. As a matter of fact, in paragraph 1 of order dated 19th November, 2019, in the said criminal appeal, the Division Bench referred the sentences, which petitioner was sentenced to undergo, and also observed that the learned Sessions Judge directed that the substantive sentences of imprisonment to run concurrently. We find that this observation is contrary to the operative order of the learned Additional Sessions Judge. We find that the prayer of the

petitioner that substantive sentences of imprisonment should be directed to run concurrently was not dealt with by the Appellate Court. Be that as it may, however, we cannot deal with the said grievance in the writ petition filed under Section 226 of the Constitution of India. Remedy of the petitioner is to apply for modification of the order passed in appeal by the Division Bench of this Court in Criminal Appeal No.727 of 2013.

5. Since the petitioner is in jail and present petition is filed through jail, we do not find it appropriate to dismiss this petition with direction to the petitioner to file fresh application for modification. In the interest of justice, in our considered view, this petition can be converted into Criminal Application for modification and placed before the appropriate Division Bench taking criminal appeals to take appropriate decision. Accordingly we pass the following order:

: O r d e r :

Registry is directed to convert this Writ Petition into Criminal Miscellaneous Application and thereafter place the same before the Division Bench taking criminal appeals for appropriate decision.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]