

committee and was duly aware of the facts and circumstances of the said report and accordingly, the argument of learned counsel for petitioner that there was absence of subjective satisfaction is clearly not made out in the peculiar facts of the present case.

15. Apart from the above, this Court has examined the fact that the petitioner has been inflicted with censure entry in 2007 and five annual increments were withheld in the 2010 and again in the year 2012, censure entry was awarded in his character roll. The aforesaid entries clearly indicate that there was sufficient material before the screening committee to conclude that the petitioner was a deadwood and accordingly, provision of Regulation 56 of the Financial Hand Book 2 to 4 were clearly applicable in the case of the petitioner.

16. In light of the above, no other ground was urged in assailing the impugned order, accordingly, the petition being devoid of merits is hereby dismissed.

17. It has been submitted by learned counsel for petitioner that due to pendency of the present writ petition, even admissible dues of the petitioner of his compulsory retirement has also not been given by the State Government.

18. There is no doubt even if the government servant is compulsory retired, he is certainly entitled for all service dues for which he is entitled as per rules. Accordingly, liberty is given to the petitioner to move a fresh representation to respondent no. 3 i.e. Sub Divisional Officer Mitauli, District Lakhimpur Kheri giving all the details of the dues to which he is entitled. Let the representation be given to

the respondent no. 3 within a period of three weeks. In case such a representation is given, the respondent no. 3 shall consider and decide the same by a reasoned and speaking order within six weeks thereafter. In case he finds that the petitioner is entitled to the claims made by him in the said representation, he shall ensure that the same are disbursed to the petitioner with expedition say within a period of one month thereafter.

(2024) 11 ILRA 558
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.11.2024

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Appeal (Defective) No. 1431 of 2023

Chandan Mishra @ Shailesh Mishra
...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
A.T. Pandey

Counsel for the Respondents:
G.A.

Criminal Law - Criminal Procedure Code, 1973 - Sections 161, 164, 173(2) & 375, - Indian Penal Code, 1860 - Section 354-A - The Protection of Children from Sexual Offences Act, 2012 - Sections 11 & 12 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)X - Appeals - against Conviction and Sentence - written complaint - FIR - offence of Sexual assault and attempt to rape of a minor girl Child - Investigation - Final report u/s 173(2) Cr.P.C. - Cognizance - Summoning Order - Bail Granted - Charges framed - Application to plead guilty - Request for concluding the Trial - conviction - sentencing - Application for release from custody - Dismissed

– on the ground, sentence does not contain concession for concurrent running of Sentences – Appeal filed – Court finds that, ordinarily, Sentences for different offences related to one Incident run concurrently – if not, Trial Court must record reasons for consecutive Sentences – Rigours of Section 375 Cr.P.C. barring Appeal not strictly applicable in instant case – Resultantly, Appeal Partly Allowed – Impugned Judgment of conviction modified, Accordingly (Para – 17, 18, 19)

Appeal partly allowed. (E-11)

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Appellant-Chandan Mishra @ Shailesh Mishra has filed this appeal to challenge the judgment of conviction and order of sentence dated 13th July, 2022 passed by Special Judge (P.O.C.S.O. Act), Court No. 1, Gorakhpur in Special Sessions Case No. 32 of 2013, arising out of Case Crime No. 394 of 2013, under Section 354A IPC, Section 11/12 Protection of Children from Sexual Offences Act, 2012 and Section 3(1)X Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Shahpur, District Gorakhpur.

2. The facts leading to the above appeal are that upon a written complaint by Dinesh Chaudhary (complainant), the above mentioned FIR was registered with the allegations that on 29.5.2013, Wednesday at 4:30 pm, Chandan Mishra, neighbourer took away his daughter to his house, where he molested her and attempted to commit rape. On hearing the screams of the victim, few persons reached at the place of occurrence, but the accused managed to escape. As per complainant, the occurrence was witnessed by Rajesh Chaudhary, Vishal and others. Broadly on these allegations, the above noticed case crime was registered.

3. After registration of the case, the investigation was carried out and the statements of the victim and eye-witnesses were recorded and the site plan of the place of occurrence was also prepared. Finally, upon completion of investigation, a final report under Section 173(2) Cr.P.C. was filed in the court of competent jurisdiction, thereby sending the accused-appellant to face trial for alleged commission of offences punishable under Section 354A IPC, Section 11/12 Protection of Children from Sexual Offences Act, 2012 and Section 3(1)X Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The trial court analyzed the final report on 26.6.2019 and took cognizance of the offences, and summoned the accused. Pursuant to the said order, the accused-appellant appeared, who was released on bail vide order dated 30th July, 2015. Thereafter, the trial court framed charges against the accused for alleged commission of offences punishable under Section 354A IPC, Section 11/12 Protection of Children from Sexual Offences Act, 2012 and Section 3(1)X Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but the accused pleaded not guilty and chose to face trial.

5. The prosecution examined its two witnesses PW-1 Dinesh Chaudhary and PW-2 mother of the victim, however, during the pendency of the trial, the accused-appellant moved an application on 28th June, 2022 to plead guilty in respect of the alleged offences and prayed for concluding the trial.

6. The trial court vide impugned judgment dated 13th July, 2022 proceeded to convict him and imposed sentence of

two years rigorous imprisonment for commission of offence punishable under Section 354A IPC with a fine of Rs. 5000/-, and in default further ordered him to undergo simple imprisonment for six months. Similarly, for offence under Section 11/12 Protection of Children from Sexual Offences Act, 2012, the convict was awarded a sentence of two years rigorous imprisonment with a fine of Rs. 3000/-, and in default, he was ordered to undergo further simple imprisonment for three months, whereas in respect of offence punishable under Section 3(1)X Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 rigorous imprisonment for a period of one year was awarded with a fine of Rs. 2000/-, and in default, the convict was ordered to undergo three months simple imprisonment.

7. Later on, an application was moved by the appellant-convict in August, 2023 before the trial court, who prayed for his release from custody as the period of imprisonment awarded vide judgment dated 13th July, 2022 stood served. However, the said application was dismissed by the trial court vide order dated 30.8.2023 on the ground that the impugned order of sentence does not contain the concession that the sentences awarded to the convict shall run concurrently, and the total sentence(s) awarded to the convict would run consecutively and shall be completed by July, 2026.

8. Feeling aggrieved against the said decision dated 30th August, 2023, the appellant has preferred this appeal to challenge the impugned judgment of conviction as well as the order of sentence dated 13th July, 2022.

9. Alongwith the appeal, a separate application seeking condonation of delay of 460 days in filing the appeal has also been moved, wherein vide order dated 26.2.2024, notice was issued to the opposite party nos. 2 and 4. As per office report dated 20th July, 2024, the opposite party no. 2 had refused to accept notice.

10. Learned counsel for the appellant has argued that the alleged occurrence took place in the year 2013 and after commencement of trial, the accused-appellant participated in the said proceedings, who during the pendency of the trial pleaded guilty and considering the stand of the accused, the trial court had convicted him vide judgment dated 13th July, 2022. Learned counsel has further referred to the impugned judgment of conviction and order of sentence to contend that while sentencing the convict for commission of different offences, the respective period of imprisonment awarded was not ordered to run concurrently, therefore, the convict having undergone more period of imprisonment, than awarded, is still languishing in jail.

11. Learned counsel further argued that the order dated 30.8.2023 also suffers from illegality, as the trial court has failed to appreciate the background of the case while refusing to modify the sentence part, therefore, the appellant has approached this Court through the above statutory appeal, which is beyond the period of limitation. Learned counsel submits that since the appellant had been pursuing his alternative remedy, therefore, delay in filing the appeal be condoned and the sentence awarded by the trial court vide order dated 13.7.2022 be modified.

12. In response, learned State Counsel has argued that once the judgment of conviction is founded upon the confession of the accused, therefore, it is amply clear that the accused was well aware of the consequences of his confession. According to the learned State Counsel, the convict cannot maintain this appeal, much less to challenge the sentence part alone. Learned State Counsel has further drawn the attention of the Court to the order dated 30th August, 2023 and argued that the trial court has clearly observed that the total sentence imposed upon the convict is five years alongwith fine, and in default, he has been further directed to undergo a period of twelve months simple imprisonment. Thus, it cannot be said that the sentence awarded to the convict stands served by him. Learned State Counsel prays that the appeal be dismissed as the appellant has also failed to give a justifiable explanation for filing the appeal after a long delay of 460 days.

13. Learned counsel for the parties have been heard and with their assistance, the case file has been perused.

14. No doubt, the appellant-convict during the trial proceedings had moved an application to plead guilty and consequently, he was convicted by the trial court for commission of the above noticed offences. But, a perusal of the judgment of conviction dated 13th July, 2022 reveals that the trial court had noticed the conduct of the accused, who pleaded guilty, and further calculated his undergone period of two years in custody as an under trial, and clearly decided to punish him with a sentence of imprisonment of already undergone period. In addition, learned trial court chose to burden him with fine also, but erroneously in the sentence part, while

imposing the substantive sentence of two years and one year for different offences, the trial court omitted to direct that the sentences awarded to the accused-convict shall run concurrently.

15. Though the accused had later on moved an application seeking modification, but the same was also dismissed. Therefore, keeping in view the above background, this Court does not find any merit in the objection raised by the learned State Counsel that the appellant has failed to explain the delay in filing the appeal. In the considered opinion of this Court, the delay in filing the appeal has been sufficiently explained. Therefore, the same is hereby condoned. Accordingly, the application is allowed.

16. During the course of hearing, the custody certificate dated 29th February, 2024 issued by the Senior Superintendent, District Jail, Gorakhpur has also been produced, and according to it, upto 28th February, 2024, the convict had undergone actual period of one year, eight months and seventeen days in custody, therefore, by now, the convict has undergone a period of approximately two and half years.

17. Ordinarily, the sentences awarded to the convict in respect of commission of different offences are directed to run concurrently, if, the said offences relate to one incident/transaction, but while refusing to exercise such a discretion in favour of the convict, the trial court is required to record reasons for imposing consecutive sentences. The impugned order dated 13th July, 2022 does not contain any such reason, whereas on the contrary, there is a specific observation by the trial court that the accused deserves to be punished only with the period already

undergone by him in prison. Thus, in this background, the rigours of Section 375 Cr.P.C. barring appeal in cases where accused pleads guilty would not be strictly applicable, as the impugned judgment of conviction and order of sentence dated 13th July, 2022 contain conflicting findings relating to the sentence part.

18. As a result, the objection raised by the learned State Counsel regarding maintainability of the appeal is also hereby rejected. In view of the above discussion, this Court has no hesitation in holding that the impugned sentence part contained in the judgment dated 13.7.2022 suffers from grave illegality and calls for interference by this Court in exercise of appellate jurisdiction.

19. Resultantly, the appeal is **party allowed** and while maintaining the judgment of conviction dated 13th July, 2022, the impugned order on sentence is modified to the extent that all the sentences imposed upon the appellant-convict for commission of offences punishable under Section 354A IPC, Section 11/12 Protection of Children from Sexual Offences Act, 2012 and Section 3(1)X Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall run concurrently.

(2024) 11 ILRA 562

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 13.11.2024

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ -C No. 8197 of 2024

Manoj Kumar Sharma

...Petitioner

Versus

U.O.I. & Anr.

...Respondents

Counsel for the Petitioner:

Ram Lal Mishra

Counsel for the Respondents:

A.S.G.I., Anadi Krishna Narayana, Harish Kumar Yadav, Ishan Shishu, Sandeep Kumar Singh

A. Banking Law – Succession – Banking Regulation Act, 1949 - Section 45ZA - Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account.

The Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of S. 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed. (Para 8)

The petitioner's main argument is that the petitioner being the nominee, the petitioner is entitled to receive the money in the FDRs as per Section 45ZA. (Para 5)

The petitioner has a right to obtain the money from the bank as he is a nominee. However, this money which is received by the petitioner would be subject to the succession laws and the heirs of the deceased would have a right to the said amount in accordance with law. (Para 11)

Writ petition disposed of. (E-4)

Precedent followed:

Ram Chander Talwar & anr. Vs Devender Kumar Talwar & ors., (2010) 10 SCC 671 (Para 8)

(Delivered by Hon'ble Shekhar B. Saraf, J.
& Hon'ble Vipin Chandra Dixit, J.)