

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE RIZWAN ALI DODANI
MR. JUSTICE MUHAMMAD JEHangIR ARSHAD**

**CRIMINAL APPEAL NO.182/I OF 2001 IN
CRIMINAL MISC. APPLICATION NO.37/Q OF 2012.**

Ahmed Shah son of Raza Muhammad, caste Barakzai, resident of
Kachra Road Quetta (Presently confined in Central Jail, Mach).
.....Appellant

VERSUS

The State

..... Respondent

Learned counsel for the appellant: Mr. Shams-ur-Rehman Rind,
Advocate

Learned counsel for the State : Syed Pervaiz Akhtar,
DPG

FIRs No. Date & PS : 49/1998, dated 22.04.1998,
P.S. Gawalmandi, District Quetta.

: Sessions Case No.43/1999,

: 02/1998, P.S. Pashtoonabad,
District Quetta.

: Case No.29/1999, dated
22.04.1998, P.S. Gawalmandi,
District Quetta.

Date of Impugned Judgment of : 02.11.2004
Federal Shariat Court in J. Cr.
A.No.182/I of 2004.

Date of Impugned Judgment : 13.08.2001
of Sessions Case No.43/1999.

Date of Impugned Judgment : 28.04.2001
of Case No.29/1999.

Date of institution of Cr. Misc. : 30.05.2012
Application in FSC

Date of hearing : 14.06.2013

Date of judgment : 18.06.2013

4. ^{18,} 14.06.2013 Mr. Shams-ur-Rehman Rind, Advocate for applicant/petitioner.
Quetta. Syed Pervaiz Akhtar, DPG Baluchistan for State.

Cr. Misc. Application No.37/Q of 2012

This criminal miscellaneous application has been filed under section 561-A Cr.P.C. in Jail Criminal Appeal No.182/I of 2004 decided by learned Division Bench of this Court on 02.11.2004 whereby the conviction under section 396 PPC and sentence of imprisonment for life recorded by the learned trial Court on 28.04.2001 in Case No.29/1999 against the applicant/petitioner were maintained and the said appeal was dismissed on 02.11.2004.

The facts briefly stated are that prior to the decision of the above noted appeal, the appellant had already been convicted and sentenced in the following two cases:-

- (i) Sessions Case No.43/1999 tried under section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance VI of 1979 but convicted under section 394/34 PPC and sentenced to ten years R.I. vide judgment dated 13.08.2001 against which no appeal was filed.
- (ii) In case No.2/1998, Police Station Pashtoonabad tried under section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance VI

of 1979 but convicted under section 398 PPC and sentenced to ten years R.I. vide judgment dated 24th March, 1999 but no appeal was filed.

Through the present Criminal Miscellaneous Application, it is prayed that the sentences recorded by the learned trial Court in the above noted two cases be ordered to run concurrently with the sentence of life imprisonment confirmed in Jail Criminal Appeal No.182/I of 2001 by this Court on 02.11.2004 under section 397 PPC. The grievance of the applicant/petitioner is that inadvertently at the time of passing of judgment in all the above noted three cases neither the applicant/petitioner nor his learned counsel could request the concerned Court for directing concurrent running of sentences in the said cases alongwith the sentence passed in Jail Criminal Appeal No.182/I of 2001. Learned counsel for the applicant/petitioner in support of his contention has placed reliance on the judgment of learned Division Bench of Lahore High Court Lahore reported as *Sanaf Gul alias Sunny Versus The State 2005 P.Cr.L.J 370 (Lahore)*. Learned counsel for the applicant/petitioner further argued that since the appellant is still behind bar and undergoing the sentence, therefore, the delay in making this application as in consequential and this Court has the vast powers under section 397 Cr.P.C. read with

section 561-A Cr.P.C. to allow the prayer made in the application in the interest of justice, specially on the ground that lesser sentence always merge into the major sentence. Learned counsel for the applicant/petitioner further argued that according to the report submitted by the Superintendent, Central Prison, Mach 26.12.2012 requisitioned by this Court vide order dated 14.11.2012, the conduct of the appellant during confinement at Central Prison, Mach was satisfactory. Learned counsel for the applicant/petitioner therefore, submits that this application be allowed in the terms as prayed for.

On the other hand, learned DPG Baluchistan for State has opposed this application by arguing that as the applicant/petitioner never made such request before the concerned Court which recorded the above noted judgments at the time of their announcement and further all the three cases registered against the appellant related to different occurrence as well as were decided by different Courts, therefore, this application was not maintainable.

We have considered the above noted arguments of the learned counsel for the parties and have gone through the entire record of the case.

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Admittedly, the applicant/petitioner was originally tried in all the three cases under Hudood Laws but the sentences were also recorded as Tazir, therefore, this application was maintainable before the Federal Shariat Court and for that reason this Court can exercise its inherent jurisdiction under section 561-A Cr.P.C, while deciding this application. Both the above noted three cases were registered against the applicant/petitioner though for different occurrence and different dates, yet the fact remains that the appellant/petitioner was tried under Hudood Laws, therefore, this Court can provide relief to the applicant/petitioner by invoking the provisions of section 397 Cr.P.C. As the judgment of the Courts below in the above noted cases are silent as to whether the sentence in all the cases would run consecutively or concurrently, therefore this Court can take curative measures under section 561-A Cr.P.C. to serve the interest of justice as held by a learned Division Bench of the Hon'ble Lahore High Court, Lahore in the above noted judgment relied upon by the learned counsel for the appellant/petitioner. Even otherwise, it is an established principle of law that lesser sentences always merge into the major one. Further as reported by the Superintendent, Central Prison, Mach, the conduct of the appellant during his confinement in jail is satisfactory and the same may be considered as an additional ground for exercising jurisdiction

under section 397 Cr.P.C. in his favour instead of throwing away this application on technical ground as pointed out by the learned DPG Baluchistan for State.

Resultantly, this Criminal Miscellaneous Application is allowed and it is directed that sentences passed and recorded against the applicant/petitioner Ahmed Shah son of Raza Muhammad in all the above noted three cases shall run concurrently. The Superintendent, Central Prison Mach be informed accordingly.

Above are the reasons for our short order dated 14.06.2013.


18/6/2013

JUSTICE MUHAMMAD JEHANGIR ARSHAD


JUSTICE RIZWAN ALI DODANI

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Approved for reporting.



JUSTICE MUHAMMAD JEHANGIR ARSHAD