

Sambha Ji Krishan Ji

Vs

State of Maharashtra

Writ Petition No. 1377 of 1973

(Y. V. Chandrachud, S. N. Dwivedi JJ)

13.11.1973

JUDGMENT

DWIVEDI, J. –

This petition for a writ in the nature of habeas corpus under Art. 32 of the Constitution is entirely devoid of merits. Facts are these. The petitioner was tried by the Sessions Judge, Sholapur, for an offence under Section 302 I.P.C. in the Sessions Trial No. 34 of 1946, By the judgment dated November 23, 1946 he was convicted and sentenced to transportation for life. He filed an appeal in the High Court of Bombay. It was dismissed on December 2, 1946. He was admitted in the Yerwada prison on December 24, 1946. Therefrom he was released on furlough on April 24, 1949, but he did not surrender on the due date. He was arrested on August 31, 1949. Once again he was released on parole on December 23, 1950, and he repeated his earlier conduct. He became scarce. He was arrested on November 3, 1965 and sent to the Yerwada prison on November 4, 1965. He is now undergoing the unexpired portion of his sentence.

2. Against his continued detention he filed a writ petition under Art. 226 of the Constitution in the High Court of Bombay. It was dismissed on March 1, 1971. It seems that three points were advanced before the High Court on behalf of the petitioner. First, he is not the person who had been convicted by the Sessions Judge, Sholapur, in Sessions Trial No. 34 of 1946 : second, he was sentenced only to 10 years rigorous imprisonment, and not to transportation for life; and third, he is entitled to be released forthwith if the period of remission which he is entitled to get, is counted towards the sentence.

3. The High Court accepted none of these contentions. The identity of the petitioner with the person convicted by the Sessions Judge was established by the jail authorities by verifying the identification marks on his body which tallied with the identification marks of the person who was released from jail and did not surrender on the due date. Secondly, the petitioner himself admitted in the High Court that it is he who had been convicted by the Sessions Judge in the Sessions Trial No. 34 of 1949. As regards the second contention, the High Court was satisfied that it was not correct. As regards the third contention, the High Court says that it was a matter which should be taken with the State Government and the High Court was not concerned with it. Having been sentenced to transportation for life, the Government could detain him in prison for life.

4. The petitioner has not disclosed in his petition in this Court that his petition has been dismissed by the High Court. The same three points have been re-canvassed before us. In the face of the judgment of the high Court, we cannot accept them. There could be hardly any dispute that he is the

person who was convicted by the Sessions Judge, Sholapur in the Sessions Trial No. 34 of 1946 to transportation for life. Counsel for the State has shown us a copy of the judgment of the Sessions Judge. That judgment shows that he was sentenced to transportation for life and not to 10 years rigorous imprisonment. As regards the third contention, the legal position is that a person sentenced to transportation of life may be detained in prison for life. Accordingly, this claimed by him is taken into account, he is entitled to be released. It is for the Government to decide whether he should be given any remissions and whether he should be released earlier.

5. The petition is dismissed.

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