

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26..08..2019

CORAM

The Honourable Mr Justice M.M.SUNDRESH  
and  
The Honourable Mr Justice M.NIRMAL KUMAR

Habeas Corpus Petition No.229 of 2019

Mohan

... Petitioner/Accused

-Versus-

1.The State of Tamil Nadu,  
Rep. by The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Fort St. George,  
Chennai 600 009.

2.The Superintendent of Prison,  
Central Prison,  
Puzhal, Chennai. .... Respondents

3.The Inspector of Police,  
C.B.C.I.D., Chennai. .... Respondents/Complainant

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, praying to set aside the portion of the judgement at Paragraph No.129 in S.C.No.232 of 1996 rendered by the learned I Additional Sessions Judge, Chennai, directing the petitioner to serve three life imprisonments consecutively and to modify the same to concurrent life imprisonments.

For Petitioner : Mr.C.P.Palichamy

For Respondents : Mr.C.Iyyappa Raj, APP for  
RR1 to 3

ORDER

[Order of the court was made by Justice M.M.SUNDRESH]

This petitioner is a life convict. By judgement dated 25.11.2005 in S.C.No.232 of 1996, the learned I Additional Sessions Judge, Chennai, on being found the petitioner herein

guilty of offence of murders and other offences convicted him for a major offence punishable under Section 302 of IPC (6 counts) and sentenced him for life sentences for each count and directed three life sentences to be run consecutively while three other life sentences to run concurrently along with the other sentences. Seeking to modify the life sentences which have been directed to be served consecutively to concurrent sentences, the petitioner is before this court.

2. Heard both sides.

3. The issue to be considered in the case on hand is as to whether the petitioner, who is a life convict in the above said Sessions Case, having been convicted for a major offence under Section 302 of IPC (6 counts) and sentenced to three life imprisonments consecutively and three life sentences concurrently, is entitled to treat them as one to run concurrently by invoking Section 427(2) of the Code of Criminal Procedure, 1973.

4. The trial court convicted and sentenced the petitioner as detailed below:-

"129. After carefully viewing and cautiously weighing the age, the status, the family condition and background, the gravity and veracity of the criminality, above all, the sufficiently long duration under incarceration, for more than 15 years and other relevant and important attending aspects, and circumstances, particularly, bearing in mind the centralized and cardinal principle of law, that "Punishment must fit the crime", this court by travelling in track with the recent with recent judgement of our apex court in Kamal Natha and others ..vs. State of T.N., (2005) 5 Supreme Court Cases, Page 194, awards to A1 on hand, the life imprisonment under each count under Section 302 r/w 34 of IPC (6 counts), R.I. for five years under each count u/s 201 of IPC (4 counts) and R.I. for two years u/s 147 IPC respectively. In the circumstance, no fine is imposed. Further in the circumstances, the life imprisonment awarded to A1 on hand for the murders of D1 and D4 to D6 and imprisonment for offence u/s 201 and 147 of IPC are ordered to run concurrently and the life imprisonment for the murders of D2 and D3 stands distinctly and separately. The said totally three life imprisonments are ordered to run "consecutively".

5. The above said conviction and sentences have been upheld by the appellate court and thus, it has attained the finality. Now, the petitioner has come forward with this petition stating that in the light of Section 427(2) of the Code, such sentences will have to be treated as the one run concurrently and not consecutively.

6. A reliance has been made by the learned counsel for the petitioner on the judgement of the Apex Court rendered in Muthuramalingam v. State (2016) 8 SCC 313. The aforesaid judgment has been taken note of by the Division Bench of this Court in Annadurai v. The State of Tamil Nadu (H.C.P.(MD) No.281 of 2018 order dated 16.03.2018). A further reliance has been made on the judgement of the Division Bench of this Court in Sundaram @ Vellian (H.C.P. No.2778 of 2013 order dated 09.01.2014).

7. The learned Additional Public Prosecutor also submitted that the above said position of law still holds good.

8. In the judgement of the Apex Court referred to supra, the law has been crystallized in the following manner:

28. While we have no doubt about the correctness of the proposition that two life sentences cannot be directed to run consecutively, we do not think that the reason for saying so lies in the proviso to Section 31(2). Section 31(2) CrPC deals with situations where the court awarding consecutive sentences is not competent to award the aggregate of the punishment for the several offences for which the prisoner is being sentenced upon conviction. A careful reading of sub-section (2) would show that the same is concerned only with situations where the courts awarding the sentence and directing the same to run consecutively is not competent to award the aggregate of the punishment upon conviction for a single offence. The proviso further stipulates that in cases falling under sub-section (2), the sentence shall in no case go beyond 14 years and the aggregate punishment shall not exceed twice the amount of punishment which the court is competent to award. Now in cases tried by the Sessions Court, there is no limitation as to the court's power to award any punishment sanctioned by law including the capital punishment. Sub-section (2) will, therefore,

have no application to a case tried by the Sessions Court nor would sub-section (2) step in to forbid a direction for consecutive running of sentences awardable by the Court of Session.

29. To the extent Duryodhan Rout case [Duryodhan Rout v. State of Orissa, (2015) 2 SCC 783 : (2015) 2 SCC (Cri) 306] relies upon proviso to sub-section (2) to support the conclusion that a direction for consecutive running of sentences is impermissible, it does not state the law correctly, even when the conclusion that life imprisonment means for the full span of one's life and consecutive life sentences cannot be awarded is otherwise sound and acceptable.

30. In Kamalanantha v. State of T.N. [Kamalanantha v. State of T.N., (2005) 5 SCC 194 : 2005 SCC (Cri) 1121], the prisoners were convicted amongst others for the offences under Sections 376, 302, 354 IPC and sentenced to undergo rigorous imprisonment for life for the offences under Sections 376 and 302 IPC and various terms of imprisonment for other offences with the direction that the sentences awarded shall run consecutively. One of the issues that was raised in support of the appeal was that the courts below were not justified in awarding consecutive life sentences. That contention was rejected by a two-Judge Bench of this Court in the following words: (SCC p. 229, para 76)

"76. The contention of Mr Jethmalani that the term "imprisonment" enjoined in Section 31 CrPC does not include imprisonment for life is unacceptable. The term "imprisonment" is not defined under the Code of Criminal Procedure. Section 31 of the Code falls under Chapter III of the Code which deals with power of courts. Section 28 of the Code empowers the High Court to pass any sentence authorised by law. Similarly, the Sessions Judge and Additional Sessions Judge may pass any sentence authorised by law, except the sentence of death which shall be subject to confirmation by

the High Court. In our opinion the term "imprisonment" would include the sentence of imprisonment for life."

31. The above view runs contrary to the ratio of this Court's decision in Cherian case [O.M. Cherian v. State of Kerala, (2015) 2 SCC 501 : (2015) 2 SCC (Cri) 123] and Duryodhan Rout case [Duryodhan Rout v. State of Orissa, (2015) 2 SCC 783 : (2015) 2 SCC (Cri) 306] . That apart the view taken in Kamalanantha case [Kamalanantha v. State of T.N., (2005) 5 SCC 194 : 2005 SCC (Cri) 1121] has not noticed the basic premise that a life sentence once awarded would imply that a prisoner shall spend the remainder of his life in prison. Once that happens there is no question of his undergoing another life sentence. To the extent the decision in Kamalanantha case [Kamalanantha v. State of T.N., (2005) 5 SCC 194 : 2005 SCC (Cri) 1121] takes the view that the Court can for each offence award suitable punishment which may include multiple sentences of imprisonment for life for multiple offences punishable with death, there is and can be no quarrel with the stated proposition. The Court can and indeed ought to exercise its powers of awarding the sentence sanctioned by law which may include a life sentence. But if the decision in Kamalanantha [Kamalanantha v. State of T.N., (2005) 5 SCC 194 : 2005 SCC (Cri) 1121] purports to hold that sentence of imprisonment for life can also be directed to run consecutively, the same does not appear to be sound for the reasons we have already indicated earlier. We need to remember that award of multiple sentences of imprisonment for life so that such sentences are superimposed over one another is entirely different from directing such sentence to run consecutively.

32. Sanaulah Khan v. State of Bihar [Sanaulah Khan v. State of Bihar, (2013) 3 SCC 52 : (2013) 2 SCC (Cri) 34] simply follows the view taken in Kamalanantha case [Kamalananthav. State of T.N., (2005) 5 SCC 194 : 2005 SCC (Cri) 1121] and, therefore, does not add any new dimension to call for any

further deliberation on the subject.

33. We are not unmindful of the fact that this Court has in several other cases directed sentences of imprisonment for life to run consecutively having regard to the gruesome and brutal nature of the offence committed by the prisoner. For instance, this Court has in Ravindra Trimbak Chouthmal v. State of Maharashtra [Ravindra Trimbak Chouthmal v. State of Maharashtra, (1996) 4 SCC 148 : 1996 SCC (Cri) 608] , while commuting death sentence penalty to one of imprisonment for life directed that the sentence of seven years' rigorous imprisonment under Section 207 IPC shall start running after life imprisonment has run its due course. So also in Ronny v. State of Maharashtra [Ronny v. State of Maharashtra, (1998) 3 SCC 625 : 1998 SCC (Cri) 859] this Court has while altering the death sentence to that of imprisonment for life directed that while the sentence for all other offences shall run concurrently, the sentence under Section 376(2)(g) IPC shall run consecutively after running of sentences for other offences. To the extent these decisions may be understood to hold that life sentence can also run consecutively do not lay down the correct law and shall stand overruled.

34. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other."

9. Similar view has also been taken by the Division Bench of this Court in HCP (MD) No.281 of 2018 dated 16.03.2018 (Annathurai v. State of Tamil Nadu).

10. In the light of the the above said pronouncements, we have no hesitation to hold that the sentences directed by the trial court to run consecutively will have to be read as concurrently.

11. In the result, this Habeas Corpus Petition is allowed and the consecutive life sentences directed by the learned I Additional Sessions Judge, Chennai, by judgement dated 25.11.2005 rendered in S.C.No.232 of 1996 will have to be run concurrently.

Sd/-  
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Fort St. George, Chennai 600 009.
  - 2.The Superintendent of Prison, Central Prison, Puzhal, Chennai.
  - 3.The Inspector of Police, C.B.C.I.D., Chennai.
  - 4.The Public Prosecutor, High Court, Chennai.
- +1cc to Mr.C.P.Palichamy, Advocate sr.73887

H.C.P.No.229 of 2019

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