

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Misc. Application No. 97 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

1. For orders on office objection
2. For hearing of main case.

20-9-2022

Mr. Raj Ali Wahid Kunwar, Advocate for applicant.
Mr. Talib Ali Memon, A.P.G.

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Omar Sial, J.: The relevant background to this application is as follows:

- (i) Muhammad Siddiq was nominated accused in 2 separate F.I.R.'s. registered at the Pakistan Bazar police station These were (i) F.I.R. No. 122 of 2006 under sections 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, and (ii) F.I.R. No. 139 of 2006 under sections 302 and 34 P.P.C.
- (ii) Siddiq was sentenced to rigorous imprisonment for 25 years in the case arising out of F.I.R. No. 122 of 2006 whereas he was sentenced to death in the case arising out of F.I.R. No. 139 of 2006. Both judgments were announced on 28.11.2013.
- (iii) Siddiq challenged the death penalty sentence before the Federal Shariat Court of Pakistan, which vide its judgment dated 22.11.2016 reduced the sentence of death to one of life imprisonment. No appeal was filed by Siddiq against this judgment. No appeal was filed by Siddiq in the 25 years sentence that he was given in the case arising out of F.I.R. No. 122 of 2006.
- (iv) Learned counsel for the applicant has prayed that it be directed that the sentence in both cases be run concurrently as the jail authorities were treating the sentence to run consecutively.
- (v) Learned APG after going through the case law cited by the learned counsel (mentioned below) for the applicant accedes to the prayer of the applicant.

2. I have heard the learned counsel and the learned APG. My observations and findings are as follows.

3. The Supreme Court of Pakistan has addressed the situation that has arisen in the present proceedings in the case titled **Rahib Ali vs The State (2018 SCMR 418)**. In that case, Rahib Ali had impugned an order of the High Court, whereby his application under section 397 read with section 561-A, Cr.P.C. seeking an order to compute two conviction sentences awarded in two different set of proceedings by two different courts to run concurrently, was declined. The Court observed that:

In cases where the subsequent conviction and sentence handed down by the trial court and for that matter the Appellate and or Revisional Court, is silent as to consolidation of two or more sentences or otherwise against a convict already undergoing a sentence; than in appropriate cases inherent jurisdiction of the High Court in terms of section 561-A, Cr.P.C. read with 397, Cr.P.C. could always be invoked. It went on to observe that:

In view of the discussion made above, position that emerges is that the Courts in Pakistan generally take charitable view in the matter of sentences affecting deprivation of life or liberty of a person and unless some aggravating circumstances do not permit so, liberally exercise enabling power under section 35 and section 397, Cr.P.C. respectively to order concurrent running of sentence in one trial and so also consolidation of earlier sentence while handing down sentence of imprisonment in a subsequent trial.”

Taking stock of the legal position as noted above, examining the case in hand, in the first mentioned crime, the petitioner was convicted for life sentence and in the second mentioned case his 14 years imprisonment sentence was enhanced by this Court to life imprisonment. Treating and computing life sentences in two different trial/transactions to run consecutively or second sentence after the exhaustion of the first mentioned life sentence would be in negation of section 57 of P.P.C., as amended, which prescribes that sentence of imprisonment for life corresponds to maximum imprisonment for 25 years and in any case cannot be less than 15 years (per Rule 140 of the Pakistan Prison Rules

*1978); after earning remissions as may be extended by the executive functionaries from time to time but subject to section 401, Cr.P.C., Rule 216 and Rule 218 of the Pakistan Prison Rules, 1978. Reference in this regard may also be made to **Shah Hussain vs The State (PLD 2009 SC 460)** and **Ishfaq Ahmed vs The State (2017 SCMR 307)** as well as **Shaista Bibi and another vs Superintendent, Central Jail Mach and 2 others (PLD 2015 SC 15)**.*

4. In line with the wisdom enunciated by the Supreme Court of Pakistan in the aforementioned case, the 2 sentences awarded to Muhammad Siddiq in the 2 cases (i) F.I.R. No. 122 of 2006 under sections 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, and (ii) F.I.R. No. 139 of 2006 under sections 302 and 34 P.P.C. are ordered to run concurrently.
5. The jail roll which is on file reflects that the applicant has already served 24 years 9 months and 9 days. He may be released once his concurrently run sentence is complete unless he is required in some other custody case, which probably will not be the case.
6. Application stands disposed of in the above terms.

JUDGE