

**Reserved on: 05.04.2022**

**Delivered on: 18.04.2022**

**Court No. - 70**

**Case :-** CRIMINAL APPEAL No. - 5086 of 2005

**Appellant :-** Pawan Singh And Another

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Arvind Kumar Pandey, A.T.Pandey, Akhilesh Kumar Singh, Arvind Kumar Kushwaha, Lalit Kumar Shukla

**Counsel for Respondent :-** Govind Kumar Saxena, Krishna Agarwal, S.K. Shukla, Sanjay Kumar Singh

**Hon'ble Raj Beer Singh,J.**

1. This appeal has been preferred against the judgment and order dated 09.06.2005, passed by the Additional Sessions Judge IVth, Gorakhpur, in Special Session Trial No. 178 of 2003, under section 8/20/23/43 of Narcotic Drugs and Psychotropic Substance Act (hereinafter referred as NDPS Act), DIR, Gorakhpur, whereby the appellant Pawan Singh and Shri Bhagwan have been convicted under Section 20(b)(ii) and Section 23 of NDPS Act and sentenced to 15 years rigorous imprisonment along with fine of Rs. 1 lakh under Section 20(b)(ii) and 15 years rigorous along with fine of Rs. 1 lakh under Section 23 NDPS Act. In default of payment of fine, they have to undergo additional sentence of two years. There was no such direction that both the substantial sentences have to run concurrently.

2. During pendency of this appeal, appellant No. 2 Shri Bhgawan has passed away and his appeal was abated vide order dated 15.03.2022. Thus, now the instant appeal is confined only in respect of appellant No. 1 Pawan Singh.

3. Heard Sri Akhilesh Kumar Singh, learned counsel for the

appellant no.1 Pawan Singh and Sri Krishna Agarwal, learned Special Public Prosecutor for the Union of India/ DRI.

4. Learned counsel for the appellant No.1 has not disputed the findings of conviction of appellant No. 1, recorded by the trial Court by impugned judgment and confined his arguments only regarding point of sentence awarded by the trial Court.

5. In the instant matter, though the conviction of appellant No.1 is not being disputed by the learned counsel for the appellant and learned counsel confined his argument only regarding sentence, however, I have gone through the entire record.

6. As per prosecution version, on 11.07.2003 after receipt of an secret information, the officials of D.R.I., Gorakhpur, comprising PW 1 S. K. Chaturvedi, Senior Intelligence Officer and PW 2 Ajit Kumar Tiwari, Inspector, DRI, have intercepted the Truck bearing No. HR-47/4854 at National Highway-28, near Guru Nanak Petrol Pump and this truck was being driven by appellant No.1 Pawan Singh and co-accused Shri Bhagwan was cleaner in the truck. Both the accused were apprehended at spot. In search of the said truck, 600 packets of 'charas' were recovered from the truck and the weight of total 'charas' was found 500 kg. Out of the recovered charas, samples of 25 grams of the recovered material were taken from each of the packet. The recovered 'charas' and the samples were sealed and taken into possession. The documents of truck were also taken into possession and the Panchnama/ recovery memo exhibit Ka-4 was prepared. The statements of appellant No.1 Pawan Singh and co-accused Shri Baghwan under section 67 NDPS Act were recorded. During investigation, samples were sent to the Chemical Examiner, CRCL, New Delhi as well as to the Chemical Examiner, Govt Opium & Alkaloid Works, Ghazipur, for analysis and later on analysis reports were received. After

completion of investigation, the complaint exhibit ka-3 was instituted in the Court.

**7.** The accused-appellant No. 1 and co-accused were charged for offences under section 20(b)(ii) and section 23 of NDPS Act. The accused persons pleaded not guilty and claimed trial. During trial, the prosecution has examined two witnesses. After evidence, the accused-appellant No. 1 and co-accused were examined under section 313 CrPC, wherein they have denied the evidence and claimed false implication. However, no evidence was led in defence.

**8.** After hearing and analysing the evidence on record, the accused-appellant No.1 and co-accused were convicted under section 20(b)(ii) and Section 23 of NDPS Act and they were sentenced as mentioned in the opening part of this judgment.

**9.** Being aggrieved, the accused-appellant No. 1 has preferred instant criminal appeal.

**10.** In his statement, P.W-1 S. K. Chaturvedi, Senior Intelligence Officer, D.R.I. Gorakhpur has supported the prosecution version and stated that on on 11.07.1993 after receipt of secret information to the effect that huge quantity of charas is being carried in Truck No. HR-47/4854, they reached near Guru Nanak Petrol Pump on the national highway and at about 02.00 PM, they intercepted the said truck bearing No. HR-47/ 4854, which was being driven by appellant Pawan Singh and that co-accused Shri Bhagwan, (khalasi) was also present in the said truck. The accused persons were offered an option of search of the truck before a Magistrate or Gazetted Officer but they did not opt for the same and thereafter in search of the said truck, total 500 kg 'charas' was recovered in 600 packets from the said truck. From each of the packet, 25

gms material was taken as sample. The recovered 'charas' and along with samples were duly sealed and taken into possession vide panchnama / recovery memo exhibit ka-4.

**11.** The version of P.W-1 S. K. Chaturvedi has been supported by PW 2 Ajit Kumar Tiwari, Inspector, DRI. PW 2 Ajit Kumar Tiwari has also made consistent statement regarding the recovery from accused persons. The statements of both the witnesses are consistent with panchnama / recovery memo exhibit ka-4. Both the witnesses have been subjected to lengthy cross-examination, but no material contradiction or any other infirmity could be shown. As the said recovery was made from the truck and thus, the provisions of section 50 NDPS Act are not attracted regarding the recovery. The report under section 57 NDPS Act has been duly proved as exhibit ka-18. There is nothing to show that any of the mandatory provision of NDPS Act was not complied with. The report of Chemical Examiner, CRCL, New Delhi as well as the report of Chemical Examiner, Govt Opium & Alkaloid Works, Ghazipur, show that the samples of recovered contraband, were containing Çharas. The said reports of samples have been duly proved as exhibit ka-26 and ka-28.

**12.** On the basis of evidence of P.W-1 S. K. Chaturvedi and PW 2 Ajit Kumar Tiwari, coupled with documentary evidence on record, the prosecution has been able to prove its case beyond doubt. The trial court has appreciated the evidence in correct perspective and the conviction of appellant No. 1 is based on evidence on record. In view of evidence on record, the conviction of appellant No. 1 under Section 20(b)(ii) and Section 23 of NDPS Act recorded by the trial court is liable to be upheld.

**13.** So far question of sentence is concerned, it has been argued

by the learned counsel for the appellant that by the impugned judgment the appellant has been convicted under Section 20(b) (ii) and Section 23 of NDPS Act and he has been sentenced to 15 years rigorous imprisonment along with fine of Rs. 1 lakh under Section 20(b) (ii) and 15 years rigorous along with fine of Rs. 1 lakh under Section 23 NDPS Act. The appellant is continuously in jail since 11.07.2003 and thus, the appellant has already undergone the sentence of about 18 years nine months. It was submitted that the trial Court has not specified in the impugned order that both the sentences are to be run concurrently and thus, the appellant has not been released so far. Referring to the facts of the matter, it has been submitted that in the facts of the case, 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. It was also stated that the appellant is not a previous convict and there is criminal antecedents against the appellant.

**14.** Learned counsel S.P.P. for the Union of India has opposed and argued that in this case recovery of 500 kg '*Charas*' was made from the truck, which was being carried by the appellant and co-accused and that in view of the quantity of the recovered contraband, the trial Court has rightly not directed to run the sentences concurrently.

**15.** At this stage it would be pertinent to mention that Section 31 of Cr. P.C. relates to the jurisdiction of court to award punishment where the accused is convicted of two or more offences at one trial. Where 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. Here a reference may be made to the decision of the Apex Court in *Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (1988) 4 SCC 183* in which the Hon'ble Apex Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard apposite:

*"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."*

**16.** The scope of section 31 Cr.P.C. and issue of concurrent or consecutive running of sentence was considered by the Hon'ble Apex Court in *O.M. Cherian alias Thankachan v. State of Kerala and Others (2015) 2 SCC 501*. In that case the appellant was convicted for the offences under Section 498-A and Section 306 IPC. The trial court ordered substantive sentences imposed on the appellant thereon to run consecutively and the same was affirmed by the High Court. Considering the scope of Section 31 Cr.P.C. and the discretion of the Court in directing concurrent running sentences, the Apex Court directed sentences to run concurrently. It was held as under:-

*"Under Section 31 Cr.P.C. 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 Cr.P.C. 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 earlier judgment in *Mohd. Akhtar Hussain and Section 31 Cr.P.C.*"

**17.** This Court in case of *Mulaim Singh v. State* 1974 CrL. L.J. 1397 has directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other.

**18.** In case of *V.K. Bansal vs. State of Haryana and V.K. Bansal vs. State of Haryana & Anr.* (2013) 7 SCC 211, the Court held as under:-

*"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."*

**19.** Thus, it is clear that Section 31 Cr.P.C. leaves discretion with the Court to order sentences for two or more offences at one trial to run concurrently or consequently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. However, this discretion is to be exercised

having regard to the nature of the offence committed and the facts situation, in which the question arises. 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. Thus, it is apparent that if the accused is convicted for two or more different offences, arising out of one and the same transaction, the basic rule is that the sentences must be directed to run concurrently. This basic rule of conviction arising out of a single transaction justifying the concurrent running of the sentences has been recognized in case Ibrahim Ahmed Bhatti (supra).

**20.** In the instant case, the recovery of 500/ kg charas has been made from the truck, which was being driven by the appellant and the co-accused was also present in the truck as Cleaner. The recovery has been attributed to both the accused persons and both were convicted under two heads ie under Section 20(b)(ii) and Section 23 of NDPS Act for possession of the same charas. The appellant no.1 has been sentenced to 15 years rigorous imprisonment along with fine of Rs. 1 lakh under Section 20(b) (ii) and 15 years rigorous along with fine of Rs. 1 lakh under Section 23 NDPS Act. Thus, both the offences have arisen from the single transaction. The co-accused, who was convicted with same sentence, has been passed away during pendency of this appeal. In view of these facts and circumstances, applying the above discussed position of law, both the sentences awarded by the trial court must have been directed to run concurrently and

thus, the learned trial court committed error by not directing that both the sentences shall run concurrently. In view of these facts and circumstances, interference is required in sentence.

**21.** In view of aforesaid, the conviction of accused-appellant Pawan Singh under Section 20(b)(ii) and Section 23 of NDPS Act is upheld, but regarding the sentences, it is directed that both the sentences of imprisonment awarded to the appellant no.1 by the trial court, under Section 20(b)(ii) and Section 23 of NDPS Act, shall run concurrently. Accordingly, both the substantive sentences i.e. the rigorous imprisonment of 15 years awarded under Section 20(b)(ii) and the rigorous imprisonment of 15 years awarded under Section 23 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 same.

22. Appeal is partly allowed in above terms.

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

**Order Date :- 18.4.2022**

A. Tripathi