State of Punjab and Others

Vs

Joginder Singh and Others

With

State of Punjab and Others

Vs

Gurmail Singh

With

State of Punjab and Others

Vs

Ajit Singh

With

State of Punjab and Others

Vs

Dhir Singh

Criminal Appeal Nos. 718-719 of 1981 and 205-212, 213-217 and 204 of 1990

(A. M. Ahmadi, Smt. M. S. Fathima Beevi JJ)

23.03.1990

JUDGMENT

AHMADI, J. -

1. Special leave granted in all the above matters.

2. These appeals involve the interpretation of paragraphs 516-B and 631 of the Manual for the Superintendence and Management of Jails in the Punjab. The preface to the Manual shows that those paragraphs of the Manual against which a black line appears are, in substance, either quotations from the law, or, from the rules having the force of law, the authority having been indicated on the upper right hand margin of each paragraph whereas the paragraphs which have not been blacklined are executive instructions issued from time to time by the Government of India, or the local government or the Inspector-General with the sanction and approval of the local government. It may at once be mentioned that paragraph 516-B contained in Chapter XV entitled

'Release of Prisoners' is not blacklined while paragraph 631 contained in Chapter XX entitled 'Remission System' is blacklined. The note in the upper right hand margin of paragraph 516-B refers to G of I Resolution Nos. 159-167 dated September 6, 1905 and P.G. No. 18608-Jails-dated June 28, 1920. There is no dispute that this paragraph contains an executive instruction only. Paragraph 631 contains a note no the upper right hand margin referring to the G of I Resolution No. 161-172 of May 2, 1908 and P.G. Letter No. 1669-S (Home) of July 31, 1908. At the foot for paragraph 631 is a 'Note' in small type with a right hand marginal note 'See para 516-B. While there can be no controversy that paragraph 631 which is blacklined has statutory force, the question is whether the Note at the foot thereof, which is not blacklined, also has statutory force.

3. Paragraph 516-B provides that the case of every convicted prisoner (except females and males below 20 years at the date of the commission of the crime) sentenced to imprisonment for life or imprisonment aggregating to over 14 years and who has undergone a period of detention in jail amounting, together with remission earned, to 14 years, 'shall be' submitted to the State Government, through the Inspector General of Prisons, for orders. In the case of female prisoners or prisoners who were below 20 years on the date of the commission of the crime, reference is required to be similarly made to the State Government on their completing a detention period of 10 years inclusive of remissions. Clause (v), however, provides that notwithstanding anything contained in the earlier part of the paragraph, a Superintendent of Jail 'may', in his direction, refer at any time, for the orders of the State Government, the case of any prisoner sentenced to imprisonment for life whose sentence might in the Superintendent's opinion be suitably commuted to a term of imprisonment. It would appear from a plain reading of this paragraph that in the case of a prisoner who has completed 14 years of detention in jail, inclusive of remissions earned, it is imperative on the part of the Superintendent of the Jail to submit his case, through the IG of Prisons, to the State Government for consideration. The use of the words 'shall be submitted' bring out this intention when we contrast them with the word 'may' and the words 'in his discretion' used in clause (v) thereto which begins with a non-obstante clause. Therefore, where the intention was to confer a mere discretion on the Superintendent of Jail, it was made manifest by the use of the expression 'may' followed by the words 'in the discretion' and where the intention was to case a duty to submit the case of the State Government, it was brought out by the word 'shall' preceding the words 'be submitted ..... for the orders of the State Government. We have, therefore, no doubt in our minds that paragraph 516-B, though an executive instruction, has been couched in language which clearly shows that in the former type of cases where the prisoner has completed 14 years of detention in jail, inclusive of remissions, his case must be referred to the State Government for consideration. Notwithstanding this limitation of completion of 14 years, clause (v) confers a discretion on the Superintendent of the Jail to refer or submit the case of a prisoner to the State Government even before he has completed 14 years if in his opinion the case is fit for commuting the sentence.

4. Paragraph 631 is indisputably a statutory one as it is blacklined. But the blacklined portion of the paragraph merely defines certain expressions including the expression 'life convicts' which means a person whose sentence amounts to 20 years imprisonment. Then appears the Note which reads as follows :

> "Note : The case of all life convicts and of all prisoners sentenced to more than 14 years imprisonment or to transportation and imprisonment for terms exceeding in the aggregate 14 years shall, when the term of imprisonment undergone, together with any remission earned under the rules amounts to 10 or 14 years, as the case may be, submitted for the orders of the local government in accordance with the instructions contained in the Home Department Resolution No. 159-67 (Jails), dated September

6, 1905." [See para 516-B]

It will be seen that the note merely reproduces the gist of paragraph 516-B. Even the right side marginal note says 'See para 516-B' and is based on the same Resolution of September 6, 1905 on which paragraph 516-B is based. The note is not blacklined as in the case of the Note below paragraph 633. It was, therefore, urged that when paragraph 516-B is not blacklined, this note below paragraph 631, which too is not blacklined, cannot be construed to be statutory in character merely because paragraph 631 incorporates a statutory rule.

5. Since the source of paragraph 516-B and the Note at the foot of paragraph 631 is the same, namely, the Resolution of September 6, 1905, counsel for the State of Punjab submitted that the learned Judge in the High Court was not right in concluding that the Note being an integral part of the statutory rule incorporated in paragraph 631 must receive the same character and if there is a conflict between the two, the note which is statutory in character must prevail. The difficulty arises because the State Government has issued instructions in 1971 which has the effect of modifying the executive instructions in paragraph 516-B, in that, it is now provided that a convict must have undergone 8 1/2 years of substantive sentence before his case for premature release can be submitted to the State Government for consideration. A further change was made by an executive instruction issued in 1976 whereby it was provided that cases of convicts who were sentenced to death and whose sentences were subsequently commuted to life imprisonment will not be submitted to the State Government for consideration unless the convict has undergone at least 14 years of substantive imprisonment. The High Court has taken the view that while paragraph 516-B would stand amended or modified by the subsequent executive instructions, the statutory rule contained in the Note below paragraph 631 cannot be touched by mere executive instructions and hence it still holds the field and the Superintendent for the jail is bound to submit the case to the State Government ignoring the change brought about by the executive instructions of 1971 and 1976. In other words, according to the High Court the executive instructions of 1971 and 1976 being in conflict with the statutory Note must give way to the latter.

6. Before we deal with the above question it may be advantageous to refer to Sections 432, 433 and 433-A of the Criminal Procedure Code which have a bearing on the question of premature release. Section 432 confers on the appropriate government the power to suspend the execution of the sentence or remit the whole or part of the sentence with or without conditions. Section 433 confers power on the appropriate government to commute (a) a sentence of death for any other punishment provided under the Penal Code, (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding 14 years or fine, (c) a sentence of rigorous imprisonment, for simple imprisonment or fine, or (d) a sentence of simple imprisonment for fine. Section 433-A provides that where an offender is visited with a sentence of imprisonment for life for an offence for which death is one of the punishments or where a sentence of death is commuted under Section 433 into one of punishment for life, such person shall not be released from prison unless he has served at least 14 years of imprisonment. It will thus be seen that Sections 432 and 433 confer powers of suspension, remission and commutation of sentences on the appropriate government, an expression defined in sub-section (7) of Section 432 of the Code.

7. In Gopal Vinayak Godse v. State of Maharashtra ((1961) 3 SCR 440 : AIR 1961 SC 600 : (1961) 1 Cri LJ 736) this Court held that a sentence of transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convict's normal life, unless the said sentence is commuted or remitted by the appropriate government. Dealing with the Rules framed under the Prisons Act, 1894, this Court held that even though they

were statutory in character they did not confer an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. It held that the rules framed under the Prisons Act enabled a prisoner to earn remissions - ordinary, special and State - the said remissions were to be given credit towards his term of imprisonment and for the purpose of working out the remissions the sentence of transportation for life was equated with a definite period, but it is only for that particular purpose and not for any other purpose. Lastly it observed that the question of remission was exclusively within the province of the appropriate government.

8. In Maru Ram v. Union of India ((1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196) this Court repelled the challenge to Section 433-A both on the question of competence of Parliament to enact the provision and its constitutional validity. While interpreting Sections 432, 433 and 433-A of the Code, this Court pointed out that wide powers of remission and commutation of sentences were conferred on the appropriate government but an exception was carved out for the extreme category of convicts who were sentenced to death but whose sentence had been commuted under Section 433 into one of imprisonment for life. Such a prisoner is not to be released unless he has served at least 14 years of imprisonment. The court refused to read down Section 433-A to give overriding effect to the Remission Rules of the State. It categorically ruled that Remission Rules and like provisions stand excluded so far as 'lifers' punished for capital offences are concerned. Remissions by way of reward or otherwise cannot cut down the sentence awarded by the Court except under Section 432 of the Code or in exercise of constitutional power under Article 72/161 of the Constitution. Remission cannot detract from the quantum and quality of the judicial sentence except to the extent permitted by Section 432 of the Code, subject of course to Section 433-A, or where the clemency power under the Constitution is invoked. But while exercising the constitutional power under Article 72/161, the President or the Governor, as the case may be, must act on the advice of the Council of Ministers. The power under Articles 72 and 161 of the Constitution is absolute and cannot be fettered by any statutory provision such as Sections 432, 433 and 433-A of the Code. This power cannot be altered, modified or interfered with in any manner whatsoever by any statutory provisions or Prison Rules.

9. Now, paragraph 516-B requires that the case of every convict sentenced to imprisonment for life or imprisonment aggregating to more than 14 years and who has undergone a period of detention in jail amounting, together with remission, to 14 years, shall be submitted to the State Government for orders. The State Government's instruction issued in 1971 provides that the convict must have undergone 8 1/2 years of substantive sentence before his case could be submitted to the government. The other instruction issued in 1976 provides that the case of a convict who was sentenced to death and whose sentence was subsequently commuted to life imprisonment will not be submitted unless he has undergone at least 14 years of substantive imprisonment. Remission schemes are introduced to ensure prison discipline and good behaviour and not to upset sentences; if the sentence is of imprisonment for life, ordinarily the convict has to pass the remainder of his life in prison but remissions and commutations are granted in exercise of power under remissions and commutations are granted in exercise of power under Sections 432 and 433 carving out an exception in the category of those convicts who have already enjoyed the generosity of executive power on the commutation of death sentence to one of life imprisonment. Even in such cases Section 433-A of the Code or the executive instruction of 1976 does not insist that the convict pass the remainder of his life in prison but merely insists that he shall have served time for at least 14 years. In the case of other 'lifers' the insistence under the 1971 amendment is that he should have a period of at least 8 1/2 years of incarceration before release. The 1976 amendment was possibly introduced to make the remission scheme consistent with Section 433-A of the Code. Since Section 433-A is prospective, so

also would be the 1971 and 1976 amendments.

10. But the High Court has come to the conclusion that paragraph 516-B, as amended by the executive instructions of 1971 and 1976, cannot override the statutory rule contained in paragraph 631 read with the Note appended thereto. Counsel for the State argued that the Note at the foot of paragraph 631 merely reproduces paragraph 516-B; the marginal note thereto says so in no uncertain terms and, therefore, the Note cannot be ascribed a statutory character. We think there is considerable force in this submission. In the first place it must be realised that according to the preface only those paragraphs which are blacklined have statutory character. The Note in question in not so blacklined. Where the note is intended to be given statutory character it is blacklined, see the note at the foot of paragraph 633. Secondly the source of paragraph 516-B and the note is the very same Resolution Nos. 159-167 of the Government of India dated September 6, 1905. It is difficult to believe that the same resolution was intended to be a mere executive instruction in one part of the Manual and was intended to be conferred a statutory character in another part of the same Manual. Thirdly the marginal note to the Note in question in terms refers to paragraph 516-B which means it was merely a reproduction of the later paragraph. In the circumstances if the Note was intended to be conferred a statutory character, it would have been blacklined in keeping with the scheme of the Manual. These are clear indicators which support the submission of the learned counsel for the State. Lastly paragraph 631 classifies prisoners and fixes the duration of their sentences e.g. 20 years for life convicts and class 3 prisoners and 25 years for class 1 and 2 prisoners. The Note at the foot of the paragraph is by way of a reminder that notwithstanding the duration fixed under the said rule, paragraph 516-B requires that cases of such prisoners should be submitted on the expiry of the duration fixed under paragraph 516-B. It, therefore, seems clear to us that the Note is neither an integral part of paragraph 631 nor does it have statutory flavour as held by the High Court.

11. We, therefore, find it difficult to uphold to view taken by the the High Court in this behalf. We may make it clear that paragraph 516-B insofar as it stands amended or modified by the 1971 and 1976 executive orders is prospective in character. We allow these appeals and set aside the judgment and order of the High Court in each of these appeals.

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