IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Criminal Jail Appeal No. 288 of 2017

Appellant	Syed Masood Hussain son of Syed Iqbal Hussain.
Respondent	The State.

Criminal Jail Appeal No. 289 of 2017

Appellant	Syed Masood Hussain son of Syed Iqbal Hussain.
Respondent	The State.

Criminal Jail Appeal No. 290 of 2017

Appellant	Syed Masood Hussain son of Syed Iqbal Hussain.
Respondent	The State.

Criminal Jail Appeal No. 309 of 2017

Appellant	Arshad Hussain son of Abbas Hussain.
Respondent	The State.

Criminal Jail Appeal No. 310 of 2017

Appellant	Arshad Hussain son of Abbas Hussain.
Respondent	The State.

Criminal Jail Appeal No. 311 of 2017

Appellant	Arshad Hussain son of Abbas Hussain.
Respondent	The State.
Appellants	Through Ms. Naila Tabassum Advocate.
Respondent	Through Mr. Muhammad Shoaib Mirza Assistant Attorney General & Mr. Ali Haider Saleem, DPG a/w Agha Zulfiqar Ali, Deputy Superintendent, Central Prison, Hyderabad a/w PC Jehangir.

Date of hearing 26.06.2018.

Date of Judgment 13.08.2018

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J U D G M E N T

SHAMSUDDIN ABBASI,, J:- By this common judgment, we intend to decide aforesaid appeals, which involve common questions of law and facts as well as the appellants are same, therefore, we deem it appropriate to decide the same together.

2. Appellants Syed Masood Hussain and Arshad Hussain having been convicted in above three separate crimes by Special Judge (Offences in Banks) Sindh, Karachi, preferred their respective appeals, numbered above, against each conviction. The details of the cases and sentences awarded to the appellants are explained herein below:-

(i) *By a judgment dated 11.02.2017 passed in Case No.15 of 2012, arising out of FIR No.08 of 2012 registered with P.S. FIA, CBC, Karachi, under Sections 420, 468 and 471, PPC, the appellants were convicted under Sections 420, 468 and 471, PPC and sentenced to undergo rigorous imprisonment for seven (07) years on each count and to pay a fine of Rs.500,000/- on each count, in default whereof they were ordered to undergo rigorous imprisonment for two (02) years on each count, however, benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellants and the sentences awarded to them on each count were ordered to run concurrently;*

(ii) *By a judgment dated 28.01.2017 passed in Case No.16 of 2012, arising out of FIR No.12 of 2012 registered with P.S. FIA, CBC, Karachi, under Sections 420, 468 and 471, PPC, the appellants were convicted under Sections 420, 468 and 471, PPC and sentenced to undergo rigorous imprisonment for seven (07) years on each count and to pay a fine of Rs.500,000/- on each count, in default whereof they were ordered to undergo rigorous imprisonment for two (02) years on each count, however, benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellants and the sentences*

awarded to them on each count were ordered to run concurrently;

(iii) By a judgment dated 11.02.2017 passed in Case No.30 of 2012, arising out of FIR No.18 of 2012 registered with P.S. FIA, CBC, Karachi, under Sections 468, 471, 114 and 109 PPC, appellant Syed Masood Hussain was convicted under Sections 420, 468 and 471, PPC and sentenced to undergo rigorous imprisonment for seven (07) years on each count and to pay a fine of Rs.500,000/- on each count, in default whereof he was ordered to undergo rigorous imprisonment for two (02) years on each count, however, benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellant and the sentences awarded to him on each count were ordered to run concurrently; and

(iv) By a judgment dated 11.02.2017 passed in Case No.05 of 2013, arising out of FIR No.02 of 2013 registered with P.S. FIA, CBC, Karachi, under Sections 420, 468, 471, 34 and 109, PPC, appellant Arshad Hussain was convicted under Sections 420, 468 and 471, PPC and sentenced to undergo imprisonment for seven (07) years on each count and to pay a fine of Rs.500,000/- on each count, in default whereof he was ordered to undergo rigorous imprisonment for two (02) years on each count, however, benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellant and the sentences awarded to him on each count were ordered to run concurrently.

3. All the three crimes registered against each appellant, referred herein above in paragraphs (i) to (iv), contained a common allegation that they used to encash the cheques of different bank customers by using their fake and dummy accounts and indulged in fraudulent activities in respect of offences in bank such as illegal withdrawal of amount through fake and managed cheques by way of tampering, manipulation etc., thereby caused losses to the customers of different banks, which constitute offences punishable under Sections 420, 468 and 471, PPC.

4. Pursuant to the registration of FIRs, the investigations were followed separately and in due course the appellants were sent

up to face trial in three cases before the Court of competent jurisdiction under the above referred Sections.

5. On submissions of charge sheets against the appellants in each case, the learned trial Court initiated separate proceedings, recorded evidence of the parties on the basis of charge framed against the appellants in each case and after hearing both the sides and assessing the evidence on record, convicted the appellants in all the cases, details whereof are explained here in above in paragraphs (i) to (iv), hence these appeals.

6. Learned counsel for the appellants at the very outset submits that she would not press these appeals on merits, if the conviction and sentences awarded to the appellants on each count as well as the sentences awarded in lieu of fines on each count in three separate crimes against each appellants, are ordered to run concurrently alongwith remissions earned by them with benefit of Section 382-B, Cr.P.C. contending that these cases were registered at same police station and tried by the same judge; that the appellants have no previous criminal record and are not dangerous, desperate and hardened criminals as well they are not previously convicted and have served sufficient punishments and due to their confinement in jail, the families of the appellants are passing a miserable life.

7. In contra, learned Assistant Attorney General and Deputy Prosecutor General, appearing on behalf of the State, while supporting the impugned judgments, have argued that prosecution has successfully proved its cases against the appellants beyond shadow of a reasonable doubt through unimpeachable evidence, therefore, the appeals merit no consideration and liable to be dismissed. They, however, did not

oppose the plea taken by the learned counsel for the appellants with regard to running of all the sentences awarded in three crimes concurrently including the sentences awarded in default to pay the fines.

8. We have heard the learned counsel for the appellants and the learned Assistant Attorney General as well as Deputy Prosecutor General on behalf of the State and gone through the entire material available before us with their assistance.

9. The contention of learned counsel for the appellants that they are not dangerous, desperate and hardened criminals as well as not previously convicted is supported from the record inasmuch as the prosecution has not produced any evidence to show that the appellants have any criminal record or history. It will not be out of place to mention here that all the three cases against each appellants, were registered at same police station within the span of one year and tried by the same judge. As per jail roll of appellants, out of the substantive sentences, the appellant Syed Masood Hussain has served sentence of about 04 years excluding period of remission earned by him and appellant Arshad Hussain has served sentence of more than eleven (11) years excluding the period of remission earned by him from the date of their conviction and their families, per learned counsel, are passing miserable life due to confinement of the appellants in jail. Needless to say that normally, it is very difficult for a family to survive without support of earning member of the family. The position, being so, would be nothing but causing misery to the families of the appellants on account of their acts. The peculiar facts and circumstances, so pleaded by the counsel for the appellants,

having gone unchallenged by prosecution may well be taken into consideration for departing from the normal practice.

10. To ascertain actual position with regard to confinement of the appellants in jail, we had called a focal person of the jail and in compliance thereof, the Deputy Superintendent, Central Prison, Hyderabad had appeared and filed separate jail rolls dated 25.06.2018 in respect of both the appellants, which reflect that the conduct of the appellants during their confinement in jail is "satisfactory". They are first offenders and have no previous criminal history or record in their credits. Besides, the appellants claim themselves to be only male members and sole bread earners of their families and have undergone sufficient punishment, therefore, we deem it appropriate that an opportunity may be given to the appellants to improve themselves in a manner to serve the country and become a respectable and law abiding citizen.

11. Keeping in view the above facts and circumstances of the case, we are of the considered view that prosecution has discharged its burden of proving the guilt of the appellants beyond shadow of a reasonable doubt. The counsel for the appellants has also not pressed appeals on merits, thus the appeals are liable to be dismissed on merits. As to the plea of appellants with regard to seeking orders for concurrent running of sentences is concerned, it is suffice to say that awarding punishment is only meant to have a balance in the society because all the divine laws speak about hereafter. Thus, conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the

guilty. The Courts have to appreciate certain circumstances before setting quantum of punishment and an opportunity may be given to a guilty of "reformation" by awarding less punishment which low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents. The plea of concurrent running of all sentences, however, shall not be available to a dangerous, desperate and hardened criminal. The rule laid down in section 397, Cr.P.C. is that a sentence is to commence on the expiration of a sentence to which a person has been sentenced separately, unless the Court directs that both sentences shall run concurrently. Consecutive sentence is, therefore, a general rule while concurrent sentence is only an exception. Only depending on the particular circumstances of a case a plea of concurrent running of sentences awarded in separate crimes can be considered. In the case in hand, the appellants seem to be from educated and respectable families. They want to bring a change in their lives and serve the country by proving themselves to be a respectable and law abiding citizen. The Hon'ble apex Court has settled and defined principles of law under Criminal Procedure Code and passed orders with regard to running of concurrent sentences awarded in different cases /trials. Reliance is placed on a case of *Muhammad Hanif and others v The State and others* reported in 2001 SCMR 84, wherein the Hon'ble Supreme Court of Pakistan has observed as under:-

> *"The suggestion is misconceived inasmuch as section 397, Cr.P.C. empowers Court to direct separate sentences of separate trials to run concurrently when the convict is already undergoing a sentence of imprisonment.*

In another case of *Mst. Shahista Bibi and another v Superintendent, Central Jail Mach and 2 others* reported in PLD 2015 Supreme Court 15, it has been held as under:-

> *"It is by now well embedded and deeply entrenched universal principle of law that while interpreting the provision of punitive law, Courts are required to strive in search of an interpretation, which prefer the liberty of a person instead of curtailing the same and that too unreasonably and unfairly unless, the statutory law clearly directs otherwise.*
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> *8. Besides the provisions of section 35, Cr.P.C. the provisions of, section 397, Cr.P.C. altogether provide entirely a different proposition widening the scope of discretion of the Court to direct that sentences of imprisonment or that of life imprisonment awarded at the same trial or at two different trials but successively, shall run concurrently. Once the Legislation has conferred the above discretion in the Court then in hardship cases, Courts are required to seriously take into consideration the same to the benefit of the accused so that to minimize and liquidate the hardship treatment, the accused person is to get and to liquidate the same as far as possible. In a situation like the present one, the Court of law cannot fold up its hands to deny the benefit of the said beneficial provision to an accused person because denial in such a case would amount to a ruthless treatment to him/her and he/she would certainly die while undergoing such long imprisonment in prison. Thus, the benefit conferred upon the appellant/appellants through amnesty given by the Government, if the benefit of directing the sentences to run concurrently is denied to him/them, would brought at naught and ultimately the object of the same would be squarely defeated and that too, under the circumstances when the provision of S.397, Cr.P.C. confers wide discretion on the Court and unfettered one to extend such benefit to the accused in a case of peculiar nature like the present one. Thus, construing the beneficial provision in favour of the accused would clearly meet the ends of justice and interpreting the same to the contrary would certainly defeat the same.*
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> *9. It is also hard and fast principle relating to interpretation of criminal law, which curtails the liberty of a person that it should be construed very strictly and even if two equal interpretations are possible then the favourable to the accused and his liberty must be adopted and preferred upon the contrary one.*
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> *10.....*
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> *11. .....*

> *12. In this case, the appellants have already undergone all the sentences, so awarded and according to the calculation chart, provided in the petition, the total period of imprisonment comes to 214 years and the total amount of fine imposed is Rs.17,20000/- or in default thereof to undergo imprisonment for a further period of 11-1/2 years' R.I. It was argued at the bar that after getting benefit of section 382-B, Cr.P.0 and various remissions, granted by the Federal, Provincial Governments and the Jail Authorities, the appellant/appellants have undergone sentence of 42 years 7 month and 21 days on the date, the petition for leave to appeal was instituted and the unexpired portion of sentence yet to undergo by the appellant/appellants comes to 171 years 4 months and 9 days. In our view, surely and without any fear of rebuttal, the above facts make out the case of detestable hardship, which in no circumstances, shall go unnoticed like in the past. Thus, a strong case has been made out to extend the prayed concession to the appellant/appellants.*
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> *13.……*
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> *14. If the sentences are allowed to run consecutively, the appellant/appellants, as earlier discussed, would meet natural death during the imprisonment. This undeniable fact was even not disputed by the learned counsel for the State. The very object, for which the Government of Pakistan commuted the sentences of death to life imprisonment and the benefit so accrued to the accused would be denied to him/them in this way and that concession, thus given, would stand nowhere and may evaporate within no time like air bubbles vanish in the air within a twinkle of an eye.*
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> *15. Accordingly, this appeal is allowed and it is directed that all the sentences awarded to the appellant/appellants shall run and shall be deemed to have run concurrently, besides the appellant/appellants shall have also to get the benefit of section 382-B Cr.P.0 and all the remissions whether granted by the Federal, Provincial Governments or the Jail Authorities, shall be extended to them".*

12. Placing reliance on the above citations and keeping in view the facts and circumstances of the present case, explained herein above, we find it a fit case for departure from the normal practice of determining quantum of sentence. The jail roll dated 25.06.2018 reflect that appellant Syed Masood Hussain has served sentence for four (04) years, eleven (11) months and five (05) days up to 25.06.2018, including remissions and by now he has to undergo

the remaining sentence of twenty seven (27) years and twenty five (25) days while appellant Arshad Hussain has served sentence for thirteen (13) years, eight (08) months and three (03) days up to 25.06.2018, including remissions and by now he has to undergo the remaining sentence of eighteen (18) years, three (03) months and twenty seven (27) days, therefore, in our humble view it would serve both the purposes of deterrence and reformation, if all the sentences awarded to the appellants on each count including the sentences awarded in lieu of fine on each count in above-mentioned cases may be ordered to run concurrently. Accordingly, all the sentences awarded to the appellants on each count in all three cases against each appellants, are ordered to run concurrently. The sentences awarded in lieu of fine on each count in three cases, referred herein above in paragraphs (i) to (iv) are also ordered to run concurrently. It is, however, made clear that after completing the substantive sentence of seven (07) years by each appellant, they shall undergo the sentence of two years, awarded in lieu of fines. The appellants shall be entitled to all remissions granted during the period of their confinement in jail with benefit of Section 382-B, Cr.P.C. The appellants shall be set free forthwith, after they have served out their respective sentences, as ordered above.

13. All six appeals, in hand, stand disposed of in the above terms.

JUDGE

JUDGE

Naeem