

Ranjit Singh

Vs

Union Territory of Chandigarh and Another

Writ Petition (Crl.) No. 116 of 1990

(M.N. Venkatachaliah, N.D. Ojha, J.S. Verma JJ)

23.08.1991

JUDGMENT

VERMA, J.

1. The short question arising for decision by us is the true meaning of sub-section (2) of Section 427 of the Code of Criminal Procedure, 1973 and its effect.

2. For an offence of murder committed on September 17, 1978 the petitioner, Ranjit Singh, was convicted under Section 302 IPC by the Sessions Judge on March 6, 1979 and sentenced to life imprisonment which was confirmed by the High Court of Punjab and Haryana. While the petitioner was on parole after his conviction and sentence for first murder, he was tried for the second murder committed on October 25, 1980 and convicted under Section 303 IPC. This conviction was altered to one under Section 302 IPC and for the second murder also the petitioner was sentenced by this Court on September 30, 1983 (Ranjit Singh v. U.T. of Chandigarh, (1984) 1 SCC 31 : 1984 SCC (Cri) 27 following Mithu v. State of Punjab, (1983) 2 SCC 277 : 1983 SCC (Cri) 405) to life imprisonment instead of death sentence. This Court while disposing of the petitioner's appeal, in this manner, directed as under : (SCC p. 32 para 2)

"(W)e feel that life imprisonment would be the proper sentence that should be imposed upon the appellant. We accordingly reduce the sentence of death imposed upon him and sentence him to suffer rigorous imprisonment for life. However, since the present murder was committed by him within a span of one year of his earlier conviction and that too when he was released on a parole we are clearly of the view that the instant sentence of imprisonment for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. We therefore, direct that in case any remission or commutation in respect of his earlier sentence is granted to him the present sentence should commence thereafter."

The petitioner has now filed this writ petition under Article 32 of the Constitution for issuance of a suitable writ or direction to correct the above direction given in the order dated September 30, 1983 to bring it in consonance with Section 427(2) CrPC and consequently for his release on the ground that both life sentences had to run concurrently in accordance with Section 427(2) CrPC and he is entitled to relief because he has undergone fourteen year sentence of imprisonment with remissions at the time of filing the writ petition on February 19, 1990. This is how the question of construction of Section 427(2) CrPC arises in the present case.

3. Section 427 of the Code of Criminal Procedure, 1973 is as under :

"427. Sentence on offender already sentenced for another offence. - (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence :

Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

4. Shri R.K. Garg, learned counsel for the petitioner strenuously urged that this Court's abovequoted direction in the judgment dated September 30, 1983 passed in Criminal Appeal No. 418 1982 of while affirming the conviction under Section 302 IPC for the second murder and imposing the punishment of life imprisonment for it also amounts to directing that the two sentences of life imprisonment are to run consecutively and not concurrently which is in direct conflict with sub-section (2) of Section 427 CrPC. He urged that the life span of a person could be only one and therefore any subsequent life sentence must run concurrently and not consecutively which is the clear mandate of Section 427(2). On this basis, it was urged that this Court's direction in the above manner on the petitioner's conviction for the second offence of murder is contrary to Section 427(2) of the Code Criminal Procedure, 1873. This is the basis of the reliefs claimed on behalf of the petitioner. In reply, Shri U.R. Lalit, appearing on behalf of respondents, contended that the direction of this Court properly construed is not contrary to Section 427(2) CrPC and, therefore, the question of issuing any writ to directions claimed by the petitioner does not arise.

5. We may straightway mention that the question of grant of relief under Article 32 of the Constitution does not arise on the above facts. The petitioner's incarceration is the result of a valid judicial order and, therefore, there can be no valid claim to the infringement of any fundamental right which alone can be the foundation for a writ under Article 32 of the Constitution. The only question, it appears, therefore, is about the correct construction of the direction given by this Court in its judgment dated September 30, 1983 in Criminal Appeal No. 418 of 1982 in the light of the true meaning of Section 427(2) CrPC.

6. The meaning of a sentence of imprisonment for life is no longer *res integra*. It was held by a Constitution Bench in *Gopal Vinayak Godse v. State of Maharashtra* ((1961) 3 SCR 440 : AIR 1961 SC 600 : (1961) 1 Cri LJ 736) that a sentence of transportation for life or imprisonment for life must *prima facie* be treated a transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. It was further held : (SCR p. 447)

"Unless the said sentence is commuted or remitted by appropriated authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison."

((1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196)

The contention that a sentence of life imprisonment was to be treated as a sentence of imprisonment for a fixed term was expressly rejected. This view was followed and reiterated in *Maru Ram v. Union of India* ((1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196) while considering the effect of Section 433-A introduced in the Code of Criminal Procedure, 1973 with effect from December 18, 1978. The Constitution Bench in *Maru Ram* ((1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196) summarised one of its conclusions as under : (SCC p. 154, para 72 : SCC (Cri) p. 154, para 72)

"We follow *Godse case* ((*Ranjit Singh v. U.T. of Chandigarh*, (1984) 1 SCC 31 : 1984 SCC (Cri) 27 following *Mithu v. State of Punjab*, (1983) 2 SCC 277 : 1983 SCC (Cri) 405) to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by government."

Another conclusion in *Maru Ram* ((1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196) was that the mandatory minimum of 14 years' actual imprisonment prescribed by Section 433-A which has supremacy over the Remission Rules and short-sentencing statutes made by the various States will not operate against those whose cases were decided by the trial court before December 18, 1978 when Section 433-A came into force but Section 433-A would apply to those sentenced by the trial court after December 18, 1978 even though the offence was committed prior to that date. From these decisions it is obvious that the mandatory minimum of 14 years' actual imprisonment prescribed by Section 433-A is applicable to petitioner in respect of both sentences of life imprisonment since the conviction by the trial court even for the first murder was after December 18, 1978, the second offence itself being committed after December 18, 1978. There is no dispute that the mandatory minimum of 14 years' actual imprisonment, as required by Section 433-A even for the first sentence of life imprisonment, has not been served out by the petitioner and, therefore, irrespective of the points raised in this petition on the basis of Section 427(2) CrPC the petitioner cannot claim relief much less a writ under Article 32 of the Constitution in the absence of the remaining sentence being remitted by the government. This alone is sufficient to refuse any relief under Article 32 of the Constitution.

7. The question now is of the meaning of Section 427(2) CrPC and its effect, in the present case, in view of the abovequoted direction of this Court in its judgment dated September 30, 1983.

8. Sub-section (1) of Section 427 CrPC provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, sub-section (1) of Section 427 CrPC deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well settled since

the decision of this Court in Gopal Vinayak Godse (Ranjit Singh v. U.T. of Chandigarh, (1984) 1 SCC 31 : 1984 SCC (Cri) 27 following Mithu v. State of Punjab, (1983) 2 SCC 277 : 1983 SCC (Cri) 405) and reiterated in Maru Ram ((1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196) that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in sub-section (1) of Section 427. As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is state in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the court directs it to run concurrently. The meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is, therefore, clear.

9. We are not required to say anything regarding the practical effect of remission or commutation of the sentences since that question does not arise in the present case. The limited controversy before us has been indicated. The only question now is of the meaning and effect of the abovequoted direction in this Court's judgment dated September 30, 1983. It is obvious that the direction of this Court must be construed harmonise with Section 427(2) CrPC which is the statutory mandate apart from being the obvious truth. The subsequent sentence of imprisonment for life has, therefore, to run concurrently with the earlier sentence of imprisonment for life awarded to the petitioner. The real exercise is to construe the last sentence in the direction which reads as under :

"We, therefore, direct that in case any remission or commutation in respect of his earlier sentence is granted to him the present sentence should commence thereafter."

It is in the background of this ultimate direction that the preceding portion has to be read. This last sentence in the direction means that in case, any remission or commutation is granted in respect of the earlier sentence of life imprisonment alone then the benefit of that remission or commutation will not ipso facto be available in respect of the subsequent sentence of life imprisonment which would continue to be unaffected by the remission or commutation in respect of the earlier sentence alone. In other words, the operation of the superimposed subsequent sentence of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority. The consequence is that the petitioner would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence is also granted to the petitioner. It is in this manner that the direction is given for the two sentences of life imprisonment

not to run concurrently.

10. The ultimate direction contained in the last sentence is obviously for this purpose. So construed the direction of this Court in the judgment dated September 30, 1983 in Criminal Appeal No. 418 of 1982 fully harmonises with Section 427(2) CrPC. This is the clarification we make of this Court's judgment dated September 30, 1983 in Criminal Appeal No. 418 of 1982.

11. We have already stated that this petition for the issuance of a writ under Article 32 of the Constitution is untenable. We have, therefore, treated it as a petition for clarification of the judgment dated September 30, 1983 in Criminal Appeal No. 418 of 1982. Accordingly, the petition is disposed of with this clarification.

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