

Daya Singh

Vs

Union of India and others

Writ Petn. (Cri.) No. 133 of 1991

L.M. SHARMA AND J.S. VERMA, JJ.

24.04.1991

JUDGEMENT

SHARMA, J.:-

1. On the basis of a letter received from a prisoner detained in Alipore Central Jail, Calcutta, drawing the attention of this Court to the long wait of Daya Singh, the petitioner convicted for the murder of late Chief Minister of Punjab, Pratap Singh Kairon, lodged at present in Rohtak Jail, Haryana, pending the execution of his death sentence, this case was registered as a writ petition and was listed before us on 27-3-1991. All the relevant facts were not available from the letter but from the Office Report it appeared that the case of the condemned prisoner had earlier come to this Court. We directed the Registry to examine the earlier files and place before us the relevant details. In the meantime we stayed the execution of the death sentence. The learned counsel for the State of Haryana was also informed about the case. As directed, the case was placed before us again on Monday, the 1st April, 1991, when Ms. Kusum Chaudhary appeared on behalf of State of Haryana and orders were passed for notice to the counsel representing the Union of India. Having heard about the case, the convict Daya Singh engaged his own counsel to represent him and to press this writ petition and accordingly Mr. R. K. Jain appeared for him on 5-4-1991. We have, in the circumstances, treated this application as one directly by Daya Singh. The Union of India is represented by Additional Solicitor General of India. The case was further adjourned at the request of the counsel and was ultimately heard on 16-4-1991.

2. Mr. Jain has contended that if the relevant circumstances of this case are examined in the light of the decisions of this Court, the conclusion is irresistible that there has been inexcusable delay in executing the death sentence of the petitioner, and the sentence should, therefore, be quashed by this Court under Article 32 of the Constitution.

3. The petitioner was tried for the murder of Sardar Pratap Singh Kairon which took place in 1965 and was convicted and sentenced to death by the trial Court on 13-12-1978. The sentence was confirmed by the High Court on 22-3-1980. His special leave petition was dismissed by this Court on 21-8-1980 and a further prayer for review was rejected on 2-9-1981. He filed mercy petitions before the Governor and the President of India, which were also rejected. Several orders of stay were passed from time to time, the details whereof are not very significant in view of the rejection by this Court of an earlier application under Article 32, being Writ Petition No. 191 of 1986, filed through his brother Lal Singh. The case was dismissed on October 11, 1988 and the stay of the execution of the sentence stood vacated. The reasoned judgment, however, was pronounced later and is reported in Smt. Triveniben, v. State of Gujarat, (1989) 1 SCC 678 (AIR 1989 SC 1335). The petitioner filed another mercy petition thereafter before the Governor of Haryana on 18-11-1988 and

an order for stay of execution was again passed. The matter remained pending and the petitioner has been awaiting the final outcome of his last petition since then. On the basis of a newspaper report dated December 24, 1990 it is alleged that the attention of the Deputy Prime Minister was drawn to the petitioner's case and the Deputy Prime Minister gave an assurance that he would examine the matter. This report drew the attention of Alipore Jail prisoner which prompted him to send the letter which led the Registry of this Court to register the present writ petition.

4. The earlier writ petition of the petitioner Writ Petition No. 191 of 1986, filed through his brother Lal Singh, was initially heard by a Division Bench of this Court and the matter, along with a number of other application on behalf of other convicts was referred for the decision of the Constitution Bench. The cases were heard at considerable length by the Constitution Bench of which one of us (Sharma, J.) was a member and the leading argument at that stage was also made by Mr. R. K. Jain when all aspects of the cases were thoroughly considered. Finally, this Court substituted the sentence of death of one convict (Harbhajan Singh) in another case by the sentence of imprisonment for life, but the other writ petitions including that of the prisoner were dismissed. In the circumstances the petitioner cannot succeed on the basis of the earlier delay. The operative part of the judgment, as stated earlier, was passed in October, 1988 and what is now relevant to consider is the delay subsequent to this date.

5. Before proceeding further we may refer to the decision in Smt. Trivenibai's case, (AIR 1989 SC 1335) laying down the principle which governs the present petition. Although the cases were disposed of by two judgments, according to the opinion of the Bench, which was unanimous, undue delay in execution of the sentence of death entitles the condemned prisoner to approach this Court under Article 32, but this Court will examine only the nature of delay caused and circumstances ensued after the sentence was finally confirmed by the judicial process, and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. Further, while considering the grievance of inordinate delay this Court may consider all the circumstances of the case for deciding as to whether the sentence of death should be altered into imprisonment for life, and no fixed period of delay could be held to make the sentence of death inexecutable. In the light of these observations the circumstances of the present case are to be examined.

6. It is true that while rejecting the earlier prayer of the petitioner on October 11, 1988 all the relevant considerations were taken into account and the petitioner cannot be permitted to raise the same plea, once rejected, by repeated petitions. But this does not deprive the petitioner the right to renew the prayer on fresh circumstances arising later and, therefore, not considered. This is the position in the present case. Although the matter was finally closed by this Court in October, 1988, the petitioner continues to remain in a state of suspense since then. The main question is as to what is the effect of this delay.

7. The initial reason for the further delay has been a fresh mercy petition filed by the petitioner. Does this fact justify keeping him under a sense of anticipation for more than two years? If the prayer was not considered fit to be rejected at once it was certainly appropriate to have stayed the execution, but the matter should have been disposed of expeditiously and not kept in abeyance as has been done. The counter affidavit filed on behalf of the Union of India states that on the receipt of the last mercy petition the Governor of Haryana immediately made a reference to the President of India seeking enlightenment on the question as to whether the Governor, while dealing with such applications, is bound by the advice of the Chief Minister of the State and whether it is open to the Governor to exercise his constitutional power in a case where an earlier application to the same

effect had been rejected by the President. Soon after the receipt of this communication, the matter was referred to the Department of Legal Affairs, Ministry of Law and Justice for advice, and the Ministry suggested that the question should be discussed with the Attorney General of India. Since the matter remained under consideration no reply could be sent to the query and ultimately it was only in March this year, that the reply could be sent in the shape of a directive under Article 257 (1) of the Constitution to all the Chief Secretaries of the State Governments and Union Territories: The affidavit, however, does not furnish any fact or circumstance in justification of the delay. In absence of any reasonable explanation by the respondents we are of the view that if the concerned officers had bestowed the necessary attention to the matter and devoted the time its urgency needed, we have no doubt that the entire process of consideration of the questions referred would have been completed within a reasonable period without leaving any yawning gap rightly described by the learned Additional Solicitor General as embarrassing gap". There has, thus, been an avoidable delay, which is considerable in the totality of circumstances in the present case, for which the condemned prisoner is in no way responsible.

8. As was cautioned by this Court in Smt. Triveniben's case, (AIR 1989 SC 1335), we are not laying down any rule of general application that the delay of two years will entitle a convict, sentenced to death, to conversion of his sentence into one for life imprisonment, rather we have taken into account the cumulative effect of all the circumstances of the case for considering the prayer of the petitioner. Although the fact that the petitioner has been continuously detained in prison since 1972 was taken into account while rejecting his earlier writ petition, the same is not rendered completely irrelevant for the purpose of the present case and we have taken it into consideration merely as a circumstance assuming significance as a result of the relevant circumstances arising subsequent to the judgment rendered in October, 1988.

9. Having regard to all the circumstances of the case, we deem it fit to and accordingly substitute the sentence of imprisonment for life in place of the petitioner's death sentence. The writ petition is accordingly allowed.

10. In the letter from Alipore Jail a prayer has been made for the release of the petitioner. As was indicated in Triveniben's case, (AIR 1989 SC 1335) the only relief a convict awaiting execution of death sentence can get from this Court on the ground of delay is conversion of the sentence into that of life imprisonment. However on conversion of the death sentence to life imprisonment, the petitioner would now be governed and dealt with as a life convict for all purposes. We are not required to say anything more in this behalf. This prayer made in the letter is rejected.

Petition allowed.

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