Before Vikas Bahl, J.

SURESH CHAND *—Petitioner*

versus

AJIT SINGH DAHIYA AND OTHERS *—Respondents*

CRM-M No. 48159 of 2021

December 17, 2021

Code of Criminal Procedure, 1973—Ss. 31, 353, 362, 425, 427,482—The Indian Penal Code,1860—Ss.302—The Arms Act,1959,—S. 25—Pettion filed under S.482 CrPC. for quashing order whereby application filed under Section 353 read with 362 Cr.P.C. was allowed and sentences were ordered to run concurrently—Petitioner was convicted under 302 IPC and under 25 Arms Act—Life imprisonment was imposed under S. 302 IPC— Two separated sentences of 5 years Rigorous imprisonment were imposed for two incidents under 25 Arms Act—It was not stated that two terms of 5 years were to run prior to life imprisonment—Appeal against conviction and sentence was dismissed by High Court—SLP also dismissed—Application filed by complainant under 353 read with 362 Cr.PC. Before Trial Court—Petition allowed.

Held that a perusal of Section 31 of Cr.P.C. would show that it provides that when a person is convicted at one trial of two or more offences, then the Court has the power to sentence him for such offences, to the several punishments prescribed thereof which such Court is competent to inflict; and 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. A perusal of Section 427 of Cr.P.C. moreso Sub-Section 2 of the same would show that in case, a person is already undergoing a sentence of imprisonment for life, and on a subsequent conviction, is sentenced to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

(Para 15)

Further held that from the aforesaid provisions as well as judgments referred to hereinabove, following principles would emerge: - I) Where in one trial, a person is convicted for two or more offences,

and the sentence does not include the sentence of life imprisonment, and it has not been specified in the judgment of conviction and order of sentence that the sentences are to run concurrently, then the sentences in such a situation would run consecutively. (Reference in this regard may be made to the concluding lines of para 10.2 of the judgment of the Hon'ble Supreme Court in Sunil Kumar's case (supra), reproduced hereinabove and also to para 17 of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of Muthuramalingam and others (supra), which has also been reproduced hereinabove). II) Where in one trial, multiple sentences of imprisonment for life are awarded, the life sentences so awarded cannot be directed to run consecutively and have to necessarily run concurrently, as life imprisonment would mean full span of one's life. Such sentences would, however, be superimposed 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 in the others. (Reference with respect to the same may be made to para 31 of the judgment of the Hon'ble Supreme Court passed in Muthuramalingam & others' case (supra), as has been reproduced hereinabove). III) Where in one trial, accused is convicted of multiple offences and is awarded life sentence for one offence and term sentences for the other offences, then it would be open to the trial Court to direct the convict to undergo the term sentence/ term sentences before commencement of his life sentence and such direction would be legitimate. However, any such direction is to be passed by the trial Court after considering the facts and circumstances of that particular case. The discretion to be exercised in such cases has to be on judicial lines and is not to be done mechanically. Converse of it, however, would not stand judicial scrutiny inasmuch as if the trial Court directs that the sentence of life imprisonment would start first, and the term sentence would follow, it would then necessarily imply that the term sentence would run concurrently, as once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. (Reference in this regard may be made to para 32 of the judgment passed by the Hon'ble Supreme Court in Muthuramalingam & others' case (supra)). IV). When a person already undergoing a sentence of term imprisonment, is sentenced to imprisonment for a term or imprisonment for life on a subsequent conviction, then such term imprisonment or imprisonment for life shall commence at the expiration of the term imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous

sentence. (Reference in this regard may be made to the provisions of section 427(1) of Cr.P.C. reproduced hereinabove). V) When a person already undergoing a sentence of imprisonment for life, is sentenced, on subsequent conviction, to imprisonment for a term or imprisonment for life, then the subsequent sentence shall run concurrently with such previous sentence. (Reference in this regard may be made to section 427(2) of Cr.P.C. reproduced hereinabove). In the light of the above principles, this Court would like to determine as to whether the impugned order is legally sustainable.

(Para 21)

Further held that a perusal of section 353, which has been reproduced hereinabove, and deals with the term "judgment", as well as section 362, which has also been reproduced hereinabove, and deals with the proposition that the Court can not alter its judgment, do not, in any manner, entitle a party to go back to the Trial Court to seek directions, as were being sought in the said application. Neither of the said sections envisage the setting aside of a conviction warrant or issuance of a direction to the authorities to comply with any order. Once the Additional Sessions Judge, Chandigarh, vide judgment dated 23.11.2006, and order of sentence dated 29.11.2006, had finally disposed of the matter, the appeal and the SLP against which had already been adjudicated, the moving of the present application, after a period of 13 years after the passing of the order of sentence, before the Additional Sessions Judge, Chandigarh, was not maintainable, moreso under section 353 r/w 362 of Cr.P.C. The Additional Sessions Judge had become functus officio, and thus could not have entertained the said application.

(Para 24)

Further held that in view of the above, this Court reiterates that the Court of first instance while awarding multiple sentences of imprisonment in a trial, must specify, in clear terms, as to whether the said sentences would run concurrently or consecutively and in case, they were to run consecutively, the order (sequence) in which the same would run.

(Para 29)

Sumeet Goel, Sr. Advocate with
Gaurav Verma, Advocate and
Samir Rathaur, Advocate and
Sangram Singh, Advocate , *for the petitioner.*

Karambir Singh Nalwa, Advocate and
Chakitan V.S. Papta, Advocate and
Yajur Sharma, Advocate, for respondent No.1/complainant.

P.S. Paul, Addl. P.P. UT Chandigarh,
for respondent Nos.2 and 4.

Manish Dadwal, AAG, Haryana, for respondent Nos.3 and 5.
(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

(1) This is a petition filed under Section 482 of Cr.P.C. for quashing of impugned order dated 07.10.2021 passed by the Additional Sessions Judge, Chandigarh in Criminal Revision No.187 of 30.11.2019 (Annexure P-1) in FIR No.255 dated 01.09.2002 registered under Sections 302/307/34 of the Indian Penal Code (hereinafter to be referredas "the IPC") r/w Section 25 of the Arms Act, 1959 (hereinafter to be referred as the Act of 1959), at Police Station City Sonipat, vide whichthe application filed by respondent No.1-Ajit Singh Dahiya under Section 353 read with Section 362 of Cr.P.C. had been allowed and it had been observed that the sentences which had been awarded to the petitioner in the abovesaid FIR will be deemed to run consecutively and the convictionwarrant sent to the Jail Authorities dated 29.11.2006, vide which the sentences were ordered to run concurrently, could not be taken into consideration.

(2) Learned Senior Counsel for the petitioner has submitted that in the present case, petitioner-Suresh Chand alongwith two other persons namely Sonu @ Viresh and Shiv Parkash @ Poli were tried in FIRNo.225 dated 01.09.2002 registered under Sections 302/307/34 of the IPC and Section 25 of the Act of 1959 at Police Station, City Sonepat and vide judgment dated 23.11.2006 passed by the Additional Sessions Judge, Chandigarh, the petitioner alone was convicted under Section 302 of the IPC and under Section 25 of the Act of 1959 and was sentenced vide order of sentence dated 29.11.2006 in the following manner:-

Under Section 302 IPC.	Life Imprisonment and fine Rs. 3 Lakhs or to undergo R.I. for there years in default of payment of fine.
Under Section 25 Arms Act for the incident of 1-9-2002.	To undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs. 5000 or to undergo further RI for a period of one year

	in default of payment of fine.
Under Section 25 Arms Act for the incident of 7-9 2002.	To undergo Rigorous imprisonment for 5 years and to pay a fine of Rs. 5000 or to undergo further RI for a period of one year in default of payment of fine.

A copy of this judgment be provided to the accused free of costs. In the even of realization of fine, 1/3rd thereof be paid in the families of all the deceased as compensation in terms of Section 357(1)(b) Cr.P.C. A copy of this judgment and order of sentence be sent to District Magistrate Chandigarh and District Magistrate Sonipat in terms of Section 365 Cr.P.C. and file be consigned to the records after due compilation."

Learned Senior Counsel for the petitioner has submitted thata perusal of the abovesaid order of sentence would show that it had not been stated that the two terms of imprisonment of five years each were to run prior to life imprisonment and thus, by necessary implication, theterm imprisonment of five years under Section 25 of the Act of 1959 for the incident of 01.09.2002 and another term imprisonment of five years under Section 25 of the Act of 1959 for the incident of 07.09.2002, were to run concurrently. It has further been highlighted that it had been noticed by the Additional Sessions Judge, at the time of sentencing, that the petitioner had no motive to commit the offence, nor there was any prior planning since it was a chance occurrence which had developed at the scene of the incident itself and it was the deceased persons who had travelled to the premises of the convict where the incident had taken place.

Further reference has been made by the learned Senior Counsel for the petitioner to the Conviction Warrant dated 29.11.2006 (Annexure P-4), in which, it was specifically mentioned that all the substantive sentences shall run concurrently. It is highlighted that the said conviction warrant had been duly signed by the Additional Sessions Judge, Chandigarh, who had passed the judgment of conviction and order of sentence, as stated hereinabove and the said conviction warrant was issued on the same date on which the order of sentence was passed. It is further submitted that on the basis of the said judgment and the conviction Warrant, the petitioner was certain that all the offences were torun concurrently, thus, in the grounds of appeal filed before the High Court, a copy of which has been annexed as

Annexure P-5, no issue was raised challenging the aspect of sentence not being concurrent. Specific reference has been made to every ground which had been taken in thesaid appeal. It is further argued that even when the matter was argued before the Division Bench of this Court, no such argument was raised by the petitioner to the effect that the sentence should have been made concurrent. Reference has also been made to the grounds of Special Leave Petition (for short "SLP") in which again, no ground was taken by the petitioner before the Hon'ble Supreme Court that the sentence should run concurrently, nor any such argument had been raised before the Hon'ble Supreme Court and for the same, reference has been made to the Grounds of Appeal (Annexure P-7) as well as order dated 20.01.2016 passed by the Hon'ble Supreme Court in Criminal Appeal No.628 of 2012 (Annexure P-8). It has been argued that it was an admitted position between the parties that the sentence would run concurrently as was reflected in the Conviction Warrant and the petitioner, who was undergoing life imprisonment, was sanguine of being released as per the said conviction Warrant and that after a period of more than 13 years from the date of issuance of the conviction Warrant, an application was moved by respondent No.1 under Section 353 read with Section 362 of Cr.P.C. for issuance of directions to respondent Nos.1 to 3 (respondent No.2 to 4 herein) to comply with the sentences passed against the petitioner and not to act upon the said conviction warrant. It has been contended that although the allegations were made in the said application to the effect that the said Conviction Warrant was forged and fabricated but the same had not been found to be forged and fabricated and had been found to be duly executed. Reference has also been made to the reply filed by respondent Nos.1 and 3 (respondent No.2 and 4 herein) i.e. the Superintendent, Model Jail, Chandigarh, Director General of Prisons, Haryana and The Inspector General of Prisons and Correctional Administration, U.T. Chandigarh (Annexure P-10) to the application, in which several objections had been taken, including the objection of non- maintainability of the application, and also a vehement denial of forgery of the said document. Specific reference has been made to paras 1, 12 and 14 of the said reply filed by the said respondents. The same are reproduced hereinbelow:

> "1. That the present application is not maintainable and as such, the same is liable to be dismissed.
>
> 12. That the contents of para No.12 of the application are wrong, incorrect and vehemently denied. It is submitted

that the document which is a warrant of conviction dated 29th day of November, 2006 and which was issued by the Hon'ble Court of competent jurisdiction is a part of the Court record and therefore, the allegations levelled by the applicant against the respondents with regard to the forging of the document of the court are completely false and frivolous and without having any material evidence.

14. That the contents of Para No.14 of the application was wrong, incorrect and hence denied. It is submitted that the applicant has completely twisted the facts by misinterpreting the contents of the letter dated 30.03.2019. It is stated that vide letter dated 30.03.2019, the answering respondent No.1 had submitted the case of respondent No.4 to the answering respondent No.2 for consideration with regard to his pre- mature release as per policy of Govt. of Haryana, therefore, it was necessary to bring into the notice of answering respondent No.2, the warrant of conviction which was issued by the Hon'ble Court, whereby the Hon'ble Court has specifically mentioned about the concurrent running of sentences in the case of respondent No.4 and therefore, the answering respondent No.1 did not state anything beyond the record in the said letter."

(3) Reference has also been made by the learned Senior Counsel for the petitioner to the reply (Annexure P-11) filed by the present petitioner, who was respondent No.4 in the said proceedings, in order to highlight the fact that there was no forgery in the Conviction Warrant and the said Warrant had been signed by the Presiding Officer, who had passed the judgment of conviction and order of sentence. Specific reference has also been made to para 2 of the said reply, where it has been stated that when prosecution is based on a single transaction involving two or more offences, sentences are to run concurrently. Further reference has been made by the Ld. Senior Counsel to the custody certificate (Annexure P-12) of the petitioner dated 10.11.2021, as per which as on 10.11.2021, the petitioner had already undergone actual sentence of 18 years, 8 months and 18 days and had undergone the total period, including remission, of 25 years, 2 months and 19 days. It is further contended that when the petitioner, after having suffered the said incarceration, was in the process of being released, the present application had been filed, on the basis of which, the impugned order had been passed.

(4) It is further argued that the petitioner has every right to challenge the said impugned order in the proceedings under Section 482 of Cr.P.C. inasmuch as, by virtue of the impugned order, the Additional Sessions Judge, Chandigarh has unsettled the position which stood settled for 13 years. It is submitted that although, the judgments passed by the Hon'ble Supreme Court in the case of ***Muthuramalingam and others*** *versus* ***State represented by Inspector of Police***[1] and in the case of ***O.M. Cherian @ Thankachan*** *versus* ***State of Kerala and others***[2], were specifically noticed in para 2 of the impugned order but however, the impugned order had been passed without considering the law laid down by the said two judgments and the Additional Sessions Judge,Chandigarh, has, in a cryptic manner, passed the impugned order, incomplete violation of the right to life of the petitioner.

(5) Learned Senior Counsel for the petitioner has vehemently argued that there are several factors which would show that the impugned order is illegal and against law and deserves to be set aside.

(I) First factor which has been highlighted by the learned Senior Counsel for the petitioner is by referring to the provision of Section 425of Cr.P.C.. which is contained in Chapter XXXII-D of Cr.P.C. which specifically provides as to who may issue a warrant for execution and as per the said provision, every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who has passed the sentence, or by his successor-in-office. On the said aspect, reliance has been placed upon the judgment of the Division Bench of the Madhya Pradesh High Court in the case titled ***Hamid Raza Vs. Supdt. Central Jail, Rewa and another,*** reported as ***1985 CriLJ 642*** to contend that in a case, where the warrant was issued by the Judge under Section 425 of Cr.P.C., the said act is considered to be done by the learned Judge while performing his judicial functions and the same could not be stated to be a ministerial act. On the basis of the said provision, as well as the judgment of the Division Bench of Madhya Pradesh High Court in **Hamid Raza's** (Supra), it is sought to be contended that the Conviction Warrant issued under the

[1] 2016(3) RCR (Crl.) 827
[2] 2014(4) RCR (Crl.) 922

provision of Section 425 of Cr.P.C. cannot be considered to be a ministerial act and in fact, learned Judge while issuing the same was performing his judicial function and thus, the said conviction warrant which is a part of the judicial record and has been found to be genuine document, cannot be ignored in the manner it is sought to be ignored in the impugned order. It is stated that since the order of sentence is silent, it is, thus, submitted that the conviction warrant would, in fact, make the whole issue clinching clear to the effect that the two term sentences of five years each, were to run concurrently with the sentence of life imprisonment. It is submitted that in case, the said argument of the petitioner is accepted, then, further, nothing needs to be agitated in the case.

(II) Second factor which has been highlighted by the learned Senior Counsel for the petitioner is based upon the judgment of the Constitution Bench in **Muthuramalingam's case** (Supra) and in **O.M. Cherian @ Thankachan's case** (Supra). While placing reliance upon the Constitution Bench in **Muthuramalingam's case** (Supra), it has been argued that life sentence is to be considered as a sentence for life and thus, any sentence which is sought to run after life sentence, has to necessarily be concurrent inasmuch as, it would be absolutely unworkable and unthought-of that once a life term means whole of one's life, then there could be a term subsequent to whole of one's life. Specific reference has been made to various paras of the said judgment wherein it has been observed that the Court can legitimately direct the prisoner to first undergo the term sentence before commencement of the life sentence but converse of the same is not possible as the term sentence cannot follow the life sentence as the same would be unworkable and thus, by necessarily implication, the term sentence would run concurrent to the life sentence. To similar effect, observations made in **O.M. Cherian @ Thankachan's case** (Supra) have also been highlighted. Further reference has been made to the judgments passed by the Hon'ble Supreme Court in case titled ***Sunil Kumar @ Sudhir Kumar and Another Vs. State of Uttar Pradesh***, reported as ***2021(5) SCC 560***, and in case titled ***Vikas Yadav Vs. State of U.P.***

and others reported as ***2016(4) RCR (Criminal) 546***, and to the judgment passed by the Division Benchof this Court in case titled as ***Harwinder Singh @ Pinder and others Vs. State of Punjab and others***, reported as ***2020(1) RCR (Criminal) 323***, to buttress the abovesaid submissions. Learned Senior Counsel for the petitioner has very fairly submitted that as far as the Division Bench judgment is concerned, SLP against the same has also been filed and the same is pending adjudication. It is, thus, submitted that even independent of the conviction warrant, necessary import of the sentence, which had been awarded to the petitioner, is that the two term sentences which follow the life sentence in seriatim as has been directed in the order of sentence, in the absence of any specific direction having been given to the effect that the term sentence is to be completed prior to the life sentence, have to be read concurrently with the life imprisonment.

(III) Third aspect highlighted by the learned Senior Counsel for the petitioner is that in the present case, conviction warrant was issued in the year 2006 and for a period of 13 years, the petitioner was certain that the petitioner would be released after completing his life imprisonment, in accordance with law. The impugned order has not taken into consideration the abovesaid important aspect and has unsettled the position which stood settled for 13 years, resulting in violation of the right to life of the petitioner as enshrined under Article 21 of the Constitution of India and thus, the impugned order deserves to be set aside on the said ground alone.

(6) Apart from the aforesaid factors, learned Senior Counsel for the petitioner has also relied upon Section 427 of Cr.P.C., moreso Sub-Section 2 of the same, to argue that where a person who is already undergoing a sentence of imprisonment for life, is sentenced, on a subsequent conviction, to imprisonment for a term or imprisonment for life, the subsequent sentence, as has been provided as per the said provision, would run concurrently with the previous sentence and has, thus, contended that even in a situation, where a person has been held guilty of having committed two separate crimes, in the first of which, sentence awarded to the person is life imprisonment, then any subsequent sentence, either of term or of life, has to run concurrently

with the earlier sentence. It is submitted that the case of the petitioner cannot be treatedon a lower footing than the case of a person who has committed two separate crimes, leading to his conviction in both the crimes, and having been awarded sentence of life imprisonment for the first crime and term sentence/life imprisonment for the second crime.

Learned Senior Counsel has also argued that the application filed by the respondent no. 1 herein before the Additional Sessions Judge u/s 353 r/w 362 Cr.P.C., for a direction to respondent Nos.1 to 3 therein, was not maintainable. It is submitted that none of the abovesaid provisions, that is section 353 or 362 Cr.P.C., entitled the complainant in the case or any other party to file such an application before the Court which had already passed the final judgment, and that too 13 years after the passing of the order of sentence and issuance of the said warrant.

As a last argument, learned Senior Counsel for the petitioner has submitted that even in case, there is a vacuum on account of the peculiar facts of the present case, then also, the view/interpretation which favours the accused should be taken, and the same having not been done by the Additional Sessions Judge, calls for setting aside the impugned order on the said ground also.

(7) Learned Senior Counsel for the petitioner has very fairly stated that as far as the sentence regarding fine of Rs.3,10,000/- on account of all the three sentences is concerned, the petitioner is ready to deposit the same within a period of one month from the date of receipt of certified copy of the present judgment.

(8) Per contra, learned counsel for respondent No.1 has vehemently opposed the present petition and has stated that the impugned order is correct and in accordance with law and thus, deserves to be upheld.

(9) The first submission of learned counsel for respondent No.1 is that the present petition filed under Section 482 of Cr.P.C. is not maintainable inasmuch as by virtue of filing the present petition, no words can be read into the judgment of conviction or order of sentence. Reliance has been sought to be placed upon the provision of Section 353 of Cr.P.C. as well as Section 362 of Cr.P.C., which are reproduced hereinbelow:-

> "**353. Judgment.—**(1) The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer

immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub- section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof assoon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read outunder clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except wherehis personal attendance during the trial has been dispensedwith and the sentence is one of fine only or he is acquitted: Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on whichthe judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be

deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in anyway the extent of the provisions of section 465

362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

On the basis of the provisions reproduced hereinabove, it has been argued that the judgment in a trial in any criminal case is to be pronounced in open Court and thereafter, the same becomes final. Under Section 362 of Cr.P.C., it is specifically provided that the Court cannot alter the judgment once it is signed and even a review of the same is not permissible. It is submitted that the words in the conviction warrant which are sought to be read into the judgment of conviction and order of sentence, could not have been read into the judgment of conviction and order of sentence and thus, has been rightly considered to be irrelevant by the impugned order. With respect to the maintainability of the present petition u/s 482, learned counsel for respondent No.1 has cited judgment passed by the Hon'ble Supreme Court in case titled ***M.R. Kudva*** *versus* ***State of Andhra Pradesh***[3] and has specifically referred to para 12 of the said judgment tocontend that the provisions of Section 427 of Cr.P.C. having not been invoked in the original case or in appeal, a separate application filed before the High Court, after the Special Leave petition was dismissed,was held to be not maintainable. It is argued that in the said judgment, it had been observed that High Court could not have exercised its inherent jurisdiction as it had not exercised such jurisdiction while passing the judgments in appeal and thus, filing the said application under Section 482 of Cr.P.C. was not an appropriate remedy.

(10) Learned counsel for respondent No.1 has further relied upon judgment in ***Sunil Kumar @ Sudhir Kumar's*** case (Supra), which has also been relied upon by learned Senior Counsel for the petitioner. By making specific reference to paras 8.1, 8.3, 10.2 and 12 of the

[3] (2007) 2 SCC 772

abovesaid judgment, it has been argued that as per Section 31 of Cr.P.C., discretionis vested with the trial Court to direct whether or not the sentences would run concurrently, when the accused is convicted at one trial of two or more offences, and in a case where the trial Court has not directed for the sentences to run concurrently, then they are to run consecutively. It is further argued that it had been noticed in para 13 of the abovesaid judgment that omission to direct whether the sentences awarded to the accused would run concurrently or would run consecutively, essentially operates against the accused, because unless directed to the contrary by the Court, multiple sentences are to run consecutively, as per the plain reading of Section 31 of Cr.P.C. read with the expositions in ***Muthuramalingam's*** case (Supra) and in ***O.M. Cherian @ Thankachan's*** case (Supra). It was also submitted that omission to direct consecutive running cannot ipso facto lead to concurrent running of sentences. In furtherance of this argument, learned counsel for the respondent no. 1 has referred to Section 31 of Cr.P.C. to contend that since the judgment of conviction and order of sentence is silent with respect to the aspect of running of sentences i.e. whether consecutive or concurrent, thus, it would necessarily imply that the sentences are to run consecutively.

(11) Learned counsel for respondent Nos.2 and 4 has submitted that as per their stand, conviction warrant had been correctly issued and the said document was not forged or fabricated and they were duty bound to proceed in accordance with the said conviction warrant and as per the same, the process for premature release has been rightly initiated. However, as an officer of the Court, he has submitted that it would not be open to the Court to add any word or subtract any word from the judgment of conviction and order of sentence moreso, when the matter has been settled up to the Hon'ble Supreme Court.

(12) Learned Counsel for respondent no.5 – State has stated that the impugned order has been validly passed and the same deserves to be upheld and the present petition deserves to be dismissed.

(13) This Court has heard the learned counsel for the parties and has perused the record and has also gone through the judgments which have been cited by the learned counsel appearing on behalf of the parties.

(14) Before this Court adverts to the peculiar facts of this case and to the legality of the impugned order, it would be necessary to consider the provisions as well as the judgments, which are relevant for the adjudication of the present case.

(15) Sections 31 and 427 of Cr.P.C. are reproduced hereinbelow:-

> "**31. Sentence in cases of conviction of several offences at onetrial.**—(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 thereof which such Court is competent to inflict; suchpunishments when consisting of imprisonment to commence the one after the expiration of the other **in such order as the Courtmay direct**, unless the Court directs that such punishmentsshall 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 a 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.
>
> **427. Sentence on offender already sentenced for another offence**.—(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment 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 122 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.
>
> (2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

A perusal of Section 31 of Cr.P.C. would show that it provides that when a person is convicted at one trial of two or more offences, then the Court has the power to sentence him for such offences, to the several punishments prescribed thereof which such Court is competent to inflict; and 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. **A perusal of Section 427 of Cr.P.C. moreso Sub-Section 2 of the same would show that in case, a person is already undergoing a sentence of imprisonment for life, and on a subsequent conviction, is sentenced to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrentlywith such previous sentence**.

(16) The Hon'ble Supreme Court in several judgments has laid down various principles in cases where one of the sentences is life imprisonment, as in the present case, and it would be relevant to take noteof them at this stage. The judgment of the Constitutional Bench in ***Muthuramalingam's*** case (Supra) has dealt with the question "As to whether the consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial". Relevant portion of the said judgment is reproduced hereinbelow: -

> "A Bench comprising three-Judges of this Court has referredto us the following short but interesting question:
>
> "**Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial?"**
>
> Xxx xxx
>
> 4. When the appeals came up for hearing before a three-

Judge Bench of this Court, learned counsel for the appellant appears to have confined his challenge to the validity of the direction issued by the Trial Court and affirmed by the High Court that the sentences of imprisonment for life awarded to each one of the appellants for several murders allegedly committed by them **would run consecutively and not concurrently. It was argued that in terms of Section 31 of the Criminal Procedure Code, 1973 (for short, "the Cr.P.C.") the sentence of life imprisonment awarded to the appellants for different murders alleged to have been committed by them could run concurrently and not consecutively as ordered by the Trial Court and the High Court. Reliance in support of that submission was placed upon a decision of a three-Judge Bench of this Court in O.M. Cherian @ Thankachan vs. State of Kerala @ Ors.,** (2015) 2 SCC 501 and a three-Judge Bench decision of this Court in Duryodhan Rout vs. State of Orissa (2015) 2 SCC 783.

Xxx xxx

6. We have heard learned counsel for the parties at considerable length. Section 31 of the Cr.P.C. which deals with sentences in cases of conviction of several offences at one trial runs 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 singlesentence."

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 fortrial 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. 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**…….

8. To the same effect is the decision of a two-Judge Bench of this Court in Duryodhan Rout's case (supra) in which this Court took the view that since life imprisonment

means imprisonment of full span of life there was no question of awarding consecutive sentences in case of conviction for several offences at one trial. Relying upon the proviso to sub- Section (2) of Section 31, this Court held that where a person is convicted for several offences including one for which life sentences can be awarded the proviso to Section 31(2) shall forbid running of such sentences consecutively.

9. It would appear from the above two pronouncements that the logic behind life sentences not running consecutively lies in the fact that imprisonment for life implies imprisonment till the end of the normal life of the convict. If that proposition is sound, the logic underlying the ratio of the decisions of this Court in O.M. Cherian and Duryodhan Rout cases (supra) would also be equally sound. What then needs to be examined is whether imprisonment for life does indeed imply imprisonment till the end of the normal life of the convict as observed in O.M. Cherian and Duryodhan Rout's cases (supra). That question, in our considered opinion, is no longer res integra, the same having been examined and answered in the affirmative by a long line of decisions handed down by this Court. We may gainfully refer to some of those decisions at this stage.

Xxx xxx

17. The legal position is, thus, fairly well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless of course the remaining sentence is commuted or remitted by the competent authority. That being so, the provisions of Section 31 under Cr.P.C. must be so interpreted as to be consistent with the basic tenet that a life sentence requires the prisoner to spend the rest of his life in prison. **Any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. So understood Section 31(1) would permit consecutive running of sentences only if such sentences do not happen to be life sentences. That is, in our opinion, the only way one can avoid an obvious**

impossibility of a prisoner serving two consecutive life sentences.

Xxx xxx

25. 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.

26. To the extent Duryodhan Rout case (supra) relies upon proviso to Sub- section (2) to support the conclusion that a direction for consecutive running of sentences is impermissible, it does not state the law correctly, **even when the conclusion that life imprisonment means for the full span of one's life and consecutive life sentences cannot be awarded is otherwise sound and acceptable.**

Xxx xxx

31. 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 otherso 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.

32. We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the directionis not legally sound, for once the prisoner is sentenced toundergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo theterm sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. **The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence.** Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs.Xxx xxx"

A perusal of the said judgment would show that while dealing with the proposition, as stated hereinabove, and after considering the provisions of Section 31 of Cr.P.C., it was observed therein that it was

settled law that imprisonment for life is a sentence for the remainder of the life of the offender, unless of course the remaining sentence is commuted or remitted by the competent authority and it was further observed that the provisions of Section 31 of Cr.P.C. have to be interpreted so as to be consistent with the basic tenet that a life sentence requires the prisoner to spend the rest of his life in prison and thus, any direction that requires the offender to undergo life imprisonment twice over, would be anomalous and irrational for it would disregard the fact that humans, like all other living beings, have but one life to live. **It was, thus, observed that Section 31(1) of Cr.P.C. would permit consecutive running of sentences only if such sentences do not happen to be life sentences.** It was further observed that in case, there were two life sentences, then such sentences cannot be directed to run consecutivelybut would however be superimposed 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. Importantly, in the last but one para of the said judgment, the question"As to whether the Court could order life sentence and term sentence to run consecutively?" was considered. It was observed that the Court could direct the prisoner to first undergo the term sentence, before commencing his life sentence and such direction would be legitimate and in tune with Section 31 of Cr.P.C., but the converse, however, would not be considered to be legally workable **as in case, the Court was to direct the life imprisonment to start first, it wouldnecessarily imply that the term sentence would run concurrently and the same was based on the principle and on the basis of settled law, that once a prisoner has spent his life in Jail, then there was no question of his undergoing any further sentence. Thus, in a situation, where the term sentence was to follow the life sentence, the same would necessarily imply that the term sentence would run concurrently with the life sentence.**

(17) The judgment of the Hon'ble Supreme Court in ***O.M. Cherian @ Thankachan's*** *case (Supra)* is also relevant to note at this stage. Relevant portions of the said judgment is reproduced hereinbelow:

> *"*xxxxxx
>
> 4. Upon consideration of evidence, the trial court convicted the appellant/1st accused under Section 498A IPC and sentenced him to undergo two years of rigorous

imprisonment and to paya fine of Rs.5,000/- and in default of payment of fine, to undergo further imprisonment of one year. For the offencepunishable under Section 306 IPC, the trial court sentencedhim to undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/- and in default of payment of fine, to undergo further imprisonment of three years. The substantive sentences of the appellant were ordered to run consecutively. Accused 2 to 4 were convicted under Section 498A IPC and were sentenced to undergo imprisonment for two years and to pay fine of Rs. 5,000/- with default clause of one year. The High Court confirmed the conviction and also the sentence of imprisonment imposed upon all the accused.

13.Section 31 (1) Cr.P.C. enjoins a further direction by the court to specify the order in which one particular sentence shall 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) Cr.P.C.. 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, Court has to direct those sentences to run concurrently.**

Xxx xxx

20. Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts

and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

21.Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. **We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent.** Of course, if the Court does not orderthe sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct. We also do not find any conflict in earlier judgment in Mohd. Akhtar Hussain and Section 31 Cr.P.C.

Xxx xxx

23. xxx xxx. But in the facts and circumstances of the present case, in our view, the sentences imposed on the appellant could be ordered to be run concurrently. At the time of marriage, the appellant was employed as a Painter at Delhi and after marriage, it is stated that the appellant had secured an employment in Gulf countries and used to visit India once in two years only. It is brought on evidence that in a period of eight years from 1988–1996, he came on leave to India for only four times and finally he visited India while he was on leave during January- February 1996. The appellant also appears to have taken efforts for mediation to settle the differences and the mediation was scheduled to take place on 23.2.1996; but Lillikutty committed suicide on the same day. **Keeping in view the totality of the facts and circumstances of the case, the sentences imposed on the appellant for the offences punishable under Sections 498A and 306 IPC are ordered to run concurrently and the appeal is disposed of with the above modifications.**"

A perusal of the above judgment would show that although the sentences awarded in the said case did not include a sentence of life imprisonment, yet, while determining the issue, moreso in para 13 and 20, it was observed that in case there is a sentence of life imprisonment, there was 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 and since, sentence of imprisonment for life means jail till the end of normal life of the convict, **the sentence of imprisonment for fixed term has to necessarily run concurrently with the sentence oflife imprisonment and in such a case, it would be in order, if the Sessions Judge exercised his discretion in issuing a 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.** The Hon'ble Supreme Court in the facts and circumstances of that case, has held that in the said case, sentences should be ordered to run concurrently and the appeal was disposed of with the said modification.

(18) Third judgment which would be relevant to note is the judgment of the Hon'ble Supreme Court in **Sunil Kumar @ Sudhir Kumar's** *case (Supra)* which is sought to be cited by the counsel for the petitioner as well as respondent No.1. The relevant portions of the said judgment are reproduced hereinbelow: -

> "xxxxxx
>
> 4. After having recorded conviction as aforesaid, the Trial Court sentenced the appellants to several punishments in the following manner: rigorous imprisonment for a term of 5 years with fine of Rs. 2,000/- and in default, further imprisonment for 6 months for the offence under Section 363 IPC; rigorous imprisonment for a term of 7 years with fine of Rs. 3,000/- and in default, further imprisonment for 1 year for the offence under Section 366 IPC; and rigorous imprisonment for a term of 10 years with fine of Rs. 5,000/- and in default, furtherimprisonment for 1½ years for the offence under Section 376 (1) IPC. However, the Trial Court did not specify as to whetherthe punishments of imprisonment would run concurrently or consecutively; and if they were intended to run consecutively, the Trial Court did not specify the order in which one punishment of imprisonment was to commence after expiration of the

other.

Xxx xxx

7.1. The learned counsel has contended, while relying on the decisions in Nagaraja Rao v. Central Bureau of Investigation: (2015) 4 SCC 302 and Gagan Kumar v. State of Punjab: (2019) 5 SCC 154, thatit is obligatory for the Court awarding punishments to specify whether they shall be running concurrently or consecutively; and the omission on the part of the Trial Court and the High Court, to state the requisite specifications, cannot be allowed to operate detrimental to the interests of the accused-appellants. The learned counsel has contended that though as per the mandate of Section 31 Cr.P.C., unless specified to run concurrently, the sentences do run consecutively but, for that purpose, **the Court is required to direct the order in which they would run; and no such direction having been given by the Trial Court or by the High Court, it cannot be said that the Courts were consciously providing for consecutive running of sentences.Further, with reference to the decision in O.M. Cherian alias Thankachan *v. State of Kerala & Ors.: (2015) 2 SCC 501, the learned counsel would urge that it is not the normal rule that multiple sentences are to run consecutively.***

Xxx xxx

10.2. Thus, it is beyond a shadow of doubt that Section 31 (1) CrPC vests complete discretion with the Court to order the sentences for two or more offences at one trial to run concurrently having regard to the nature of offences and the surrounding factors. Even though it cannot be said that consecutive running is the normal rule but, it is also not laid down that multiple sentences must run concurrently. There cannot be anystraitjacket approach in the matter of exercise of such discretion by the Court; but this discretion has to be judiciously exercised with reference to the nature of the offence/s committed and the facts and circumstances of the case. However, if the sentences **(other than life imprisonment)** are not provided to run concurrently, one would run after the other, **in such order as the Court may direct.**

> **11.** ***For what has been provided in Section 31 (1) CrPC read with the expositions of this Court, it follows that the Court of first instance is under legal obligation while awarding multiple sentences to specify in clear terms as to whether they would run concurrently or consecutively.***
>
> Xxx xxx
>
> 12. As noticed, if the Court of first instance does not specify the concurrent running of sentences, the inference, primarily, is that the Court intended such sentences to run consecutively, though, as aforesaid, the Court of first instance ought not to leave this matter for deduction at the later stage. Moreover, if the Court of first instance is intending consecutive running of sentences, **there is yet another obligation on it to state the order (i.e., the sequence) in which they are to be executed.** The disturbing part of the matter herein is that not only the Trial Court omitted to state the requisite specifications, eventhe High Court missed out such flaws in the order of the Trial Court."

The facts of the abovesaid case would show that there was no sentence of life imprisonment in the same. In the said judgment, reliance was placed upon the earlier judgments of the Hon'ble Supreme Court in the case titled ***Nagaraja Rao*** *versus* ***Central Bureau of Investigation***[4] *and in case* ***Gagan Kumar*** *versus* ***State of Punjab***[5] to observe that it was obligatory for the Court awarding the punishments to specify whether they would be running concurrently or consecutively and the omission on the part of the trial Court and the High Court to state the requisite specifications could not be allowed to operate in a way that was detrimental to the interests of the accused-appellants. **It was specifically noticed in para 10.2 of the judgment that if the sentences (other than life imprisonment) are not provided to run concurrently, one would run after the other, in such order as the Court may direct.** It was also observed that the Court of first instance is under the legal obligation while awarding multiple sentences in one trial, to specify in clear terms, as to whether they would run concurrently or consecutively and observed that if the Court of first instance was intending consecutive running of sentences, then there was

[4] (2015) 4 SCC 302
[5] (2019) 5 SCC 154

another obligation on it to state the order i.e. sequence, in which they are to be executed. At this stage, it would be relevant to note that learned counsel for respondent No.1 has sought to place reliance upon certain paras of the said judgment to state that as a matter of law, in case the judgment of conviction is silent and does not direct that the sentences are to run concurrently, then the same are to run consecutively. However, reference to the said observation has to be read in conjunction with the fact that the said observations had been made in a situation where the sentences awarded were other than the sentence of life imprisonment, as is apparent from para 10 of the judgment.

(19) Fourth judgment which is relevant for adjudication in the present case is the judgment of the Hon'ble Supreme Court in ***Vikas Yadav's*** *case (supra).* Relevant portions of the said judgment are reproduced hereinbelow: -

> "The appellants in this batch of appeals stand convicted for the offences under Sections 302, 364, 201 read with Section 34 of the Indian Penal Code (IPC). This Court while hearing the special leave petitions on 17.08.2015 had passed the following order: -
>
> "Delay condoned.
>
> Having heard learned senior counsel for the petitioners at great length, we are of the view, that the impugned orders call for no interference whatsoever insofar as the conviction of the petitioners is concerned. The conviction of the three petitioners, as recorded by the courts below, is accordingly upheld.
>
> **Issue notice, on the quantum of sentence, returnable after six weeks**."
>
> 2. On 16.06.2015 leave was granted. Thus, we are only concerned with the legal defensibility and the justifiability of the imposition of sentence.
>
> 3. The arguments in these appeals commenced on issues of law. Mr. U.R. Lalit and Mr. Shekhar Naphade, learned senior counsel appearing for the appellant in Criminal Appeal Nos. 1531-1533 of 2015 and Mr. Atul Nanda, learned senior counsel appearing for the appellant in Criminal Appeal Nos. 1528-1530 of 2015 questioned the

propriety of the sentence as **the High Court has imposed a fixed term sentence, i.e., 25 years for the offence under Section 302 IPC and 5 years for offence under Section 201 IPC with the stipulation that both the sentences would run consecutively.** It is apt to note here that separate sentences have been imposed in respect of other offences but they have been directed to be concurrent. After advancing the arguments relating to the jurisdiction of the High Court as well as this Court on imposition of fixed term/period sentence, more so when the trial court has not imposed death sentence, the learned counsel argued that the factual score in the instant case did not warrant such harsh delineation as a consequence disproportionate sentences have been imposed.

Xxx xxxXxx xxx

76. The next submission pertains to the direction by the High Court with regard to the sentence imposed under Section 201 to run consecutively. Learned counsel for the appellants have drawn our attention to the Constitution Bench decision in V. Sriharan (supra). The larger Bench was dealing with the following question:-

"Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial?"

77. Learned counsel appearing for the appellants have drawn out attention to the analysis whether a person sentenced to undergo imprisonment for life when visited with the "term sentence" should suffer them consecutively or concurrently. The larger Bench in that context has held thus:-

"We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however maynot be true for if the Court directs the life sentence to start first it would

necessarily imply that the term sentence would run concurrently**. That is because oncethe prisoner spends his life in jail, there is no question of his undergoing any further sentence.**"

78. In the instant case, the trial Court has imposed the life sentence and directed all the sentences to be concurrent. The High Court has declined to enhance the sentence from imprisonment for life to death, but has imposed a fixed term sentence. It curtails the power of remission after fourteen years as envisaged under Section 433-A. **In such a situation, we are inclined to think that the principle stated by the aforesaid Constitution Bench would apply on all fours. The High Court has not directed that the sentence under Section 201/34 IPC shall run first and, thereafter, the fixed term sentence will commence. Mr. Dayan Krishnan, learned senior counsel appearing for the State has argued that this Court should modify the sentence and direct that the appellants shall suffer rigorous imprisonment for the offence punishable under Section 201/34 IPC and, thereafter, suffer the fixed term sentences. Similar argument has been made in the written submission by the learned counsel for the informant. As the High Court has not done it, we do notthink that it will be appropriate on the part of this Court inthe appeal preferred by the appellants to do so. Therefore, on this score we accept the submission of the learned counsel forthe appellants and direct that the sentence imposed for the offence punishable under Section 201/34 IPC shall run concurrently with the sentence imposed for other offences by the High Court.**"

A perusal of the above judgment would show that a sentence of 25 years for the offence under Section 302 of the IPC and 5 years for the offence under Section 201 of the IPC was awarded by the High Court with the stipulation that both the sentences would run consecutively. Other separate sentences had also been imposed in respect of the other offences but they had been directed to run concurrently. Notice in the SLP had been issued with respect to the quantum of sentence and the conviction was upheld. In para 78 of the judgment, after observing thatthe principle stated by the Constitutional Bench judgment would apply, it was held that since the High Court

had not directed that the sentenceunder Sections 201, 34 of the IPC would run first, and thereafter the sentence of 25 years would commence, thus, the arguments of the Senior Counsel appearing for the State seeking modification of the said direction to the effect that the term of 5 years of rigorous imprisonment for the offence under Sections 201/34 of the IPC be suffered first by the accused, was rejected and in fact, argument of the appellant to the effect that the sentence imposed for the offence punishable under Sections 201/34 of the IPC should be made to run concurrently with the sentence imposed for the other offences by the High Court, was ordered. From the above judgment, it comes about that where there was no specific direction by the trial Court to the effect that the term sentence would run prior to the life sentence, there the Hon'ble Supreme Court deemed it fit to make the subsequent term sentence run concurrently, instead of making the term sentence run first. The facts of the said case would be relevant for the adjudication of the present case, although, this Court is sanguine of the fact that the said order was passed in an appeal arising out of the main judgment and not in collateral proceedings.

(20) Fifth judgment which is relevant would be the judgment of the Division Bench of this Court in case titled ***Harwinder Singh @ Pinder and others*** *versus* ***State of Punjab and others***[6]. Relevant portions of the said judgment arereproduced hereinbelow:-

> "We are dealing with five appeals arising out of the judgment of conviction dated 09.09.2015 and order of sentence dated 11.09.2015 passed by the Additional Sessions Judge, Ludhiana. The appellants in CRA-D-1501-DB-2015, CRA-D- 1605-DB-2015, CRA-S-4385-SB-2015 and CRA-S-4599-SB-2015, have been convicted and sentenced in FIR No. 8 dated 02.02.2012 under Sections 302, 379, 465, 468, 471, 474, 201,120-B/34 of the Indian Penal Code (for short 'IPC') registered at Police Station Haibowal, Ludhiana, as under:-

S. No	Name of Convict	U/Section	Imprisonment and Fine	In case of default of fine
1.	Harwinder Singh	302 IPC read with Section 120B IPC for the	Life Imprisonment and fine of Rs.1,00,000/- out	Further one year

[6] 2020(1) RCR (Crl.) 323

		murder of victim Balraj Singh Gill	of which Rs.80,000/- shall be paid by way of compensation to the family of Balraj Singh Gill	
		302 IPC read with Section 120B IPC for the murder of Monika Kapila	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall bepaid by way of compensation to the family of Monika Kapila	Further year
		404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read with Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months
2.	Pritpal Singh	302 IPC read with Section 120B IPC for the murder of victim Balraj Singh Gill	Life Imprisonment and fine of Rs.1,00,000/- out of whichRs. 80,000/- shall be paid by way of compensation to the family of Balraj Singh Gill	Further year
		302 IPC read	Life Imprisonment	Further

		with Section 120B IPC for the murder of Monika Kapila	and fine of Rs. 1,00,000/- out of whichRs.80,000/- shall be paid by way of compensation to the family of Monika Kapila	one year
		404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read With Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months
3.	Umesh Karda	302 IPC read with Section 120B IPC for themurder of victim Balraj Singh Gill	Life Imprisonment and fine of Rs.1,00,000/- out of whichRs. 80,000/- shall bepaid by way of compensation to the family of Balraj Singh Gill	Further one year
		302 IPC read with Section 120B IPC for the murder of Monika Kapila	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall bepaid by way of compensation to the family of Monika Kapila	Further one year

		404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further 3 months
		471 IPC read With Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months
		201 R/W 120B IPC	7 years and fine of Rs.20,000/	Further six months

2. The sentences of the above three convicts namely Harwinder Singh, Pritpal Singh and Umesh Karda**, have been ordered to run consecutively for each of the offence.**

XXX XXX

67. **The learned trial Court got swayed by the fact that in this case two murders had been committed, and thus awarded two life sentences for the said two murders. However, the learned trial Court lost sight of the fact that the said murders were committed in the same occurrence and in both the cases the offence is one i.e. Section 302 IPC and there are no separate FIRs.** Still further, except for the offence under Section 302 IPC, there is no other offence, which entails the punishment of either death sentence or life imprisonment. Thus, the judgment in Shankar Kisanrao Khade's (supra) case is distinguishable and not applicable in the case in hand. The test of `Rarest of Rare' case applied in Shankar Kisanrao Khade's (supra), would not come into play in this case as there is no series of acts (i.e. more than one offence entailing death sentence or life imprisonment), which may justify the imposition of the consecutive running of sentences.

68. Hence, we direct that the life sentences imposed upon the appellants Harwinder Singh; Pritpal Singh and Umesh

Karda, on two counts, **shall run concurrently**.

69. Coming to the question as to whether the sentences awarded for the other offences upon the said accused-appellants, shall run concurrently or consecutively, in Vikas Yadav Vs. State of U.P. and others, (2016)9 SCC 541, the Hon'ble Apex Court, considered the judgment delivered in Shankar KishanraoKhade's (supra). However, while relying upon the judgment of the Constitution Bench judgment in Union of India Vs. Sriharan alias Murugan and others, (2014) 1 SCC page 1, it was held as under:-

"76. The next submission pertains to the direction by the High Court with regard to the sentence imposed under Section 201 to run consecutively. Learned counsel for the appellants have drawn our attention to the Constitution 53 of 56 CRA-D-1501- DB-2015 and other connected cases 54 Bench decision in V. Sriharan (supra). The larger Bench was dealing with the following question:-

"Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for whichhe has been tried in a single trial?"

77. Learned counsel appearing for the appellants have drawn out attention to the analysis whether a person sentenced to undergo imprisonment for life when visited with the "term sentence" should suffer them consecutively or concurrently. The larger Bench in that context has held thus:-

"We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence."

Xxx xxx

> 70. Thus, it is clear that if two sentences, one of them being life sentence and another one a term sentence, are imposed by the Court, **then unless the term sentence is ordered to start first, both the sentences shall run concurrently.** It was, thus, held that the Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. **Unless it is so directed, the life sentence running at the first instance, all the sentences shall run concurrently, the reasoning being that once theprisoner spends his life in jail, there is no question of his undergoing further sentence.**"

A perusal of the above judgment would show that in the said case, three of the six accused persons were convicted for life imprisonment on two counts of Section 302 of the IPC and further, for term sentences under various other Sections and the same were ordered to run consecutively. It was noticed in para 67 of the abovesaid judgment that the present case was a case of two murders which were said to have been committed in one occurrence. In para 70, it was observed that in case, there are two sentences, one of them being life sentence and another one being a term sentence, then, unless the term sentence is ordered tostart first, both the sentences are required to run concurrently and it was further observed that although the Court can legitimately direct the convict to first undergo the term sentence before the commencement ofthe life sentence and in case it is not so directed then, the life sentence would run first and all the other sentences would necessarily run concurrently and the reason for the same was stated to be that once the prisoner has spent his life in jail, there is no question of his undergoing further sentence. The said observation is also relevant for adjudication of the present case, although it would be relevant to note that Special Leave to Appeal against the said judgment has been filed and notice has been issued in the same and the same is stated to be pending but the fact that there is no stay operation of the said judgment has been admitted by the counsel appearing on behalf of both the parties.

(21) From the aforesaid provisions as well as judgments referredto hereinabove, following principles would emerge: -

I) **Where in one trial, a person is convicted for two or more offences, and the sentence does not include the**

sentence of life imprisonment, and it has not been specified in the judgment of conviction and order of sentence that the sentences are to run concurrently, then the sentences in such a situation would run consecutively. (Reference in this regard may be made to the concluding lines of para 10.2 **of the judgment of the Hon'ble Supreme Court in Sunil Kumar's case (supra), reproduced hereinabove and also to para 17 of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of Muthuramalingam and others (supra), which has also been reproduced hereinabove).**

II) **Where in one trial, multiple sentences of imprisonment for life are awarded, the life sentences so awarded cannot be directed to run consecutively and have to necessarily run concurrently, as life imprisonment would mean full span of one's life. Such sentences would, however, be superimposed 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 in the others. (Reference with respect to the same may be made to para 31 of the judgment of the Hon'ble Supreme Court passed in Muthuramalingam & others' case (supra), as has been reproduced hereinabove).**

III) **Where in one trial, accused is convicted of multiple offences and is awarded life sentence for one offence and term sentences for the other offences, then it would be open to the trial Court to direct the convict to undergo the term sentence/ term sentences before commencement of his life sentence and such direction would be legitimate. However, any such direction is to be passed by the trial Court after considering the facts and circumstances of that particular case. The discretion to be exercised in such cases has to be on judicial lines and is not to be done mechanically. Converse of it, however, would not stand judicial scrutiny inasmuch as if the trial Court directs that the sentence of life**

imprisonment would start first, and the term sentence would follow, it would then necessarily imply that the term sentence would run concurrently, as once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. (Reference in this regard may be made to para 32 of the judgment passed by the Hon'ble Supreme Court in Muthuramalingam & others' case (supra)).

IV) **When a person already undergoing a sentence of term imprisonment, is sentenced to imprisonment for a term orimprisonment for life on a subsequent conviction, then such term imprisonment or imprisonment for life shall commence at the expiration of the term imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. (Reference in this regard may be made to the provisions of section 427(1) of Cr.P.C. reproduced hereinabove).**

V) **When a person already undergoing a sentence of imprisonment for life, is sentenced, on subsequent conviction, to imprisonment for a term or imprisonment for life, then the subsequent sentence shall run concurrently with such previous sentence. (Reference in this regard may be made to section 427(2) of Cr.P.C. reproduced hereinabove).**

In the light of the above principles, this Court would like to determine as to whether the impugned order is legally sustainable.

(22) The present case has raised a very peculiar situation which would be apparent from the facts of the case as are being concisely stated hereinafter.

(23) The petitioner was convicted vide judgment dated 23.11.2006 under Section 302 of the IPC and under Section 25 of the Act of 1959. From the order of sentence, which has been reproduced hereinabove, it is apparent that the first sentence was of life imprisonment for the commission of offence under Section 302 of the IPC and the second sentence awarded was of 5 years rigorous

imprisonment under Section 25 of the Act of 1959 and the third sentence awarded was of rigorous imprisonment for 5 years, also under section 25 of the Act of 1959. In the said judgment of conviction and order of sentence, it had neither been stated that the same were to run concurrently, nor it had been stated that the term sentences were to run prior to the sentence of life imprisonment. In the said order of sentence, it had been noticed that although, because of the said unfortunate incident, three persons had died but the petitioner had no motive to kill the deceased, nor there was any planning for committing such offence and the same was a chance occurrence as the circumstances developed at the scene of occurrence itself and further it was the deceased who had themselves travelled to the premises of the petitioner. The conviction warrant dated 29.11.2006 (Annexure P-4) was issued by the Additional Sessions Judge, Chandigarh on the same date when the order of sentence was passed and by the same presiding officer who had passed the judgment of conviction and order of sentence and in the said conviction warrant, it had been specifically stated that all the substantive sentences were to run concurrently. It is an admitted case between the parties that in the grounds of appeal before the High Court (Annexure P-5), in the judgment of the High Court dated 20.04.2011 (Annexure P-6) dismissing the appeal of the petitioner, in the grounds of appeal before the Hon'ble Supreme Court dated 10.08.2011 (Annexure P- 7), as well as in the judgment of the Hon'ble Supreme Court dated 20.01.2016 (Annexure P-8) dismissing the criminal appeal of the petitioner, no ground or argument was raised on behalf of the petitioner to state that the trial Court should've ordered the concurrent running of sentence, since as per the petitioner's case, he was certain that he was to be released, after completing the life sentence as the two term sentences were to run concurrently with the life sentence. It was after the period of 13 years that the application dated 29.11.2019 (Annexure P-9) was filed by respondent No.1 under Sections 353 read with Section 362 of Cr.P.C. for issuance of directions to respondent Nos.1 to 3 (respondent No.2 to 4 herein) to comply with the sentence passed against the petitioner and not to act upon the said conviction warrant. In the said application, allegations were made to the effect that the conviction warrant was forged and fabricated. In the reply filed by respondent Nos.1 to 3 (respondent No.2 to 4 herein) i.e. the Superintendent, Model Jail, Chandigarh, Director General of Prisons, Haryana and The Inspector General of Prisons and Correctional Administration, U.T. Chandigarh, **specific objections were raised with respect to maintainability of the said application** and it was also

stated that the conviction warrant was a genuine document and that the conviction warrant, which had been issued by the Hon'ble Court of competent jurisdiction, was part of the Court record and, therefore, allegation levelled by respondent No.1 herein with respect to forgery was vehemently denied. To the similar effect, was the reply filed by the present petitioner, who was respondent No.4 in the said proceedings. The application filed under Section 353 read with Section 362 of Cr.P.C., by respondent No.1 was allowed by the Additional Sessions Judge, Chandigarh vide impugned order dated 07.10.2021, without discussing or considering the law laid down by the Hon'ble Supreme Court in ***Muthuramalingam's*** case (Supra) and in ***O.M. Cherian @ Thankachan's*** case (Supra), although the said two judgments were cited and specifically noticed in the impugned order dated 07.10.2021 and without considering as to whether such an application was maintainable or not. In the impugned order it was held that the sentences were to run consecutively and the conviction warrant in which it was stated that sentences were to run concurrently, was not to be taken into consideration. In the impugned order, the fact that the petitioner had already undergone 18 years, 8 months and 18 days of actual sentence and undergone the total period, including remission, of 25 years, 2 months and 19 days as per the custody certificate dated 10.11.2021, and also the fact that the said application had been moved after a period of 13 years from the passing of the order of sentence and issuance of conviction warrant, had not been duly considered.

(24) This Court, after considering all the facts and circumstances, holds that the impugned order is illegal and deserves to be said aside on the following grounds: -

i) The impugned order has been passed in an application filed under section 353 r/w 362 Cr.P.C. In the said application a direction had been sought to be given to respondent no. 1 to 3 therein, i.e. Superintendent, Model Jail, Chandigarh, Director General of Prisons, Haryana and The Inspector General of Prisons and Correctional Administration, U.T. Chandigarh, to comply with the sentence passed against the present petitioner and to not act uponthe conviction warrant. The maintainability of the said application was specifically questioned by the respondent no. 1 and 3 therein, by raising a preliminary objection as has been noticed in para 3 of

the impugned order. However, no finding has been given regarding the same. A perusal of section 353, which has been reproduced hereinabove, and deals with the term "judgment", as well as section 362, which has also been reproduced hereinabove, and deals with the proposition that the Court can not alter its judgment, do not, in any manner, entitle a party to go back to the Trial Court to seek directions, as were being sought in the said application. Neither of the said sections envisage the setting aside of a conviction warrant or issuance of a direction to the authorities to comply with any order. Once the Additional Sessions Judge, Chandigarh, vide judgment dated 23.11.2006, and order of sentence dated 29.11.2006, had finally disposed of the matter, the appeal and the SLP against which had already been adjudicated, the moving of the present application, after a period of 13 years after the passing ofthe order of sentence, before the Additional Sessions Judge, Chandigarh, was not maintainable, moreso under section 353 r/w 362 of Cr.P.C. The Additional Sessions Judge had become *functus officio,* and thus could not have entertained the said application. The Hon'ble Supreme Court of India, in the case titled as ***Hari Singh Mann v. Harbhajan Singh Bajwa,*** reported as ***2001(1) SCC 169***, had observed that the Court becomes *functus officio* the moment the official order disposing of a case is signed. Nothing has been observed in the impugned order or has been shown to this Court in the present proceedings to prove that the said application is maintainable. Although, on the said ground alone, the impugned order deserves to be set aside, but yet, this Court would like to state the other illegalities in the impugned order on account of which also, the impugned order is not sustainable.

ii) The impugned order fails to take note of the fact that the jail warrant dated 29.11.2006 was issued under the signatures of the Additional Sessions Judge, Chandigarh on the same date when the order of sentence was passed by the same Presiding Officer. In the said conviction warrant, it was specifically mentioned that all the substantive sentences are to run concurrently. The

relevant portion of the said conviction warrant is reproduced hereinbelow:

"To
Superintendent
District Jail, Chandigarh

Whereas at the Sessions trial held before me from 10.8.2004 to 25.11.2006, Accused Suresh Chand s/o Dhoop Singh age 45 years, R/o 20/152, Prabhu Nagar Sonepat (Haryana) of the calender of the said xxxxx has been convicted and sentenced to undergo rigorous imprisonment as given below:-

Under Section	**Rigorous Imprison ment**	**Fine Rs.**	**In default of payment of fine, further RI for**
302 IPC	For life	3 lac	3 years
25 Arms Act Incident of on 1.9.2002	5 years	5000/-	1 year
25 Arms Act inci 7.9.2002	5 years	5000/-	1 year

All the substantive sentences shall run concurrently.

The period of custody w.e.f. 7.9.2002 to 29.11.2006 (4 years, 2 months and 22 days) of the convict during investigation and trial of this case has been ordered to be deducted from the period of sentence awarded.

This is to authorize and require you the said Superintendent to receive the said accused into your custody in the said jail together with this warrant and thereby carry the aforesaid sentences into execution according to law.

Given under my hand and seal of this Court on 29th day of November 2006

Fine not paid

Sd/-
(B.K. Mehta)
Addl. Sessions Judge,
Chandigarh"

As per Section 425 of Cr.P.C., which is contained in

Chapter XXXII of Cr.P.C., every warrant for the execution of a sentence may be issued either by the Judge or by the Magistrate who passed the sentence, or by the successor-in-office. Section 425 of Cr.P.C is reproduced hereunder:-

425. Who may issue warrant.—Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office

The Division Bench of the Madhya Pradesh High Court in in **Hamid Raza's** *(Supra)* has held as under:-

*"*xxxxxx

We are of the opinion, that the relief claimed by the petitioner cannot be granted. Under Section 418 of the Cr. Procedure Code where the accused is sentenced to imprisonment for life the Court passing the sentence shall forthwith forward a warrant to the jail where the accused is to be confined. Under Section 425 every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office. Under Section 31 of the Code if the accused is convicted for more than one offence, the sentences are to run consecutively unless the Court directs that such punishments shall run concurrently. Admittedly in the warrant which was issued by the Second Addl. Sessions Judge for execution of the sentence, there was omission in mentioning that the sentences passed against the petitioner were to run concurrently, with the result the jail authorities rightly assumed that the sentences were to run consecutively and so the petitioner was not released although he completed four years of jail sentence on 14-5-1982. When this fact was brought to the notice of the jail authorities for the time by the order of this Court in Misc.Cr. Case No. 1231 of 1982 dated 4- 8-1983 which was received on 8-8-1983 the petitioner was immediately released. Therefore, it is evident that the jail authorities are not at all responsible for the illegal detention of the petitioner after 14-5-1982. Under the circumstances, the Superintendent, Central Jail, Raipur nor the State of M.P. could be held liable for the damages for the illegal detention of the petitioner.

> Xxx xxx
>
> 5. Now the question remains whether the Court of Second Addl. Sessions Judge, Rewa, which issued the detention warrant, could be held liable to pay the damages as the Court failed to mention in the warrant that the two sentences passed against the petitioner were to run concurrently. Failure to mention this fact resulted in the jail authorities presuming that the sentences were to run consecutively. For the protection of Magistrates and others acting judicially, the Judicial Officers Protection Act, 1850 was enacted.
>
> Xxx xxx
>
> In this case the warrant was issued by the Second Addl. Sessions Judge Under Section 425 of the Code of Cr. Procedure. This act was done by the Second Addl. Sessions Judge while performing his judicial functions. Therefore, he is fully protected under Section 1 of the Judicial Officers Protection Act, in spite of the fact that there was a mistake in the warrant in mentioning that both the sentences were to run concurrently.
>
> Xxx xxx
>
> **7. Whatever that be, here the warrant was issued by the Presiding Judge Under Section 425 of the Code of Cr. Procedure and this he did while acting judicially and it cannot be said to be a ministerial act. If the warrant was issued by the clerk of the Court then things might have been different.**
>
> **8.** With the result the petition fails and it is dismissed."

A perusal of the above judgment would show that it had been observed therein that the Additional Sessions Judge, while issuing the warrant under Section 425 of Cr.P.C., is performing his judicial functions and the same cannot be stated to be a ministerial act.

Thus, the conviction warrant which had been issued on 29.11.2006 was a judicial act. The said conviction warrant was, in fact, not in contradiction to the judgment of the trial Court, convicting and sentencing the petitioner, and in fact, the said warrant when read with the seriatim in which the sentence was imposed by the trial Court and also in light of the fact that there was no specific direction to the

effect that the term sentence was to preceed life imprisonment, would make it clear that the term sentences were to run concurrently with the life sentence and the said intent of the trial Judge had been dealt with in a perverse manner, by not taking into consideration the conviction warrant.

iii) The impugned order has failed to take note of the fact that even independent of the conviction warrant, a perusal of the order of sentence would show that the same does not direct that the term sentences were to commence prior to the sentence of life imprisonment and even the seriatim in which the sentences have been mentioned, would show that the sentence of life imprisonment had been stated to be the first sentence followed by two term sentences of five years each, both under section 25 of the Act of 1959. In such a situation, a plain reading of the order of sentence would show that the term sentences were to commence after the sentence of life imprisonment and since, as per the settled law laid down by the Hon'ble Supreme Court in **Muthuramalingam's case** (Supra) and in **O.M. Cherian @ Thankachan's case** (Supra) and in **Vikas Yadav's** case (supra), the same would lead to an impossible/unworkable situation inasmuch as, life imprisonment implies imprisonment for the whole span of one's life, thus, there would be no question of a person undergoing any further sentence after undergoing the sentence of life imprisonment. Thus, in such a situation, it would **necessarily imply** that the term sentences would run concurrently with the sentence of life imprisonment. The judgments although were noticed in paragraph 2 of the impugned order, but were not considered.

iv) That the impugned order failed to take note of the provisions of section 427(2) of Cr.P.C. A perusal of the said provision, which hasbeen reproduced hereinabove, would show that even in a case, where a person has been convicted twice in two separate trials thatis to say that in a case where he is already undergoing a sentence of imprisonment for life and is sentenced on a subsequent conviction to imprisonment for a term or

imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. Since in the present case, the petitioner has been convicted of offences under a "single transaction", that is, in one occurrence, thus, hiscase is on a higher footing than the case of a person who has committed two separate offences in two different occurrences.

v) The impugned order does not take into consideration the fact that the conviction warrant was issued on 29.11.2006, in which it was specifically stated that all the substantive sentences shall run concurrently and the present application, challenging the said warrant had been moved after a period of 13 years and the impugned order had been passed on 07.10.2021, when the case of the petitioner for release was at the final stage, and thus, the same is against the legitimate expectation the petitioner had for all these years with respect to his release and the same is apparent from the fact that neither in the grounds of appeal before the High Court, nor in the grounds of appeal before the Hon'ble Supreme Court, the petitioner had sought the concurrent running of the sentence. In case, any challenge to the warrant had been raised immediatelyafter the issuance of the said warrant, and in case the said issue had been decided against the petitioner, then, the petitioner would have had an opportunity to raise the said issue of sentencing before the Division Bench of this Court or before the Hon'ble Supreme Court. Moreover, respondent no. 1 waited for 13 long years, and moved the present application after the Presiding Officer who had passed the order of sentence and had issued the conviction warrant, was not holding the post of Additional Sessions Judge, Chandigarh anymore.

vi) The Impugned order fails to take note of the fact that the trial Court, in the order of sentence dated 29.11.2006, had noticed that the Petitioner had no motive to commit the offence, nor there was any prior planning for committing the said offence as the occurrence had taken place by chance and the

circumstances had developed at the scene of occurrence itself and it was the deceased persons who had travelled to the premises of the convict. The said observations had been made at page 84 of the paper book. Even the argument of the counsel for the petitioner to the effect that the petitioner was a first-time offender, against whom there was no previous conviction and the fact that the petitioner was the only earning hand in the family, were also noticed by the trial Court, as apparent from page 77 of the paper book. Para 32 of the judgment dated 29.11.2006 would show that DW1 Dr. Alankrita had been examined in the case and she had produced the medico-legal report of the petitioner and the petitioner was found to be having a punctured lacerated wound above the knee joint with inverted blackened margins. The said facts have also not been considered in the impugned order.

vii) The impugned order also failed to take into consideration the fact that in a criminal case even when two views are possible, then also, the view favouring the accused should be taken, as it is a settled principle of law that any benefit of doubt has to go to the accused.

viii) The petitioner, as per the custody certificate, has already undergone 18 years, 8 months and 18 days of actual sentence and the total period of 25 years, 2 months and 19 days including remission, as on 10.11.2021 and this is a very important aspect, which has beentaken into consideration by this Court while adjudicating the present case.

(25) At this stage, to be fair to the counsel for respondent no. 1,the objection raised by him with respect to the maintainability of the present petition filed under Section 482 of Cr.P.C., is also being dealt with. There is no quarrel with the proposition which is sought to be propounded by the counsel for respondent No.1 to the effect that in collateral proceedings, moreso under Section 482 of Cr.P.C., words cannot be read into a judgment, moreso when the appeal and further appeal against the impugned judgment has been dismissed. For the said proposition, learned counsel for respondent No.1 has relied upon judgment of the Hon'ble Supreme Court in ***M.R. Kudva's*** *case (Supra).*

This Court has considered the said arguments and also the said judgment of the Hon'ble Supreme Court. In the case before the Hon'ble Supreme Court, the facts were different from the case at hand. In the said case, the accused therein was convicted in two separate criminal cases by the Special Judge, CBI on 04.07.1997 and 06.08.1997. The Special Judge, while passing the judgment of conviction in the second case, took note of the fact that the accused had earlier been convicted and observed that he did not deserve any sympathy and further observed that the sentences of imprisonment imposed upon him were to run concurrently. Appeals against both the judgments, as well as Special Leave petitions were dismissed, and thereafter, an independent petition u/s 482 r/w 427 of Cr.P.C. was filed in the High Court praying for the sentences to run concurrently. It is in the said background, that the Hon'ble Supreme Court had observed that the provisions of Section 427 of Cr.P.C. were not invoked at the time when the original case or appeal was pending in the matter and it was only after dismissal of the matter before the Hon'ble Supreme Court, that an independent petition u/s 482 r/w 427 had been filed, which was held to be not maintainable. In the present case, it is respondent No.1 who had filed the application beforethe Additional Sessions Judge, Chandigarh. It is on his application that the impugned order has been passed and the position which stood settled since 2006 has been unsettled and the petitioner who was in the process of being released, is required to undergo further incarceration for several years in compliance of the impugned order. It is not in dispute that the order of the Sessions Court can be challenged in the proceedings under Section 482 of Cr.P.C. before this Court. The prayer in the present petition under Section 482 of Cr.P.C. is for setting aside the order dated 07.10.2021 and the prayer is not for reading any words into the order of sentence or for reviewing the same. Since, in the impugned order, Additional Sessions Judge, Chandigarh had considered the import of the order of sentence dated 29.11.2006 without considering the relevant law on the point and without considering the fact that the application was not maintainable, thus, it is within the ambit of this Court to set aside the said order and protect the legal rights of the petitioner. It is further observed that this Court has not added any words into the judgment of conviction dated 23.11.2006 or to the order of sentence dated 29.11.2006, and has only considered the legality of the impugned order dated 7.10.2021.

(26) In view of the abovesaid facts and circumstances, the present petition is allowed and the impugned order dated 07.10.2021 is

set aside and the application filed by respondent No.1 under Section 353 read with Section 362 of Cr.P.C. is dismissed.

(27) Before parting with this judgment, it would be relevant totake note of para 21 the judgment of the Hon'ble Supreme Court in the case of ***Sunil Kumar @ Sudhir Kumar's*** *case (Supra).* Para 21 of the same is reproduced hereunder: -

> "21. **While closing on the matter, we deem it appropriateto reiterate what was expounded in the case of Nagaraja Rao (supra), that it is legally obligatory upon the Court of first instance, while awarding multiple punishments of imprisonment, to specify in clear terms as to whether the sentences would run concurrently or consecutively. It needs hardly an emphasis that any omission to carry out this obligation by the Court of first instance causes unnecessary and avoidable prejudice to the parties, be itthe accused or be it the prosecution.**"

A perusal of the para reproduced hereinabove would show that it had been categorically observed that it is legally obligatory upon the Court of first instance while awarding multiple sentences of imprisonment in one trial to specify, in clear terms, as to whether the sentences would run concurrently or consecutively, since an omission to fulfill this obligation by the Court of first instance causes unnecessaryand undue prejudice to the parties, be it the accused or be it the prosecution.

(28) It is apparent that the said observations of the Hon'ble Supreme Court are either not in the knowledge of, or are not being diligently followed by the trial Judges who are deciding the original trial and on account of the same, parties are having to litigate for several rounds, even after the case has been finally adjudicated upon, on merits.

(29) **In view of the above, this Court reiterates that the Court of first instance while awarding multiple sentences of imprisonmentin a trial, must specify, in clear terms, as to whether the said sentences would run concurrently or consecutively and in case, they were to run consecutively, the order (sequence) in which the same would run.**

(30) The Registrar Judicial of this Court is requested to circulate the present judgment to all the trial Court Judges in Punjab, Haryana and Chandigarh.

(31) This Court appreciates the assistance rendered by Mr. Sumeet Goel, Senior Advocate assisted by Mr. Gaurav Verma, Advocate and Mr. Karambir Singh Nalwa, Advocate, assisted by Mr. Chakitan V.S. Papta, Advocate, who have made a sincere endeavour to cite the relevant lawand have also very fairly argued the matter, not as adversaries but as officers of the Court.

J.S. Mehndiratta