

Sat Pal alias Sadhu

Vs

State of Haryana and Another

Writ Petn. (Criminal) No. 1385 of 1991

(Kuldip Singh, K. Ramaswamy JJ)

19.08.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Sat Pal alias Sadhu, the petitioner, has challenged his continued detention in jail and is seeking an order in the nature of habeas corpus claiming that he has served more than the maximum sentence of imprisonment prescribed under law and should, therefore, be released.

2. The petitioner was arrested on March 27, 1978 in a case registered under Section 302 Indian Penal Code. He was convicted on August 16, 1978 and was sentenced to undergo imprisonment for life. According to the petitioner he has undergone about 13 years and six months actual imprisonment and total period of imprisonment including remissions comes to more than 17 years. Admittedly his sentence has not been remitted fully nor commuted for imprisonment for a term not exceeding 14 years either under Section 55, Indian Penal Code or under Section 433B, Code of Criminal Procedure, 1973 by the appropriate government. However, the petitioner's case is that he has undergone more than 14 years sentence including remissions and since the said sentence was got executed in jail custody in the form of rigorous imprisonment, the government must be deemed to have commuted his sentence to 14 years either under Section 55, Indian Penal Code or Section 433(B), Code of Criminal Procedure, 1973 notwithstanding that no formal order in that behalf was made by the State Government and as such his continued detention in jail is illegal and he is entitled to be released forthwith. The argument has been advanced by Mr. Balwant Singh Malik, the learned counsel for the petitioner on the following grounds:

(I) "Imprisonment for life" as one of the punishments was substituted for "transportation for life" in Section 53 of the Indian Penal Code by Amending Act 26 of 1955. No corresponding amendment has been made in the Code of Criminal Procedure, 1973 and there is no provision under the Code for the execution of the sentence of "imprisonment for life". In the absence of any provision for executing the sentence of "imprisonment for life" in the Code of Criminal Procedure the detention of life convicts in prison is unlawful and illegal and as such the government, in order to legalise detention, has necessarily to commute life sentence under Section 55, Indian Penal Code or Section 433(B), Code of Criminal Procedure, 1973 to one of the rigorous imprisonment, which under the said provisions cannot legally exceed a term of 14 years. The petitioner having completed 14 years, he is entitled to be released.

(II) The sentence of "life imprisonment" has not been defined either under the Indian Penal Code or under any other law. It is nowhere provided that a life convict has to undergo rigorous imprisonment. The Government by causing the life convicts to be dealt with as a prisoner sentenced to rigorous imprisonment must be deemed to have commuted sentence of imprisonment for life to a sentence of rigorous imprisonment under Section 55, Indian Penal Code or Section 433(B) Code of Criminal Procedure, 1973 for a term not exceeding 14 years.

3. The arguments advanced by the learned counsel stand concluded against him by the judgment of this Court in *Naib Singh v. State of Punjab*, (1983) 2 SCC 454: (1983 Cri LJ 1345). In the said case Naib Singh challenged his continued detention in jail on the following grounds:-

"In regard to the sentence of life imprisonment the place where it has to be executed or carried out has to be appointed under Section 32 of the Prisoners Act, 1900, and since the sentence of 'imprisonment for life, like the sentence of 'transportation of life, could be executed only by way of banishment or exile by the convict being removed to the place or places' required to be appointed by the State Government under Section 32 of the Prisoners Act, the executing authorities were obliged to 'execute' or 'carry out' the said sentence in jail indirectly by way of commuting it for imprisonment of either description for a term not exceeding 14 years under Section 55, IPC or Section 433(b), Cr.P.C., 1973. In other words in the absence of any proper authority of law warranting the detention and execution of the sentence of such life convict in jail, his detention in such jail custody will have to be regarded as illegal and unlawful.

Nature of sentence of life imprisonment is undefined and it is not necessarily rigorous; but because the petitioner was made to undergo his sentence of life imprisonment in jail and that too in rigorous manner for more than 14 years (inclusive of remissions) his sentence should be deemed to have been commuted by the State Government either under Section 55, IPC or under Section 433 (b), Cr.P.C., 1973 without a formal order in that behalf and he be released forthwith."

This Court rejected both the contentions and dismissed the petition. V.D. Tulzapurkar, J. speaking for the Court held as under:-

"Under Section 32 of the Prisoners Act a sentence of transportation either for a term or for life could be and a sentence of life imprisonment can be made executable in local jails by constituting such jails as the 'places' within the meaning of Section 32 under orders of the State Governments. Apart from Section 32 of the Prisoners Act, Section 383 of Cr.P.C., 1898 and Section 418 of Cr. P.C., 1973 also contain the necessary legal authority and power under which a criminal Court can by issuing a warrant direct the execution or carrying out of a sentence of life imprisonment in local jails. Ever since the sentence of transportation either for a term or for life became executable in jails within the country and the same position must obtain in regard to persons sentenced to imprisonment for life on and after January 1, 1956 in view of Section 53-A, IPC inserted by the Amending Act 26 of 1955.

The nature of punishment required to be suffered under a sentence of 'imprisonment for life' awardable on and after January 1, 1956 is rigorous imprisonment. Earlier the

sentence of transportation either for life or for a term meant rigorous imprisonment in the sense of exaction of hard labour from the convict. Since under Section 53 A(2) transportation for a term has been equated to rigorous imprisonment for the same term, by necessary implication the sentence of 'transportation for life', now substituted by 'imprisonment for life' by Section 53-A(1), which is awardable for more serious, or more grave or more heinous crimes must mean rigorous imprisonment for life, that is to say it cannot be anything but rigorous.

It is not necessary that while passing the sentence of imprisonment for life a criminal Court should keep in view the provisions of Section 60, IPC and choose one or the other form so as to clarify the exact nature of punishment intended to be inflicted on the accused. A distinction between 'imprisonment for life' and 'imprisonment for a term' has been maintained in the Penal Code in several of its provisions. Moreover, whenever an offender is punishable with 'imprisonment for life' he is not punishable with 'imprisonment which may be of either description' within the meaning of Section 60 and therefore, that section would be inapplicable."

4. It is not disputed by the learned counsel for the petitioner that the judgment in Naib Singh's case (1983 Cri LJ 1345) (SC) is a complete answer to his arguments but he has vehemently argued that the said judgment needs reconsideration by a larger Bench. The learned counsel also made an attempt to challenge the correctness of the Privy Council judgment in Kishori Lal v. Emperor, AIR 1945 PC 64: (1945 (46) Cri LJ 626) and of this Court in Gopal Vinayak Godse v. State of Maharashtra, (1961) 3 SCR 440: (1961 (i) Cri LJ 736). Both these judgments have been relied upon by this Court in Naib Singh's case.

5. We have carefully read the judgment of this Court in Naib Singh's case (1983 Cri LJ 1345) (SC) and have given our thoughtful consideration to the points dealt with and decided therein. We respectfully agree with the reasoning and the conclusions reached by this Court in the said judgment. We see no justification whatsoever to refer the points decided in Naib Singh's case to a larger Bench. We, therefore, dismiss the writ petition. Petition dismissed.

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