

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.S-22 of 2020
Criminal Jail Appeal No.S-131 of 2018
Criminal Jail Appeal No.S-155 of 2017.

Date of hearing: 17.04.2023
Date of decision: 17.04.2023
Appellant: Muhammad Siddique,
Through Mr. Ashfaq Ahmed Lanjar, advocate.
The State: Through Ms. Sana Memon, Asst. PG.

JUDGMENT

MUHAMMAD IQBALKALHORO, J:-On 20.08.2014 at 1600 hours appellant was arrested while committing robbery, along with co-accused who absconded, from complainant party sitting inside Dargah Juman Shah, Mirpurkhas. In the course of robbery, PW Fakir Abdul Majeed was injured and from appellant one unlicensed TT pistol was recovered. Accordingly, he was booked in Crime No.38/2014, u/s 397, 34 PPC and Crime No.39/2014, u/s 23(1) (a) Sindh Arms Act, 2013, at PS Mehmoodabad. After his arrest he was also shown arrested in Crime No.26/2014, u/s 394, 397, 34 PPC registered at PS Gharibabad Mirpurkhas. The facts of that case also show that he along with co-accused Sulleman alias Zubair, Rizwan, and Abdullah committed robbery from complainant on 23.04.2014 at 1900 hours when complainant was present at Khipro Naka Bus Stand along with his relatives. In the course of robbery, a companion of the appellant had got injured from fire of his accomplice facing resistance. This FIR was registered on 23.04.2014. All the three cases were tried separately against the appellant and he has been convicted and sentenced as under:

1.Crime No. 26/14, P.S Gharibabad i) US 397 PPC ii) U/S 337-F(vi) PPC iii) U/S 337-F(ii) PPC iv) U/S 337-F(iii) PPC v) U/S 337-F(ii) PPC	R.I 10 years, fine Rs. 50,000/- or 06 months R.I 01 year, Comp: Rs. 100,000/- R.I 01 year, Comp: Rs. 30,000/- R.I 01 year, Comp: Rs. 30,000/- R.I 01 year, Comp: Rs. 30,000/- awarded by the Learned II-Additional Sessions Judge, Mirpurkhas on 14-02- 2017/ with benefit U/S 382-B Cr.P.C w.e.f 20-08-2014 (Above sentences run-concurrently)
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2. Crime No. 39/14, P.S.MehmoodabadU/S 23(i)(a) S.A Act	R.I 05 years, fine Rs. 25,000/- or 01 year awarded by the Learned II-Additional Sessions Judge, Mirpurkhas on 15-05- 2018 with benefitU/S 382-B CrPCw.e.f 20-08-2014
3.Crime No. 38/14, P.S.MehmoodabadU/S 397 PPC	R.I 07 years, fine Rs.10,000/- or 03 months awarded by the Learned 2 nd Assistant Sessions Judge, Mirpurkhas on 17-12-2019 with benefit U/S 382-B CrPCw.e.f 21-08-2014.

2. Today in terms of last order, the Jail Authorities have submitted Jail Roll of the appellant which shows that he has remained in Jail for 17 years, 06 months, 18 days, and has earned remissions of 08 years, 09 months and 20 days, total 26 years 04 months and 08 days. His remaining portion of sentence has been shown as “nil”.

3. At the very outset, learned counsel for the appellant submits that the appellant has already served out his sentences but since compensation amount of Rs.190,000/- is unpaid by him, therefore, he has not been released by jail authorities. He further submits that he will not press the instant appeals on merits if the sentences awarded to the appellant in abovementioned cases are ordered to run concurrently firstly, and secondly the compensation amount is ordered to be recovered from the appellant as arrears of land-revenue, as the appellant has already remained in jail for about 26 years.

4. Ms. Sana Memon, learned Assistant Prosecutor General Sindh has recorded no objection on release of appellant as he has already served out his whole sentence.

5. I have considered submissions of the parties and have perused the material available on record.

6. On the above question of law: concurrent running of sentences as awarded in two separate cases, in the case titled "Rahib Ali v. The State (2018 SCMR 418)" the Supreme Court of Pakistan has been pleased to observe that generally, where a convict is undergoing sentence in earlier conviction and later in a separate trial(s) stand convicted and sentenced for imprisonment for life or otherwise for a shorter term, sentence in subsequent trial commences after sentence in earlier trial is exhausted. However, the trial court seized of subsequent trial and the Appellate Courts in appeal arising there from are empowered under section 397 Cr.P.C. to direct that the subsequent sentence(s) to run

conjointly with previous sentence(s) of imprisonment of life or otherwise as the case may be. In the light of this judgment, it is clear that there is no impediment in exercising the powers u/s 397 CrPC by this Court in these appeals.

7. So far as the compensation amount is concerned, under section 544-A, Cr.P.C., there is no such proviso whereby such recovery in respect of compensation when awarded could be written off or waived, even if substantive sentences are served out. Provisions of section 544-A, Cr.P.C. are mandatory. Under the said provisions even if convict undergoes imprisonment in default of payment of compensation then also the said amount of compensation would be recovered as arrears of land revenue.

8. Accordingly, in view of the above, the captioned appeals are dismissed as the appellant has already served out the sentences in all three cases, and therefore, as not pressed. However, the appellant shall be entitled for benefit under section 397, Cr.P.C. and all the sentences of appellant Muhammad Siddique in all the above mentioned cases, which he has already suffered, are ordered to run concurrently. However, sentences on account of compensation of Rs.190,000/- are maintained which, however, shall be recovered from him as arrears of land revenue in the light of ratio laid down in the case of Muhammad Tufail versus Sessions Judge Attock and others (PLD 2004 SC 89). He shall be released forthwith if he is not required in any other custody case.

All the three appeals in hand are disposed of accordingly.

JUDGE