

State of Madhya Pradesh

Vs

Ratan Singh and Others

Criminal Appeal No. 246 of 1971

(A.C. Gupta, Syed M. Fazal Ali JJ)

05.05.1976

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated May 13, 1971 by which the High Court allowed the writ petition filed by the respondent Ratan Singh a prisoner who was confined in Central Jail, Amritsar. The appeal arises in the following circumstances.

2. The respondent Ratan Singh was convicted by the Sessions Judge, Bhind in the State of Madhya Pradesh by his order dated October 16, 1957 under Section 302 I.P.C. and sentenced to imprisonment for life. An appeal filed by the respondent against the order of the Sessions Judge was dismissed by the High Court on May 19, 1959. Thereafter the accused made a prayer to the Government for transferring him from Gwalior Jail to Amritsar as the accused/respondent belonged to Punjab State. The representation of the accused was accepted and accordingly he was transferred to the Punjab Jail where he was lodged at Central Jail, Amritsar. The order of transfer was passed on October 15, 1959. The respondent contended that as he had completed the period of 20 years' imprisonment including the remissions granted under the Punjab Jail Manual he was entitled to be released forthwith and he accordingly made an application for his release to the Punjab Government. In fact the admitted position is that on May 7, 1971 the accused had undergone imprisonment for a period of 25 years 18 days and 19 hours taking into account the various remissions granted to him from time to time. The Government of Punjab forwarded the representation of the respondent to the Government of Madhya Pradesh for passing an order of release. On April 18, 1971 the State of Madhya Pradesh rejected the request of the respondent for his release. Thereafter the accused/respondent filed a writ petition in the High Court of Punjab and Haryana on the ground that the accused having served the sentence for more than 20 years was entitled to be released as a matter of course under the provisions of the Punjab Jail Manual and the Rules framed under the prisons Act. It was also contended by the respondent that as he was lodged in a jail under the jurisdiction of the Punjab Government, the appropriate Government to order his release was the Punjab Government and not the Government of Madhya Pradesh and, therefore, the request made by the Punjab Government to the Madhya Pradesh Government was not warranted by law. The High Court without issuing notice to the State of Madhya Pradesh and after hearing the Advocate-General accepted the plea taken by the respondent and held that Punjab State was the appropriate authority to release the respondent. The high Court relied upon a decision of the Madhya Pradesh High Court in Sitaram Barelal v. State of Madhya Pradesh (AIR 1969 MP 252 : 1969 Jab LJ 530) and directed that as the respondent had already served more than 20 years he was entitled to be released forthwith. Accordingly the High Court allowed the petition and directed the

State Government to consider the case of the respondent for being released and dispose of the case within 20 days from the date of the order of the High Court. It appears that in pursuance of the order of the High Court the respondent was released.

3. The State of Madhya Pradesh has filed this appeal by special leave against the order of the Punjab and Haryana High Court on the ground that in law it was the Madhya Pradesh Government alone which had the power to remit the sentence and release the prisoner and the High Court was in error in holding that the Punjab Government could pass the order of release. Appearing in support of the appeal Mr. Ram Panjwani learned Counsel submitted two points before us. In the first place it was argued that the High Court completely overlooked the legal position that a sentence of imprisonment for life could not be said to be a sentence which would expire automatically after the expiry of 20 years including remissions. The sentence would ensure till the life-time of the prisoner but the State Government had the discretion under Sections 401 and 402 of the Code of Criminal Procedure to remit the remaining part of the sentence and order release of the prisoner. Secondly, it was submitted that as the prisoner was convicted by a court situate in the State of Madhya Pradesh the appropriate Government was the Madhya Pradesh Government and not the Punjab Government where the prisoner was transferred to exercise its discretion under Section 401 of the code of Criminal Procedure. No one appeared for the respondent, but at the time of granting special leave, this Court had ordered that the release of the prisoner would not be reopened even if the appeal succeeded. In other words the State of Madhya Pradesh in this case is not concerned with the individual case of the respondent but only wants an authoritative decision on the important principle involved in the case.

4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in Gopal Vinayak Godse v. State of Maharashtra ((1961) 3 SCR 440 : AIR 1961 SC 600; (1961) 1 Cri LJ 736), where the Court, following a decision of the Privy Council in Pandit Kishori Lal v. King Emperor (LR 72 IA 1 : AIR 1945 PC 64) observed as follows :

Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

If so, the next question is whether there is any provisions of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the India Penal Code, Code of Criminal Procedure or the Prisons Act.

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A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.

The Court further observed thus :

But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of

prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act Under the said rules the orders of an appropriate Government under Section 401, Criminal Procedure Code, are a prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the code of Criminal Procedure and neither Section 57 of the Indian penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Indian Penal Code. In other words, this Court has clearly held that a sentence for life would ensure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life. In these circumstances, therefore, it is clear that the High Court was in error in thinking that the respondent was entitled to be released as of right on completing the term of 20 years including the remissions. For these reasons, therefore, the first contention raised by the learned Counsel for the appellant is well founded and must prevail.

5. The next plank of the argument put forward by Mr. Ram Panjwani was that under Section 401 of the Code of Criminal Procedure it was the State of Madhya Pradesh where the accused was convicted which alone had the power to grant remission and order release of the prisoner. It was submitted that the transfer of the accused from the State of Madhya Pradesh to the State of Punjab was made merely at the instance of the prisoner and for his convenience and could not clothe the transferee State with the power to pass an order under Section 401 of the Code of Criminal Procedure. In order to understand the implications of the argument put forward by the appellant it may be necessary to extract the relevant provisions of Section 401 of the code of Criminal Procedure which run thus :

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

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

A perusal of Section 401 of the code of Criminal Procedure would reveal that the section consists of two parts - the first part confers an absolute discretion on the appropriate Government to remit the whole or any part of the punishment to which the accused may have been sentenced. The words used in sub-section (1) as also sub-section (2) of Section 401 clearly show that the power is exercised by the "appropriate Government". The expression "appropriate Government" appears to have been substituted for the expression "Provincial Government" by Amendment Act, 1950. Previously the words used were "Provincial Government". Sub-section (2) of Section 401 of the code of Criminal Procedure, however, enjoins that before exercising its discretion on an application made to the appropriate Government for remission of the sentence, the appropriate Government may require the presiding Judge of the Court which convicted the prisoner to state his opinion whether the application should be granted or refused. Thus the procedure laid down in sub-section (2) of Section 401 gives a clear indication as to the real meaning and purport of the words "appropriate Government". It is obvious that only that Government can call for the opinion of the presiding Judge of the court which has control over the said presiding Judge or the court which is situated within the jurisdiction of the said Government. As a logical corollary of the interpretation of sub-section (2) of Section 401 it is the State where the accused was convicted which alone has the power to grant remissions of the sentence. In the instant case the Punjab Government had absolutely no control or jurisdiction over the Sessions Judge, Bhind in the State of Madhya Pradesh and could not have called for an opinion from that court. In these circumstances there can be no shadow of doubt that the appropriate Government mentioned in sub-section (1) and subsection (2) of Section 401 of the Code of Criminal Procedure refers to the Government of the State where the accused was convicted. That is to say, the transferor Government and not the transferee Government. Any such transfer of the accused from a jail situate in one State to a jail in some other State has absolutely no bearing on the question as to the application of Section 401 of the Code of Criminal Procedure, because this is merely an executive matter and an executive decision taken to meet the convenience of the accused.

6. Furthermore, the position is made absolutely clear by sub-section (3) to Section 402 of the Code of Criminal Procedure which runs thus :

In this section and in Section 401, the expression "appropriate Government" shall mean -

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (4A) of Section 401 is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government; and

(b) in other cases, the State Government.

A perusal of this provision clearly reveals that the test to determine the appropriate Government is to locate the State where the accused was convicted and sentenced

and the Government of that State would be the appropriate Government within the meaning of Section 401 of the Code of Criminal Procedure. Thus since the prisoner in the instant case was tried, convicted and sentenced in the State of Madhya Pradesh, the State of Madhya Pradesh would be the appropriate Government to exercise the discretion for remission of the sentence under Section 401(1) of the Code of Criminal Procedure. Although the present case is governed by the old Code, yet we may mention that the new Code of Criminal Procedure, 1973 has put the matter completely beyond any controversy and has reiterated the provisions of Section 402(3) in sub-section (7) of Section 432 which provides thus :

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

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

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

Actually this clause has been bodily lifted from the provisions of Section 402(3) and has made the position absolutely clear.

7. In *Surjit Singh v. State of Punjab* (Criminal Writ No. 11 of 1971 decided on May 26, 1972 : [ILR (1975) 1 Punj & Har 201]) a Division Bench of the Punjab and Haryana High Court has also taken the view that the appropriate Government would be the Government of the State where the prisoner has been convicted and sentenced. The Division Bench of the court after an exhaustive discussion of the various provisions of the code of Criminal Procedure and the Rules observed as follows :

There is, however, nothing to indicate that for the purposes of remission and suspension of sentences under Section 401, Criminal Procedure Code, the Legislature intended to adopt a different definition of 'appropriate Government'. In short, under Section 401, Criminal Procedure Code, the Government of the State of conviction and not the Punjab Government was competent to remit the balance of the sentence of these life convicts. All that the Punjab Government could do was to forward the cases of these life convicts to the appropriate Government for remitting the remaining term of their life imprisonment, in exercise of the power under Section 401, Criminal Procedure Code. The Punjab Government has already made such a reference in favour of the petitioners to the Governments of the States of conviction. Neither the Punjab Government nor the Superintendent of Jail concerned can release the prisoners under any of the statutory rules contained in Punjab Jail Manual without receiving the necessary orders of the appropriate Government under Section 401. Pending the receipt of orders of the appropriate Government, therefore, the detention of the petitioners could not by any reasoning, be called illegal.

We find ourselves in complete agreement with the view taken by the Punjab and Haryana High Court.

8. Before closing the judgment, we may refer to *Sitaram Barelal's* case which forms the sheet-

anchor of the decision of the High Court in the instant case. To begin with that case does not deal with the identical point involved in the present case. In that case, the State Government had exercised a statutory power under a Special Act passed by the State of Madhya Pradesh, namely, the Madhya Pradesh Prisoners Release on Probation Act 16 of 1954. Under the provisions of that Act the State Government was given the power to release prisoners found to have been of good conduct by imposing certain conditions for their release. It was not a case where the Government was exercising its discretion under Section 401 of the code of Criminal Procedure for remission of a part of the prisoner was conferred by the said Act on the State of Madhya Pradesh under certain conditions. The Government was, therefore, exercising a statutory power. In these circumstances the facts in Sitaram Barelal's case were quite different from the facts of the present case. It is true that the prisoner in that case was lodged in a jail in the State of Maharashtra but in view of the provisions of the Special Act a particular State Government alone was empowered to exercise its discretion under the provisions of Section 2 of the said Act. In the instant case there is no such Act at all in the State of Punjab and Haryana which could have provided any justification for the said State to exercise its power to release the prisoner. Thirdly, as already stated the power conferred by the Act was merely a power to release the prisoner on a temporary basis subject to certain conditions which is not the case here at all. In these circumstances the High Court was not at all justified in relying on the decision of the Madhya Pradesh High court in Sitaram Barelal's case for the proposition that the Punjab Government would be the appropriate Government to exercise power under Section 401(1) of the Code of Criminal Procedure.

9. For a review of the authorities and the statutory provisions of the code of Criminal Procedure the following propositions emerge :

(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;

(3) that the appropriate Government which is empowered to grant remission under Section 401 of the code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and

(4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction.

10. For these reasons, therefore, we are satisfied that the view taken by the High Court of Punjab and Haryana in the instant case is erroneous and cannot be supported in law. We accordingly allow the appeal, set aside the order of the High Court. But as the respondent has already been released, the order of release of the respondent shall stand.

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