

**IN THE HIGH COURT OF CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

CRR 162 of 2023

**Chanchal Sarkar
Vs.
The State of West Bengal**

For the petitioner : Mr. Jaydeep Kanta Bhowmik,
: Mr. Sayantan Bhowmik,
: Ms. Rikta Sarkar.

For the State : Mr. Aditi Shankar Chakraborty,
: Mr. Biswarup Roy.

Heard on : November 23, 2023
Judgment delivered on : November 30, 2023

Md. Shabbar Rashidi, J.:

1. The instant revisional application has been filed at the behest of the accused/ convict directed against the order and judgment dated June 17, 2022 passed by learned Assistant Sessions Judge, Siliguri.

2. The company Head Quarter Mahananda BOP of 176 Bn of the BSF lodged complaint with the officer-in-charge, Phansidewa P.S. to the effect that on December 03, 2021 at 4.55 hrs. the officers of the BSF were in a ambush party. The ambush party apprehended one Bangladeshi cattle smuggler with some cattle. On enquiry, the smuggler disclosed before the ambush party that he entered into the Indian territory a day before the date of incident taking advantage of darkness and bamboo bushes. The said smuggler was apprehended and the cattle were seized and forwarded to the officer-in-charge of Phansidewa P.S. along with a written complaint.

3. On the basis of such written complaint, Phansidewa P.S. case No. 85 dated December 03, 2021 under Section 447/186/379/411/34 of the Indian Penal Code and Section 14A/14C of The Foreigners Act, 1946 was started against the petitioner.

4. The police took up investigation and on completion of investigation, submitted charge-sheet. The case was

committed to the Court of Sessions for disposal. On the date of fixing for consideration of charge, i.e. June 17, 2022, the accused petitioner was produced in the Court. Charges under Section 14A of The Foreigners Act, 1946 read with Section 447/186/411 of the Indian Penal Code were framed against the petitioner. The charges were read over and explained to the accused petitioner to which the accused petitioner pleaded guilty to the charges framed.

- 5.** Accordingly, on the basis of pleading guilty by the accused petitioner, the petitioner was convicted in terms of Section 229 of the Code of Criminal Procedure. He was sentenced to simple imprisonment for two years and a fine of Rs. 10,000/- (Rupees Ten Thousand) and in default of payment of fine to undergo simple imprisonment for a further period of 15 days for the offence punishable under Section 14A of the Foreigners Act, 1946. The petitioner was further sentenced to simple imprisonment for one year for the offence punishable under Section 447 of the Indian Penal Code. He was also sentenced to simple imprisonment for two years for the offences

punishable under Section 411 of the Indian Penal Code. He was also sentenced to undergo simple imprisonment for one month for the offence punishable under Section 186 of the Indian Penal Code.

- 6.** By the impugned order, the learned Trial Court directed the sentences to run consecutively one after another.
- 7.** By filing the instant revisional application, the petitioner has prayed for setting aside the impugned judgment and order of conviction and sentence and/or quashing or modifying the impugned order.
- 8.** At the time of hearing, learned advocate for the revisionist submits that learned Trial Court was not justified in passing the impugned order directing the sentences to run consecutively one after another. It has been submitted that the learned Trial Court ought to have passed an order directing the sentences to run concurrently as the offences relating to Section 14A of the Foreigners Act read with Section 447/186/411 of the

Indian Penal Code were allegedly committed in one and the same transaction.

9. In support of such contention, learned advocate for the petitioner relied upon **2023 SCC OnLine Chh 3630 (Mohanlal Khunte Vs State of Chhattisgarh).**

10. It is contended by learned advocate for the petitioner that the offences complained of were committed by the petitioner in one and the same transaction, therefore, punishment awarded to the petitioner ought to have been directed to run concurrently instead of consecutive.

11. It was, however, contended by learned advocate for the State that as per the case made out in the First Information Report, the petitioner is said to have confessed that the petitioner entered into the territory of India unauthorized on the previous day and he was found in possession of cattle said to be stolen. Therefore, since the overtact on the part of the petitioner was spread over two days, it cannot be said that the offences were committed in one and the same transaction.

12. As noted, the petitioner was put on trial for several offences in one trial and was convicted for the offences punishable under Section 14A of the Foreigners Act read with Section 447/186/411 of the Indian Penal Code, 1860. The petitioner pleaded guilty of the offences at the time of consideration of charges. Accordingly, the petitioner was convicted on the basis of his pleading guilty under the provisions of Section 229 of the Code of Criminal Procedure, 1973. He was consequently, sentenced and was directed to suffer several sentences for violation of the aforesaid Sections of the Foreigners Act as well as Indian Penal Code. The sentences so passed for the offences under Section 14A of the Foreigners Act read with Section 447/186/411 of the Indian Penal Code, 1860 were directed by the learned Trial Court to run consecutively, one after another.

13. Since, the petitioner had voluntarily pleaded guilty and was convicted in terms of Section 229 of the Code of Criminal Procedure, the option of preferring an appeal was not available to the petitioner in terms of Section 375

of the Code of Criminal Procedure. For the aforesaid reason, the petitioner has come up with a revisional application.

14. The order of conviction and sentence was passed by learned Assistant Sessions Judge, there appears no reason to question the competence of the Trial Court in passing the impugned order in terms of the provisions of Section 31 of the Code of Criminal Procedure. However, no reason has been assigned by the learned Trial Court in directing the several sentences to run consecutively.

15. The only question that calls for consideration by this Court is whether the offences under Section 14A of the Foreigners Act and that under Section 447/186/411 of the Indian Penal Code were committed in one and the same transaction.

16. In the case of **Mohanlal Khunte (Supra)**, the Hon'ble Court laid down that,

“14. The Supreme Court in the matter of O.M. Cherian (supra) considered the issue and answered in paragraphs 19, 20 and 21 of the

judgment holding that under Section 31 of CrPC, the trial Court has full discretion to order the sentences to run concurrently in case of conviction for two or more offences considering the facts and circumstances of the case and nature of offence and observed as under:—

“19. As pointed out earlier, Section 31 Cr PC deals with quantum of punishment which may be legally passed when there is (a) one trial; and (b) the accused is convicted of two or more offences. The ambit of Section 31 is wide, covering not only a single transaction constituting two or more offences but also offences arising out of two or more transactions. In the two judgments in Mohd. Akhtar Hussain v. Collector of Customs and Manoj v. State of Haryana, the issue that fell for consideration was the imposition of sentence for two or more offences arising out of the single transaction. It is in that context, in those cases, this Court held that the sentences shall run concurrently.

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 (supra) and Section 31 CrPC.”

15. Similarly, relying upon their earlier decisions rendered in the matters of V.K. Bansal v. State of Haryana⁴ and Mohd. Akhtar Hussain (supra), their Lordships of the Supreme Court held that when the prosecution is based on single transaction where it constitutes two or more offences, sentences are to run concurrently and observed in paragraphs 16 and 17 as under:—

“16. When the prosecution is based on single transaction where it constitutes two or more offences, sentences are to run concurrently. Imposing separate sentences, when the acts constituting different offences form part of the single

transaction is not justified. So far as the benefit available to the accused to have the sentences to run concurrently of several offences based on single transaction, in V.K. Bansal (supra) in which one of us (T.S. Thakur, J.) was member, this Court held as under : (SCC p. 217, para 16)

“16. we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

17. This Court in Mohd. Akhtar Hussain (supra), recognised the basic rule of conviction arising out of a single transaction justifying the concurrent finding running of the sentences. The following passage in this regard is relevant to be noted : (SCC p. 187, para 10)

“10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. But this rule has no application if the transaction relating to offences is not the same.”

17. According to the case made out in the First Information Report, the petitioner entered into the Indian Territory and was apprehended with some cattle, said to be stolen, while trying to cross the international border. The petitioner, manifestly, entered into the Indian territory with an intention of cattle smuggling and was trying to cross the border with allegedly stolen cattle. The transaction is said to be stretched over two days but taking into account the object and intention exhibited from the actions of the petitioner, it cannot be said that the two distinct acts of crossing the border and dealing with the stolen cattle were not part of the same transaction. The entry of the petitioner into the Indian

Territory and stealing and taking away of the cattle back to his own country, again trying to cross the international borders can, at no stretch of imagination, be termed as separate transactions. The petitioner simply did several and distinct act in order to fulfill his prime object.

18. It has already been noted hereinbefore that no reason has been disclosed in the order impugned as on what considerations; the learned Trial Court directed the sentences to run consecutively.

19. Therefore, in view of the ratio laid down in the case of **Mohanlal Khunte (Supra)**, and in the light of discussions made hereinabove, this Court is of the opinion that the order of sentence passed by the learned Trial Court, so far as it relates to the manner it is directed to run, requires to be modified. It is hereby directed that the sentences passed in the impugned order dated June 17, 2022 in Sessions Case No. 38 (02) of 2021 for the offences punishable under Section 14A of the Foreigners Act, 1946 and that under Section 447/186/411 of the Indian Penal Code, 1860 shall run

concurrent from the date of passing of the order impugned.

20. Accordingly, the instant Revisional Application being CRR No. 162 of 2023 is hereby allowed to the extent indicated hereinbefore.

21. Let a copy of this be sent to the learned Trial Court for information and necessary action, if any.

22. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Md. Shabbar Rashidi, J.)