

J. Cr. Misc. No.16/I/2007 &  
J. Cr. Misc. No.166/I/2008 IN  
J. Cr. Appeal No.306/I/2003  
J. Cr. Appeal No.307/I/2003

23.06.2010  
QUETTA

Nemo for applicant.  
Mrs. Noor Jahan Kahoor Advocate for the State.

**ORDER:**

It is past 12.00 noon. The case has been called thrice but no one is present on behalf of the applicant. This is the 13<sup>th</sup> date of hearing. The matter cannot be kept pending indefinitely. In this view of the matter I am proceeding to dispose of the two applications. I have heard the learned Counsel for the State. I have scanned the contents of the two applications. The connected record has been perused.

2. This order will dispose of two miscellaneous applications moved by Abdul Shakoor petitioner at present confined in Machh Jail, Balochistan.

3. As indicated below the petitioner was convicted and sentenced on three different occasions:-

- (i) A crime report was initiated against Abdul Shakoor on 25.11.2002 which was registered as FIR No.98/2002 with Levies Thana Pishin under section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance 1979 read with section 34 of the Pakistan Penal code. After investigation a trial ensued and the petitioner was convicted under section 392 of Pakistan Penal Code and sentenced to seven years rigorous imprisonment and a fine of Rs.20,000/- or in

default of payment of fine to undergo a further period of two years rigorous imprisonment by the order of Sessions Judge Pishin on 18.11.2003. Appeal against this judgment was dismissed by Federal Shariat Court on 06.04.2004 vide Jail Criminal Appeal No.306/I/2003. Leave in this case was refused by the Supreme Court of Pakistan on 08.11.2006 vide Jail Shariat Petition No.65 of 2004.

- (ii) An information was lodged against the petitioner on 25.11.2002 which was registered with Police Station Levies Pishin as FIR No.99/2002. After investigation the petitioner was sent up for trial which culminated in his conviction recorded by trial Court on 18.11.2003 under section 13-E Arms Ordinance, 1965 and he was sentenced to three years rigorous imprisonment with a fine of Rs.10,000/- or in default of payment of fine six months simple imprisonment. Appeal against this conviction and sentence was dismissed by the High Court Balochistan, Quetta on 19.03.2004. However sentence was reduced from three years to two years rigorous imprisonment and the fine was reduced to Rs.8,000/- or in default of payment of fine to undergo a further period of four months simple imprisonment.

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(iii) Yet another crime report was lodged against petitioner on 03.11.2002 which was registered with Police Station Levies Pishin as FIR No.86/2002. As a result thereof Criminal Trial commenced which resulted in the conviction of Petitioner on 18.11.2003 and he was sentenced to seven years rigorous imprisonment with fine of Rs.20,000/- or in default of payment of fine to undergo additional period of two years rigorous imprisonment under section 392 of the Pakistan Penal Code. Appeal against this conviction and sentence was dismissed by Federal Shariat Court on 27.04.2004 vide its judgment delivered in Jail Criminal Appeal No.307/I/2003. Petition for special leave to appeal Jail Shariat Petition No.65 of 2004 was dismissed on 02.12.2008 by the Supreme Court of Pakistan.

4. Law relating to sentence, awarded to a person already undergoing a sentence of imprisonment, is contained in section 397 of the Code of Criminal Procedure. The provision reads as under:-

**Section: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:

Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

5. I had the advantage to scan inter-alia the following reports on the question of scope of section 397 of the Code of Criminal Procedure:-

- (i) Nagappa Vyankappa Sali Vs. Emperor  
AIR 1931 Bombay 529
- (ii) Jainta Kumar Banerjee Vs. The State  
AIR 1955 Calcutta 632
- (iii) Muhammad Hanif & others Vs. The State & others  
2001 S.C.M.R 84
- (iv) Mian Gulzar Muhammad Vs. Crown  
PLD 1950 Lahore 497
- (v) Peter Erastos & others Vs. The State  
1992 MLD 193
- (vi) Nek Muhammad and another Vs. The State  
PLD 2007 Karachi 62

- (vii) Abdul Hamid Vs. The State  
1990 P.Cr.L.J 568
- (viii) Zareen Shah Vs. Superintendent Jail, Machh  
1997 P.Cr.L.J 1185
- (ix) Muhammad Yaqub Tahir Vs. Superintendent,  
District Jail, Rawalpindi.  
PLJ 1978 Criminal Cases (Lahore) 531
- (x) Bashir Vs. State  
PLD 1991 Supreme Court 1145
- (xi) Muhammad Imran son of Muhammad Aqil and  
another Vs. The State  
S.B.L.R 2001 FSC 50
- (xii) Ahmad Sultan and another Vs The State  
2007 S.C.M.R 1424
- (xiii) Ahmad Jan Vs. District & Sessions Judge & another  
PLD 1994 Quetta 1
- (xiv) Salim Raza Vs. The State and another  
1998 P.Cr.L.J 284 (Lahore)
- (xv) Ahmad alias Ahmun & 3 others Vs. The State  
1991 P.Cr.L.J 1445 (Lahore)
- (xvi) Shaukat Hayat Vs. Superintendent, Central Prison, Karachi  
2000 P.Cr.L.J 1905 (Karachi)
- (xvii) Mst. Zubaida Vs. Falak Sher and others  
2007 S.C.M.R. 548
- (xviii) Gullat Shah Vs. The State  
1992 S.C.M.R 1424
- (xix) Khan Zaman and others Vs. The State  
1987 S.C.M.R 1382

6. My conclusions are as follows:

- (i) It is the prerogative of the trial Court to direct the subsequent sentence to run concurrently with the previous sentence in given facts and circumstances of a case.

(ii) The powers exercisable by trial Court can be exercised by the appellate Court when the appeal is being disposed of by the latter forum.

(iii) That the High Courts or for that purpose the Federal Shariat Court has no jurisdiction to exercise power either under Article 199 of the Constitution of Pakistan or Section 561-A of the Code of Criminal Procedure to interfere in the sentences awarded by the trial Court when the matter is not before it either as Appeal or as Revision.

(iv) Where the relief under section 397 of seeking concurrent running of sentences has neither been given/obtained from the Court awarding subsequent sentence or the Court of appeal deciding the case of subsequent sentence, then the prisoner cannot claim relief in collateral proceedings because finality is attached to all the legal decisions wherein the remedy was either denied or it was not claimed. Collateral proceedings are not legally recognized substitutes of the remedy by way of appeal or revision under the Code of Criminal Procedure.

(v) The Federal Shariat Court may interfere in the mode of execution of sentences only if the matter is before it is in Appeal or Revision but once a matter has been finally concluded by the Federal Shariat Court in its appellate or revisional jurisdiction it becomes

functus officio. However the power of review conferred upon the Federal Shariat Court under Article 203 of the Constitution may be used only when grave miscarriage of justice has been brought to its notice.

(vi) The Federal Shariat Court can exercise jurisdiction only in cases which are within its competence under Article 203-DD of the Constitution and in no other matter.

(vii) That after all legal remedies including special petition for leave to appeal before the Supreme Court have been exhausted by a convict no fresh round of litigation can be initiated on the sole ground of converting consecutive sentences into concurrent sentences.

(viii) Cases where the victims are different and the dates of occurrence of offence and the crime reports are different, the trials are separate and may be the nature of offences are dis-similar, the Court deciding the subsequent trial would eschew awarding sentences to run concurrently unless the facts and circumstances of the case demand to the contrary.

(ix) Where the trial or the appellate Court refrains from directing the subsequent sentence to run concurrently with the previous sentence then the sentences will run consecutively whether the sentences were awarded for different offence in the same or

separate trials irrespective of the fact that the judgments were announced on the same or different dates by the same or a different Court.

(x) Where the sentence awarded in a previous trial has been set aside in appeal the sentence in the subsequent trial, though supposed to have run consecutively, will be deemed to have commenced from the date of conviction and the period undergone in the previous sentence will be deemed to have been spent in respect of the subsequent sentence.

(xi) Once an accused has been awarded life sentence at one trial, the sentence awarded at the subsequent trial may be ordered to run concurrently to avoid sentences exceeding life imprisonment. Aggregate of punishments of imprisonment for several offences at one trial is deemed to be a single sentence under section 35 of the Code of Criminal Procedure.

7. As a consequence of what has been stated above the three sentences awarded to petitioner Abdul Shakoor cannot be made to run concurrently because:-

- (i) I am not sitting in appeal over the three separate convictions and consequent sentences recorded by three trial Courts in three different cases;
- (ii) One of the conviction is recorded under section 13 E of the Arms Ordinance which is beyond the jurisdiction of Federal Shariat Court;

- (iii) The petitioner had gone upto the Apex Court where his Jail Shariat Petition No.64(S) of 2004 and Jail Shariat Petition No.65(S) of 2004 was dismissed on merit meaning thereby that the convictions and sentences recorded against the petitioner had gained finality on 02.12.2008/08.11.2006 respectively;
- (iv) The appeal against conviction and sentence recorded under section 13 E of Arms Ordinance on 18.11.2003 was dismissed on 19.03.2004, whereby reduction of one year in the sentence was ordered by the High Court of Balochistan in Cr. Jail Appeal No.141/2003. The petitioner has already benefited by the said order;
- (v) The two Appeals filed by the petitioner as Jail Criminal Appeal No.306/I of 2003 and Jail Criminal Appeal No.307/I of 2003 had been dismissed by Federal Shariat Court on 06.04.2004 and 27.04.2004 respectively without any direction for converting the consecutive sentences in concurrent. There is no material to review those judgment which have since attained finality; and
- (vi) The petitioner had been given the benefit of section 382-B of the Code of Criminal Procedure

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by the trial Court which advantage was not disturbed in appeal.

(vii) There is no material on record to show that any grave miscarriage of justice has occurred or any unjustified harm has been done to the petitioner particularly when the general law of the land mandates consecutive sentences. It is not a case of hardship of nature that where a person has been awarded life term in a previous trial and is also sentenced to another substantial term of imprisonment in a subsequent trial in which event the superior judiciary in the larger interest of justice might as well interfere and direct the consecutive sentence to run concurrently.

8. The tradition of the Holy Prophet, P.B.U.H, no doubt recommends removing difficulties and creating ease and comfort for the people but the difficulty in the way of petitioner is not the doing of any other individual. The hardship by way of imprisonment was earned by the petitioner himself as a consequence of violating the existing laws. Awarding of punishment to a transgressor is in consonance with Islamic teachings. The alleged hardship has not been created in this case for the petitioner alone. The provision contained in section 397 of the Code of Criminal Procedure is the general law of the land which has not been declared to

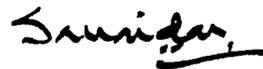
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be repugnant to the Injunctions of Islam. Moreover Ayat 38 of Sura 74 of Holy Quran is also in the field which proclaims that every soul is held in pledge for its deeds. Ayat No.8 of Sura 99 of Holy Quran declares that every one who has done an atom's weight of evil, shall see it. The offences committed by the petitioner were distinct in nature and done on different occasions against different persons whose basic rights were violated. The offences committed by the petitioner created law and order problem in the society. The machinery of the State had come into motion as a consequence of registration of criminal cases against the petitioner. The petitioner proved himself to be a repeater and hence does not merit concessions. He was not awarded the maximum punishment mandated by the penal provisions.

9. The two petitions J. Cr. Misc. 16/I/2007 and J. Cr. Misc. 166/I/2008 are resultantly dismissed as being without force. The essence of this order be conveyed to the petitioner through Superintendent Jail Machh.



**Justice Syed Afzal Haider  
Acting Chief Justice**

**Fit for Reporting.**



**Justice Syed Afzal Haider  
Acting Chief Justice**