



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

CRIMINAL APPEAL NO.873 OF 2022

Laxman @ Popat Mohan Landage
Age: 33 years, Occu.: Labour,
R/o. Surdi, Tq. & Dist.Osmanabad.

..Appellant

Versus

1. The State of Maharashtra
Through
Police Station (Rural),
Osmanabad.

2. X.Y.Z.

..Respondents
(Res. No.2 is victim)

.....

Advocate for Appellant : Mr.Kishor R.Doke
APP for Respondent no.1 : Mr.D.J.Patil

.....

**WITH CRIMINAL APPLICATION NO.1575 of 2018
IN CRIMINAL APPEAL NO.873 OF 2022**

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23 APRIL, 2024

PRONOUNCED ON : 24 APRIL, 2024

JUDGMENT :-

1. Convict - original accused no.2 - Laxman @ Popat Mohan Landage took exception to judgment and order of conviction passed by the Special Judge, Osmanabad dated 03-10-2017 in Special (POCSO) Case No.1 of 2016 holding him guilty for the offence punishable under Sections 376(2)(n), 354-D of the Indian Penal Code (IPC) and under Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act).

2. During pendency of the appeal, learned counsel for appellant placed on record Imprisonment Certificate exh.'X' dated 04-04-2024 issued by the Superintendent, Nashik Road Central Prison, certifying that convict has been given benefit of remission by the State Government and he has suffered 10 years, 5 months and 16 days imprisonment. On the strength of said certificate, learned Counsel for appellant pointed out that convict has already undergone the maximum sentence awarded, however, he pointed out that merely because in the operative part of the judgment of the trial Court, there is omission to state whether sentences for offence under Section 6 of the POCSO Act and for offence under Section 506 of the IPC to run concurrently or consecutively, effect is not given to the remission granted by the State Government. He submits that in such contingency, law is fairly settled that sentences are to always run concurrently and not consecutively and resultantly, he beseeched to apply such legal position and set appellant at liberty. He submits that even otherwise in view Imprisonment Certificate exh.'X', appellant has already suffered entire maximum sentence awarded.

3. Learned APP also pointed out that in the operative part of the judgment, against which appeal has been preferred, learned trial Court has not specified whether sentences for above offences are to

be run concurrently or consecutively. He pointed out that sentences for both the offences are distinct. Though convict has suffered ten years imprisonment for offence under Section 6 of the POCSO Act, there is one year imprisonment awarded for offence under Section 506 of the IPC. Impugned order being silent as to whether sentences are to be suffered concurrently or consecutively, he pointed out that prison authorities are not giving effect to the remission. However, he fairly conceded that, in view of Imprisonment Certificate exh.'X' convict has already suffered 10 years, 5 months and 16 days imprisonment till 31-03-2024. He further conceded that this Court may pass appropriate order.

4. On perusal of the impugned order dated 03-10-2017, it emerges that learned trial Judge has sentenced present appellant Laxman to suffer rigorous imprisonment for ten years for commission of offence under Section 6 of the POCSO Act and one year rigorous imprisonment for commission of offence under Section 506 of the IPC. But it is conspicuously noticed that, learned trial Court has not categorically specified, by way of distinct clause, as to whether both sentences for both offences should run concurrently or consecutively.

5. It transpires that both the offences are arising out of single

transaction. In view of settled legal position by way of catena of judgments, it is fairly settled that, sentences are to be generally run concurrently. It would be apt to refer to judgment of the Hon'ble Apex Court in the case of ***Mohd. Akhtar Hussain v. Assistant Collector of Customs; (1988) 4 SCC 183*** in which the following passage carries observations as under :

“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. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different”.

As stated above, in the case in hand both offences are part and parcel of same transaction.

Similar views are reiterated in the rulings of the Hon'ble Apex Court in the cases viz. ***Manoj alias Panu v. State of Haryana, 2014 AIR SCW 312; Sunil Kumar alias Sudhir Kumar and another v. State of Uttar Pradesh, (2021) 5 SCC 560*** and ***Iqram v. State of Uttar Pradesh and others, (2023) 3 SCC 184***.

6. Once State has given benefit of remission under special drive

and Jail Authority has certified that appellant has already suffered 10 years, 5 months and 16 days imprisonment, mere omission on the part of trial Judge to specify that sentences for both the offences are to be run concurrently, the above benefits of remission, in the opinion of this Court, should not be withheld and further frustrated. This appellate Court does have power to modify the order of the trial Court on its omission to specify the above. Hence, following order :

ORDER

- (i) The operative part of the Judgment and order passed by the Special Judge, Osmanabad in Special (POCSO) Case No.1 of 2016 dated 03-10-2017 is hereby modified to following extent :

“Both sentences for offence under Section 6 of the POCSO Act and under Section 506 of the IPC are to be run concurrently.”

- (ii) Accordingly, Criminal Appeal No.873 of 2022 is disposed of.
- (iii) The Registrar (Judicial) to convey the above order to the concerned Jail Authorities forthwith.
- (iv) In view of disposal of the appeal, Criminal Application No.1575 of 2018 is also disposed of.

(ABHAY S. WAGHWASE)
JUDGE