



HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 387 of 2021

Reserved on : 07.09.2021

Delivered on : 16.11.2021

Shekshpear, S/o Pyara Tirki, Aged About 41 Years, Occupation- Student, R/o Village- Aaraketar, Police Station- Jashpur Nagar, District- Jashpur (C.G.)

(Age 22 Years mentioned in order sheet but at present petitioner age is 41 Years)

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through: It's Secretary, Home Department (Jail), Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District- Raipur (C.G.)
2. Additional Secretary, Home Department (Jail), Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District- Raipur (C.G.)
3. Secretary, Law Department Mantralaya, Mahanadi Bhawan, Atal Nagar, District- Raipur (C.G.)
4. The Jail and Correctional Services Chhattisgarh, The Director General Prisoners, Jail Road, Raipur, District- Raipur (C.G.)
5. The Jail Superintendent, Central Jail Ambikapur, District- Surguja (C.G.)
6. The Second Additional Session Judge (F.T.C.) Jashpur, District- Jashpur (C.G.)

---- **Respondents**

For Petitioner : Mr. Rohitashva Singh, Advocate.
For State/Respondents : Mr. Hari Om Rai, Panel Lawyer.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner has filed the present petition under Article 226 of the Constitution of India seeking quashment of order dated 04.05.2021 (Annexure P/6) passed by Additional Sessions Judge, Jashpur, District- Jashpur (C.G.) whereby application filed by the petitioner under Section 432 of Cr.P.C. for grant of relief to run all the sentences concurrently, has been rejected. He has also prayed for remission of sentences which is remaining or adjust the sentences of Sections 363, 366, 376 &



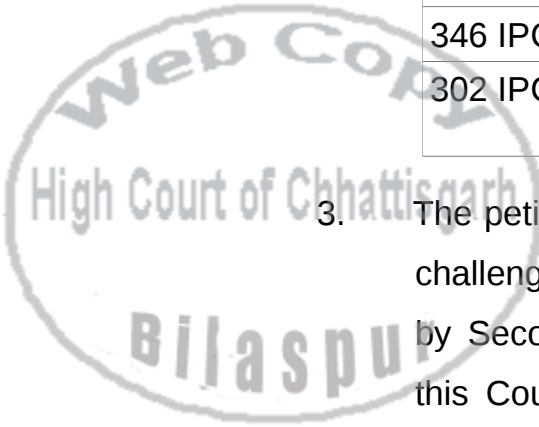
346 of IPC with the sentence awarded in Section 302 of IPC which is already remitted by the State Government.

2. The brief facts, as projected by the petitioner, are that petitioner was convicted vide order dated 12.06.2002 (Annexure P/1) passed by Second Additional Session Judge (F.T.C.), Jashpur, District- Jashpur (C.G.) in Session Trial No. 52/2002 and sentences awarded to him in the following manner:-

Section	Sentence	In default of payment of fine amount
363 IPC	R.I. for 3 years and fine of Rs. 500/-	S.I. for 15 days
366 IPC	R.I. for 3 years and fine of Rs. 500/-	S.I. for 15 days
376 IPC	R.I. for 7 years and fine of Rs. 1000/-	R.I. for 1 month
346 IPC	R.I. for 6 months	
302 IPC	R.I. for life and fine of Rs. 5000/-	S.I. for 5 months

3. The petitioner along with other co-accused namely Sanjeev Tirki challenged the order dated 12.06.2002 (Annexure P/1) passed by Second Additional Sessions Judge (F.T.C.), Jashpur before this Court and Hon'ble Divisional Bench of this Court vide its order dated 17.02.2010 (Annexure P/2) maintained the sentence awarded to the petitioner under Sections 376/34 & 346/34 of IPC and altered conviction of the petitioner under Sections 363/34, 366/34 & 302/34 of IPC as sentences under Sections 363, 366 & 302 of IPC. The operative part of the order passed by this Court is extracted below:-

“31. On close scrutiny of the evidence available on record we are of the considered view that the appellant Shekshpear has committed the offence punishable under Sections 363/34, 366/34, 376/34 (virtually of gang rape), 346/34 & 302/34 of the Indian Penal Code and appellant Harsh Sanjeev Tirki has committed the offence punishable under Sections 376/34 (virtually of gang rape), 302/34 & 346/34 of the Indian Penal Code. Consequently, the criminal appeal is partly allowed. Conviction and sentence of appellants Shekshpear and Harsh Sanjeev Tirki under Sections 376/34 & 346/34 of

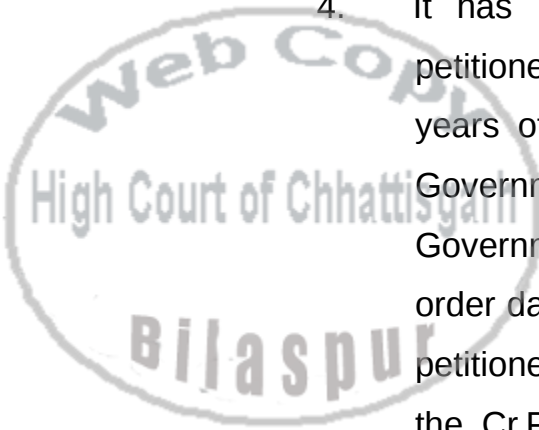




the Indian Penal Code is hereby maintained. Conviction of the appellant Shekshpear under Sections 363/34, 366/34 & 302/34 of the Indian Penal Code are altered into under Sections 363, 366 & 302 of the Indian Penal code and sentenced Rigorous Imprisonment for 3 years and fine of Rs. 500/- in default of payment of fine amount additional simple imprisonment for 15 days, rigorous imprisonment for 3 years and fine of Rs. 500/- in default of payment of fine amount additional simple imprisonment for 15 days, imprisonment for life and fine of Rs. 5,000/- in default of payment of fine amount additional simple imprisonment for 5 months. Appellant Hash Sanjeev Tirki is acquitted of the charges of under Sections 363/34 & 366/34 of the Indian Penal Code and his conviction and sentence under Section 302/34 of the Indian Penal Code is hereby maintained.”

4. It has been further contended by learned counsel for the petitioner that since the petitioner has completed more than 14 years of sentence, therefore, his case was sent to the State Government for grant of remission and the Additional Secretary, Government of Chhattisgarh, Home (Jail) Department vide its order dated 04.09.2019 (Annexure P/3) granted remission to the petitioner as per the power conferred under Section 432 (1) of the Cr.P.C., in which, name of the appellant is mentioned at Serial No. 5. It has been further contended that the petitioner has been granted remission for offence under Section 302 of IPC, but there is no consideration with regard to offence under Sections 363, 366, 376 & 346 of IPC, therefore, he made representation for adjustment of the sentence under Sections 363, 366, 376 & 346 of IPC with the sentence awarded to him under Section 302 of IPC before Additional Sessions Judge, Jashpur, District- Jashpur (C.G.), but the same has been rejected vide order dated 28.11.2019 (Annexure P/4). The operative part of the order dated 28.11.2019 (Annexure P/4) passed by Additional Sessions Judge, Jashpur, District- Jashpur (C.G.) is extracted below:-

“अभियुक्त दंडी बंदी शेक्सपीयर एवं हर्ष संजीव तिकी पर द्वारा ना.बा. पीड़िता को अन्य के घर ले जाकर उसके साथ गैंगरेप



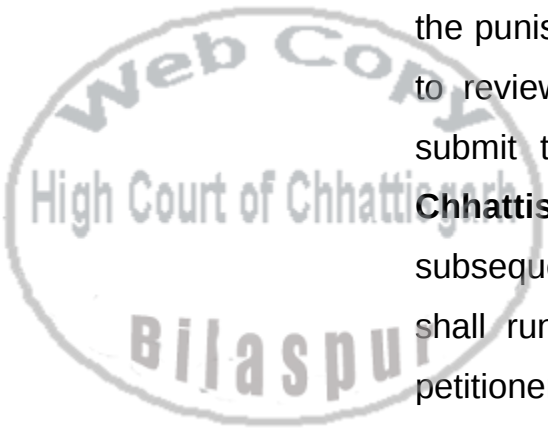


कर उसकी हत्या किये जाने का आरोप है। विचारण न्यायालय के द्वारा उन्हें दोष सिद्धी को माननीय उच्च न्यायालय के द्वारा पुष्टि किया गया है। अभिलेख के अवलोकन से दर्शित है कि अभियुक्तगण के द्वारा कृत्य अत्यन्त की घृणित है। अभिलेख में अभियोजन साक्षियों के साक्ष्य एवं प्रकरण के समस्त तथ्यों एवं परिस्थितियों को देखते हुए इस न्यायालय के मत में अभियुक्तगण/दण्डित बंदी की ओर से प्रस्तुत परिहार आवेदन मंजूर किया जाना उचित प्रतीत नहीं होता है। अतः राज्य शासन चाहे तो बंदी को जेल मेन्युअल के अनुसार उसे दी गई सजा में परिहार कर सकता है।”

5. It has been further contended by learned counsel for the petitioner that the petitioner has submitted application under Section 432 of the Cr.P.C. for remission of sentence. The said application was forwarded to the learned Additional Sessions Judge, Jashpur. The said application has been rejected vide its order dated 04.05.2021 (Annexure P/6) by observing that once the punishment has been awarded, the Court has no jurisdiction to review its order. Learned counsel for the petitioner would submit that this Court in **Momin @ Mansur Vs. State of Chhattisgarh & another**¹ (Annexure P/7) has held that subsequent sentence imposed upon the petitioner of that case shall run concurrently with the sentences imposed upon the petitioner in different Session Trial, therefore, the petitioner is also entitled for similar relief and his sentences awarded under Sections 363, 366, 376, 346 of IPC should have also been run concurrently with the sentence awarded to him under Section 302 of IPC. The petitioner is similarly situated accused, therefore, he is also entitled for similar benefits.
6. Learned counsel for the petitioner would refer to the judgment rendered by Hon'ble the Supreme Court in **Imran Jalal @ Bilal Ahmed @ Kota @ Saleem @ Hadi Vs. State of Karnataka**² and would submit that sentences awarded to him for the offence committed by him under Section 363, 366, 376, 346 of IPC should also be run concurrently with the sentence awarded to him under Section 302 of IPC.
7. On the other hand, learned State counsel has filed their return in

1 WP (Cr.) No. 973 of 2019 (Decided on 27.09.2019)

2 CRA No. 636 of 2021 (Decided on 19.07.2021)





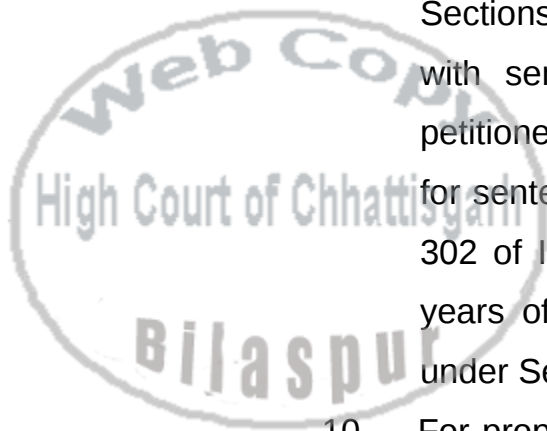
which it has been stated that since both the sentences have to be run separately, therefore, the petitioner is not entitled for grant of any relief and the application of the petitioner has rightly been rejected by the State Government. It has been further contended that the judgment cited by learned counsel for the petitioner in **Momin @ Mansur** (Supra) is not applicable to the present facts and circumstances of the case.

8. I have heard learned counsel for the parties and perused the records appended thereto with utmost satisfaction and also called for the record from the respondents with regard to the proceeding of remission of sentence.
9. On above factual matrix, the points to be determined by this Court is (1) whether sentences awarded to the petitioner under Sections 363, 366, 376 & 346 of IPC can be run concurrently with sentence under Section 302 of IPC? (2) whether the petitioner is entitled to grant of remission ex facto granted to him for sentence of life imprisonment awarded to him under Section 302 of IPC for releasing the petitioner without completion of 7 years of imprisonment as awarded for commission of offence under Section 363, 366, 376 & 346 of IPC ?
10. For proper understanding of the points to be determined by this Court, it is necessary to reproduce Sections 31, 432, 433 & 433A of Cr.P.C. which read as under:-

“31. Sentences in cases 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 Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment 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.

(2) 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 that-

(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”

432. Power to suspend or remit sentences.- (1)

When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without Conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, In the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders give directions as to the suspension of sentences and the conditions on





which petitions should be presented and dealt with: Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and-

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub- sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means,-

(a) in cases where the sentence is for an offence against, or the order referred to in sub- section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

433. Power to commute sentence. The appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for any other punishment provided by the Indian Penal Code;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

433A. Restriction on powers of remission or Commutation in certain cases.- Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death





is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

11. This Court has called for the records from the State with regard to the proceeding initiated for grant of remission after completion of 20 years of imprisonment and also considered the circular issued by the State Government in this regard dated 20.09.2017, which provides that for releasing the prisoner who is undergoing life imprisonment, should complete 20 years imprisonment out of which atleast 14 years should be actual imprisonment rest may be remission granted to the prisoner from time to time. The relevant paragraph of the circular is extracted below for convenience:-

“उपरोक्त के संबंध में निर्देशित किया जाता है कि आजीवन कारावास की सजा से दण्डित बंदियों के द्वारा 14 वर्ष की वास्तविक सजा एवं अर्जित परिहार की मिलाकर कुल भुगताई गई सजा अवधि 20 वर्ष पूर्ण बनने के 06 माह पूर्व ही दण्ड देने वाले संबंधित माननीय न्यायालय के पीठाधीन न्यायाधीश से बंदियों शेष सजा का परिहार आवेदन मंजूर किये जाने के संबंध में अभिमत प्राप्त करने की कार्यवाही प्रारंभ की जावे तथा प्रकरण में माननीय न्यायालय के अभिमत प्राप्त होने के पश्चात 20 वर्ष की सजा मय माफी, पूरी होने पर बंदी का पूर्ण प्रकरण यथा—बंदी का आवेदन पत्र, नामिनल रोल, माननीय पीठासीन न्यायालय का अभिमत, संक्षेपिका, तैयार कर तत्काल इस कार्यालय को भेजें, ताकि बिना किसी विलंब के बंदियों के दण्डादेश के शेष सजा का परिहार मंजूर करने के उक्त प्रकरण में शासन द्वारा आवश्यक कार्यवाही की जा सके।”

12. While considering the case of the petitioner for releasing him after completion of 14 years of actual imprisonment, it has been revealed from record that at the time of consideration of case of the petitioner on 05.12.2018, the petitioner actually remained in jail is 16 years, 11 months & 05 days and he has got remission to the tune of 6 years, 05 months & 13 days, thus, he has completed sentence of 23 years, 04 months & 28 days. Therefore, he has been directed to be release by the State Government vide its order dated 04.09.2019, but since his sentence for commission of offence under Sections 363, 366,





376 & 346 of IPC has not been completed, therefore, he has not been released.

13. Learned counsel for the petitioner would refer to the judgment rendered by Hon'ble the Supreme Court in **Imran Jalal** (Supra) and would submit that since the sentences awarded to the petitioner for commitment of offence under Section 363, 366, 376 & 346 of IPC should also be run concurrently and he should be released. This contention is not correct and the judgment of Hon'ble Supreme Court in **Imran Jalal** (Supra) is not applicable to the present facts of the case as in this case the accused was convicted 3 times for life and 5 times 10 years simple imprisonment and 1 time 10 years rigorous imprisonment. Then, the Hon'ble the Supreme Court directed to delete the sentence awarded in paragraph 9 for 10 years, which shall commence at the expiration of the other sentences of imprisonment only. Hon'ble the Supreme Court as held at paragraph 9, is as under:-

“9. Paragraph 9 of the order of sentence contemplated commencement of the sentence awarded under paragraph 4 of the order of sentence, after the expiration of other sentences of imprisonment. It would, therefore, mean that the sentence in paragraph 4 would begin after the expiration of other sentences including sentence for life awarded under three counts. This stipulation would be against the law laid down by this Court in Muthuramalingam, especially paragraph 35 of the decision as quoted above.”

14. Wherein, the petitioner has been imposed life imprisonment for 1 time only, which has already been remitted by the State Government as detailed in foregoing paragraph of the judgment.
15. The petitioner has been convicted for committing offence under Sections 363, 366, 376 & 346 of IPC and sentenced to rigorous imprisonment for 3 years, 3 years, 7 years & 6 months respectively and for offence under Section 302 of IPC, he has been sentenced for life imprisonment. The petitioner has been granted remission for offence under Section 302 of IPC, therefore, he cannot claim that the remission which has been granted to him for commission of offence under Section 302 of





IPC will be *de facto* applicable in case of grant of remission for offence under Sections 363, 366, 376 & 346 of IPC. Section 31 of the Cr.P.C. gives power to the trial Court to award sentence and in the present case, the trial Court has awarded sentence to be run separately which has been affirmed by Divisional Bench of this Court also, therefore, this Court cannot issue direction to run both the sentences concurrently.

16. The Constitutional Bench of Hon'ble the Supreme Court in **Muthuramalingam & others Vs. State represented by Inspector of Police**³, held as under:-

“7. A careful reading of the above would show that the provision is attracted only in cases where two essentials are satisfied viz.(1) a person is convicted at one trial and (2) the trial is for two or more offences. It is only when both these conditions are satisfied that the Court can sentence the offender to several punishments prescribed for the offences committed by him provided the Court is otherwise competent to impose such punishments. What is significant is that such punishments as the Court may decide to award for several offences committed by the convict when comprising imprisonment shall commence one after the expiration of the other in such order as the Court may direct unless the Court in its discretion orders that such punishment shall run concurrently. Sub-section (2) of Section 31 on a plain reading makes it unnecessary for the Court to send the offender for trial before a higher Court only because the aggregate punishment for several offences happens to be in excess of the punishment which such Court is competent to award provided always that in no case can the person so sentenced be imprisoned for a period longer than 14 years and the aggregate punishment does not exceed twice the punishment which the court is competent to inflict for a single offence.

8. Interpreting Section 31(1), a three-Judge Bench of this Court in O.M. Cherian's case (supra) declared that if two life sentences are imposed on a convict the Court must necessarily direct those sentences to run concurrently. The Court said:

“13. Section 31(1) CrPC enjoins a further direction by the court to specify the order in which one particular sentence shall

³ (2016) 8 SCC 313





commence after the expiration of the other. Difficulties arise when the courts impose sentence of imprisonment for life and also sentences of imprisonment for fixed term. In such cases, if the court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of Section 31(1) CrPC. There is no question of the convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are imposed on the convict, necessarily, the court has to direct those sentences to run concurrently.”



28. While we have no doubt about the correctness of the proposition that two life sentences cannot be directed to run consecutively, we do not think that the reason for saying so lies in the proviso to Section 31 (2). Section 31(2) of the Cr.P.C. deals with situations where the Court awarding consecutive sentences is not competent to award the aggregate of the punishment for the several offences for which the prisoner is being sentenced upon conviction. A careful reading of sub-Section (2) would show that the same is concerned only with situations where the Courts awarding the sentence and directing the same to run consecutively is not competent to award the aggregate of the punishment upon conviction for a single offence. The proviso further stipulates that in cases falling under sub- section (2), the sentence shall in no case go beyond 14 years and the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to award. Now in cases tried by the Sessions Court, there is no limitation as to the Court's power to award any punishment sanctioned by law including the capital punishment. Sub-section (2) will, therefore, have no application to a case tried by the Sessions Court nor would Sub-section (2) step in to forbid a direction for

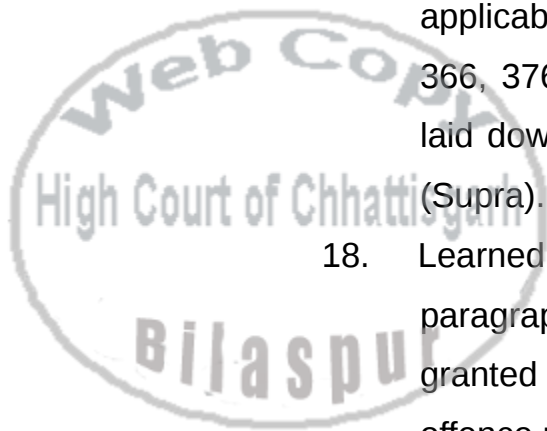


consecutive running of sentences awardable by the Court of Session.

34. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.”

17. The petitioner was granted remission by the State Government vide its order dated 04.09.2019 after 20 years completion of imprisonment under Section 302 of IPC, therefore, petitioner's remission for offence under Section 302 IPC will be *de facto* applicable for offence committed by him under Sections 363, 366, 376 & 346 of IPC, cannot be accepted in view of the law laid down by Hon'ble the Supreme Court in **Muthuramalingam** (Supra).

18. Learned counsel for the petitioner would submit that as per paragraph 290 of Jail Manual, since the petitioner has been granted remission by the State Government for punishment of offence under Section 302 of IPC, therefore, he is also entitled to get the remission for sentences awarded to him for commission of offence under Section 363, 366, 376 & 346 of IPC. The submission is contrary to the paragraph of Jail Manual as paragraph 290 of the Jail Manual provides that any person who is facing two or more sentences on separate charges, such sentences consisting of imprisonment or imprisonment of life, shall commence the one after expiration of the other unless the Court otherwise directs, it means the sentence of 7 years for commission of offence under Section 363, 366, 376 & 346 of IPC will run after expiration of life imprisonment awarded to him for commission of offence under Section 302 of IPC. Therefore, the petitioner is not entitled for grant of remission of Section 302 of IPC for Section 363, 366, 376 & 346 of IPC. Paragraph 290 of the Jail Manual is extracted below:-





“290. If a warrant directs that any person shall undergo two or more sentences on separate charges, such sentences, when consisting of imprisonment or imprisonment for life shall commence the one after expiration of the other, in such orders, as the Court may direct, unless the court directs that such punishment, shall run concurrently (section 35 Criminal Procedure Code). When any person already undergoing sentence of imprisonment, penal servitude, or imprisonment for life is sentenced to imprisonment, penal servitude, or imprisonment for life, the sentences shall be served, the one after the expiration of the other, in order of award unless the Court awarding sentences of imprisonment for life directs that such sentences of imprisonment for life shall take effect immediately (Criminal Procedure Code, 1986, Section 397), or unless the prisoner is an escaped convict, in which case the provisions of section 396 of the Code of Criminal Procedure, 1898 will apply.”

19. Hon'ble the Supreme Court in **Rajan Vs. Home Secretary, Home Department of Tamil Nadu & others**⁴ has again considered the judgment passed by Constitutional Bench of Hon'ble the Supreme Court in **Muthuramalingam** (Supra) and has held at paragraph 14 of the judgment that remission or commutation granted by the competent authority for any one of the offences does not *ipso facto* result in release of the prisoners for other offences for which he has been convicted and sentenced at one trial.
20. The conviction under Sections 363, 366, 376 & 346 of IPC is still going on for 7 years. If we consider from 04.09.2019, the petitioner will be completed his sentence on 03.09.2026 out of 7 years of imprisonment, he has completed only 2 years 2 months of his sentence.
21. Since the petitioner has completed 2 years 2 months in jail, he can make representation for remission of sentences awarded to him under Sections 363, 366, 376 & 346 of IPC which is not the right of the petitioner to get benefit of remission, it is for the State Government to consider and decide the representation

4 (2019) 14 SCC 114



submitted by the petitioner and pass suitable orders considering the overall conduct of the accused/ petitioner in accordance with policy/circular issued by the State Government in this regard within a period of four months from the date of submission of representation by the petitioner.

22. With these observations and directions, the instant writ petition is disposed of.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Arun

Head Note

“Remission granted to the petitioner in one such sentence, the benefit of such remission would not be *ipso facto* extended to the other sentence.”

