

Trilochan Soren Vs. State

Trilochan Soren Vs. State

SooperKanoon Citation : sooperkanoon.com/533895

Court : Orissa

Decided On : Feb-24-1992

Reported in : 1992(II)OLR195

Judge : L. Rath, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 31(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 64

Appeal No. : Criminal Miscellaneous Case No. 240 of 1990

Appellant : Trilochan Soren

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : P.K. Misra, N.C. Pati, A.K. Nanda, B.K. Nayak and S.K. Swain

Disposition : Case allowed

Judgement :

L. Rath, J.

1. This is an application Under Section 482 from jail seeking the direction for the sentences passed against the petitioner to run concurrently instead of

consecutively as had been directed by the learned Sessions Judge, Keonjhar, in Sessions Trial No. 45/42-K of 1981. The petitioner was made to stand trial Under Sections 366, 376 and 379 IPC and having been found guilty, was convicted and was sentenced Under Section 366 IPC to five years' R. I. and pay fine of Rs. 500/- in default to undergo R. I. for three months, Under Section 376 IPC to R. I. for ten years and fine of Rs. 500/- in default to undergo R. I. for three months, and Under Section 379 IPC to R. I. for one year and fine of Rs. 1000/- in default to undergo R. I. for six months. Out of the fine amounts, if realised, a sum of Rs. 1000/- was directed to be paid to PW 4 as compensation. The learned Judge also directed the sentences to run consecutively.

2. Such direction for consecutive running of the sentences is on the face of it, hit by Clause (a) of the proviso to Section 31(2) Cr. P. C. which directs that in no case a person shall be sentenced to imprisonment for a period longer than fourteen years. The aggregate sentence as passed by the learned Judge is for a period of sixteen years and hence the direction has become illegal. The allegations for which the petitioner was tried were of his having duped a lady, PW 4 by taking her to different places on the promise of marriage, cohabit with her and thereafter having deserted her while taking away her ornaments as also Rs. 900/-. The conviction was on 30-3-1982. The petitioner has already spent nearly ten years in the jail. Keeping the gravity of the offences in view, I think a concurrent running of the substantive sentences would meet the ends of justice and hence setting aside the direction in the judgment for the sentences to run consecutively, I direct that the substantive sentences imposed under the different Sections are to run concurrently.

3. Next is the submission raised by the learned counsel for the petitioner urging for concurrent running of the sentences passed in default of the payment of fines. A sentence in default of payment of fine is to be always in excess of the substantive sentence as is directed Under Section 64 IPC. The question is whether different default sentences can be made concurrent amongst themselves. The answer would be plainly in the negative. The payment of fines cannot be made concurrent so as to in effect make it one payment only and hence the sentences in their default cannot be made, concurrent The question was considered in AIR 1942

Sind 80 (Emperor v. Mitho Maroo Machi) where relying on two earlier decisions, 27 Bom. L. R. 1651 (Emperor v. Subrao Sesharao) and 5 S. L R. 263 (Emperor v. Akidullah Azizullah) it was pointed out that a direction for the sentences in defaults to run concurrently would be impossible of compliance as in the event the fine is paid in part it would be difficult to appropriate the part payments of the fine against the terms of imprisonment in default. The learned Judges hence came to the conclusion that there is no difference in principle between a case where two sentences of imprisonment are imposed in default of fine and a case where there is a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of the fine. In 1967 CrL. L.J. 1597 :AIR 1967 Assam & Nagaland 111 (Sashi Nath Sarma v. State of Assam) it was held that under the law there can be no question of a concurrent sentence of fine at all and that every sentence of fine that is imposed on any count has to be a separate liability on the convicted person and the fine is payable.

4. In that view of the matter, the sentences imposed on the petitioner to be undergone in the event of default in payment of fines, have of necessity to run consecutively.

5. As a result, the Criminal Misc. Case is allowed subject to the aforesaid modification.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com