

25.09.2023

Sl. No.: 1

Court No.30

BM

CRA 193 of 2019
+
IA No.: CRAN 1 of 2019
(Old No.: CRAN 1277 of 2019)

Atul Mondal
Vs.
The State of West Bengal

Mr. Amitabha Karmakar

... for the appellant

Mr. Bibaswan Bhattacharyya

... for the State

As directed, the learned counsel for the State has produced a report from the Superintendent, Burdwan Central Correctional Home.

Report filed in court be kept with the record.

The present appeal had been preferred against a Judgment and Order dated 26.06.2018 and 28.06.2018 passed by the learned Additional Sessions Judge, Chandernagore in Sessions Trial No.12/2017 (Sessions Case No.173/2016) convicting thereby the accused/appellant under Section 10 of the Protection of Children from Sexual Offences Act and sentencing him to suffer rigorous imprisonment for five years and to pay a fine of Rs.3,000/- in default to suffer simple imprisonment for three months and further convicting him for the offence punishable under Section 354 of the Indian Penal Code and sentencing him to suffer simple imprisonment for three years and to pay a fine of rupees 2,000/- i.d. to suffer S.I. for two months.

From the report of the Superintendent, Burdwan Central Correctional Home, it appears that the convict has already undergone a total period of imprisonment for a period of 5 years 4 months and 2 days.

It is submitted by the learned counsel for the petitioner that the convict has not been released by the Correctional Home as the appellate court while sentencing the convict to suffer substantive sentence and also sentence in default of fine, sentencing him for offence punishable under Section 10 of the POCSO Act and Section 354 of the IPC has not directed, that the sentences are to run **concurrently or consecutively.**

The Supreme Court in **Sunil Kumar @ Sudhir Kumar & Anr. vs The State of Uttar Pradesh, Criminal Appeal No. 526 of 2021 (arising out of SLP (Crl.) No. 3549 of 2018) on 03.06.2021, held:-**

*“10. The contentions urged in this matter essentially revolve around the provisions contained in Section 31(1) CrPC. The contours of these provisions have been succinctly delineated and explained by this Court in the case of **O.M. Cherian** (supra) in the following terms:*

“20. Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

21. Accordingly, we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at

one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also do not find any conflict in the earlier judgment in *Mohd. Akhtar Hussain* and Section 31 CrPC.”

10.1. In *Muthuramalingam* (supra), the basic question before the Constitution Bench was as to whether consecutive life sentences could be awarded to a convict on being found guilty of a series of murders, for which, he had been tried in a single trial. In the course of determination of this question, the Constitution Bench dealt with several dimensions of sentencing, particularly those relating to multiple sentences and observed, inter alia, that, “23.....So interpreted Section 31(1) CrPC must mean that sentences awarded by the court for several offences committed by the prisoner shall run consecutively (unless the court directs otherwise) except where such sentences include imprisonment for life which can and must run concurrently....”

10.2. Thus, it is beyond a shadow of doubt that Section 31(1) CrPC vests complete discretion with the Court to order the sentences for two or more offences at one trial to run concurrently having regard to the nature of offences and the surrounding factors. Even though it cannot be said that consecutive running is the normal rule but, it is also not laid down that multiple sentences must run concurrently. There cannot be any straitjacket approach in the matter of exercise of such discretion by the Court; but this discretion has to be judiciously exercised with reference to the nature of the offence/s committed and the facts and circumstances of the case. However, if the sentences (other than life imprisonment) are not provided to run concurrently, one would run after the other, in such order as the Court may direct.

11. For what has been provided in Section 31(1) CrPC read with the expositions of this Court, it follows that the Court of first instance is under legal obligation while awarding multiple sentences to specify in clear terms as to whether they would run concurrently or consecutively. In the case of *Nagaraja Rao* (supra), this Court expounded on this legal obligation upon the Court of first instance in the following terms:

“11. The expressions “concurrently” and “consecutively” mentioned in the Code are of

immense significance while awarding punishment to the accused once he is found guilty of any offence punishable under IPC or/and of an offence punishable under any other Special Act arising out of one trial or more. It is for the reason that award of former enure to the benefit of the accused whereas award of latter is detrimental to the accused's interest. It is therefore, legally obligatory upon the court of first instance while awarding sentence to specify in clear terms in the order of conviction as to whether sentences awarded to the accused would run "concurrently" or they would run "consecutively".

12. *As noticed, if the Court of first instance does not specify the concurrent running of sentences, the inference, primarily, is that the Court intended such sentences to run consecutively, though, as aforesaid, the Court of first instance ought not to leave this matter for deduction at the later stage. Moreover, if the Court of first instance is intending consecutive running of sentences, there is yet another obligation on it to state the order (i.e., the sequence) in which they are to be executed. The disturbing part of the matter herein is that not only the Trial Court omitted to state the requisite specifications, even the High Court missed out such flaws in the order of the Trial Court.*

13. *Even when we find the aforementioned shortcomings in the orders passed by the Trial Court as also by the High Court, the question is as to whether the sentences awarded to the appellants could be considered as running concurrently? As noticed, the omission to state whether the sentences awarded to the accused would run concurrently or would run consecutively essentially operates against the accused because, unless stated so by the Court, multiple sentences run consecutively, as per the plain language of Section 31(1) CrPC read with the expositions in **Muthuramalingam** and **O.M. Cherian** (supra). The other omission to state the order of consecutive running cannot ipso facto lead to concurrent running of sentences.*

14. *Faced with the position that the stated omissions will not, by themselves, provide a room for concurrent running of sentences, learned counsel for the appellants has endeavoured to invoke the 'single transaction' principle. In our view, the said principle is essentially referable to Section 220 CrPC, which provides that if more offences than one are committed in one series of acts so connected together as to form the same transaction, then the accused may be charged with and tried at one trial for every such offence. In a given case, after such trial for multiple offences, if the accused is convicted and*

awarded different punishments, concurrent running thereof may be provided depending on the facts and the relevant surrounding factors. We are afraid, the principle related with 'single transaction' cannot be imported for dealing with the question at hand.

14.1. In the case of **Mohan Baitha** (supra), this Court observed that the expression 'same transaction', from its very nature, is incapable of an exact definition and it is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. The question involved in that case did not relate to sentence but to the inquiry and trial of different offences pertaining to Sections 304-B, 498-A, 120-B and 406 IPC and territorial jurisdiction of the Magistrate in Bihar when the alleged incident constituting one of the offences, i.e., under Section 304-B IPC, had taken place in the State of Uttar Pradesh. Of course, in the case of **Mohd. Akhtar Hussain** (supra), this Court indicated that if a transaction constitutes two offences under two enactments, generally it is wrong to have consecutive sentences but this Court hastened to observe that such a rule shall have no application if the transaction relating to the offences is not the same or the facts concerning the two offences are quite different. Significantly, in that case, consecutive running of sentences awarded to accused-appellant, in two different cases pertaining to the Gold (Control) Act, 1968 and the Customs Act, 1962, was upheld by this Court with the finding that the two offences for which the appellant was prosecuted were 'quite distinct and different'. The only modification ordered by this Court was concerning the term of imprisonment for the latter conviction while disapproving its enhancement from 4 years to 7 years by the High Court after noticing that he was already sentenced to imprisonment for a term of 7 years in the first offence. The trial and conviction in the case of **Manoj alias Panju** (supra) had been for offence under Section 307 IPC as also under Sections 25 and 27 of the Arms Act. In the case of **Nagaraja Rao** (supra), the trial and conviction had been of offences under Section 381 IPC and Section 52 of the Post Office Act, 1898. In the case of **Gagan Kumar** (supra), offences were under Sections 279 and 304-A IPC. These decisions, essentially proceeding on their own facts, do not make out a case for interference in favour of the appellants."

In the present case the charges framed, under the two different acts, relate to and arise out of the same single incident.

Accordingly, in the interest of justice, the sentences imposed by the Trial Court is to run concurrently.

The Superintendent, Burdwan Central Correctional Home, is directed to release the convict **on his serving out the sentence as directed** and clarified by this court on receipt of the copy of this order.

CRA 193 of 2019 is accordingly stands disposed of.

Application being IA No.: CRAN 1 of 2019 (Old No.: CRAN 1277 of 2019) also stands disposed of.

Learned counsel for the State shall sent a copy of this order to the Superintendent, Burdwan Central Correctional Home, at once for necessary compliance.

Urgent photostat certified copies of this order, if applied for, shall be supplied to the learned counsel for the as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)