

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 296 OF 2020

Vinod S/o Ramchandra Jadhav

Age: 43 years, Occu: Nil,

(Convict no.255)/(Convict no.10914)

R/o at present Nashik Road Central Prison,
Nashik, Dist. Nashik.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through Police Station,
Hadgaon, Dist. Nanded.

2. The Superintendent of Nashik Road
Central Prison,
Nashik.

.. **Respondents**

...

Mr. G.D. Kale, Advocate for the Petitioner.

Mr. S.J. Sangle, APP for the Respondent-State.

...

**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 20.02.2020

ORAL JUDGMENT :- (*Per: T.V. Nalawade, J.*)

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. In the present proceeding a direction is sought by present petitioner-prisoner to treat the sentences given for two different offences like

for the offences punishable under Section 498-A and 306 of the I.P.C. to run concurrently. In sessions case no.67 of 2001 which was pending in the Court of learned Sessions Judge, Nanded he is convicted for these offences. For the offence punishable under Section 498-A he is sentenced to suffer R.I. for two years and for the offence punishable under Section 306 of the I.P.C. he is sentenced to suffer R.I. for five years. The trial Court Judge did not mention in the operative order that these two sentences are to run concurrently. Criminal Appeal No. 252 of 2003 was filed in this Court and the learned Single Judge of this Court dismissed that appeal by decision dated 12.07.2016.

3. The aforesaid point was not raised in the appeal and so that point was not considered by the learned Single Judge. The learned counsel for the petitioner submitted that the point involved is no more *res intergra* and by considering the law developed on this point this Court has already given decision that when there is no specific mention that the sentences given in one case for different offences are to run concurrently, the authority should presume that they are to run concurrently. This point is decided by this Court in Criminal Writ Petition No. 1681 of 2019 on 19.11.2019 (*Syed Noor V/s. State of Maharashtra and Anr.*) Relevant observations can be found in para nos.4 to 7. That matter was taken up to Supreme Court but that point was

not touched by any Court and this Court gave relief that the two sentences will run concurrently. The observations made in the judgment are as under:

“4. The learned counsel (appointed) for the petitioner placed reliance on the observations made by the Supreme Court in the case of ***Gagan Kumar V. State of Punjab 2019 DGLS(SC) 255***. In that case, the accused was convicted and sentenced for the offences punishable under Sections 279 and 304-A of IPC. The learned Judicial Magistrate First Class had not mentioned in the order as to whether two sentences awarded to the accused under the aforesaid two provisions would run concurrently or consecutively. The matter was taken to the High Court. However, this point was not touched. Before the Apex Court, this point was raised and the Apex Court held that in view of the provision of Section 31 of the Code of Criminal Procedure, the sentences awarded to the accused by the Magistrate will run concurrently. The relevant observations made by the Apex Court in paragraphs No.17, 20 and 21 of the judgment read as follows:-

“17. In such a situation, it was necessary for the Magistrate to have specified in the order by taking recourse to Section 31 of the Code as to whether the punishment of sentence of imprisonment so awarded by her for each offence would run concurrently or consecutively.

20. As mentioned above, the appellant was convicted and accordingly punished with a sentence to undergo two years rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount to further undergo one month simple imprisonment under Section 304-A and 6 months rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount to further undergo 15 days simple imprisonment under Section 279 IPC.

21. In our view, having regard to the facts and circumstances of the case and keeping in view the nature of controversy involved in the case, both the aforementioned sentences awarded by the Magistrate to

the appellant would run "concurrently"."

5. The learned A.P.P., on the other hand, placed reliance on the observations made by the Apex Court in the case of ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti V. Assistant Collector of Customs (Prevention), Ahmedabad and others AIR 1988 SC 2143***. The facts in that case were different and the provision of Section 427 of the Code of Criminal Procedure was required to be considered. The accused had pleaded guilty in both the cases. The Apex Court laid down that the sentences in such circumstances would run consecutively and not concurrently. Thus, there were two separate cases and hence, different provision was used.

6. In view of the provision of Section 31 of the Code of Criminal Procedure and Section 71 of the IPC, when an accused in a case is tried for different offences, which are connected with each other and he is convicted and sentenced separately for each offence, the sentences would ordinarily run concurrently. In view of the observations made by the Apex Court in the case of ***Gagan Kumar*** (supra), this Court holds that the sentences awarded to the accused would run concurrently. This Court holds that if the Court awarding the sentences wants to see that the sentences should run consecutively, such mention needs to be there in the operative order in view of the provision of Section 31 of the Code of Criminal Procedure. If there is no such mention and offences have connection with each other like in the present matter, then it needs to be presumed that the sentences are to run concurrently.

7. The aforesaid point was not touched by this Court in the appeal proceedings. This Court holds that in such circumstances, writ jurisdiction can be used by the High Court. To meet the ends of justice and to correct the mistake, the relief claimed in the present Writ Petition needs to be granted."

7. The aforesaid point was not touched by this Court in the appeal proceedings. This Court holds that in such circumstances, writ jurisdiction can be used by the High Court. To meet the ends of justice and to correct the mistake, the relief claimed in the present Writ Petition needs to be granted.

8. In view of the aforesaid discussion of the law, this Court holds that in the present matter also the relief needs to be granted. In the result, the petition is allowed. Relief is granted in terms of prayer clause-B. It is hereby directed to treat both the sentences for aforesaid offences to run concurrently. Rule is made absolute in aforesaid terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]