

**IN THE FEDERAL SHARIAT COURT OF PAKISTAN**

(Appellate/Revisional Jurisdiction)

**PRESENT**

**MR. JUSTICE SH. NAJAM UL HASAN, CHIEF JUSTICE**

**MR. JUSTICE DR. FIDA MUHAMMAD KHAN**

**MR. JUSTICE MEHMOOD MAQBOOL BAJWA**

Crl. Misc. Application No.02-L of 2018

IN

Crl. Appeal No. 102-L of 2004 (Disposed of)

1. Muhammad Nazir,
2. Muhammad Jehangir,

Both sons of Sher Muhammad R/o Mouza Pitradi, Tehsil Chiniot  
District Jhang.

**Petitioners**

**V E R S U S**

1. Superintendent, Central Jail, Faisalabad.
2. The State
3. Syed Mukhtar Hussain Shah S/o Gulzar Hussain Shah,  
R/o Tehsil & District Faisalabad.

**Respondent**

For the Petitioners	....	Mr. Shahid Azeem, Advocate.
For the State	....	Ch. Muhammad Sarwar Sidhu, Additional Prosecutor General, Punjab.
For the complainant	....	Syed Mukhtar Hussain Shah, in person.
FIR No. date & Police Station	....	22/2002, 14.01.2002, Saddar Chiniot
Date of judgment of trial Court	....	16.03.2004
Date of Judgment of FSC	....	13.08.2008
Date of Judgment of Shariat Appellate Bench	....	20.04.2017

Date of receipt of application in FSC	...	14.03.2018
Date of hearing and decision	....	16.05.2018

**JUDGMENT:**

**SH. NAJAM UL HASAN, CJ:** Petitioners-Muhammad Nazir and Muhammad Jehangir have jointly filed this criminal miscellaneous application under section 561-A Cr.PC whereby they have prayed that their already converted death sentence to life imprisonment be ordered to run concurrently with the sentence of life imprisonment separately awarded under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

2. Facts leading to the instant application are that both petitioners-Muhammad Nazir and Muhammad Jehangir were tried alongwith others in case FIR No.22/2002 dated 14.01.2002 registered under section 16 and 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 at Police Station Saddar, Chiniot. After conclusion of the trial, learned Additional Sessions Judge, Chiniot, vide his judgment dated 16.03.2004, convicted and sentenced the petitioners on two counts as under:-

- i) Under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to death;
- ii) Under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 to life imprisonment each with whipping 30 stripes each and fine of Rs.5,000/- each or in default of payment of fine to further undergo three months S.I.

Benefit of section 382-B Cr.PC was extended to both the petitioners.

3. The petitioners filed appeal (**Crl. Appeal No.102-L of 2004**) in this Court against their above-mentioned conviction and sentence. The learned trial court also sent a reference for confirmation of death sentence awarded to the petitioners, which was registered and numbered as **Crl. Mur. Ref. No.11-L of 2004**. This Court, vide its judgment dated 13.08.2008, dismissed the above-mentioned appeal filed by the petitioners and upheld their conviction under both the offences under section 11 and 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Sentence under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was upheld whereas the sentence of death under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was converted to life imprisonment. The aforementioned murder reference was answered in negative.

4. The petitioners filed appeal (**Crl. Sh. Appeal No.15 of 2014**) before the Shariat Appellate Bench, Hon'ble Supreme Court but the same was not pressed and as such was dismissed vide order dated 20.04.2017.

5. Mr. Shahid Azeem, learned counsel representing the petitioners, submitted that as per Jail record, the petitioners have undergone sentence of imprisonment for more than 32 years which includes the remissions but still they are in Jail and have to undergo further sentence of imprisonment of more than 16 years because the Jail authorities are considering both the sentences of life imprisonment under sections 11 and 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 awarded to the petitioners

to run consecutively as no specific order for running the sentences concurrently has been passed. Learned counsel states that the petitioners were convicted by the trial court under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and were sentenced to life imprisonment alongwith other sentences for abducting the victim-Munaza Majeed for committing zina. At the same time, they were also convicted under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 for jointly committing *zina bil jabr* with the victim-Munaza Majeed and for that they were sentenced to death. Learned counsel further states that both the above-mentioned offences were statedly committed in the same transaction but the petitioners were convicted and sentenced on two counts. It is argued by the learned counsel that in the appeal preferred before the Federal Shariat Court, death sentence of the petitioners under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was converted into life imprisonment but it was not specifically mentioned that after converting death sentence into life imprisonment both the sentences of life imprisonment were to run either concurrently or consecutively. It is then argued by the learned counsel that under section 20 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 the provisions of Code of Criminal Procedure, 1898 were to apply '*mutatis mutandis*' on the Federal Shariat Court in respect of the cases under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and that under section 35 Cr.PC a person cannot be sentenced to imprisonment for more

than 14 years in one trial. Learned counsel further argued that under section 57 of the Pakistan Penal Code, 1860, life imprisonment is described as imprisonment for 25 years, so in the circumstances, life imprisonment on two counts can only be awarded if the sentences of life imprisonment are directed to run consecutively. To strengthen his point of view, learned counsel relied upon the cases of "Shah Hussain Vs. The State" reported in PLD 2009 SC 460 and "Javed Sheikh Vs. The State" reported in 1985 SCMR 153. It has been argued that in the judgment of Federal Shariat Court, it is nowhere mentioned that both the sentences of life imprisonment shall run consecutively, so through this Miscellaneous Application, only clarification has been sought for declaring that as under section 35 Cr.PC sentence of more than 25 years cannot be imposed, so direction be issued that both the sentences of life imprisonment awarded to the petitioners shall run concurrently.

6. On the other hand, learned law officer has supported the arguments advanced by learned counsel for the petitioners and states that judgment of the Federal Shariat Court is silent and it was nowhere mentioned that sentences of life imprisonment were to run concurrently or consecutively, so only clarification in this respect has been sought by the petitioners but while passing order on this Miscellaneous Application, this court cannot be presumed to have interfered in the judgment earlier passed by this Court. Complainant-Syed Mukhtar Hussain Shah is present in the Court and states that he has no objection in this matter.

7. Heard the parties and perused the record.

8. The petitioners were convicted for two offences committed in the same transaction. They were convicted and sentenced to life imprisonment for abducting the victim-Munaza Majeed for the purpose of committing zina. They were also convicted and sentenced to death for jointly committing *zina bil jabr* with the victim-Munaza Majeed. Later on in an appeal preferred before this Court, sentence of death for jointly committing *zina bil jabr* was converted into life imprisonment. The petitioners assailed the same judgment before the Hon'ble Supreme Court but did not press the same and as such the appeal was dismissed as not pressed.

9. The present Miscellaneous Application has been filed under section 561-A Cr.PC seeking direction to the Jail authorities that both the sentences of life imprisonment should run concurrently because in the judgment of the Federal Shariat Court dated 13.08.2008, it was not specifically mentioned that after conversion of death sentence into life imprisonment, both the sentences of life imprisonment were to run consecutively. So keeping in view the provision of Proviso-I of sub-section 2 of section 35 Cr.PC "that in one trial of two or more offences, aggregate sentence of imprisonment shall not be more than 14 years". In the circumstances, sentences of life imprisonment can be directed to run concurrently as under section 57 of Pakistan Penal Code, 1860, one sentence of life imprisonment shall be reckoned as equivalent to imprisonment of 25 years.

**10.** In this regard, we are fortified with the view taken by the Hon'ble Supreme Court in the case of "Juma Khan and another Vs. The State" reported in 1986 SCMR 1573, relevant portion is reproduced below for reference:

XXXIII, R. 6—Penal Code (XLV of 1860), S. 302—Criminal Procedure Code (V of 1898), S. 35—Sentence—Sentence of imprisonment for life imposed by Trial Court upon petitioner under section 302, Penal Code, on each account, without clarifying whether same would run concurrently or consecutively—High Court dismissing prayer of accused made in his application under section 561-A, Cr.PC., to order sentences to run concurrently—Supreme Court ordered that sentences so ordered would run concurrently – Total period of imprisonment at one trial could not exceed 25 years—(Sentence).

Similar view was taken in the case of "Khan Zaman and others Vs. The State" 1987 SCMR 1382, which is also reproduced below:-

---Ss. 302, 149 & 148—Criminal Procedure Code (V of 1898), S. 35(2), proviso (a)—Sentence—Sentence of life imprisonment on two counts ordered to run consecutively—Consecutive running of such sentence being violative of S.35(2), proviso (a), Cr.P.C omission rectified and sentences ordered to run concurrently.

**11.** We are conscious of the fact that after announcing earlier judgment, this Court cannot interfere in the conviction and sentence awarded to the petitioners but in the present Miscellaneous Application, the only relief sought by the petitioners is that there was no specific order or direction in the earlier judgment that either both the sentences of life imprisonment shall run consecutively or concurrently. So only clarification in the form of direction has been sought so that both the sentences of life imprisonment are directed to run concurrently.

**12.** We have anxiously taken into consideration the relevant provisions mentioned in section 20 of the Offence of Zina (Enforcement of Hudood)

Ordinance, 1979 which explicitly lays down that provisions of the Code of Criminal Procedure, 1898, shall apply '*mutatis mutandis*, in respect of cases under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

**13.** Balck's Law Dictionary (Eighth Edition)-2004, has defined '*mutatis mutandis*' as 'All necessary changes having been made; with the necessary changes <what was said regarding the first contract applies *mutatis mutandis* to all later ones>'. Similarly, Oxford Advanced Learners' Dictionary (7<sup>th</sup> edition) stipulates the meaning of '*mutatis mutandis*' as (used when you are comparing two or more things or situations) making the small changes that are necessary for each individual case, without changing the main points: the same contract, *mutatis mutandis*, will be given to each employee (= the contract is basically the same for everybody, but the names, etc. are changed).

**14.** Keeping in view the definition, it is clear vide section 20 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 that the powers given to the High Court under section 561-A Cr.PC shall also apply '*mutatis mutandis*' on the Federal Shariat Court in respect of the cases under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

**15.** In other words, all powers given to the High Court under section 561-A, CrP.C can be exercised by the Federal Shariat Court while exercising its jurisdiction under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.



**16.** In the case of “Rahib Ali Vs. The State” reported in 2018 SCMR 418, the Supreme Court has held at paragraph-17, page 426:-

“In the light of discussion made above, there remains no doubt that the High Court and so also this Court have jurisdiction under section 561-A read with section 35 and or section 397, Cr.PC as the case may to ordered such multiple sentences in same transaction/trial or in a separate and subsequent trial to run concurrently”

It is clear that this Court has power under section 561-A Cr.PC to look into this matter even at this stage and can declare both the sentences of life imprisonment to run concurrently if no specific order in this respect was passed while converting death sentence into life imprisonment.

**17.** The Hon’ble Supreme Court in the case of “Muhammad Sharif Vs. The State” reported in 2014 SCMR 668 has also held:-

----S. 35---penal Code (XLV of 1860), Ss. 302, 342 & 365--- Constitution of Pakistan, Art. 188---Supreme Court Rules, 1980, O.XXVI, R. 1---Suo motu review by Supreme Court-Qatl-e-amd, wrongful confinement, kidnapping or abducting with intent secretly and wrongfully to confine person—Multiple offences committed by accused part of the same transaction/incident--- Concurrent running of sentences---Scope---Offences of murder, wrongful confinement and abduction were committed by the accused, in the present case, which were part of the same transaction, and, thus, ordinarily sentences passed for such offences ought to have been ordered to run concurrently with each other---Such aspect had escaped the notice of the Supreme Court while deciding appeal of accused---Supreme Court, in suo motu review, ordered that all sentences of imprisonment passed against accused, in such circumstances, should run concurrently with each other. (p.669) A.

**18.** This view of the Hon’ble Supreme Court was further fortified in the following cases reported as:

- i. “Faiz Ahmed and another Vs. Shafiq-ur-Rehman and another”  
2013 SCMR 583.

- ii. “Mst. Shahista Bibi and another Vs. Superintendent Central jail Mach and 2 others” PLD 2015 SC 15.
- iii. “Sajjad Ikram and others Vs. Sikandar hayat and others” 2016 SCMR 467.

**19.** For what has been discussed above, we are persuaded to accept this Miscellaneous Application. We would, therefore, clarify that the sentences of life imprisonment imposed upon the petitioners-Muhammad Nazir and Muhammad Jehangir under sections 11 and 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 on two counts vide judgment of this Court dated 13.08.2008 in case FIR No.22/2002 dated 14.01.2002 registered under section 16 and 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 at Police Station Saddar, Chiniot **shall run concurrently. Order accordingly.**

**MR. JUSTICE SH. NAJAM UL HASAN  
CHIEF JUSTICE**

**MR. JUSTICE DR. FIDA MUHAMMAD KHAN**

**MR. JUSTICE MEHMOOD MAQBOOL BAJWA**

Dated: 31<sup>st</sup> May, 2018

at Islamabad

**‘Ch. Ilyas’**

**Approved for reporting.**

**MR. JUSTICE SH. NAJAM UL HASAN  
CHIEF JUSTICE**