

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM-23993-2019 and  
CRM-27158-2019 in/and  
CRA-D-944-DB-2012(O&M)  
Date of Decision : 11.9.2019

**Mahender and another**

**..... Appellants**

**Versus**

**State of Haryana**

**..... Respondent**

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI  
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. V.S.Rana, Advocate  
for the applicant-appellant No.2.

Ms. Palika Monga, DAG, Haryana.

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**AJAY TEWARI, J. (Oral)**

1. This appeal has been filed against the judgment and conviction order dated 19.4.2012 passed by the Additional Sessions Judge, Bhiwani whereby the appellants were convicted and sentenced to undergo Rigorous imprisonment for a period of eight years and and to pay a find of Rs. 50,000/- each and in default of payment of fine to further undergon simple imprisonment for six months for the offence under Section 307 read with Section 34 IPC, further to undergo RI for period of two years for the commission of offence under Section 353 read with Section 34 IPC and both the convicts ordered to undergo RI for a period of two years and also sentence to pay a fine of Rs.10000/- each and would

undergo simple imprisonment for a period of one month in case of non-payment of fine for the commission of offence under Section 25 (1) (1B) (a) of the Arms Act, 1959 in case FIR No. 61 of 24.4.2011. P.S. Badhra under Sections 352, 332, 307 and 186 of the IPC, 1860 and Section 25 of the Arms Act, 1959.

2. **CRM-23993-2019**

This application has been filed by appellant No.1 praying for sentences running concurrent in case (i) FIR No. 46 dated 6.4.2011 under Sections 395, 397 IPC, under Sections 25/54/59 of Arms Act, P.S.Satnali Mahendergarh convicted for 7 years, (ii) FIR No. 53 dated 2.4.2011 under Sections 394, 397 IPC, under Section 25 of Arms Act, P.S.Loharu, Charkhi Dadri, District Bhiwani, convicted for 7 years (iii) FIR No. 16 dated 19.1.2011 under Sections 395, 397, 120-B IPC, P.S.Charkhi Dadri, District Bhiwani (iv) FIR No. 61 (in which the present appeal has been filed) dated 24.4.2011 under Sections 353, 332, 307, 186 IPC, under Section 25 of Arms Act.

3. **CRM-27158-2019**

This application has been filed by appellant No.2 for praying for sentences imposed upon the appellant No.2 vide judgment and order of conviction dated 19.4.2012 to run concurrently.

On 28.8.2019 the following order was passed :-

*“On the last date the following order was passed :-*

*“This is an application praying that the applicant-appellant has been convicted and sentenced for 8 years under Section 307 IPC, 2 years under Section 353 and 2 years under Section 34 IPC, however the concurrence has not been granted.*

*Learned counsel for the applicant-appellant No.1 has*

*argued that once there was one transaction out of which 3 offences were made out, the Court should exercise mercy and direct the sentences to be run concurrently.*

*Notice of the application.*

*On the asking of the Court, Mr. Randhir Singh, Addl. A.G, Haryana accept notice of the application on behalf of the non-applicant.*

*Counsel for the applicant undertakes to supply a copy of the application to the learned State Counsel during the course of the day.*

*Learned State Counsel has argued that as per Section 427 Cr.P.C separate sentences are the rule and special reasons have to be given for granting concurrence and if the Trial Court has taken a conscious decision not to grant concurrence, this Court would not do so unless special reasons are given for the same.*

*In our considered opinion, prayer made by the learned counsel for the applicant deserves to be allowed. It is trite to say that conjunctive sentences may have more deterrent effect but concurrence is more conducive to reformation.*

*In these circumstances, we allow the application and direct that the sentences awarded to the applicant-appellant shall run concurrently. Learned counsel for the applicant further states that once this Court has allowed concurrence the net effect is that the applicant-appellant has undergone his entire sentence.*

*Learned State counsel is directed to place on record custody certificate of the applicant-appellant.*

*Adjourned to 28.8.2019.”*

*Custody certificate dated 27.08.2019 by way of an affidavit of Anil Kumar, Deputy Superintendent, District Prison (Jhajjar), Haryana has been filed and the same is taken on record. As per the custody certificate applicant-appellant No.1 has undergone 08 years, 03 months and 29*

*days of actual imprisonment and 09 years, 10 months and 24 days including remission in the present case.*

*Resultantly, the statement of learned counsel for the applicant-appellant No.1 that he has now undergone entire sentence in the present case is correct. In the circumstances, applicant-appellant No.1 be released from custody (if not required in any other case) since he has completed his entire sentence in this case (including the period in default of payment of fine). Counsel for the applicant-appellant No.1 further points out that along with this appellant there was another appellant i.e. Satish but none is appearing on his behalf and he is also on similar footing.*

*In the circumstances, we deem it appropriate to appoint Sh.V.S.Rana, Advocate as Amicus Curiae to assist this Court on behalf of applicant-appellant No.2. He is directed to move an application in this regard.*

*State may obtain custody certificate of applicant-appellant No.2 also.*

*Adjourned to 11.09.2019.”*

4. Custody certificate of appellant No.2 dated 10.9.2019 by way of affidavit of Sewa Singh-Dsm, Deputy Superintendent, District Prison-Rohtak, Haryana has been filed on behalf of the respondent-State, the same is taken on record. Copy has been supplied to the opposite counsel. As per the custody certificate, the applicant-appellant No.2 has actual undergone for 8 years 7 months and 06 (including the period in default of payment of fine).

5. In these circumstances, it has to be held that the applicant-appellant No.2 has also undergone his entire sentence. His case is identical to that of the appellant No.1. The appellant No.2 be released from custody forthwith.

- 6. At this stage, learned counsel for the appellants states that he does not wish to press this appeal.
- 7. The appeal stands disposed of.
- 8. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)  
JUDGE

(HARNARESH SINGH GILL)  
JUDGE

11.9.2019  
anuradha

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | - | Yes/No |
| Whether reportable        | - | Yes/No |