

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5839 OF 2021

Mr. Azim Mohammad Hanif

though Jail.

.. Petitioner

Vs.

The State of Maharashtra

.. Respondent

- Ms. Pranali P. Kakade, appointed Advocate for the Petitioner.
- Mr. J.P. Yagnik, APP for the State.

CORAM : SUNIL B. SHUKRE &
M.M. SATHAYE, JJ.

DATE : 29th MARCH, 2023.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Heard.
2. Rule.
3. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at the stage of admission itself.
4. The petitioner has been convicted for committing murder of two persons, namely, Zakira Mohammad Fayyaz Qureshi and Mohammad Farooq Abdulla Ajij @ Bablu, and therefore, has been sentenced to

suffer life imprisonment for the murder of Zakira Mohammad Fayyaj Qureshi and has been further sentenced to suffer another life imprisonment for the murder of Azim Mohammad Hanif Shaikh, as punishable under Section 302 of the Indian Penal Code, 1860 vide judgment and order dated 24.01.2017 passed by the Additional Sessions Judge, Thane, whose conviction and sentences have been confirmed by the co-ordinate Bench of the Division bench of this Court (CORAM : PRASANNA B. VARALE & N.R. BORKAR, JJ) while dismissing the appeal against conviction filed by the petitioner, by its judgment dated 09.09.2021.

5. So far so good. The trouble for the petitioner however, began, when it came to his notice that there was a fundamental error in the operative part of trial Court's order. The trial court while passing the operative order dated 24.01.2017, had directed that both the sentences of life imprisonment would run consecutively and one after another. While confirming this judgment and order of the trial court, the co-ordinate Bench of the Division Bench of this Court did not notice the direction that, two life sentences had been awarded one after another, by the trial court. Any way, this direction of the trial court was an error manifest on record as it has flown in the face of a clearcut bar upon doing so provided in sub-section 2 of Section 427 of the Code of

Criminal Procedure, 1973. Sub-section 2 of Section 427 for the sake of convenience is reproduced as under:-

“When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

6. It would be clear from the above referred provisions of law that when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

7. In the present case, the first sentence of life imprisonment was awarded to the petitioner for committing murder of Zakira Qureshi and it is the law that when the sentence is not suspended by the Trial Court, it starts to run immediately. Since suspension of first sentence given in the present case was beyond the power of the trial court it was not suspended by the Trial Court and it was also not suspended by this Court during pendency of the appeal, and therefore, the first sentence of life imprisonment had already started to run against the petitioner. These facts and circumstances of the case had fulfilled the conditions of Section 427(2) of the Cr.P.C. and bar on running of subsequent

sentence consecutively had become operational, and therefore, it was the duty of the trial court to not to have directed consecutive running of two life sentences, imposed one after another in the same trial. This bar also created a corresponding right upon the convict to not to be subjected to suffer two sentences for life imprisonment in one and the same life. This is what the Apex Court has held in the case of ***Muthuramalingam & Ors. Vs. State Represented by Inspector of Police***¹ wherein it is observed that the provisions made in the Cr.PC. must be so interpreted as to 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. The Supreme Court further held that the provisions of Section 31(1) were required to be harmonized with Section 427(2) of the Cr.P.C. and when harmonized, they would permit consecutive running of sentences only if the sentences do not happen to be life sentences and that if, more than one life sentences are awarded to the prisoner, the same would get superimposed over each other. It also held that this will imply that in case the prisoner is granted any benefit of remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other. That is the only way, as held by the Supreme

¹ (2016)8 SCC 313

Court, one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.

8. We thus find that there is an error in the direction issued by the Trial Court for running of two life sentences awarded to the petitioner consecutively, which error has not been noticed by this Court while dismissing the appeal against conviction filed by the petitioner, and therefore, there is a need for this Court to modify that direction in order to restore to the petitioner his legal right u/s.427(2) r/w. Section 31(1) of the CR.P.C.

9. Accordingly, the petition is allowed and it is directed that the two life imprisonments awarded to the petitioner shall run concurrently and not consecutively and to that extent, the operative order of the Trial Court dated 24.01.2017 is modified. We further direct that the error rectified through this order being an error apparent on the face of the record in the trial Court's judgment, judgment of this Court dated 09.09.2021 tendered in Criminal Appeal No.1565 of 2018 shall be so construed as to give effect to the above direction.

10. The Petition is thus disposed of. No costs.

[M.M. SATHAYE, J]

[SUNIL B. SHUKRE, J.]