

May 2, 2024
ARDR (41)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

CRR 181 of 2023

Md. Aktar Hussain
Vs.
The State of West Bengal

Adv. Jaydeep Kanta Bhowmik,
Adv. Sayantan Bhowmik,
Adv. Subham Kumar,
Adv. Rikta Sarkar,

...for the petitioner.

Adv. Aditi Shankar Chakraborty, Ld. APP,
Adv. Aniruddha Biswas,

...for the State.

Heard learned counsels for the parties.

The accused-petitioner has been convicted for offence punishable under several provisions upon pleading guilty before the learned trial Court and has been sentenced to suffer simple imprisonment for two years and to pay a fine of Rs.10,000/- in default, to suffer simple imprisonment for fifteen days for offence under Section 14A of the Foreigners Act, simple imprisonment for one month for committing offence under Section 447 of the Indian Penal Code, simple imprisonment for a period of two years for offence punishable under Section 411 of the Code and simple imprisonment for one month for offence punishable under Section 186 of the Code, the said sentences being directed to run consecutively one after the another.

The petitioner prays for modification of the sentences to the extent that there may be a direction for sufferance of the sentences concurrently and not consecutively.

Learned counsel for the petitioner submits that the petitioner has come up before this Court by way of a revisional application since there was no other forum available for him in view of the provision laid down under Section 375 of the Code of Criminal Procedure. Learned counsel has referred to a judgment delivered by a coordinate Bench of this Court in CRR 162 of 2023 on 30th November, 2023, whereby the coordinate Bench has placed reliance on the authority in *Mohanlal Khunte vs. State of Chhattisgarh* reported in 2023 SC OnLine CHH 3630.

It shall be useful to reproduce the relevant portion of the judgment.

“ 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 CrPC 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 Haryana*⁴ 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”

In view of the ratio laid down in the said judgment this Court is inclined to hold that the sentence awarded to the accused-petitioner is required to be modified to the extent that all the sentences shall run concurrently instead of consecutively.

Accordingly, the application, being CRR no. 181 of 2023 is allowed.

The sentences awarded to the accused-petitioner following his conviction for offences punishable under Sections 447/186/411 of the Indian Penal Code and Section 14A of the Foreigners Act shall run concurrently and not consecutively.

Urgent certified website copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Suvra Ghosh, J.)