

Nalamolu Appala Swamy and Others

Vs

State of Andhra Pradesh

With

Inturu Nageshwara Rao and Others

Vs

State of Andhra Pradesh

Criminal Appeal Nos. 491 and 488 of 1978

(S. Natarajan, K. Jagannatha Shetty, Kuldip Singh JJ)

05.04.1989

ORDER

1. Pending disposal of the appeal filed against their convictions under Sections 147/148 and 302 read with Section 149 or 34 IPC, the appellants seek remission of sentence and release in terms of G.O./MS No. 580/Home (Prisons C) Department dated October 20, 1984 of the Andhra Pradesh Government.

2. In view of the limited question for consideration by us, there is no need to set out the provisions of the GO or the manner of their interpretation. Suffice it to say that the GO has been issued by the government for granting remission to certain categories of prisoners "to commemorate the occasion of the anniversary of the formation of the Andhra Pradesh State on November 1, 1984 and the restoration of democratic rule in the State".

3. In a brief affidavit-in-reply filed by the State, it has been stated in para 4 as follows :

"It is respectfully submitted that the said GO is not applicable after November 1, 1984 and further the remission can only be granted to the prisoners who are actually in jail at the time of issuance of the said GO. The appellants herein were on bail by virtue of the order of this Hon'ble Court. Since they were not in jail at the time of issuance of the above Go they cannot claim to be released by applying this GO to them."

4. Mr. Subba Rao, learned counsel for the appellants assailed the reason given by the State for denying remission of sentence to the appellants as being manifestly wrong because the GO nowhere sets out that the benefit of remission would be confined to prisoners who were actually in jail on the date of the GO and not to others who were on jail. We find merit in the contention because the scheme of remission formulated under the GO is with reference to the period of sentence actually undergone by different classes of prisoners and in the case of some the period of actual sentence together with the remissions earned for reckoning the total sentence. The GO does not stipulate that

in order to get the benefit of remission the prisoners must actually be in jail on the date the GO was issued. It therefore follows that the ground set out by State Government for excluding the operation of the GO to the appellants is clearly unsustainable.

5. Mr. Choudhri, learned counsel for the State contended that even if prisoners who were on bail on the date of the GO are entitled to claim remission in terms of the GO, the appellants are not entitled to the benefit of remission because they have completed only five years of actual sentence and not seven years of actual sentence and ten years of total sentence as laid down in clause (a) of para 2. Mr. Choudhri stated that clause (a) and clause (b) of para 2 of the GO envisage two different kinds of life convicts viz. those under clause (a) being persons who have been convicted for an offence punishable with death or imprisonment for life and those falling under clause (b) (referred to as "other lifers") being persons who have been convicted for offences for which the maximum sentence provided for is only imprisonment for life and not death sentence and by reason of this distinction the appellants cannot rely upon clause (b) of para 2 and seek remission inasmuch as they have been convicted for an offence of murder punishable with death or imprisonment for life, Mr. Subba Rao countered this statement by pointing out that both clauses (a) and (b) refer to Section 433-A CrPC and as such there is no scope for any differentiation being made between the life convicts referred to in clause (a) and clause (b) in the manner sought to be done by Mr. Choudhri.

6. We do not feel called upon to go into the question whether the appellants would fall under clause (a) or clause (b) of para 2 of the GO as it is for the State Government to interpret the GO and decide the matter. We are confining our order to the limited question whether the ground set out in the counter-affidavit for denying remission to the appellants under the GO viz. that they were not in jail but were on bail at the time the GO is a tenable one.

7. We therefore direct the State Government to consider the matter afresh without reference to the fact that the appellants were not in jail on the date the GO was issued.

8. In order to enable the State Government to consider the matter, the appellants may make an application to the State Government at an early date and on such application being made the government shall consider the same on its merits within a period of six weeks from the date of the application and pass appropriate orders.

9. After orders are passed by the State Government, the appellants may seek orders of court for listing of the appeal.

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