

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-7155-2018(O&M)

Date of Decision: April 11, 2019.

Sumit Chopra

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP-7156-2018(O&M)

Vikramjit Singh @ Vicky

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. V.K. Jindal, Advocate for the petitioner(s).

Ms. Samina Dhir, DAG, Punjab.

HARINDER SINGH SIDHU, J.

This order shall dispose of two Writ petitions i.e. ***CWP-7155-2018 titled as Sumit Chopra vs. State of Punjab and others*** and ***CWP-7156-2018 titled as Vikramjit Singh @ Vicky vs. State of Punjab and others*** as the question involved in both is identical.

For brevity, facts have been taken from CWP-7155-2018.

This Writ Petition has been filed impugning the order dated 16.05.2017 (Annexure P-12) whereby the case of the petitioner for pre-mature release has been rejected. It has been rejected on the ground that the learned Additional Sessions Judge, Jalandhar while awarding sentence vide his order dated 19.04.2005, had directed that the petitioner will remain

modified by any Court. Thus, the case of the petitioner is not covered under any policy of the State Government.

The petitioner along with two others namely Vikramjit Singh @ Vicky (petitioner in CWP No.7156 of 2018) and Nitin Kataria was convicted for offences under Sections 302, 392, 394, 201 IPC read with Section 34 IPC in FIR No.193 dated 10.08.2001, Police Station Division No.6, Jalandhar by the learned Sessions Judge vide judgment dated 19.04.2005.

The sentences awarded were as under:-

<i>Sr. No.</i>	<i>u/s</i>	<i>Details of the sentence awarded</i>
1.	302/34 IPC	Life imprisonment, fine of Rs.5,000/- in default of payment of fine one year imprisonment.
2.	302/34 IPC	Life imprisonment fine of Rs.5,000/- in default of payment of fine one year imprisonment.
3.	392 IPC	Seven years imprisonment fine of Rs.2,000/- in default four months imprisonment.
4.	394 IPC	Sentence of 10 years and fine of Rs.5,000/- in default payment of fine one year imprisonment
5.	201 IPC	Five year imprisonment, 1000/- fine in default two months imprisonment.

After awarding the aforesaid sentences the Ld. Sessions Judge directed as under:

“..The sentence of imprisonment awarded to each of the accused/convicted above shall not run concurrently but shall be consecutive one after the other. They shall remain in jail for rest of their lives. File be completed and consigned to the record.”

The petitioner preferred Criminal Appeal No.399-DB-2005. This appeal along with connected appeals was disposed of vide judgment and

order dated 17.02.2012. The conviction was upheld. However, the sentence was modified. With regard to the sentence it was observed as under:-

“ We would now like to examine the legality of the sentences imposed upon the appellants. The Ld. Trial Court has while sentencing the appellants awarded two life imprisonments one for each murder and ordered that they would remain in prison for the rest of the lives without a right to commutation of sentence or premature release. The appellants have also been sentenced to a period of 7 years rigorous imprisonment each with a fine of Rs. 2000/- each under Section 392 of the Indian Penal Code. The trial court has ordered that these sentences shall run consecutively and not concurrently.

A sentence is imposed as a measure of retribution but must not reek of vengeance. The question that stares us is whether the trial Court was justified in imposing such a severe sentences on the appellants who are young men on the threshold of their lives. It is true that the offence of murder of two women does not entitled them to any sympathy but to direct that sentences would run conjunctively, without a right to parole or remission of sentence, in our considered opinion, would in essence be as harsh as a death sentence. We, therefore, direct that all the substantive sentences awarded to the appellants shall run concurrently. With this modification of order of sentence, we dismiss the appeal.”

Even after passing of this order the State authorities did not grant remissions to the petitioner and the other convicts. Nor were they granted parole. The petitioner and the other convict filed Criminal Miscellaneous Nos.16592 of 2014 and 21052 of 2014 for clarification of the orders dated 17.02.2012. The applications were disposed of vide order dated 29.06.2014.

“Counsel for the applicants submits that while dismissing the appeal the sentence imposed by the trial Court was set aside and after commenting adversely upon the denial of a right to seek parole and remission being too harsh, the sentences imposed were ordered to run concurrently but it was not specifically ordered that the appellants shall have a right to seek parole and be entitled to remission of sentence. It may, therefore, be clarified whether the applicants are entitled to parole and remission, as authorities are misconstruing order dated 17.02.2012 to have held that though sentences shall run concurrently the applicants shall not be entitled to parole and remission. We have heard the counsel for the parties and find no reason to modify/clarify order dated 17.02.2012. Last paragraph of the judgment is self-explanatory as to adverse opinion recorded with respect to sentence. After holding that order of concurrent sentence and denial of parole is not warranted the sentence was modified and replaced with a fresh order of sentence dated 17.02.2012, thereby leaving no ambiguity as to what was set aside and what was ordered. Disposed of accordingly.”

Mr. Jindal, learned counsel for the petitioner(s) has argued that the respondents have erred in concluding that the order of the learned Additional Sessions Judge, Jalandhar has not been modified by the High Court and that the convict is required to stay in jail for the rest of his life. In fact the order stands modified and replaced with a new order of sentence which is clear from a plain reading of the order dated 17.02.2012 in Criminal Appeal and the order dated 29.06.2014 on the applications for clarification.

impugned order is justified.

All the three relevant orders have been reproduced above.

The Ld. Sessions Judge while convicting the petitioner and other accused for various offences had directed that the sentences shall not run concurrently but would run conjunctively. It was also directed that the convicts shall remain in jail for the rest of their lives.

While disposing of the Criminal Appeals vide order dated 17.02.2012 this Court examined the legality of the sentence imposed by the Ld. Sessions Judge. It was observed that there was no doubt the convicts were not entitled to any sympathy as they had been convicted for the offence of murder of two women. But the direction that the sentences would run conjunctively, without a right to parole or remission of sentence was found to be as harsh as a death sentence. Accordingly it was directed that all the substantive sentences awarded to the appellants shall run concurrently. The appeal was disposed of with this modification of order of sentence.

As the respondents still considered the petitioner and the other convicts as not entitled to any benefit of remission or parole, the petitioner and his co-convicts moved applications seeking clarification of the order dated 17.02.2012. In the application for clarification it was argued that while modifying the sentence imposed by the Ld. Sessions Judge, this Court had ordered the sentences to run concurrently but it had not been specifically ordered that the convicts would be entitled to parole and remission.

This Court while holding that there was no reason to clarify the order observed that the last paragraph of the judgment where the sentence

awarded by the Ld. Sessions Judge had not been approved was self explanatory. It was observed that after holding that order of concurrent sentence and denial of parole is not warranted, the sentence was modified and replaced with a fresh order of sentence dated 17.02.2012. Thus there was no ambiguity as to what was set aside and what was ordered.

Clearly as observed in the order dated 29.06.2014 there was no ambiguity in order dated 17.02.2012. This order further clarifies and leaves no room for any doubt that vide the order dated 17.02.2012 the sentence of the Ld. Sessions Judge had been modified and replaced with a fresh order of sentence dated 17.02.2012 as per which all the substance sentences awarded shall run concurrently.

The direction of the Ld. Sessions Judge that the sentences shall run conjunctively one after the other and that the convicts shall remain in jail for the rest of their lives stand replaced by the order of sentence dated 17.02.2012 in the Criminal Appeal. It is not open to the respondents to refer to that direction in the order of sentence of the Ld. Sessions Judge.

Accordingly this petition is allowed. The impugned order is set aside. The respondents are directed to reconsider the case of the petitioner for pre-mature release as per law.

The petitions are disposed of accordingly.

April 11, 2019

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No