

Subhash Devidas Deshmukh Vs. the State of Maharashtra and Another

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Court : Mumbai Aurangabad

Decided On : Oct-03-2013

Judge : K.U. Chandiwal & a.I.S. Cheema

Appeal No. : Criminal Writ Petition No.789 of 2013

Appellant : Subhash Devidas Deshmukh

Respondent : The State of Maharashtra and Another

Judgement :

A.I.S. Cheema, J.

1. Rule. Rule made returnable forthwith and heard finally, by consent.

2. Writ Petitioner Subhash Devidas Deshmukh, along with other fourteen accused, was prosecuted vide Sessions Trial No.149 of 2004 before the Court of Sessions Judge, Parbhani. The fifteen accused were charged with offences punishable under Sections 148, 341, 504, 302, 307, 323, 324 read with 149 of Indian Penal Code, 1860 ("I.P.C." in brief). Writ Petitioner was accused No.13 in the sessions trial. At the conclusion of the trial, some of the accused were convicted and imposed different sentences. As far as regards the writ Petitioner, he was acquitted for the offences punishable under Section 302 read with 149 of I.P.C. and 504 read with 149 of I.P.C. Petitioner was found to be inflicted stab injury by knife on abdomen of one PW-3 Keshav, which was found to be of serious nature. He was convicted for the offence punishable under Section 148 of I.P.C. and

sentenced to suffer simple imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month. For offence punishable under Section 307 of I.P.C., he was convicted and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for one year. For offence punishable under Section 341 read with Section 149 of I.P.C., he was sentenced to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month.

3. The writ Petitioner as well as the other convicted accused preferred Criminal Appeal Nos. 784 of 2006, 781 of 2006, 815 of 2006 and Criminal Appeal No.394 of 2007, to this High Court. Writ Petitioner was Appellant No.4 in Criminal Appeal No.784 of 2006. By Judgment dated 16th September, 2009 of this High Court, all the above Appeals came to be disposed. The conviction and sentences as far as regards writ Petitioner are concerned, were maintained.

4. According to the learned counsel for the writ Petitioner, Special Leave Petition (Criminal) No.3231-3232/2010 was filed by writ Petitioner along with others in the Supreme Court of India and on the stage of grant of leave itself, on 14th May 2010, Hon'ble Supreme Court passed brief orders that there is no merit in the Special Leave Petitions and the same were accordingly dismissed.

5. Now the Petitioner has filed this Writ Petition with the grievance that the Sessions Judge, while passing the sentences, did not direct that the sentences should run concurrently or for that matter consecutively. It is claimed that Petitioner has completed period of seven years of imprisonment but he has not been released, as there was no direction to run the sentences concurrently or consecutively. According to him, the offences punishable under Section 148 as well as under Section 307 of the I.P.C. took place in the same incident and so direction should have been that the sentences shall run concurrently. As per Section 31 of the Code of Criminal Procedure, 1973 ("Cr.P.C." in short) trial Court should have exercised the discretion.

6. We have heard learned counsel for the Petitioner and learned A.P.P. for the State.

7. It has been argued by the learned counsel for the Petitioner that it has been held in the matter of **V. Venkateswarlu vs. State of Andhra Pradesh, 1987 Cri. L.J. 1621** that the High Court in exercise of revisional jurisdiction suo motu or in exercise of its inherent powers under Section 482 of Cr.P.C., can direct the sentences to run concurrently as provided under Section 427 of Cr.P.C. even when the convictions and sentences passed had become final. On behalf of the Petitioner, reliance is also placed on the case of **V.K. Bansal vs. State of Haryana and another, (2013) 7 Supreme Court Cases, 211**, in support of the contention that this Court should direct the sentences to run concurrently.

8. Both the Judgments in the matters of **V. Venkateswarlu** and **V.K. Bansal**, referred above, are basically under Section 427 and not Section 31 of Cr.P.C. with which we are concerned here.

9. Reliance has also been placed on the case of **Shersingvs. State of M.P., 1989 Cri. L.J. 632**. Even this matter relates to Section 427 of Cr.P.C.

10. Section 427 of Cr.P.C. reads as under:

"427. Sentence on offender already sentenced for another offence.-

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) 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."

11. Section relevant for present matter, Section 31 of Cr.P.C., is as under:

"31. Sentence in cases of conviction of several offences at one trial.-

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

12. Comparison of both the above Sections makes it clear that Section 427 applies when there are different trials while Section 31 applies at a time when in one trial the accused gets convicted for two or more offences, how the sentences of imprisonments should operate. In Section 31, it is the multiple offences which are dealt with, while in Section 427 of Cr.P.C. it is multiple trials and sentences that are dealt with.

13. Still the principles emerging from the rulings, referred above, in the matter of sentencing need to be kept in view. It is clear that, whether the sentences should run concurrently or not, is discretion which requires to be exercised judicially and not mechanically.

14. Learned counsel for the Petitioner relied on the case of **SurjaRam vs. The State, 1963(2) Cri. L.J. 396**. However, that is a matter where the High Court of Rajasthan in the given set of facts, observed that neither Section 35 nor 397 of the Code of Criminal Procedure, 1898 applied (which Sections were corresponding to present Sections 31 and 427 of Cr.P.C., 1973 respectively).

15. As far as proposition that High Court can exercise inherent powers under Section 482 of Cr.P.C. to do justice, there is no difficulty. Apart from the matter of **V. Venkateswarlu** (supra), even in the matter of **BasudebPradhan vs. State of Orissa, 1983 Cri. L.J., 527**, it was observed that the direction to make consecutive sentences concurrent can be given in exercise of inherent powers. Need to resort to Section 482 of Cr.P.C., in matters dealt with under Section 427 of Cr.P.C. at times arises as the attention of subsequent Court is not brought to the fact that the accused is already undergoing a sentence of imprisonment. This is not so with Section 31 where in the trial before the Court, it has to exercise the discretion whether to make sentences under different offences concurrent.

16. In the matter of **ShaikhIdris and others vs. Emperor, 40 Cr.L.J. 1939, Page 751**, dealing with Section 35 (as it then was), it was observed:-

"The learned Magistrate not having specified that the two sentences of three months' rigorous imprisonment on each of the petitioners were to run concurrently, they must be held to have been ordered to run consecutively under S.35, Criminal Procedure Code."

17. In the matter of **KhudaBux and others vs. State, 52 Cri. L.J. 1951, Page 912**, it was observed at page No.915 as under:

"It is laid down in S.35 of the Code that one sentence of imprisonment will commence after the expiration of the other sentence of imprisonment unless the

Court directs that such sentences shall run concurrently. Obviously the normal rule is that the sentences should be consecutive and they may be made to run concurrently only if there is some reason. Whether the sentences should run consecutively or concurrently is left to the discretion of the Court but the Court must exercise its discretion judicially."

18. Perusal of Section 31 of Cr.P.C. does show that when the accused is sentenced for two or more offences, the punishments consisting of imprisonment are to commence one after the expiration of the other, as mentioned in the order, unless the Court directs that such punishments shall run concurrently. Court can even indicate the order in which the consecutive sentences shall be suffered. If not specifically indicated, the sequence of sentences in the order of Court must be followed. Consecutive sentences however have to be subject to Proviso below Section 31(2) of Cr.P.C.

19. We have gone through the Judgments of the trial Court as well as this Court and we have considered the severity of the offences committed. The trial Court inflicted "simple imprisonment" of one year for the offence punishable under Section 148 of I.P.C. and "rigorous imprisonment" of seven years for offence punishable under Section 307 of I.P.C. with fine. Separate order of "fine" was imposed under Section 341 read with Section 149 of I.P.C. also. Thus, one is simple imprisonment, the other is rigorous imprisonment and third is of fine only. Intention of the trial Court is obvious. Such sentences cannot be suffered concurrently. After the orders have become final, we do not wish to enter into the merits of the matter and invoke powers under Article 226 of the Constitution of India or Section 482 of Cr.P.C. to first convert the nature of sentences passed and then to make them concurrent.

20. There is no substance in the Writ Petition. Writ Petition is dismissed. Rule discharged.