

G. M. Morey

Vs

Government of Andhra Pradesh and Another

Criminal Appeal No. 247 of 1981

(O. Chinnappa Reddy, R. B. Misra JJ)

26.03.1982

JUDGMENT

CHINNAPPA REDDY, J. -

1. Dondaji, Ambasad, Pandu Rao, Vittal Rao, Buchiah, M. Ram Reddy and Sangaiah are convicts undergoing sentences of life imprisonment in the Central Jail, Hyderabad. All of them were convicted prior to December 18, 1978, the date on which Section 433-A was introduced into the Criminal Procedure Code by Amendment Act 45 of 1978. Section 433-A imposes a restriction on the powers of the Government under Section 432 to remit sentences. It provides that a person shall not be released from prison unless he has at least served 14 years of imprisonment where the sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life. A Constitution Bench of this Court has held in Maru Ram v. Union of India ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112) that Section 433-A is prospective in effect and "that the mandatory minimum of 14 years' actual imprisonment will not operate against those whose cases were decided by the trial court before December 18, 1978". The seven convicts whose names have been mentioned earlier were convicted by the trial court before December 18, 1978 and therefore, they are not governed by Section 433-A, Criminal Procedure Code. On October 20, 1980 the Government of Andhra Pradesh, in order to commemorate the 25th Anniversary of the formation of the State of Andhra Pradesh and in exercise of its powers under Section 432, Code of Criminal Procedure, issued G.O.Ms. No. 557 dated October 30, 1980-Home (Prisons C) Department remitting and reducing the sentences of various categories of prisoners in the State. Clauses (a), (b), (c) and (d) of paragraph 2 of the G.O. are as follows :

- (a) Except the prisoners sentenced for life who are governed by Section 433-A, CrPC, all other convicts who have undergone a total sentence of five years as on October 31, 1980 shall be released.
- (b) All prisoners with a sentence of one year and above shall be granted a special remission of one month for each year of sentence awarded.
- (c) All prisoners with a sentence below one year shall be granted a special remission of 15 days.
- (d) All prisoners other than life convicts over 60 years of age as on October 31, 1980 shall be released.

Paragraph 3 which is also relevant is as follows :

The remission and reduction of sentence ordered in paragraph 2 above will also apply to prisoners, who have been convicted by courts situated within the State of Andhra Pradesh and are undergoing sentences in other States but shall not apply to the following categories of prisoners :

(1) Prisoners convicted and sentenced by courts situated outside the State of Andhra Pradesh;

(2) Prisoners convicted of offence against a law relating to matter to which the executive power of the union extends; and

(3) Prisoners convicted of offence under Sections 120-B, 121 to 130, 359 to 377 and 395 to 402, IPC.

2. The seven convicts claim that they have undergone more than five years' imprisonment and that they are, therefore, entitled to be released in terms of the G.O. A writ petition filed on their behalf was dismissed by the Andhra Pradesh High Court on the ground that the G.O. had no application to 'life convicts'. The decision in Maru Ram v. Union of India ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112) was brushed aside on the ground that the question in the present case was not whether Section 433-A was prospective or retrospective in operation but whether a 'life convicts' was entitled to benefits of the G.O. The high court was in obvious error in ignoring the decision of this Court in Maru Ram v. Union of India ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112), on the ground that the question in present case was not whether Section 433-A was prospective or retrospective, disregarding the real importance of the decision, for this case, which lay in the fact that Section 433-A was held therein not to operate against those, like the present seven convicts, whose cases were decided by the trial court before December 18, 1978. The learned council for the State of Andhra Pradesh had to concede this position before us. If these seven convicts are governed by Section 433-A their cases are directly attracted by clause (a) of paragraph 2 of the G.O. Under clause (a) all convicts who have undergone a total sentence of five years as on October 31, 1980 except "prisoners sentenced for life and who are governed by Section 433-A" have to be released. This means that 'life convicts' who are governed by Section 433-A, Code of Criminal Procedure are not to be released even if they have undergone a total sentence of five years as on October 31, 1980. All others are to be released. Therefore, life convicts who are not governed by Section 433-A, Code of Criminal Procedure and who have undergone a total sentence of five years are entitled to be released.

3. The submissions of the learned counsel for the State was that if the whole of the G.O. was read together it will be clear that all 'life convicts' are to be excluded from the benefit of the G.O. Obviously not. If that was so there was no need to refer to those "who are governed by Section 433-A", in clause (a) of para 2 of the G.O. According to the learned counsel the expression "who are governed by Section 433-A, CrPC" was merely descriptive of prisoners sentenced to life imprisonment. We cannot agree. The word used in clause (a) is 'governed' and not 'described' or 'mentioned'. Again clause (d) while directing the release of all convicts over 60 years of age excludes 'life convicts'. If the intention of the G.O. was to exclude 'life convicts' from the benefits the G.O. it was not necessary to separately exclude them from each of clause (a) and (d) of paragraph 2. The purpose would have been better achieved by adding other category to the categories mentioned in paragraph 3 say, "person sentenced to imprisonment for life". There was no

need for the Government to express its intention in the circumlocutory manner suggested by the learned counsel. The learned counsel for the State referred us to clause (3) of paragraph 3 submitted that persons convicted of offences not punishable with life imprisonment had also been excluded from the benefit of G.O. and it would be anomalous if persons sentenced to imprisonment for life were to get the benefit of G.O. and those sentenced to smaller terms of imprisonment were not to get the benefit of the G.O. We are unable to agree. There are several offences in the Indian Penal Code and elsewhere which are punishable with far greater severity than some of the offences mentioned in clause (3) of paragraph 3 of the G.O. But it cannot be contended that the G.O. does not apply to persons convicted of such offences. On the other hand, the very circumstance that offences like those punishable under Sections 302, 304, 307 and 326 which may be punished with imprisonment for life are not included in clause (3) of paragraph 3 shows that the benefit of the G.O. was intended to be extended to 'life convicts' also. We disagree with the conclusion of the High Court, allow the appeal and direct the seven convicts aforesaid to be released forthwith.

</html