

Kartar Singh and Others

Vs

State of Haryana Through Inspector-General of Prison, Chandigarh

Writ Petition (Criminal) No. 3226 of 1981

(V. D. Tulzapurkar, Baharul Islam JJ)

26.08.1982

JUDGMENT

TULZAPURKAR, J. -

1. This writ petition raises the question whether persons sentenced to imprisonment for life are entitled to set off their under-trial period of detention against their sentence under Section 428 of the Criminal Procedure Code ?
2. The facts giving rise to the aforesaid question may be stated. The three petitioners (Kartar Singh, Mukhtiar Singh and Baljit Singh) on conviction under Section 302, Indian Penal Code were sentenced to imprisonment for life, the first two on February 20, 1973 and the last on September 17, 1975 and each one of them is at present undergoing his sentence in one or the other jails at Hissar in the State of Haryana. The petitioners have pointed out that in *Maru Ram v. Union of India* ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112 : 1980 Cri LJ 1440) this Court while upholding the constitutional validity of Section 433-A of Criminal Procedure Code, has held the section to be prospective in effect, that is to say, the mandatory minimum of 14 years' actual imprisonment specified therein will not be operate against those whose cases were decided by the trial court before December 18, 1978 when the section came into force and that all 'lifers' whose conviction by the court of the first instance was entered prior to that date would be entitled to consideration by Government for premature release on the strength of the remissions earned under the relevant rules and according to them under Para 516-B of the Punjab/ Haryana Jail Manual life convicts below the age of 20 at the date of their completing 6 years of substantive imprisonment and 10 years of imprisonment including remissions while life convicts above the age of 20 at the date of their convictions are entitled to be considered for premature release on their completing 8 1/2 years of substantive imprisonment and 14 years of imprisonment including remissions. The petitioners say that their case falls in the second category and according to them they are entitled to be considered for premature release if to their total period of imprisonment inclusive of remissions is added the period of their under-trial detention (which in the case of the first two to petitioners is 612 days and in the case of the third petitioner is 2 years 1 month and 14 days) as on such reckoning the total detention exceeds 14 years and their continued detention is illegal; but the respondent State has issued an Order No. 1953/59/G 1/G. 3/T-19(11) dated February 2, 1981 to all Jail Superintendents in the State whereunder instruction have been issued that for the purpose of considering cases of premature release while calculating 8 1/2 years' substantive sentence and 14 years' imprisonment including remission the benefit of under-trial period is not to be given to life convicts who have been convicted before December 18, 1978. The petitioners have challenged the legality and/or validity of the said Order as being contrary to law and violative of Articles 14 and 21 of the Constitution. In substance the petitioners have contended that the said Order illegally and

wrongfully denies to life convicts the benefit of a set-off contemplated under Section 428, CrPC and therefore the petitioners have sought a mandamus directing the respondent State to consider their cases for release under Para 516-B of the Punjab/Haryana Jail Manual after giving them the benefit of said set-off against their sentences.

3. In the counter-affidavit filed on behalf of the respondent State the legal position obtaining as a result of this Court's decision in Maru Ram case ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112 : 1980 Cri LJ 1440) has been accepted; similarly the effect of Para 516-B of the Punjab/Haryana Jail Manual as set out by the petitioners is also accepted. It is however, denied that the Order No. 1953/59/G 1/G. 3/T-19(11) dated February 2, 1981 is illegal or invalid for any reason or is contrary to section 428, CrPC. It has been contended that the benefit of a set-off contemplated by Section 428, CrPC is not available to life convicts but is available to those convicts who have been sentenced to imprisonment for a term and therefore far from being contrary to any law the impugned Order is in accord with the provisions of Section 428, CrPC and since periods of their under-trial detention are not to be reckoned or set off against their sentences the petitioners' cases could not be said to have become ripe for such consideration for premature release. Even otherwise, according to the respondent State the petitioner's cases could not be said to have become ripe for consideration because the periods of substantive or actual imprisonment, the remissions earned and the periods of under-trial detention as set out by the petitioners are not correct. According to the respondent State the case of Kartar Singh the net period of substantive or actual imprisonment is 6 years 9 months and 11 days, the remission earned by him amount to 4 years 5 months and 24 days, to which even if the period of under-trial detention, which is 1 year 8 months and 4 days, is added the total comes to 12 years 11 months and 9 days and not 14 years as required by para 516-B of the Punjab/Haryana Jail Manual; in the case of Mukhtiar Singh the net period of substantive or actual imprisonment is 7 years zero month and 6 days, the remissions earned by him amount to 4 years 7 months and 10 days, to which even if the period of under-trial detention which is 1 year 8 months and 4 days is added the total comes to 13 years 3 months and 20 days and not 14 years as required by the said Para 516-B; in the case of Baljit Singh the net substantive or actual imprisonment undergone by him is 4 years 9 months and 10 days, the remissions earned by him amount to 3 years 8 months and 11 days, to which even if the period of under-trial detention which is 2 years 1 month and 13 days is added the total comes to 10 years 7 months and 4 days and not 14 years as required by the said Para 516-B. In any event, therefore, none of the petitioners is entitled to have his case considered for premature release and therefore the petition is liable to be dismissed.

4. Since the legal question touching the proper construction of Section 428, CrPC was argued at length by counsel on either side at the Bar we have decided to address ourselves to that question without getting lost in the factual dispute as to whether even after reckoning the periods of their under-trial detention the petitioners are or are not entitled to have their cases considered by the State Government for premature release under Para 516-B of the Punjab/Haryana Jail Manual. In other words for the purpose of deciding the question we shall proceed on the assumption that factually if the periods of their under-trial detention are taken into account petitioners would be entitled to have their cases considered for premature release. The question is whether even on such assumed factual basis the petitioners are in law entitled to get a set-off of the said periods against their sentences under Section 428 of the CrPC and if so, whether the impugned Order dated February 2, 1981 issued by the respondent State is illegal or invalid.

5. At the outset it may be stated that the impugned Order dated February 2, 1981 is challenged as contravening Section 428 but the constitutional validity of Section 428 itself has not been challenged. Admittedly all the three petitioners have been convicted Under Section 302, IPC and

have been sentenced to imprisonment for life and the question is whether Section 428, CrPC is applicable to them. Section 428 runs thus :

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment. - Where an accused person has, on conviction been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

On a plain reading of the aforesaid provision it will be clear that the cases of the petitioners, who have been sentenced to imprisonment for life, would not fall within the section, for, the section applies to an accused person who has on conviction, been sentenced to imprisonment for a term and it is only in cases of such persons who have been sentenced to imprisonment for a term that the period of their under-trial detention has to be set off against the term of the imprisonment imposed upon them and the liability of such persons to undergo imprisonment has to be restricted to the remainder, if any, imposed upon them. Counsel for the petitioners, however, raised a two-fold contention. In the first place, he contended that persons sentenced to imprisonment for life could be said to have been sentenced to their life term which under the provisions of the Penal Code (Section 57) and Jail Manual (Para 516-B) are regarded as equivalent to 20 years or 14 years and as such cases of life convicts would fall within the terms of Section 428. Secondly, in any event when remissions are actually granted by the State Government under Section 432, CrPC or by the jail authorities under the relevant remission rules contained in Jail Manual to life convicts their cases should be treated as falling within the purview of Section 428, inasmuch as on the grant of remission their sentences become imprisonments for a term and since in the instant case each one of the petitioners has been granted remissions each is entitled to have the benefit of the set-off mentioned in Section 428 of the CrPC and consequently the impugned Order of February 2, 1981 issued by the respondent State would be illegal or invalid as contravening the section. To support his contention counsel relied upon a decision of the Gujarat High Court in the case of Kalidas Vanmalibhai v. State of Gujarat ((1980) 21 Guj LR 7) where that court has taken the view that a beneficent provision like the one contained in Section 428, CrPC should be made available to convicts sentenced to life imprisonment. It is not possible to accept the submissions of counsel for the reasons which we shall presently indicate.

6. In the first place a perusal of several sections of the Indian Penal Code as well as Criminal Procedure Code will show that both the codes make and maintain a clear distinction between imprisonment for life and imprisonment for a term; in fact, the two expressions 'imprisonment for life' and 'imprisonment for a term' have been used in contradistinction with each other in one and the same section, where the former must mean imprisonment for the remainder of the natural life of the convict (vide definition of 'life' in Section 45, IPC) and the latter must mean imprisonment for a definite or fixed period. For instance, Section 304, IPC provides that punishment for culpable homicide not amounting to murder shall be 'imprisonment for life or imprisonment of either description for a term which may extended to 10 years'; Section 305 provides that punishment for abetment of a suicide of a child or insane person shall be 'death or imprisonment for life or imprisonment for a term not exceeding 10 years'; Section 307 provides that punishment for an attempt to commit murder accompanied by actual hurt shall be imprisonment for life or imprisonment of either description which may extend to 10 years; so also, voluntarily causing hurt

in committing robbery is punishable under Section 394 with imprisonment for life or with rigorous imprisonment for a term which may extend to 10 years. Section 55, IPC uses the two expressions in contradistinction with each other and says that an appropriate Government may in every case in which sentence of imprisonment for life shall have been passed commute the punishment for imprisonment of either description for a term not exceeding 14 years; similarly, Section 433(b), CrPC uses the two expressions in contradistinction with one another. Having regard to such distinction which is being maintained in both the Codes it will be difficult to slur over the distinction on the basis that life convicts should be regarded as having been sentenced to life term or to say that the two could be understood as interchangeable expressions because basically the life term of any accused is uncertain. Further, Section 57, IPC or the remission rules contained in Jail Manual (e.g. Para 516-B of Punjab/Haryana Jail Manual) are irrelevant in this context. Section 57, IPC provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years for the specific purpose mentioned therein, namely, for the purpose of calculating fractions of terms of punishment and not for all purposes; similarly remission rules contained in Jail Manuals cannot override statutory provisions contained in the Penal Code and the sentence of imprisonment for life have to be regarded as a sentence for the remainder of the natural life of the convict. The Privy Council in Pandit Kishori Lal case (Pandit Kishori Lal v. King-Emperor, AIR 1945 PC 64 : 72 IA 1 : 219 IC 350 : 46 Cri LJ 626) and this Court in Gopal Godse case (Gopal Vinayak Godse v. State of Maharashtra, (1961) 3 SCR 440 : AIR 1961 SC 600 : 1961 (1) Cri LJ 736) have settled this position once and for all by taking the view that a sentence for transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. This view has been confirmed and followed by this Court in two subsequent decisions - in Ratan Singh case (State of M.P. v. Ratan Singh, 1976 Supp SCR 552 : (1976) 3 SCC 470 : 1976 SCC (Cri) 428 : 1976 Cri LJ 1192) and Maru Ram case (AIR 1959 Mys 116 : ILR 1958 Mys 411 : 1959 Cri LJ 617). In this view of the matter life convicts would not fall within the purview of Section 428, CrPC.

7. The next submission that at least cases of life convicts who have been actually granted remissions either by the State Government under Section 432, CrPC or by jail authorities under the relevant remission rules should be treated as falling within the purview of Section 428 because on the grant of remissions, their sentences become sentences of imprisonment for a term is also without any substance. The argument is fallacious for two reasons. In the first place, an order of remission passed by the State Government or by the jail authorities does not interfere with either the conviction or sentence recorded by the Court which remains intact, it merely affects the execution of the sentence passed by the Court and frees the convicted from his liability to undergo the dull term of imprisonment and it is for this reason that an accused person has every right to press his appeal against the conviction and sentence imposed upon him, full remission notwithstanding (vide *In re Puttawwa* (AIR 1959 Mys 116 : ILR 1958 Mys 411 : 1959 Cri LJ 617). Secondly, Section 428 opens with the words : " Where an accused person has, on conviction, been sentenced to imprisonment for a term" and as such the section will come into play in cases where 'imprisonment for a term ' is awarded on conviction by a court and not where the convict's sentence becomes a sentence for a term on remission being granted by the Executive. In the latter case the section on its own terms would be inapplicable.

8. The last submission has been that if convicts other than life convicts are entitled to the benefit of the set-off under Section 428, there is no reason why life convicts should be denied the advantage of this beneficial provision and in this behalf it was pointed out that such an argument has found favour with the Gujarat High Court in *Kalidas Vanmalibhai* case ((1980) 21 Guj LR 7). In our view the question is not whether the beneficent provision should be extended to life convicts on a priori

reasoning or equitable consideration but whether on true construction the section comprises life convicts within its purview and on construction it is not possible to hold that they do. Moreover, if the objects and reasons for introducing Section 428 anew in the Code, as set out by the Joint Committee in its Report are taken into account, it will appear clear that cases of life convicts were never intended to be covered by the provisions. The Joint Committee has stated the objects and reasons for introducing this provision in the Code thus :

The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long periods as under-trial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in Jail as under-trial prisoner. Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in many cases, the accused is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs.

It is obvious that the mischief sought to be remedied has no relevance where gravity of offence requires the imposition of imprisonment for life.

9. Having regard to the above discussion, it is clear that the benefit of set-off contemplated by Section 428, CrPC would not be available to life convicts. In our view, the decision of the Gujarat High Court in the case of Kalidas Vanmalibhai ((1980) 21 Guj LR 7) is erroneous and the contrary view taken by Kerala High Court in *Kanthalot Karunan v. State of Kerala* (1975 Ker LT 147), by Bombay High Court in *Rajahusein Gulamhusein Lakhani v. State of Maharashtra* (1976 Cri LJ 1294 (Bom)), *Rafiq Abdul Rehman v. State of Maharashtra* (1978 Cri LJ 214 : 79 Bom LR 576 : 1978 Mah LJ 211) and by Rajasthan High Court in *Bhimsen v. State of Rajasthan* (1977 Cri LJ 696 : 1976 Raj LW 522 : 1976 WLN 563) is correct. In this view of the matter, the impugned Order dated February 2, 1981 passed by the respondent State, being in conformity with Section 428, CrPC, is perfectly legal and valid.

10. In the result, the writ petition is dismissed.

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