

JUDGMENT

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This application contains prayer to the effect that the sentences of imprisonment inflicted on the applicant in the following cases, which, in the aggregate, are about 43 years and 3 months, may be made concurrent as in the appeal filed by the present applicant i.e. criminal appeal bearing No.8/Q of 1996, (Case FIR No.58/95 P.S. City), the sentences inflicted on co-accused namely, Abbas Shah were also made concurrent:-

<u>S.No.</u>	<u>FIR No.</u>	<u>Under Section</u>	<u>Sentence</u>	<u>Sentencing Court</u>
1.	58/95 P.S.City	17/2 Haraba	10 years R.I. Fine Rs.50000/- Or one year more	Addl:Sessions Judge H. Quetta
2.	61/95 P.S.City	13E Arms Order	3 years R.I. fine nil	Addl:Sessions Judge H. Quetta
3.	33/95 P.S. City	17/3 Haraba	7 years R.I. fine nil	Addl:Sessions Judge H. Quetta
4.	58/94 P.S.Bijli Road	17/3 Haraba	10 years R.I. fine Rs.5000/- Or two years more	Addl:Sessions Judge H. Quetta
5.	81/94 P.S.Browry	17/3 Haraba	5 year fine Rs 5000/- Or 3 months more	Adhoc Sessions Judge-Quetta
6.	73/94 P.S.Bijli Road	17/2 Haraba	5 years R.I. 10 stripes	Adhoc Sessions Judge-Quetta.

2. Learned counsel for the applicant has contended that though the sentences of imprisonment inflicted on co-accused Abbas Shah which

in the aggregate came to 58 years, in different cases, were made concurrent yet, since no application for the grant of such relief/benefit, was filed by the present applicant, therefore, it could not be afforded to the applicant. He has added that since in a number of cases it has been laid down by the Superior Courts that any benefit afforded to one appellant can be extended to the co-accused persons or non-appealing convicts as well, therefore, on the same premise the application filed by applicant Muhammad Imran may be sympathetically considered and allowed as he is a young man of tender age and the only earning male member of his family. He has also tried to canvass that since the sentences of imprisonment inflicted on the applicant, though at different trials, in the aggregate, are more than life span of a person, as the life imprisonment has, under section 57 PPC, in calculating the fractions of punishments, been equated, with 25 years imprisonment, therefore, the sentences inflicted on the applicant, may be ordered to run concurrently with his previous sentences in other cases and inter-se as well. He has pointed out that the sentences inflicted on the

applicant, in the cases mentioned at serial No.1 and 2, have already been ordered to run concurrently by the sentencing Court i.e. Additional Sessions Judge-II, Quetta yet, since no clear order with regard to status of the sentences of imprisonment in the cases at serial No.3 to 6, has been passed by the trial Courts, as to from which date it would start running either from the date of the arrest of the applicant or whether it would be concurrent or otherwise, therefore, the applicant, who is repentant, may also be afforded the benefit already granted to the co-accused. Learned counsel for the applicant has added that applicant's behaviour in jail has, so far, been exemplary as he, while undergoing the sentences of his imprisonment, has not only improved his education considerably by passing Urdu Adeeb, Urdu Alam, Urdu Fazil, Intermediate and B.A. Examinations from jail but has also mended his ways and has thus shown that, if given a chance, he can be a useful member of the society.

3. Mr.Muhammad Shoaib Abbasi, Advocate, learned counsel for the State in view of the fact that the sentences in the case of the co-

accused namely, Abbas Shah have already been made concurrent, does not oppose the application. He has, however, stated that since the application, in hand, has been filed after disposal of the appeal filed by the applicant, therefore, it may be seen as to whether or not the Court, after deciding the said appeal, has become functus officio.

4. I have given my anxious consideration to the respective contentions of the learned counsel for the parties. So far as the objection raised by the learned counsel for the State that since this Court after deciding the appeal, has become functus officio, therefore, the relief claimed through the application in hand cannot be granted, is concerned, it may be pointed out here that though appeal filed by the applicant was decided by this Court on 25.4.2001 yet, since the applicant omitted to file the application in hand, at the relevant time, which, if filed, would have been otherwise allowed, as application filed by the co-accused Abbas Shah, whose case was at par with the applicant, was allowed, hence, to my mind, this Court notwithstanding decision of the appeal, has not become functus officio because the

Courts are always competent to decide the matters related with the main "case". It may be noted here that though the words case, cause or action are convertible terms, each meaning proceeding in a Court yet, in common parlance the word "case" is more comprehensive and enfolds not only a decision on a particular issue or with regard to an accused but also includes determination of matters ancillary thereto or connected therewith. For instance, the grant of benefit under section 382-B Cr.P.C. if omitted by the trial or Appellate Courts at the time of decision of the case or the appeal, or an order passed under Article 14 of the Prohibition (Enforcement of Hadd) Order, 1979, with regard to confiscation of the vehicle used in transportation of the contraband material i.e. intoxicants etc. after decision of the case or appeal. In a number of cases the relief originally not claimed or omitted inadvertently, was granted subsequently by the superior Courts. Reference, in this regard, may usefully be made to the following reported judgments:-

1. Akram Khan and 2 others vs. The State 1990 SCMR 486
2. Iqbal Elahi vs. The State 1987 SCMR 1274;

3. Muhammad Hussain vs. The State PLD 2005 Karachi 196;
4. Muhammad Amin vs. The State SBLR 2004 Sindh 914;
5. Muhammad Yousaf vs. The State 1998 PSC (Crl.) 5;
6. Haji Muhammad Ismail vs. The State 1992 P.Cr.LJ 988
7. Muhammad Aziz vs. The State 1997 MLD 1433
8. Sabir Khan vs. The State PLJ 1994 FSC 26;
9. Mst.Razia Bibi and 3 others vs. Muhammad Arshad and others 1994 MLD 1
10. Khalil Ahmad vs. The State 1994 MLD 1739;
11. Akbar Khan vs. The State PLJ 1991 FSC 85
12. Liaquat vs. The State 1991 P.Cr.LJ 1721;

I am, therefore, inclined to hold that so far as grant or refusal of the relief claimed through the instant application is concerned this Court has not become functus officio.

5. It would be pertinent to mention here that sentences of imprisonment inflicted on co-accused namely, Abbas Shah in ten cases which came to 58 years, in the aggregate, were ordered to run concurrently with the sentences inflicted on him in Criminal Appeal No.8/Q of 1996 and Jail Criminal Appeal No.23/I of 1996, filed by the present applicant and the said co-accused and inter se as well, on the application made by accused Abbas Shah as well as on a reference from the learned Sessions Judge, primarily for the reasons that the

said appellant, who was a young man of 22 years, was the only male member of the family comprising of an aged mother and six unmarried sisters. He was repentant and his conduct in jail was also exceptionally good.

6. The relevant discussion from the judgment 'Muhammad Imran and another' reported as SBLR 2001 FSC 50 is reproduced herein below for ready reference and convenience:-

"13. So far as Criminal Reference No.2/Q of 1999, is concerned, it may be pointed out here that the learned Sessions Judge has not decided the application filed by Abbas Shah himself, and has referred the same to this Court for disposal because, according to him, his conception regarding application of various provisions of law to the proposition in hand, was not clear. He was of the opinion that since both the provisions i.e. section 397 as well as 35 of the Criminal Procedure Code, whereunder different sentences may be ordered to run concurrently, were in conflict with each other, therefore, a recourse to section 3(12) of the General Clauses Act, which, according to him, was applicable to the enforcement of judgments from the date of its announcement was inevitable. However, later on, he himself retorted the argument by saying that since the provision of section 397 Cr.P.C. being a special law has to override the general law, therefore the direction sought for cannot be made thereunder, as well. In the reference, however, he has mentioned the cases Nos.58/95,45/95,33/95,58/94, 73/94,238/94 and 81/94 only.

14. Before dealing with the proposition, it would be advantageous to have a glance at the relevant provisions i.e. section 3(12) of the General Clauses Act section 397 PPC and 35 of the Criminal Procedure Code, which read as follows:-

"S.3(12):- "commencement", used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

"S.397, Sentence on offender already sentenced for another offence: When a person already undergoing a sentence of imprisonment, or imprisonment for life is sentenced to imprisonment, or imprisonment for life such imprisonment, or imprisonment for life shall commence at the expiration of the imprisonment, or imprisonment for life to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence."

S.75. Sentence in case of conviction of several Offences at one trial:- (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Pakistan Penal Code sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict, such punishment, when considering of imprisonment or transportation to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on

conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:-

Maximum term of punishment.

- (a) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years;
- (b) If the case is tried by a Magistrate other than a Magistrate acting under section 34, the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose appeal, the aggregate of consecutive sentences passed under this section in case of conviction for several offences at one trial shall be deemed a single sentence."

A bare perusal of the above provisions would lead to the inference that section 3(12) of the General Clauses Act which provides for the definition of the word "commencement" has been used in the enactment for and in reference to coming into force "an Act or Regulation" therefore, it has no nexus with the proposition in hand. Whereas, the provisions of section 397 as well as section 35(1) Cr.P.C. deals with altogether different situations. The basic difference, between the two provisions, is that where, section 397 Cr.P.C. prescribes for the running of different sentences inflicted on an offender, at different trials, for different offences, without any clog of time, place and nature of offence. Section 35 Cr.P.C. enjoins that it would come into play only, when a person is convicted at one trial of two or more offences, so apparently both these sections are not in conflict with each other, rather it cater for and deals with different situations and since a direction under section 35 Cr.P.C. is contingent on the conviction of a person for several

provision or the direction to make the sentences concurrent is necessary to secure the ends of justice. For instance, for an act or omission constituting an offence under two or more enactments the offender shall be liable to be prosecuted and punished under either or any of those enactments as provided by section 26 of the General Clauses Act yet, he cannot be punished twice for the same offence keeping in view the provisions of Article 13 of the Constitution of the Islamic Republic of Pakistan read with section 403 Cr.P.C. In such a case it would be appropriate to record convictions separately and award concurrent sentences if they are of imprisonment, as was held in the case of Niaz Ali v. The State (PLD 1961 (W.P.) Lahore 269 wherein appellant was convicted under section 161 of the PPC and section 5(2) of the Prevention of Corruption Act, 1947 and was awarded concurrent sentences of six months rigorous imprisonment on each count and, in addition, sentences of fine of Rs.50 on each count were also inflicted. It was held that punishment of fine of Rs.50 under each of the two enactments making a total of Rs.100 tantamounts to duplication of punishment, for the same offence.

16. The case of Khan Zaman and other v. The State 1987 SCMR 1382 is yet, another example. In that case the petitioners at first instance were sentenced to death, but on appeal to the High Court their sentences were altered to life imprisonment on each count relating to each of the two murders committed by them. but sentences were ordered to run consecutively. On petition for leave to appeal, the Hon'ble Spreme Court of Pakistan while referring the cases of Juma Khan and another v. The State 1986 SCMR 1573 and Muhammad Itifaq v. The State 1986 SCMR 1627 was pleased to hold that in view of proviso(a) to section 35(2) Cr.P.C. the petitioners could not have been sentenced for more then 25 years imprisonment and, therefore, the sentences recorded against the petitioners shall run concurrently.

offences at one trial, therefore, section 35 Cr.P.C. in my view, is not attracted to the instant case because appellant Abbas Shah has been convicted at different trials, for the offences committed at different times and places. However, section 397 Cr.P.C would be helpful to some extent, as it empowers a Court to direct that any sentence of imprisonment inflicted on a person subsequently, while he is already undergoing a sentence of imprisonment, may run concurrently, with his previous sentence yet, it too, does not answer the proposition conclusively as it is silent with regard to the running of sentence concurrently, interse. To my mind, the Court in the situation would have to have a recourse to both sections 397 as well as 561(A) of the Criminal Procedure Code. In this view of the matter I am fortified by the observations made in the following reported judgments:-

1. Janta Kausar Banarjee vs. The State
AIR 1955 Calcutta 632
2. Nagappa Ryanhappa Sali and others vs. Emperor
134. IC 1931 AIR 1931 Bom 529
3. Mullapudi Venkanna vs. The State
AIR 1964 Andhra Pradesh 499
4. Baijnath Kurmi and another v. The State
AIR 1961 PATNA 138.
5. Sis Ram and others vs. Emperor
AIR 1929 Allahabad 585

15 It may be pointed out here that though under section 397 Cr.P.C the Court is competent to direct that in case a person is already undergoing a sentence of imprisonment any sentence passed subsequent thereto shall run concurrently with such previous sentence and normally direction in this regard is made under section 561-A Cr.P.C. yet, the power so vested has to be exercised sparingly in certain cases only where imposition of subsequent sentence either offends any constitutional or legal

In the above context reference may also be usefully made to a judgment delivered by the Hon'ble High Court of Sindh Karachi in Constitution Petition No.D.1305 of 92 an unreported judgment referred to in the case of Zareen Shah v. Superintendent Central Jail Mach and another 1997 P.Cr.L.J 1185) wherein the convict was sentenced to 61 years imprisonment, in the aggregate, in seven different cases by three different Courts and was in custody for almost 30 years since the date of his arrest and was left with no other relative in this world except his only an ailing sister. His sentences of imprisonment in all the cases were ordered to run concurrently. Needless to point out that inherent powers of the Court can be exercised only for doing complete and substantial justice keeping in view the merits of each case. Reference in this regard, the cases reported as Hasan Shah v. Ghulam Murtaza and another PLD 1970 SC 335, Khawaja Fazal Karim v. The State PLD 1976 SC 461 and Ghulam Muhammad v. Muzammal Khan and another PLD 1967 SC 317, may be referred to.

17. It would also be not out of place to mention here that purpose behind the infliction of sentence is two fold: firstly, it shall create such atmosphere which may become a deterrence for the people who have inclination towards crime and secondly to work as a medium in reforming the offenders. The sentence should be neither so severe that the offenders may, out of frustration, become desperate and hardened criminals nor it should be so mild that they may be encouraged to commit the offence again. Needless to point out that in judging adequacy of sentence certain other factors such as, circumstances in which the offence was committed, age and character of the offender and injury to the individuals and the society etc are also to be considered.

18. In the instant case, the appellant has been convicted and sentenced in a number of cases at different trials committed at

different times and places and though the only common factor is that all these cases have been registered under the provision of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, and as per general rule the sentences of imprisonment inflicted on the appellant in these cases have to run consecutively yet, keeping in view the submission made by the learned counsel for the parties, as well as facts of the case especially that appellant is a young man of about 22 years, is the only male member of the family which comprises of an aged mother and six unmarried sisters and that as per report from the Superintendent Jail, conduct of the appellant in jail has been exceptionally good and he has been undergoing exams which indicates that he has the spirit and zeal to reform himself. I am inclined to direct that sentences of imprisonment inflicted on appellant Abbas Shah in cases bearing Nos.45/94,33/95,58/94,73/94,238/94 and 81/94 shall run concurrently with the sentences of imprisonment in the instant case and interse as well. However, the sentences of fine or the quantum of terms of imprisonment in default thereof, recorded against appellant Abbas Shah in all the cases shall remain the same. It is hoped that the indulgence shown to appellant Abbas shah would bring out of him a law abiding and respectable citizen."

It is well-settled that benefit granted to one appellant can be granted to the non-appealing accused persons, as well. This view receives support from the following reported judgments:-


1. Muhabbat Ali and another v. The State 1985 SCMR 662;
2. Muhammad Aslam and five others vs. The State 1972 SCMR 194;
3. Akbar Hussain and another vs. The State 1997 P.CrI.LJ 543;

4. Mukhtar Ahmad etc vs. The State NLR 1991 SD 691;
5. Pawan Kumar vs. State of Haryana 2003(5)Supreme 196;
6. Bijoy Singh and another vs. State of Bihar 2002(4) Supreme 362;
7. Durga Shankar Mehtar v. Raghuraj Singh and others, AIR 1954 SC 520.
8. Harbans Singh v. State of Uttar Pradesh and others (1982) 2 SCC 101;
9. Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra, JT 2003 (2) SC 158.
10. Anil Rai v. State of Bihar, (2001) 7 SCC 318;
11. Raja Ram and others v. State of M.P., (1994) 2 SCC 568;
12. Chellappan Mohandas and others v. State of Kerala, AIR 1995 SC 90;
13. Dandu Lakshmi Reddy v. State of A.P., (1999) 7 SCC 69;
14. Gurucharan Kumar and Anr. v. State of Rajasthan, JT 2003(1) SC 60
15. Suresh Chaudhary v. State of Bihar, (2003 4 SCC 128;

4

And since, in the instant case, applicant Muhammad Imran is also a young man, as his age at the time of the commission of the offence was about 20 years, he has, while in jail, considerably improved his education by passing a number of exams, as pointed out by the learned counsel for the applicant. his conduct in the near past has been remarkable and his case is at par with co-accused Abbas Shah, therefore, I am inclined to allow this application as well in the hope that the indulgence shown to the applicant would bring out of him a

law abiding and respectable citizen. Accordingly, it is directed that sentences of imprisonment inflicted on applicant Muhammad Imran son of Muhammad Aqil in cases No.2 to 6, detailed in the opening para hereof, shall also run concurrently with the sentences of imprisonment in the case FIR No.58/95 at serial No.1 and interse as well. However, the sentences of fine or the terms of imprisonment in default thereof, inflicted on the applicant in the above cases, shall remain the same as ordered by the trial/appellate Courts.


(Ch. Ejaz Yousaf)
Chief Justice

Islamabad, dated the
20th May, 2005
ABDUL RAHMAN/**

FIT FOR REPORTING

Chief Justice