State of Andhra Pradesh

Vs

Vallabhapuram Ravi

Criminal Appeal No. 254 of 1984

(E. S. Venkataramiah, Sabyasachi Mukharji JJ)

14.09.1984

JUDGMENT

VENKATARAMIAH, J. -

1. The main question involved in this appeal by special leave is whether on the coming into force of Section 433-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') an adolescent offender who is sentenced to imprisonment for the life on being convicted of an offence for which death is also one of the punishments prescribed by law and who later on is by an order made by the State Government directed to be sent to a Borstal School under Section 10-A of the Andhra Borstal Schools Act, 1925 (hereinafter referred to as 'the Act') is liable to be kept in a Borstal School or in a prison at least for a period of fourteen years.

2. The respondents Vallabhapuram Ravi was born on April 28, 1960. Unfortunately owing to an incident which took place when he was still in his teens, he was convicted of an offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life on April 29, 1980 in the Sessions Case 51 of 1980 on the file of the Sessions Judge, Guntur in the State of Andhra Pradesh. On September 12, 1980 the State Government of Andhra Pradesh on being satisfied that it would be to the advantage of the respondent if he was transferred to a Borstal School made an order under Section 10-A of the Act in G.O. Rt. No. 2394 Home (Prisons-B) Department dated September 12, 1980 directing that he should be detained in a Borstal School to serve the unexpired portion of the sentence till he attained the age of 23 years. Accordingly he was transferred to the Borstal School at Visakhapatnam on October 14, 1980. The respondent was classified as a Special Star Grade Inmate which was the highest classification on the basis of industrious and good conduct under Section 19-C of the Act. Since he was not released on his attaining 23 years of age on April 28, 1983 in accordance with the decision of the High Court of Andhra Pradesh in Bondili Jagannath Singh v. Government of A.P. ((1983) 2 APLJ 262), he sent a letter to the High Court of Andhra Pradesh requesting it to issue a writ of habeas corpus to the State Government to release him. The High Court treated the letter as a writ petition and after hearing the State Government passed an order on November 29, 1983 in Writ Petition 6601 of 1983 directing the State Government to release the respondent. Aggrieved by the decision of the High Court, the State Government has filed this appeal under Article 136 of the Constitution.

3. Owing to the persistent efforts of public spirited persons like Sri Evelyn Ruggles-Brise (1857-1937) and the agitation which was carried on by leading members of the community two public enquiries were instituted in England in the year 1894 into the administration of prisons. The enquiries revealed that in England annually about 20,000 young criminals belonging to the age group of 16 to 21 were being admitted into prison by the end of the last century and that it was

necessary to find a remedy to prevent the inflow of such large number of young men into the prison lest they should turn out to be professional criminals in later years on account of the pernicious influence the prison life and the close association with other adult prisoner would have on them. This led to the passing of two laws by the British Parliament, namely, the Prevention of Crime (Borstal) Act, 1908 and the Children Act, 1908. These laws were followed by the Criminal Justice Acts of 1948, 1961 and 1972 and the Children and Young Persons Act, 1969 and each of them made details provisions for dealing with young or adolescent offenders. The principle underlying these laws was that if children or adolescents found to be guilty of offences by criminal courts were in lieu of ordinary sentence of imprisonment kept in a special form of detention in a place other than a prison, of which the purpose was to develop mentally, physically and morally all inmates by giving them necessary training, there was every likelihood of such persons being reformed and accepted by society as persons who had no inclination to commit crimes in the future. It was generally felt that every offender upto a certain age "may be regarded as a potentially good citizen; that his lapse into crime may be due either to physical degeneracy or bad social environment; that it is the duty of the State at least to try to effect a cure, not to class the offender offhand and without experiment with the adult professional criminal" (see Encyclopaedia Britannica, 1962 Edn., Vol. III at page 923). This system of treatment of juvenile or adolescent offenders came to be called the ‘Borstal System’ after the village of Borstal in Kent (England) where the early experiments on boys between the ages of 16 and 21 were carried out in an old convict prison before the passing of the above mentioned Acts of 1908. The Borstal System subsequently became popular in all the Commonwealth countries and was introduced through laws passed for the purpose of achieving its object. One such law is the Act which was enacted in the year 1925. Its object was to make provision for the establishment and regulation of Borstal Schools for detention and training of adolescent offenders. The relevant provisions of the Act i.e. Section 2(1) and (2), 8 and 10-A are extracted below for ready reference :

4. In this Act, unless there is anything repugnant in the subject or context : (1) "Adolescent offender" means any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security under Section 106 or 118 the Code of Criminal Procedure has failed to do so and who at the time of such conviction or failure to give security is not less than 16 nor more that 21 years of age;

5. "Borstal School" is a corrective institution wherein adolescent offenders, whilst detained in pursuance of this Act, are given such industrial training and other instruction and are subject to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime;…....

6. Power of Court to pass sentences of detention in Borstal School. - Where it appears to a court having jurisdiction under this Act that an adolescent offender should, by reason of his criminal habits or tendencies, or association with persons of bad character be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime, it shall be lawful for the court, in lieu of passing a sentence of imprisonment, to pass sentence of detention in a Borstal School for a term which shall not be less than two years and shall not exceed five years but in no case extending beyond the date on which the adolescent offender will, in the opinion of the court attain the age of twenty-three years :

> Provided that, before passing such sentence, the court shall consider any report or representation which may be made to it including any report or representation made by the probation officer of the area in which the offender permanently resided at the time when he committed the offence as to the suitability of the case for treatment in a

Borstal School and shall be satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such instruction and discipline as aforesaid.

10-A Power of State Government to transfer offenders sentenced to transportation to Borstal Schools. - The State Government may, if satisfied that any offender who has been sentenced to transportation either before or after the passing of the Madras Borstal School (Amendment) Act, 1939, and who at the time of conviction was not less than 16 nor more than 21 years of age, might with advantage be detained in a Borstal School, direct that such offender shall be transferred to a Borstal School, there to serve the whole or any part of the unexpired residue of his sentence. The provisions of this Act shall apply to such offender as if he had been originally sentenced to detention in a Borstal School.

An order may be made under this section notwithstanding that the sentence of transportation has been subsequently commuted into a sentence of imprisonment.

7. Any person who is not less than 16 years nor more than 21 years of age on the date of his conviction of an offence punishable with imprisonment or who having been ordered to give security under Section 106 or Section 117 of the Code fails to furnish such security is considered an adolescent offender under the Act. When such an offender is convicted of an offence punishable with imprisonment it is the duty of the court convicting him to consider whether having regard to his criminal habits or tendencies or association with persons of bad character he should be detained for such period and under such instruction and discipline as appears most conducive to his reformation and repression of crime. If the court considers that it is desirable to do so it may in substitution of the sentence of imprisonment pass a sentence of detention in a Borstal School for a term which shall not be less than two years and shall not exceed five years. In no case he can be detained in a Borstal School beyond the age of twenty-three years. This outer limit of 23 years of age was introduced by an amendment made by the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936). Before passing such order of detention the court should satisfy itself about matters set out in the proviso to Section 8 of the Act including any report made by the probation officer of the area concerned. It is seen that the sentence of detention is passed in lieu of the sentence of imprisonment which may have been passed. Hence the detention ordered under the above provision is not imprisonment and the Borstal School where the adolescent offender is detained is not a prison. This is also the view taken by Beaumont, C.J. in Emperor v. Lakshman Shivram (AIR 1933 Bom 461 : ILR (1934) 58 Bom 37 : 35 Bom LR 1018 (FB)) which was a case arising under the Bombay Borstal Schools Act, 1929. Merely because Section 5 of the Act has made the Prisons Act, 1894 and Prisoners Act, 1900 applicable to a Borstal School regarding matters not otherwise provided for does not make it a prison or its inmates prisoners. The period of detention has no relationship to the sentence of imprisonment that could have been imposed under law. It is based on the opinion of the court as to what is conducive to the reformation of the person detained and the repression of the crime and in no case it can exceed five years or can be beyond the date on which the person attains 23 years of age. Section 10-A of the Act which was introduced by the Madras Borstal Schools (Amendment) Act, 1939 (Madras Act XIII of 1939) provides that the State Government may, if satisfied that any offender who has been sentenced to imprisonment for life and who at the time of conviction was not less than 16 years of age nor more than 21 years of age might, with advantage be detained in a Borstal School, direct that such offender shall be transferred to a Borstal School, there to serve the whole or any part of the unexpired period of sentence. The second sentence in Section 10-A of the Act is a deeming provision. It provides that the provisions of the Act shall apply to such offender as if he had been originally sentenced to detention in a Borstal

School. In view of this clause it is contended and we feel rightly that it would not be open to detain a person in a Borstal School beyond the age of twenty-three years, nor can he be sent back to the prison except under Section 14 of the Act. Section 14 of the Act reads thus :

> 14. Transfer of incorrigibles etc. to prisons. – where a person detained in a Borstal School is reported to the State Government by the Superintendent of such School to be incorrigible or to be exercising a bad influence on the other inmates of the school or in the case of a person directed to be sent to a Borstal School before the commencement of the Madras Borstal Schools (Amendment) Act, 1936, to be over twenty-three years of age, the State Government may commute the unexpired residue of the term of detention to such term of imprisonment of either description as the State Government may determine, but in no case exceeding :
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> 1. such unexpired residue, or
> 2. the maximum period of imprisonment fixed for the offence or the failure to give security as the case may be, or
> 3. the maximum period of imprisonment which the court that tried him had authority to award under the Code of Criminal Procedure, 1898, whichever is shortest.

8. While construing Section 14 of the Act we may omit the unnecessary words "or in the case of a person directed to be sent to a Borstal School before the commencement of the Madras Borstal Schools (Amendment) Act, 1936, to be over 23 years of age" as they do not apply to a person who is sent to a Borstal School after the commencement of the Madras Borstal Schools (Amendment) Act, 1936. These words had to be introduced to remove the anomaly that would have arisen by the amendment made to Section 8 by the same Amending Act providing that no person could be kept in a Borstal School after he had attained 23 years of age and to deal with cases of persons who had already been detained in a Borstal School and who had crossed 23 years of age. Hence omitting the above words what Section 14 of the Act means is that where a person detained in a Borstal School is reported to the State Government by the Superintendent of such School to be incorrigible or to be exercising a bad influence on the other inmates of the School, the State Government may commute the unexpired residue of the period of detention which in no case can be for more than five years to such term of imprisonment of either description as the State Government may determine, but in no case exceeding (a) such unexpired residue, or (b) the maximum period of imprisonment fixed for such offence or the failure to give security, as the case may be, or (c) the maximum period of imprisonment which the court that tried him had authority to award under the Code, whichever is shortest. It is obvious from the foregoing that even in the case of person who is convicted of an offence punishable for imprisonment for life, but who is detained in a Borstal School by virtue of an order made by the State Government under Section 10-A of the Act, the period of imprisonment that can be substituted by the State Government in the place of the period of detention cannot exceed five years in any event. This is the only provision in the Act which authorises the State Government to shift a person who is in a Borstal School to a prison and even here it is possible only where there is an adverse report against him by the Superintendent of the Borstal School as stated therein.

9. I may here refer to some of the decisions having a bearing on the effect of an order made under Section 10-A of the Act.

10. In In re T. Munirathnam Reddi (AIR 1955 Andh 118 : 1955 Andh WR 53 : 1955 Cri LJ 917) Subba Rao, C.J. dealing with the case of an adolescent offender who was convicted under Section

302 of the Indian Penal Code and sentenced to transportation for life observed thus :

> In this case, we are satisfied that the first accused is not a hardened criminal. He was a student of Sri Venkateswara College and was below 21 years at the time he was convicted of the offence. We have also found that he shot the deceased when he abused him and his father presumably when they questioned him about his conduct in insulting his mother. The act was done by a young man of good antecedents in an emotional state. In our view, Section 10-A, Borstal Schools Act is really intended to govern the case of such accused. We, therefore, while sentencing the first accused to transportation for life, recommend his case to the Government to take action under Section 10-A and to commit him to the Borstal School for such period as they think fit.

11. The above decision shows that the High Court of Andhra Pradesh was of the view that on making an order under Section 10-A of the Act, the State Government could commit a person sentenced to transportation for life to a Borstal School for such period as it thought fit. The High Court of Madras has also passed similar order in In re Krishnaswami alias Kittan (AIR 1949 Mad 109(1) : ILR 1949 Mad 354 : (1948) 2 Mad LJ 115 : 50 Cri LJ 115) and in In re Periyaswami Asari (AIR 1949 Mad 223 : (1948) 2 Mad LJ 452 : 61 Mad LW 777 : 50 Cri LJ 240). It is true that the Kerala High Court has held in Kesavan v. State of Kerala (1957 Ker LJ 1049) that a person above 16 and below 21 years of age at the time he committed murder and sentenced to imprisonment for life could be detained in a Borstal School under Section 10-A of the Act but he has to serve the whole or any part of the unexpired residue of his sentence in that institution. The High Court of Kerala holds that the second sentence in Section 10-A has not the effect of attracting the limitation that a person cannot be kept in a Borstal School after he attains 23 years of age found in Section 8 of the Act for according to that High Court that sentence merely says that the provisions of the Act shall apply to an offender whose detention in a Borstal School is directed under Section 10-A as if he had been originally sentenced to detention in a Borstal School, not that the provisions of the Act shall be applied in making the direction. The High Court of Kerala appears to be unwilling to give full effect to the words ‘as if’ in the second sentence of Section 10-A in view of the presence of the words "the whole or any part of the unexpired residue of his sentence" at the end of the first sentence in Section 10-A of the Act. It is true that there is some apparent contradiction between the two sentences. But having regard to the object of the legislation and the meaning of the words ‘as if’ in the second sentence, we should extend all the privileges available to an offender detained under Section 8 of the Act to a prisoner who is directed to be transferred to a Borstal School under Section 10-A. The object of the legislation is to reform offenders who have committed acts visiting them with the penalty of undergoing prison life when they were between 16 and 21 years of age and that is sought to be achieved by taking them away from the company of adult prisoners whose continued association in prison would have serious adverse influence on their character. If every person who is transferred under Section 10-A to a Borstal School is to remain there until he serves out the entire period of imprisonment for life, the Borstal School would soon become a prison consisting of ‘lifers’ and its other inmates who are detained under Section 8 would be keeping company with adult offenders, thus defeating the very object of establishing a Borstal School. The court should as far as possible avoid a construction which will make the legislation futile. The second reason is that the words ‘as if’ appearing in the second sentence in Section 10-A make it a deeming provision and such deeming provision should in law be carried to its logical end. This Court while construing such deeming provision has adopted and applied in a number of cases the rule of construction expounded by Lord Asquith in East End Dwellings Co. Ltd. V. Finsbury Borough Council (1952 AC 109, 132 : (1951) 2 All ER 587 : 115 JP 477 : (1951) 2 TLR 486 (HL)) in the following words :

> If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. This statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

12. It may also be noted that apart from the clause in Section 8 which prescribes that no person detained under it can be kept in a Borstal School after he attain 23 years of age, there are other provisions in the Act which are specially applicable to the inmates of a Borstal School. Section 21-A of the Act empowers the State Government to order at any time the discharge of an inmate of any Borstal School either absolutely or subject to such conditions, as it may think fit. The expression 'inmate' in Section 21-A should in the ordinary course include a person who is directed to be transferred to a Borstal School under Section 10-A of the Act. Section 19-C of the Act provides for classification of such inmates into various grades for purposed of discipline and control in a Borstal School. The provisions in Part III of the Act lay down the procedure for releasing the inmates of a Borstal School on licence. Section 13-A of the Act authorises the transfer of an inmate of a Borstal School in the State of Andhra Pradesh to any Borstal School or other school of a like nature in any other part of India, with the consent of Government of the other State concerned. Every one of these provisions is applicable to person transferred under Section 10-A.

13. I agree with the decision of the High Court of Andhra Pradesh in Bondili Jagannath Singh v. Government of A.P. case ((1983) 2 APLJ 262) that if a person detained in a Borstal School under Section 10-A of the Act is to be retransferred to the prison after he serves out the full term of detention in the School it will defeat the very object and purpose of the Act of providing for detention of young offenders in a Borstal School for the purpose of reformation and rehabilitation of such offenders and that a person who is detained in Borstal School has to be released if he has completed 23 years of age. But Shri. P. Rama Reddi, learned counsel for the State of Andhra Pradesh very fairly submitted while a person detained in a Borstal School under Section 10-A of the Act was entitled to be released on his attaining 23 years of age before the commencement of Section 433-A of the Code, he cannot be now released until he has undergone fourteen years of imprisonment as prescribed by Section 433-A if he is a person who is sentenced for imprisonment for life for an offence for which death is also one of the punishments prescribed by law.

14. Now arises the crucial question whether on the coming into force of Section 433-A of the Code, a person who had been sentenced to imprisonment for life on being convicted of an offence for which death is also prescribed as a punishment and who being a person not below 16 nor above 21 years of age had later on been directed by the State Government under Section 10-A of the Act to be detained in a Borstal School is entitled to be released on his completing 23 years of age without any regard to the provision on Section 433-A of the Code which insists that a person who is sentenced to imprisonment for life on being convicted of such an offence should actually undergo imprisonment for a minimum period of fourteen years. Section 433-A of the Code which came into force on December 18, 1978 reads thus :

> 433-A. Restriction on powers of remission or commutation in certain case. – Notwithstanding anything contained in Section 432, where a 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, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

15. Section 10-A of the Act empowers the State Government to transfer any offender who has been sentenced to imprisonment for life and who at the time of conviction was not less than 16 nor more than 21 years of age from a prison to a Borstal School, if it is satisfied that it would be to his advantage as provided therein. It is well known that persons who commit acts which are forbidden by law are ordinarily classified into groups on the basis of their age for determining their liability under criminal law. Section 82 of the Indian Penal Code declares that nothing is an offence which is done by a child under seven years of age. Section 83 of the Indian Penal Code provides that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. Children who are below 15 or 16 years of age are entitled to the protection of certain beneficent provisions in the various Children's Acts in force in different parts of the country. Section 360 of the Code again provides for releasing on probation of good conduct or after admonition a person under twenty-one years of age who is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against him. The Act with which we are concerned in this case is again one such law which attempts to treat an adolescent offender in a humane way. The classification of offenders on the basis of age for purposes of criminal law is, therefore, beyond reproach.

16. The only argument pressed before us by the State Government is that in view of the mandate of Section 433-A of the Code, any person who is sentenced for imprisonment for life for an offence for which death is one of the punishments provided by law cannot be released from prison unless he had served at least fourteen years of imprisonment even though by an order made under Section 10-A of the Act he has been detained in a Borstal School. This contention obviously overlooks the words 'prison' and 'imprisonment' in Section 433-A of the Code and the effect of an order made by the State Government under Section 10-A of the Act read with Section 8 thereof. Entry 4 of List II of the Seventh Schedule to the Constitution which reads as "4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein…" also makes a distinction between a prison and a Borstal institution. Section 433-A of the Code refers to a person who is actually undergoing imprisonment. As soon as an order is made under Section 10-A of the Act in respect of a person who is sentenced to imprisonment for life and is sent to a Borstal School pursuant thereto, he ceases to be a prisoner undergoing imprisonment. As observed earlier he would be a detenu in a Borstal School and the provisions of Section 8 of the Act will have to be given their full effect in his case also. Under Section 8 of the Act the person detained in a Borstal School can be kept there for a maximum period of five years and in no case after he has attained 23 years of age. I have already noticed that there is no provision for sending him back to prison except Section 14 of the Act which will not be applicable to a person against whom no report is made by the Superintendent of a Borstal School as stated therein. If Section 14 of the Act is inapplicable there is no legal way in which he can be sent back to prison to satisfy the requirements of Section 433-A of the Code. Moreover, an anomalous situation which arises in the case of a person sent to a Borstal School under Section 10-A of the Act is that if the period of detention in a Borstal School is not to be counted as the period of imprisonment because detention is ordered in lieu of imprisonment and because Borstal School is not a person then such person cannot claim by way of credit the period of detention in a Borstal School while computing the fourteen years of imprisonment mentioned in Section 433-A of the Code. If that is so, should he undergo an extra period of imprisonment equivalent to the period of his detention to make good the deficiency to satisfy the requirements of

that section ? That would hardly be a proper thing to be demanded of him.

17. Our attention is drawn to a decision of this Court in Maru Ram v. Union of India ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112 : AIR 1980 SC 2147 : 1980 Cri LJ 1440). I have gone through that decision carefully. There the question which arose for consideration was whether after the coming into force of Section 433-A of the Code, it was open to the State Governments to reduce the sentence of imprisonment for life imposed on a person convicted of a capital offence to any period they liked on the basis of the remission rules framed by the State Governments which were traceable to Section 432 or Section 433 of the Code or Acts which authorised the State Governments to modify the sentence of imprisonment for life imposed by courts. Krishna Iyer, J. who delivered the judgment on behalf of himself and Chandrachud, C.J. and Bhagwati, J. observed at pages 1217 and 1218 thus : [SCC para 23, p. 128 : SCC (Cri) pp. 131-32]

Sentencing is a judicial function but the execution of the sentence, after the court's pronouncement, is ordinarily a matter for the executive under the Procedure Code, going by Entry 2 in List III of the Seventh Schedule. Keeping aside the constitutional powers under Articles 72 and 161 which are 'untouchable' and 'unapproachable' for any legislature, let us examine the law of sentencing, remission and release. Once a sentence has been imposed, the only way to terminate it before the stipulated term is by action under Sections 432/433 or Articles 72/161. And if the latter power under the constitution is not invoked, the only source of salvation is the play of power under Section 432 and 433(a) so far as a 'lifer' is concerned. No release by reduction or remission of sentence is possible under the corpus juris as it stand, in any other way. The legislative power of the State under Entry 4 of List II, even if it be stretched to snapping point, can deal only with Prisons, and Prisoners, never with truncation of judicial sentences. Remissions by way of reward or otherwise cannot cut down the sentence as such and cannot, let it be unmistakably understood, grant final exit passport for the prisoner except by government action under Section 432(1). The topic of Prisons and Prisoners does not cover release by way of reduction of the sentence itself. That belongs to criminal procedure in Entry 2 of List III although when the sentence is for a fixed term and remission plus the period undergone equal that term the prisoner may win his freedom. Any amount of remission to result in manumission requires action under Section 432(1), read with the Remission Rules. That is why parliament, tracing the single source of remission of sentence to Section 432, blocked it by the non obstante clause. No remission, however, long, can set the prisoner free at the instance of the State, before the judicial sentence has run out, save by action under the constitutional power or under Section 432. So read, the inference is inevitable, even if the contrary argument be ingenious, that Section 433-A achieves what it wants - arrest the release of certain classes of 'lifers' before a certain period, by blocking Section 432. Articles 72 and 161 are, or course, excluded from this discussion as being beyond any legislative power to curb or confine.

18. Then the learned Judge considered the effect of Section 5 of the Code on the remission laws or rules. Section 5 of the Code reads thus :

> Saving. – Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

19. It was contended by the petitioners in that case that Section 5 of the Code saved all remissions, short sentencing schemes as special and local laws and, therefore, they would prevail over the Code including Section 433-A. Repelling that contention, Justice Krishna Iyer proceeded to observe thus :

[SCC paras 33, 38, pp. 132, 134.35 : SCC (Cri) pp. 135, 137]

The anatomy of this savings section is simple, yet subtle. Broadly speaking, there are three components to be separated. Firstly, the Procedure Code generally governs matters covered by it. Secondly, if a special or local law exists covering the same area, this latter law will be saved and will prevail. The short-sentencing measures and remission schemes promulgated by the various States are special and local laws and must override. Now comes the third component which may be clinching. If there is a specific provision to the contrary, then that will override the special or local law. Is Section 433-A a specific law contra ? If so, that will be the last word and will hold even against the special or local law.

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A thing is specific if it is explicit. It need not be express. The antithesis is between ‘specific’ and ‘indefinite’ or ‘omnibus’ and between ‘implied’ and ‘express’. What is precise, exact, definite and explicit, is specific. Sometimes, what is specific may also be special but yet they are distinct in semantics. From this angel, the Criminal Procedure Code is a general Code. The remission rules are special laws but Section 433-A is a specific, explicit, definite provision dealing with a particular situation or narrow class of cases, as distinguished from the general run of cases covered by Section 432, CrPC. Section 433-A picks out of a mass of imprisonment cases of specific class of life imprisonment cases and subjects it explicitly to a particularised treatment. It follows that Section 433-A applies in preference to any special or local law because Section 5 expressly declares that specific provisions, if any, to the contrary will prevail over any special or local law. We have said enough to make the point that ‘specific’ is specific enough and even though ‘special’ to ‘specific’ is near allied and ‘thin partition do their bounds divide’ the two are different. Section 433-A escapes the exclusion of Section 5.

20. A reading of the above passage shows that the Court was of the view that in view of the non obstante clause used in Section 433-A of the Code which excluded the operation of Section 432, the remission rules which were traceable to Section 432 could not prevail over Section 433-A and Section 5 of the Code could not, therefore, be relied on by the petitioners.

21. In the instant case reliance is not being placed on any rules traceable to Section 432 of the Code or on a statute which empowered the State Government to reduce the period of imprisonment imposed by the court passed under the legislative power derived from Entry 2 of List III of the Seventh Schedule to the Constitution but on an independent statute which specifically deals with the case of a small section of persons namely adolescent offenders traceable to the legislative power derived from the expressions ‘prisons’ and ‘Borstal institutions’ in Entry 4 of the State List. If in the case of such offenders, the State Government makes an order under Section 10-A of the Act directing their detention in a Borstal School, then they cease to be persons undergoing imprisonment for life on being convicted of an offence for which death is also prescribed as one of the punishments but they will become detenus in a Borstal School. The Act which is a local law, therefore, prevails on all the provisions of the Code including Section 433-A of the Code as there is no provision which excludes the operation of the Act which deals with Borstal institutions. Section 433-A of the Code was introduced not to set at naught provisions like Section 10-A of the Act which dealt with the special class of offenders like adolescent offenders but only to regulate capricious and arbitrary decisions under Section 432 of the Code and the remission rules sometimes reducing the sentence of imprisonment for life imposed on persons who had been convicted of capital offences but had been sentenced to imprisonment for life to short periods like five to six

years. That is apparent from the notes in clauses found in the Bill under which Section 433-A of the Code was introduced. The relevant clause is given below :

> Clause 33 : Section 432 contains provision relating to powers of the appropriate Government to suspend or remit sentences. The Joint Committee on the Indian Penal Code (Amendment) Bill, 1972 had suggested the insertion of a proviso to Section 57 of the Indian Penal Code to the effect that a person who has been sentenced to death and whose death sentence has been commuted into that of life imprisonment and persons who have been sentenced to life imprisonment for a capital offence should undergo actual imprisonment of 14 years in jail. Since this particular matter relates more appropriately to the Criminal Procedure Code, a new section is being inserted to cover the proviso inserted by the Joint Committee.

22. The Joint Committee's recommendation on Section 57 of the Indian Penal Code which is referred to in the above clause was as follows :

> Section 57 of the Code as proposed to be amended had provided that in calculating fractions of terms of punishment imprisonment for life should be reckoned as equivalent to rigorous imprisonment for twenty years. In this connection attention of the Committee was brought to the aspect that sometimes due to grant of remission even murderers sentenced or commuted to life imprisonment were released at the end of 5 to 6 years. The Committee feels that such a convict should not be released unless he has served at least fourteen years of imprisonment.

23. It is obvious that Parliament which was aware of laws like the Act which were in force in the States did not choose to interfere with them by enacting Section 433-A of the Code. If it intended to nullify or modify such laws the non obstante clause in Section 433-A would have been more comprehensive including all local statutes enacted for the benefit of children and juvenile or adolescent offenders. Considering the case in the light of the observations made in Maru Ram case ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112 : AIR 1980 SC 2147 : 1980 Cri LJ 1440) I feel that Section 10-A of the Act remain unimpaired and it has to be given full effect even after the enactment of Section 433-A of the Code. The contrary view expressed by the Madras High Court in In re Ganapati (1983 Cri LJ 509 : 1982 Mad LW (Cri) 217) cannot be accepted as correct.

24. I am, therefore, of the view that Section 433-A of the Code would not operate in respect of persons dealt with under Section 10-A of the Act and that Parliament never intended while enacting Section 433-A to deny the benefit available to adolescent offenders under Section 10- A of the Act. When once this conclusion is reached, the argument that by reason of Article 254 of the Constitution, the Act should yield in favour of a later Central legislation which is repugnant to the Act would not arise because there would be no such repugnancy at all. If Section 433-A of the Code is kept out of the way, Section 10-A of the Act should be interpreted in the same way in which it was understood all along. So construed a person who is detained under Section 10-A of the Act in a Borstal School would have to be released on his attaining 23 years of age. My view recei__ves support from the decision of this Court in Kunwar Bahadur v. State of Uttar Pradesh (1980 SupSCC 339 : 1981 SCC (Cri) 275) which was a case under the U.P. Borstal Act, 1938, the relevant part of which reads thus : [SCC para 2, p. 340 : SCC (Cri) p. 276]

It was then argued that so far as appellant Nand Kishore is concerned, he appears to be only 15 years at the time when the occurrence took place and it appears that when he was sent to prison the jailor referred him to the Sewa Sadan under Section 7 of the United Provinces Borstal Act, 1938.

Under this section where a prisoner is sentenced for transportation i.e. life imprisonment and is below the age of 21 years he should be sent to Borstal School where he cannot be detained for more than five years. The law thus contemplates that for such an offender the sentence of five years will be equivalent even to a higher sentence of life imprisonment. It is not disputed before us that the appellant Nand Kishore had already served five years in that institution and has been released therefrom. The question, therefore, of his surrendering to serve the remaining sentence does not arise. With this modification the appeal is dismissed.

25. In view of the foregoing, there is no ground to interfere with the decision of the High Court. The appeal is, therefore, dismissed.

SABYASACHI MUKHARJI, J. (concurring). –

With great respect I agree with the order proposed and also with the reasoning of my learned brother, Justice Venkataramiah. There is however some anomaly in Section 10-A of the Andhra Pradesh Borstal Schools Act, 1925. The said section has been set out in the judgment. It empowers the State Government to "transfer offenders sentenced to transportation to Borstal School". It further provides that if the State Government is satisfied that any offender who has been sentenced to transportation either before or after the passing of the Madras Borstal Schools (Amendment) Act, 1939, and who at the time of conviction was not less than 16 years nor more than 21 years, might with advantage be detained in Borstal School, direct that such offender shall be transferred to a Borstal School, "there to serve the whole or any part of the unexpired residue of the sentence". The section further stipulates that the provisions of the said Act should apply to such offender "as if he had been originally sentenced to detention in a Borstal School". In the instant case, by the order dated September 12, 1980, the State Government had directed that the petitioner should be detained in a Borstal School "to serve the unexpired portion of the sentence till he attains the age of 23". My learned brother has, with the aid of the principle enunciated by Lord Asquith in East End Dwellings Co. Ltd. V. Finsbury Borough Council (1952 AC 109, 132 : (1951) 2 All ER 587 : 115 JP 477 : (1951) 2 TLR 486 (HL)), deemed that the original sentence of transferring the petitioner to a Borstal School has been passed by the Court at the time of imposing sentence originally. But in fact in passing the order under Section 10-A expression used by the State Government is that the person concerned should be detained in ‘Borstal School’ to serve the unexpired portion of the sentence till he attains the age of 23 years. So the sentence actually passed by (sic under) the enabling section by the State Government directs the detenu "to serve the unexpired portion of the sentence." Therefore we have to deem as if the sentence was passed by the court at the time of the passing of the original sentence by the Court. In a matter of this nature, the statute should be more specific and in that view of the matter, the Government should consider the question of either altering the language of Section 10-A of the Act or be more __specific while passing any orders under Section 10-A of the Act. With these observations I respectfully agree with the decision of my learned brother.

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