SUPREME COURT OF INDIA

C.A. Pious

Vs.

The State of Kerala

(Dr. Arijit Pasayat and D.K. Jain JJ.)

14.09.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Kerala High Court dismissing the writ appeal filed by the appellant.

3. Background facts in a nutshell are as follows:

The appellant is suffering life imprisonment in Central Jail, Kannur in view of the conviction for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC').

He made a claim before the State Government that the Kerala Prison Rules, 1958 (in short 'Rules') provide for release on probation on completion of 8 years of custody. According to him the period of study leave amounting to 6 years 10 months and 13 days have to be reckoned while computing the period of sentence undergone. The prayer was rejected on the ground that the writ petitioner had not suffered 8 years of custodial sentence and, in fact, he had undergone imprisonment for 6 years, 3 months and 25 days to which the remand period of 1 month and 17 days is to be added making a total of 6 years 5 months and 10 days. The High Court found substance in the stand of the State Government with reference to Rule 225(2) that the writ petitioner was not entitled to any relief. A writ appeal was filed before the High Court. The Division Bench by the impugned order held that the case of the writ petitioner could not have been placed before the committee as he has not suffered mandatory period of 8 years of sentence.

4. Learned counsel for the appellant submitted that the period of study has to be reckoned. Reference is made to Rule 461. Learned counsel for the State on the other hand supported the order of the High Court.

5. Rule 280-A provides for suspension of sentence as empowered under Section 432 (6) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for the period of leave for the purpose of study. The special rules framed also is captioned as "RULES FOR SUSPENSION OF SENTENCE OF PRISONERS FOR THE PURPOSE OF STUDY". On the other hand, Chapter 26 of the Rules with respect to leave specifies only two kinds of leave i.e. emergency and ordinary. The above rules do not contemplate suspension of sentence and it can also be seen from the same that the maximum period of emergency leave at a stretch is only for a period of 15 days and the ordinary leave up to a

maximum of 30 days at a time vide Rule 453. Rule 452B also provides that a prisoner once released on leave of any kind will not be eligible for a subsequent release on leave until the completion of six months of actual imprisonment to be counted from the date of his last return from leave. Emergency leave in Rule 455 is an exception to this as the same is confined to 15 days as noted above and the grounds are death or serious illness of a near relative. On the other hand, during the period of study leave, the sentence stands suspended. The result of suspension of sentence as per Rule 225(2) is that the same is excluded from the period of sentence undergone. Ipsissima verba Rule 225 is as follows:

"225. Procedure when sentence is suspended.

(1) When an appellate court directs that the execution of sentence or order appealed against be suspended the appellant shall, if detained in jail pending the further orders of such Appellate Court, be treated in all respects as an under trial prisoner".

(2) Should the appellant be ultimately sentenced to imprisonment the period during which the original sentence was suspended shall (a) if passed in jail, be included, and (b) if passed out of Jail, be excluded in computing the term for which he is sentenced by the Appellate Court".

6. Rule 225 (2) makes the position very much explicit. Rule 461 i.e. the provision for treatment of the period of leave as the sentence undergone cannot be made applicable to the study leave period. The same is abundantly clear from the fact that at the time of commencement of study leave, the sentence stands suspended whereas for the emergency leave or ordinary leave, the above suspension is not contemplated under Chapter 26 of the Rules. It is also seen from the concerned Rules as noted above, i.e. Rule 453 that the period of emergency and ordinary leave are confined to a short period and the same is not granted continuously and also that a gap of six months is contemplated as per Rule 452(B) for further release of a prisoner granting ordinary leave. Emergency leave as already noted vide Rule 455 is limited to extreme situations like death or serious illness. But so far as study leave is concerned, it is seen that the same is granted somewhat liberally. The appellant himself was outside the prison for more than six years. He was outside the prison more than the period he spent inside.

7. It appears that the Government of Kerala had constituted a High Level Committee on the basis of the order passed in suo motu proceedings which was initiated as in several instances several convicts sentenced for serious offences were released after undergoing short terms imprisonment.

Guidelines were framed by the Committee which were promulgated by G.O.(P) 228/03/Home dated 18.10.2003. In para 3 of the guidelines of the State Government order, it is as follows:

"The Committee will recommend premature release of life convicts who have completed 8 years of actual imprisonment including set off if any ordered by a competent court and excluding remission of any kind considering the nature of offence committed by the prisoners, nature of the crime, possible effects on the community, their conduct in a prison and in whose cases the committee feels that premature release would help in their social reformation and rehabilitation".

8. Stand of the appellant is clearly unsustainable. In view of the clear position emitting from Rule 225, the High Court's judgment does not suffer from any infirmity that, to be entitled to benefit convict has to suffer at least 8 years of custody.

9. In Maru Ram v. Union of India and Ors. (1981 (1) SCC 107) it was inter-alia held as follows:

"28. Neither argument has force. The first one fails because Section 302, IPC (or other like offence) fixes the sentence to be life imprisonment. 14 years' duration is never heavier than life term. The second submission fails because a remission, in the case of life imprisonment, ripens into a reduction of sentence of the entire balance only when a final release order is made. Godse is too emphatic and unmincing to admit of a different conclusion. The haunting distance of death which is the terminus ad quem of life imprisonment makes deduction based on remission indefinite enough not to fix the date with certitude. Thus, even if remissions are given full faith and credit, the date of release may not come to pass unless all the unexpired, uncertain balance is remitted by a government order under Section 432. If this is not done, the prisoner will continue in custody. We assume here that the constitutional power is kept sheathed.

29. Let us assume for the sake of argument that remissions have been earned by the prisoner. In Murphy v. Commonwealth (172 Mass 264) referred to by Cooley and cited before us (infra), it has been held that earned remissions may not be taken away by subsequent legislation. May be, direct effect of such a privative measure may well cast a heavier penalty. We need not investigate this position here.

30. A possible confusion creeps into this discussion by equating life imprisonment with 20 years' imprisonment. Reliance is placed for this purpose on Section 55, IPC and on definitions in various Remission Schemes. All that we need say, as clearly pointed out in Godse is that these equivalents are meant for the limited objective of computation to help the State exercise its wide powers of total remissions. Even if the remissions earned have totalled up to 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoner cannot claim his liberty. The reason is that life sentence is nothing less than lifelong imprisonment.

Moreover, the penalty then and now is the same life term. And remission vests no right to release when the sentence is life imprisonment. No greater punishment is inflicted by Section 433-A than the law annexed originally to the crime. Nor is any vested right to remission cancelled by compulsory l4-year jail life once we realise the truism that a life sentence is a sentence for a whole life (see Sambha Ji Krishan Ji v. State of Maharashtra (AIR 1974 SC 147) and State of M. P. v. Ratan Singh (1976 Supp SCR 552).

31. Maybe, a difference may exist in cases of fixed term sentences. Cooley lends support :

Privilege existing at time of commission of offence (e.g. privilege of earning a shortening of sentence by good behaviour) cannot be taken away by subsequent statute.

xxx xxx xxx 72. We conclude by formulating our findings:

(1) We repulse all the thrusts on the vires of Section 433-A. Maybe, penologically the prolonged term prescribed by the section is supererogative. If we had our druthers we would have negatived the need for a fourteen- year gestation for reformation. But ours is to construe, not construct, to decode, not to make a code.

(2) We affirm the current supremacy of Section 433-A over the Remission Rules and short-sentencing statutes made by the various States.

(3) We uphold all remissions and short- sentencing passed under Articles 72 and 161 of the Constitution but release will follow, in life sentence cases, only on government making in order en

masse or individually, in that behalf.

(4) We hold that Section 432 and Section 433 are not a manifestation of Articles 72 and 161 of the Constitution but a separate, though similar power, and Section 433-A, by nullifying wholly or partially these prior provisions does not violate or detract from the full operation of the constitutional power to pardon, commute and the like.

(5) We negate the plea that Section 433-A contravenes Article 20(1) of the Constitution.

(6) We follow Gopal Vinayak Godse v. State of Maharashtra (1961 (3) SCR 440) 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.

(7) We declare that Section 433-A, in both its limbs (i.e. both types of life imprisonment specified in it), is prospective in effect. To put the position beyond doubt, we direct that the mandatory minimum of 14 years' actual imprisonment will not operate against those whose cases were decided by the trial Court before December 18, 1978 when Section 433-A came into force. All 'Lifers' whose conviction by the court of first instance was entered prior to that date are entitled to consideration by government for release on the strength of earned remissions although a release can take place only if government makes an order to that effect. To this extent the battle of the tenses is won by the prisoners. It follows, by the same logic, that short. sentencing legislations, if any, will entitle a prisoner to claim release there under if his conviction by the court of first instance was before Section 433-A was brought into effect.

(8) The power under Articles 72 and 161 of the Constitution can be exercised by the Central and State Governments, not by the President or Governor on their own. The advice of the appropriate Government binds the Head of the State. No separate order for each individual case is necessary but any general order made must be clear enough to identify the group of cases and indicate the application of mind to the whole group.

(9) Considerations for exercise of power under Articles 72/161 may be myriad and their occasions protean, and are left to the appropriate Government, but no consideration nor occasion can be wholly irrelevant, irrational, discriminatory or mala fide. Only in these rare cases will the court examine the exercise.

(10) Although the remission rules or short- sentencing provisions proprio vigore may not apply as against Section 433-A, they will override Section 433-A if the government, Central or State, guides itself by the self-same rules or schemes in the exercise of its constitutional power. We regard it as fair that until fresh rules are made in keeping with experience gathered, current social conditions and accepted penological thinking- a desirable step, in our view- the present remission and release schemes may usefully be taken as guide-lines under Articles 72/161 and orders for release passed. We cannot fault the government, if in some intractably savage delinquents, Section 433-A is itself treated as a guide-line for exercise of Articles 72/161.

These observations of ours are recommendatory to avoid a hiatus, but it is for Government, Central or State, to decide whether and why the current Remission Rules should not survive until replaced by a more wholesome scheme.

(11) The U.P. Prisoners' Release on Probation Act, 1938, enabling limited enlargement under licence will be effective as legislatively sanctioned imprisonment of a loose and liberal type and

such licensed enlargement will be reckoned for the purpose of the 14-year duration. Similar other statutes and rules will enjoy similar efficacy.

(12) In our view, penal humanitarianism and rehabilitative desideratum warrant liberal paroles, subject to security safeguards, and other humanizing strategies for inmates so that the dignity and worth of the human person are not desecrated by making mass jails anthropoid zoos. Human rights awareness must infuse institutional reform and search for alternatives.

(13) We have declared the law all right, but law-in-action fulfils itself not by declaration alone and needs the wings of communication to the target community. So, the further direction goes from this Court that the last decretal part is translated and kept prominently in each ward and the whole judgment, in the language of the State, made available to the inmates in the jail library.

(14) Section 433-A does not forbid parole or other release within the 14-year span. So to interpret the section as to intensify inner tension and intermissions of freedom is to do violence to language and liberty."

10. As and when the appellant suffers actual custody of more than 8 years, let his case be considered in accordance with law by the concerned authorities.

11. We make it clear that we have not expressed any opinion in the acceptability of the plea of the appellant while considering the case of the appellant. The parameters and requirements have to be kept in view while considering the case.

12. The appeal is dismissed with the aforesaid observations.