

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.636 OF 2021

(Arising out of SLP (CrI.) No.5183 of 2021
arising out of Diary No.21455 of 2020)

IMRAN JALAL @ BILAL AHMED
@ KOTA @ SALEEM @ HADI

...APPELLANT

VERSUS

STATE OF KARNATAKA

...RESPONDENT

O R D E R

1. Leave granted.

2. This appeal challenges the judgment and order dated 29.11.2019 passed by the High Court of Karnataka at Bengaluru in Criminal Appeal No.2066 of 2016.

3. The aforesaid appeal had challenged the conviction and sentence imposed upon the appellant by the Court of 55th Additional City Civil & Sessions Judge (CCH-56), Bangalore City, in Sessions Case No.1031 of 2008. The order of sentence passed by the Trial Court was as under:

"1) The accused No.1 is sentenced to undergo imprisonment for life and shall pay the fine of Rs.50,000/- (Rupees fifty thousand only) for the commission of offence punishable under section 121 of IPC and in default of payment of fine amount he shall further undergo the imprisonment for 2 (two) years.

2) The accused No.1 is sentenced to undergo simple imprisonment for 10 (ten) years and shall pay the fine of Rs.25,000/- (Rupees twenty-five thousand only) for the commission of offence punishable under section 121-A of IPC and in default of payment of fine amount he shall further undergo simple imprisonment for 1 (one) year.

3) The accused No.1 is sentenced to undergo simple imprisonment for 10 (ten) years and shall pay the fine of Rs.25,000/- (Rupees twenty-five thousand only) for the commission of offence punishable under Section 122 of IPC and in default of payment of fine amount he shall further undergo simple imprisonment for 1 (one) year.

4) The accused No.1 is sentenced to undergo rigorous imprisonment for 10 (ten) years and shall pay the fine of Rs.25,000/- (Rupees twenty-five thousand only) for the commission of offence punishable under Section 5(b) of Explosive Substances Act, 1908 and in default of payment of fine amount he shall further undergo simple imprisonment for 1 (one) year.

5) The accused No.1 is sentenced to undergo simple imprisonment for 10 (ten) years and shall pay the fine of Rs.25,000/- (Rupees twenty-five thousand only) for the commission of offence punishable under Section 25(1A) of Arms Act, 1959 and in default of payment of fine amount he shall further undergo simple imprisonment for 1 (one) year.

6) The accused No.1 is sentenced to undergo simple imprisonment for 10 (ten) years and shall pay the fine of Rs.25,000/- (Rupees twenty-five thousand only) for the commission of offence punishable under Section 26(2) of Arms Act, 1959 and in default of payment of fine amount he shall further undergo simple imprisonment for 1 (one) year.

7) The accused No.1 is sentenced to undergo imprisonment for life and shall pay the fine of Rs.50,000/- (Rupees fifty-thousand only) for the commission of offence punishable under Section 20 of Unlawful Activities (Prevention) Act, 1967 and in default of payment of fine amount he shall further undergo the simple imprisonment for 2 (two) years.

8) The accused No.1 is sentenced to undergo imprisonment for life and shall pay the fine of Rs.50,000/- (Rupees fifty thousand only) for the commission of offence punishable under Section 23(1) of Unlawful Activities (Prevention) Act, 1967 and in default of payment of fine amount he shall further undergo the simple imprisonment for 2 (two) years.

9) Except the sentence of imprisonment for the offence punishable under section 5(b) of Explosive Substances Act, 1908, which is the rigorous imprisonment for 10(ten) years, the other sentences of imprisonments, which are simple in nature, shall run concurrently. The sentence of imprisonment for the offence punishable under section 5(b) of Explosive Substances Act, 1908, which is the rigorous imprisonment for 10(ten) years, shall commence at the expiration of other sentences of imprisonments.

10) The accused No.1 is entitled for set-off, under section 428 of Cr.P.C., of the period of detention undergone during the period of trial of this case."

4. The order of conviction and sentence passed by the Trial Court having been affirmed by the High Court, the present appeal has been preferred. The notice in the matter was confined to the nature and quantum of sentence imposed upon the appellant.

5. We have heard Mr. Siddhartha Dave, learned Senior Advocate in support of the appeal and Mr. Shubhranshu Padhi, learned Advocate for the State.

6. The only submission advanced by Mr. Siddhartha Dave, learned Senior Advocate, on nature and quantum of sentence is that the last part of paragraph 9 of the order of sentence which observed that the sentence of imprisonment for 10 years awarded in terms of

paragraph 4 of the order of sentence would commence at the expiration of other sentences of imprisonment is incorrect.

Taking exception to this direction, Mr. Dave submits that this direction runs counter to the decision of the Constitution Bench of this Court in *Muthuramalingam v. State*¹. Paragraphs 18 and 35 of the decision were to the following effect:

"18. The legal position is, thus, fairly well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless of course the remaining sentence is commuted or remitted by the competent authority. That being so, the provisions of Section 31 under CrPC must be so interpreted as to be consistent with the basic tenet that a life sentence requires the prisoner to spend the rest of his life in prison. Any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. So understood Section 31(1) would permit consecutive running of sentences only if such sentences do not happen to be life sentences. That is, in our opinion, the only way one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.

... ..

35. We may, while parting, deal with yet another dimension of this case argued before us, namely, whether the court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The trial court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the court to direct the order in which sentences will

¹ (2016) 8 SCC 313

run is unquestionable in view of the language employed in Section 31 CrPC. The court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 CrPC. The converse however may not be true for if the court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the court below calls for any modification or alteration is a matter with which we are not concerned. The regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs."

(Emphasis supplied)

7. On the other hand, Mr. Shubhranshu Padhi, learned Advocate for the State has relied upon paragraph 25 of the decision, which is to the following effect:

"25. In *O.M. Cherian case* [*O.M. Cherian v. State of Kerala*, (2015) 2 SCC 501 : (2015) 2 SCC (Cri) 123] the prisoner was convicted and sentenced to imprisonment for the offences punishable under Sections 498-A and 306 IPC. The courts below had in that case awarded to the convicts imprisonment for two years under Section 498-A IPC and seven years under Section 306 IPC and directed the same to run consecutively. Aggrieved by the said direction, the prisoners appealed to this Court to contend that the sentences awarded to them ought to run concurrently and not consecutively. The appeal was referred [*O.M. Cherian v. State of Kerala*, (2015) 2 SCC 501, 506-507 (para 5)] to a larger Bench of three Judges of this Court in the light of the decision in *Mohd. Akhtar Hussain v. Collector of Customs* [*Mohd. Akhtar Hussain v. Collector of Customs*, (1988) 4 SCC 183 : 1988 SCC (Cri) 921]. Before the larger Bench, the prisoners relied upon *Mohd. Akhtar Hussain case* [*Mohd. Akhtar Hussain v. Collector of Customs*, (1988) 4 SCC 183 : 1988 SCC (Cri) 921] and *Manoj v. State of Haryana* [*Manoj v. State of Haryana*, (2014) 2 SCC 153 : (2014) 1 SCC (Cri) 763] to contend that since the prisoners were found guilty of more than two offences committed in the course of one incident, such sentences ought to

run concurrently. This Court upon a review of the case law on the subject held that Section 31 CrPC vested the court with the power to order in its discretion that the sentences awarded shall run concurrently in case of conviction of two or more offences. This Court declared that it was difficult to lay down a straightjacket rule for the exercise of such discretion by the courts. Whether a sentence should run concurrently or consecutively would depend upon the nature of the offence and the facts and circumstances of the case. All that could be said was that the discretion has to be exercised along judicial lines and not mechanically. Having said that, the Court observed that if two life sentences are imposed on a convict the court has to direct the same to run concurrently. That is because sentence of imprisonment for life means imprisonment till the normal life of a convict."

8. In the instant case, the appellant was awarded life sentence on three counts and sentence of 10 years each on five counts, out of which it was only the sentence in respect of the offence punishable under Section 5(b) of the Explosive Substances Act, 1908, which was subject matter of the last part of the directions in paragraph 9 of the order of sentence.

9. Paragraph 9 of the order of sentence contemplated commencement of the sentence awarded under paragraph 4 of the order of sentence, after the expiration of other sentences of imprisonment. It would, therefore, mean that the sentence in paragraph 4 would begin after the expiration of other sentences including sentence for life awarded under three counts. This stipulation would be against the law laid down by this Court in *Muthuramalingam*¹, especially paragraph 35 of the decision as quoted above.

10. Considering the fact situation, in our view, the following sentence appearing in paragraph 9 of the order of sentence:

"The sentence of imprisonment for the offence punishable under section 5(b) of Explosive Substances Act, 1908, which is the rigorous imprisonment for 10 (ten) years, shall commence at the expiration of the other sentences of imprisonments."

must stand deleted. Ordered accordingly.

11. This appeal, therefore, stands allowed in the aforesaid terms.

.....J.
[UDAY UMESH LALIT]

.....J.
[AJAY RASTOGI]

NEW DELHI;
JULY 19, 2021.

ITEM NO.26

COURT NO.3
(HEARING THROUGH VIDEO CONFERENCING)

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No.21455/2020

(Arising out of impugned final judgment and order dated 29-11-2019 in CRLA No.2066/2016 passed by the High Court Of Karnataka At Bengaluru)

IMRAN JALAL @ BILAL AHMED @ KOTA @ SALEEM @ HADI Petitioner(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(IA No.113042/2020 - FOR CONDONATION OF DELAY IN FILING; and, IA No.113043/2020 - FOR EXEMPTION FROM FILING O.T.)

Date : 19-07-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Siddhartha Dave, Sr. Adv.
 Mr. Govind Jee, Adv.
 Mr. Syed Musaib, Adv.
 Mr. Aditya Singh, Adv.
 Mr. Krishna Kumar Singh, AOR

For Respondent(s) Mr. Shubhranshu Padhi, AOR
 Mr. Ashish Yadav, Adv.
 Mr. Rakshit Jain, Adv.
 Mr. Vishal Banshal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave ground.

The appeal is allowed, in terms of the Signed Order placed on the file.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER