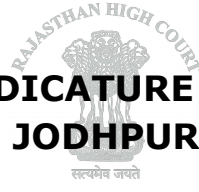




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Criminal Misc. Appli No. 13/2023



Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. B.R.Godara
For Respondent(s) : Mr. Gaurav Singh, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

RESERVED ON :: 20/04/2023

PRONOUNCED ON :: 25/05/2023

REPORTABLE

BY THE COURT:-

1. The instant Criminal Misc. application has been moved on behalf of the applicant in the matter of judgment dated 08.02.2021 passed by the learned Special Judge, NDPS Act, No.1 Naguar in Special Sessions Case No.76/2017 whereby he was convicted and sentenced to suffer maximum imprisonment of 14 years rigorous imprisonment under Section 8/15 of NDPS Act and 10 years rigorous imprisonment under Section 8/18 of NDPS Act.



2. Briefly stated, the facts of the instant case are that a truck bearing registration No. RJ19 GC 2188 was intercepted by the police at the time of 'nakabandi' on 29.01.2017 at about 06:15 P.M. During search, a total of 38 plastic bags of poppy husk and 1 plastic polythene of opium were found in the truck. The total weight of the poppy husk was 1480 Kilograms and total weight of opium was 2.400 kilograms; both the contraband weighed above the commercial quantity demarcated under the NDPS Act, thus, the accused persons were charged for offences under Section 8/15 and Section 8/18 of NDPS Act. They pleaded not guilty and claimed trial.

3. During trial, the prosecution examined twenty two witnesses. After evidence, the accused-appellants were examined under Section 313 CrPC, wherein they have denied the evidence and claimed false implication. After consideration of the material available on record and the submissions made by the counsel for the parties, the learned trial court convicted the accused persons under Sections 8/15 and 8/18 of NDPS Act and sentenced them accordingly, however, there was no such direction from the trial court regarding the order of running of sentences, that is, if they have to run concurrently or consecutively.

4. Learned counsel for the appellant submitted that the appellants have been continuously in jail since 29.01.2017 and thus, the appellants have already undergone the sentence of about 6 years upto now. It was submitted that the trial Court has not specified in the impugned order that both the sentences are to run concurrently or consecutively. He submits that the appellants



are not previous convicts and there are no criminal antecedents against the appellants. Referring to the facts of the matter, it was submitted that in the interest of justice, it is necessary that the sentences awarded by the trial Court be altered and that both the sentences be directed to run concurrently.

5. Per contra, learned Public Prosecutor vehemently opposed the prayer made by learned counsel for the accused-appellants and submitted that in this case, recovery of 1,480 kilograms of poppy husk was made from the truck, which was being carried by the appellants and that in view of the quantity of the recovered contraband being above the commercial quantity specified in the statute, the trial Court has rightly not directed to run the sentences concurrently.

6. Heard and perused the material available on record as well as gone through the statutory provisions applicable in the matter.

7. Even after a long period of incarceration, the jail authorities conveyed to the prisoner-appellant that he has served only 6 years of sentence for an offence under Section 8/15 of NDPS Act only and the 10 years' sentence for the offence under Section 8/18 of NDPS Act would begin after completion of sentence for offence under Section 8/15 of NDPS Act which has perturbed the appellant.

8. A perusal of Section 31 of the Criminal Procedure Code reveals that it refers to the jurisdiction of court to impose punishment when the accused is found guilty for two or more offences during a single trial. Section 31 of Cr.P.C. is reproduced below for ready reference:-



“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.”

9. Section 31 of Cr.P.C. empowers the trial court with the discretion to determine that sentences for two or more offences passed in one trial would run simultaneously or consequently, depending on the nature of the offences and any aggravating or mitigating factors that may be present. However, this discretion





must be used while taking into account the type of offence committed and the facts & circumstances of the case. Hon'ble the Apex Court has propounded the law in this context through a plethora of pronouncements and the settled legal position on this topic is vital to discuss here.

10. In **Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti v. Assistant Collector of Customs** reported in (1988) 4 SCC 183, Hon'ble the Supreme Court has propounded the fundamental principle that convictions resulting from a single transaction justify running of the sentences concurrently. The relevant paragraph of the aforesaid case is reproduced below:-

"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."

11. In case of **V.K. Bansal Vs. State of Haryana & Anr.** reported in (2013) 7 SCC 211, Hon'ble the Apex Court has held that even if there are varied complaints filed against a prisoner but they are arising out of a single transaction, then the discretion shall incline towards the benefit of the prisoner. If different complaints can be construed to be arising from a single transaction, then, in the case at hand, there is no doubt that both



the charges are emerging from the same single transaction (FIR No.16/2017). The relevant paragraphs of the afore-mentioned judgment are as follows:

“14. In. Madan Lal's case (supra) this Court relied upon the decision in Akhtar Hussain's case (supra) and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

15. In conclusion, 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.”

12. In the present instance, poppy husk weighed 1480 Kilograms and total weight of opium was 2.4 kilograms as found in the truck that was being driven by appellant no. 1 and appellant no. 2 was also present in the truck. The recovery has been attributed to both the accused persons and both were convicted under Section 8/15 and Section 8/18 of NDPS Act for possession of the illegal contraband. The appellants have been sentenced to 14 years' rigorous imprisonment along with fine of Rs. 1 lakh under Section



8/15 and 10 years' rigorous imprisonment along with fine of Rs. 1 lakh under Section 8/18 NDPS Act. Thus, both the offences have arisen from a single transaction. Given these facts and circumstances, the two sentences passed by the trial court should ordinarily be ordered to run concurrently according to the enunciation of law made in the cases referred supra. As a result, the learned trial judge erred by failing to order that both the sentences shall run concurrently. In view of these facts and circumstances, interference is required to the extent of order of sentence.

13. Where an accused is convicted and sentenced for several offences at one trial, the Court may direct that the sentences shall run concurrently. In the absence of such direction by the Court, sentences shall run consecutively. It is not obligatory for the trial court to direct in all cases that the sentences shall run concurrently, however, it is well-established that failure to specify the same causes trouble in interpretation in future.

14. The type of offences committed, as well as the facts and circumstances of the case, will determine whether a directive for concurrent running of sentences should be issued in a particular case. The discretion must be used in a judicially sound manner and not casually. It is safe to conclude that the basic rule is that the sentences must be directed to run concurrently if the accused is found guilty of two or more offences that are arising out of one and the same transaction and there are no special circumstances to do so.



15. According to Section 31(1) of the Criminal Procedure Code, sentences would run consecutively unless they are specifically ordered to run concurrently. The court of first instance is required by law to clarify in clear terms whether multiple sentences would run concurrently or consecutively when pronouncing the sentence.

In **Nagaraja Rao Vs. Central Bureau of Investigation** reported in (2015) 4 SCC 302, it was propounded by Hon'ble the Supreme Court that it is obligatory for the Court awarding punishments to specify whether the sentence should be running concurrently or consecutively and if it fails to do so, it will be considered a mistake committed on its part and an even graver mistake if the omission to mention the same turns out to be detrimental to the accused-appellants.

16. In the present set of facts, the mandate under Section 31 of Cr.P.C. was not followed as the trial court did not mention the order in which the substantive sentences would be served by accused-appellants. Even there is no classification as to which sentence would be served first and which after completion of the first, thus, the judicial work has been left upon the sole discretion of a jailor which in my considered opinion is not a good and valid act on the part of trial judge. The jail authorities are not to be given any authoritative discretion as it is the sole prerogative and domain of a judicial officer. Whenever it comes to exercising discretion, it is assumed that the discretion has to be exercised judicially; neither arbitrarily nor pervasively. This exercise of discretion cannot be expected from an administrative officer like jailor. This omission on the part of the trial Court has resulted into



the appellants suffering total imprisonment of twenty four years instead of fourteen years as in the absence of any specific direction, the jail authorities have decided and intimated the appellants that their sentences would run consecutively which cannot be considered reasonable as merely because the Trial Court did not give any instructions regarding the order in which the sentences would run, it cannot be said that the Court intended for the sentences to run consecutively.

17. In **O.M. Cherian Vs. State of Kerala** reported in AIR 2015 SC 303, Hon'ble the Supreme Court summarized the core principles that it is normal rule that multiple sentences are to run concurrently when the case of prosecution was based on single transaction in the following words:

"12. The words in Section 31 Code of Criminal Procedure "...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" indicate that in case, the Court directs sentences to run one after the other, the Court has to specify the order in which the sentences are to run. If the Court directs running of sentences concurrently, order of running of sentences is not required to be mentioned. Discretion to order running of sentences concurrently or consecutively is judicial discretion of the Court which is to be exercised as per established law of sentencing. The court before exercising its discretion Under Section 31 Code of Criminal Procedure is required to consider the totality of the facts and circumstances of those offences



against the accused while deciding whether sentences are to run consecutively or concurrently.

13. Section 31(1) Code of Criminal Procedure enjoins a further direction by the court to specify the order in which one particular sentence shall commence after the expiration of the other. Difficulties arise when the Courts impose sentence of imprisonment for life and also sentences of imprisonment for fixed term. In such cases, if the Court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of Section 31(1) Code of Criminal Procedure There is no question of the convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are imposed on the convict, necessarily, Court has to direct those sentences to run concurrently.”

18. In a recent ruling passed by Hon'ble the Supreme Court in **Sunil Kumar @ Sudhir Kumar Vs. The State of Uttar Pradesh** reported in (2021) 5 SCC 560, this predicament was discussed and it was held that it is imperative upon the trial court to specify whether the sentence would run consecutively or concurrently and further to even specify the order of sentence if





the sentences are to run consecutively and not to leave the same to be dealt with at a subsequent stage. The relevant paragraphs of the afore-mentioned judgment are as follows:

"11. For what has been provided in Section 31(1) CrPC read with the expositions of this Court, it follows that the Court of first instance is under legal obligation while awarding multiple sentences to specify in clear terms as to whether they would run concurrently or consecutively. In the case of Nagaraja Rao (supra), this Court expounded on this legal obligation upon the Court of first instance in the following terms:-

"11. The expressions "concurrently" and "consecutively" mentioned in the Code are of immense significance while awarding punishment to the accused once he is found guilty of any offence punishable under IPC or/and of an offence punishable under any other Special Act arising out of one trial or more. It is for the reason that award of former enure to the benefit of the accused whereas award of latter is detrimental to the accused's interest. It is therefore, legally obligatory upon the court of first instance while awarding sentence to specify in clear terms in the order of conviction as to whether sentences awarded to the accused would run "concurrently" or they would run "consecutively"."

12. As noticed, if the Court of first instance does not specify the concurrent running of sentences, the inference, primarily, is that the Court intended such sentences to run consecutively, though, as aforesaid, the Court of first instance ought not to leave this matter for deduction at the later stage. Moreover, if the Court of first instance is intending consecutive





running of sentences, there is yet another obligation on it to state the order (i.e., the sequence) in which they are to be executed. The disturbing part of the matter herein is that not only the Trial Court omitted to state the requisite specifications, even the High Court missed out such flaws in the order of the Trial Court.

19. Finally, it was concluded by Hon'ble the Supreme Court in Sunil Kumar (supra) as follows:

"21. While closing on the matter, we deem it appropriate to reiterate what was expounded in the case of Nagaraja Rao (supra), that it is legally obligatory upon the Court of first instance, while awarding multiple punishments of imprisonment, to specify in clear terms as to whether the sentences would run concurrently or consecutively. It needs hardly an emphasis that any omission to carry out this obligation by the Court of first instance causes unnecessary and avoidable prejudice to the parties, be it the Accused or be it the prosecution."

20. This court is of the considered opinion that unless there are special circumstances to pass an order regarding running of sentence consecutively; in routine, an order to run the sentence concurrently should be passed otherwise accused would suffer way harsher punishment than the legislature intended. For instance, in any case where the charges are under Sections 147, 148, 149, 323, 324, 325, 341, 302, 436 and 447 of IPC and the accused persons are involved in forming an unlawful assembly, in furtherance thereby causing simple and grievous hurt by different weapons and then causing death and at the same time, they set the hutment on fire and committed the offence of criminal



trespass and if all the accused are convicted for the charged offences then it may put the accused under an onerous situation. Therefore, the trial Court must specify in what order the sentences would be served by the accused-appellants and if the trial Court intends to direct consecutive running of sentences then it must specify the intent in writing in the order of sentence so as not to leave the liberty of an individual in the hands of a jailor. In this case at hand, the learned Trial Judge has not whispered even a single word regarding how the sentence awarded to the accused-appellants would run and it cannot be said that the Courts were consciously intending to order consecutive running of sentences.

21. Lastly, looking at the case from another perspective, it is observed that when an order of sentence is being passed, a trial judge has to consider the facts and circumstances of the case as well as the facts and circumstances of the accused person. Sections 235(2) and 255 of Cr.P.C. also provide that if the accused is convicted, then before proceeding to pass an order of sentence, it is imperative upon the judge to hear the accused on the point of sentence and then pass the order which would include whether the sentence is to run consecutively or concurrently. It can be inferred from the spirit of the afore-mentioned provision of law that a trial judge has to consider the circumstances of the accused and hear him/her before passing an order of sentence and if the court wishes to pass direction regarding sentence to run consecutively in that situation also an opportunity of hearing should have been provided. In the case at hand, if the circumstances of the accused are considered then it is revealed



from the record that the accused appellants Sohanlal and Ram Narayan were aged 38 and 30 respectively; were residents of a remote village and belong to a farmer family and thus, considering that if they are sentenced to suffer a period of 24 years of imprisonment then there would be nothing left in the remainder of their lives as per common life expectancy to go back to, as reformed individuals in the society, and the purpose of law concerning reform, according to which an accused should be given an opportunity to correct himself/herself, reform his/her ways and rehabilitate if the factors surrounding the matter allow for the same, would face utter defeat.

22. Accordingly, keeping in mind the judicial pronouncements referred in the preceding paragraphs and the discussion made herein above, the application seeking concurrency of the sentences is allowed and it is ordered that both the substantive sentences awarded to the accused-appellants by the trial Court i.e. the rigorous imprisonment of 14 years awarded under Section 8/15 and the rigorous imprisonment of 10 years awarded under Section 8/18 of NDPS Act, shall run concurrently. However, amount of fine and the additional sentence awarded by the trial court in default of payment of fine shall remain the same.

23. The jail authorities are directed to compute both the sentences passed in respect of the accused persons vide order dated 08.02.2021 as being run concurrently, thus, both the sentences, namely 14 years' rigorous imprisonment under Section 8/15 and 10 years' rigorous imprisonment under Section 8/18 of



NDPS Act, shall be deemed as having been run concurrently till now and the total term of imprisonment shall not exceed 14 years.

24. The copy of this judgment be sent to the trial court as well as to the concerned Jail Superintendent for necessary action.



68/-

(FARJAND ALI),J