

Satbir Singh Vs. Unknown

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Court : Punjab and Haryana

Decided On : Dec-20-2012

Appellant : Satbir Singh

Respondent : Unknown

Judgement :

Criminal Writ Petition No.30 o

1. IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Criminal Writ Petition No.30 of 2012 Date of decision: December 20, 2012 Satbir Singhpetitioner Vs. State of Haryana and othersrespondents
CORAM: HON'BLE MR. JUSTICE SURYA KANT HON'BLE MR. JUSTICE R.P.NAGRATH Present: Mr.Vijay K. Jindal, Advocate, for the petitioner. Mr. R.D.Sharma, DAG, Haryana for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment ?.

2. To be referred to the reporter or No.?.

3. Whether the Judgment should be reported in the Digest ?. R.P. NAGRATH,J.While hearing the instant Criminal Writ Petition under Article 226 of the Constitution of India, learned Single Judge recorded discordant note to the earlier judgments passed by this Court on specific issues and referred the matter to the larger Bench by formulating following two questions:

1. Whether the petitioner is entitled to release under the Probational Release Act in the year 2012 when the Act itself has been repealed by State of Haryana in the year 2001?. Criminal Writ Petition No.30 o

2. Whether the petitioner who has been convicted for an offence under Section 304-B IPC is entitled to release under the provisions of the Probational Release Act and the rules framed thereunder ?.. This is how the matter is before us.

2. The matter arose on a petition for quashing the order dated 16.11.2011 Annexure P/8, passed by respondent No.1 deciding the prayer of petitioner for conditional release on licence under Good Conduct Prisoners' Probational Release Act, 1926 (in short the 'Act of 1926') read with Good Conduct Prisoners' Probational Release Rules, 1927 (for brevity the 'Rules of 1927') .

3. The petitioner was convicted of the offences punishable under Sections 304-B and 498-A of the Indian Penal Code (in short IPC.) in FIR No.337 dated 24.5.1994 and sentenced to undergo 10 years rigorous imprisonment under Section 304-B IPC and two years rigorous imprisonment with a fine of Rs.200/- under Section 498-A IPC vide judgment and order dated 19th /21st October, 1995 of the trial Court. The appeal preferred against that judgment was dismissed by this Court on 15.05.2009 and the S.L.P. before the Hon'ble Supreme Court was also dismissed vide order dated 3.5.2010.

4. The petitioner had undergone sentence of 4 years 3 months and 14 days which includes 6 months remissions granted under Section 432 Cr.P.C., out of the awarded sentence of 10 years. Earlier the petitioner filed Criminal Writ Petition No.1104 of 2011 titled Satbir Singh V. State of Haryana before this Court. That petition was allowed partly vide judgment dated 27.7.2011 (Annexure P/7), the operative part of which reads as under : Consequently, the petitioner is entitled to get his Criminal Writ Petition No.30 o

3. case considered for conditional release under the Act if he satisfies the conditions for conditional release under the Act before the Act was repealed. not existence of infrastructure cannot be a ground to decline the aforesaid benefit to the petitioner, if he is otherwise entitled to the same under the Act. The State

cannot abdicate its responsibility to provide statutory benefit to any citizen on the ground of lack of infrastructure. It is the duty of the State to create necessary infrastructure for implementation of the statutory provisions. For the reasons aforesaid, the instant writ petition is allowed partially and respondents are directed to consider the case of the petitioner for conditional release under the provisions of the Act and the Rules framed thereunder within a period of three months from the date of receipt of certified copy of this order and pass appropriate order in accordance with law.

5. The Financial Commissioner & Principal Secretary, Government of Haryana in purported compliance of above reproduced direction passed the order Annexure P/8 dated 16.11.2011 declining the prayer of petitioner, which has been assailed in the instant petition.

6. It is the common case of parties that the Act of 1926 stood repealed by the State of Haryana in the year 2001 by Good Conduct Prisoners' Probational Release (Repeal) Act, 2001 (hereinafter referred to as the 'Repeal Act'). The matter revolves round interpretation of Section 2(c) of the Repeal Act which provides that the repeal shall not effect any Criminal Writ Petition No.30 o

4. right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed. The contention of the petitioner's counsel is that if any right has accrued to the petitioner for consideration of his conditional release under the Act, that right is saved by the above provision of the Repeal Act.

7. After giving a brief overview of the judicial and legislative history behind saving the rights and liabilities accrued under a repealed Act, the learned Single Judge held as under : It is my considered opinion that what is intended to be preserved by the repealing Act are situations where persons have been released on a license under Section 2 of the Act. However, before the period of the license could exhaust the Act was repealed. Since the privilege had already accrued to them they would continue to enjoy their release on license under the Act, despite its repeal. It is for these reasons, I do not subscribe to the argument of the counsel for the petitioner that he is still entitled to release under the Probational Release Act. Such an argument, though attractive at first flush is contrary to the provisions of

the Repeal Act and the ratio of law laid down by Hon'ble the Supreme Court on various occasions.the ratio of law propounded in CRWP No.1104 of 2011 (Annexure P/7) relying upon the decisions rendered in ' Ruli Ram V.State of Haryana etc. CRWP No.104 of 2004 decided on 1st October,2004 and ' Ram Dass V. State of Haryana and others' CRM No.32996 of 2002 in CRM No.46299-M of 2001 decided on 20th September,2002 is Criminal Writ Petition No.30 o

5. required to be re-looked as I have expressed a contrary opinion.

8. On question No.2, the learned Single Judge held that a person convicted of the offence under Section 304-B IPC which provides minimum sentence of 7 years RI is not entitled to the benefit of the said provisions as the offence was inserted in the IPC by Act No.43 of 1986 to curb the menace of 'dowry death' which was found much prevalent in our society, even though corresponding amendment in Rule 9 of the Rules of 1927 was not made. The learned Single Judge differed with the view point of another coordinate Bench of this Court in Criminal Misc. No.13697-M of 1999 Sunder Lal V. State of Haryana and others decided on 7.7.1999 (Annexure P/12). After an elaborate discussion, the learned Single Judge held as under : Hence, if the ratio of law laid down in Sunder Lals case(supra) is allowed to prevail, it will promote evil and perpetuate mischief. A person having committed murder of a young bride within seven years of marriage for the greed of dowry, which is a social menace, will take benefit of the Release Act and the object of Section 304-B IPC to cause deterrence will obliterate. What is ironical, is that after holding a trial, which is assigned to the Court not less than Sessions, the sentence awarded, which has been affirmed by the High Court and upheld by Honble the Supreme Court, will have no effect as the convict will be set free under the Release Act. If the Release Act cannot keep pace with the amending legislation to the Indian Penal Code, the Courts have to play Criminal Writ Petition No.30 o

6. an active role to curb the mischief. Thus, literal interpretation of Rule 9 of the Rules in Sunder Lals case (supra), in my opinion, cannot stand the test of judicial scrutiny. With all humility at my command, I regretfully cannot subscribe to the ratio of law propounded in Sunder Lals case (supra).

9. We have heard Counsel for the petitioner and the State Counsel and have given our thoughtful consideration to the propositions involved. Question No.1:

10. There cannot be any quarrel with the proposition that the date of conviction of an accused would be the date of judgment of trial Court, even though the judgment of conviction and sentence was challenged before the higher Courts. In *Maru Ram and others V. Union of India and others* AIR 198.SC 214.it was held as under :

55.that every person who has been convicted by the sentencing court before December 18, 1978,shall be entitled to the benefits accruing to him from the Remission Scheme or short-sentencing project as if Section 433-A did not stand in his way. The section uses the word 'conviction' of a person and, in the context,it must mean conviction by the sentencing court; for that first quantified his deprivation of personal liberty.

56. We are mindful of one anomaly and must provide for its elimination. If the trial Court acquits and the higher Court convicts and it so happens that the acquittal is before Section 433-A came into force and the conviction after Criminal Writ Petition No.30 o

7. it, could it be that the convicted person would be denied the benefit of prospectively and consequential non-application of Section 433-A merely because he had the bad luck to be initially acquitted ?. We think not. When a person is convicted in appeal, it follows that the appellate court has exercised its power in the place of the original court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of judgment of the trial Court. The appellate conviction must relate back to the date of the trial court's verdict, and substitute it. In this view, even if the appellate court reverses an earlier acquittal rendered before Section 433-A came into force but allows the appeal and convicts the accused,after Sec. 433-A came into force, such persons will also be entitled to the benefit of the remission system prevailing prior to Section 433-A on the basis we have explained. *Boucher Pierre Andre V. Supdt., Central Jail, Tihar* (1975) 1 SCR 19.at P 195.(AIR 197.SC 164).An appeal is a continuation of an appellate judgment as a replacement of the original judgment.

. That was relating to a case where the Hon'ble Supreme Court held that Section 433-A of Code of Criminal Procedure will have prospective effect.

11. The controversy in the instant petition is whether the concession under the Act of 1926 and the Rules framed thereunder, which Act has since been repealed, would give rise to a right that had 'accrued' to the petitioner when he was convicted in the year 1995 much before the Repeal Act 2001 or that the right of the petitioner must have matured into Criminal Writ Petition No.30 o

8. the order of release before the said repeal.

12. It is apparent that the question of passing an order under the Act of 1926 and the Rules framed thereunder in the case of petitioner could not have arisen in the year 1995, as the petitioner had a lawful right and in fact challenged the judgment of conviction and sentence before the higher courts and was unsuccessful.

13. It would be important to note that the inconsistency in the views expressed in State of Haryana and others V. Balwan AIR 199.SC 333.on the one, and State of Haryana V. Mahender Singh and others (2007)13 SCC 60.and State of Haryana V. Bhup Singh (2007)13 SCC 60.on the other hand, about the date of applicability of such policies/instructions, was settled by a larger Bench of Hon'ble Supreme Court in State of Haryana and others V, Jagdish 2010(4) SCC 216.In Balwan's case (supra) it was held as under : 5However, in order to see that a life convict does not lose any benefit available under the remission scheme which has to be regarded as the guideline, it would be just and proper to direct the State Government to treat the date on which his case is/was required to be put up before the Governot under Article 161 of the Constitution as the relevant date with reference to which their cases are to be considered.

14. The views expressed in Mahender Singh's case (supra) and Bhup Singh's case (Supra) were as follows : Mahender Singh (supra)

40. Whenever, thus, a policy decision is made, persons must be treated equally in terms thereof. 'A' fortiori the Criminal Writ Petition No.30 o

9. policy decision applicable in such cases would be which was prevailing at the time of his conviction.

. Bhup Singh (supra)

10. The right to ask for remission of sentence by a life convict would be under the law as was prevailing on the date on which the judgment of conviction and sentence was passed..... 11.....It is, therefore, directed that if the respondents have not already been released, the State shall consider their cases in terms of the judgment of this Court in Mahender Singh case having regard to the policy decision as was applicable on the date on which they were convicted and not on the basis of the subsequent policy decision of the year 2002.

. The facts of that case were that FIR relating to the incident was registered on 16.1.1995 and the respondent was convicted vide judgment and order dated 20.5.1999 for the offences under Sections 302, 148 and 149 IPC. The question posed before the Hon'ble Supreme Court was as to whether the policy which makes a provision for remission of sentence should be that which was existing on the date of conviction of the accused or should it be the policy that exists on the date of consideration of his case for pre- mature release by the appropriate authority. In the said case the respondent had been granted the relief by Punjab and Haryana High Court for consideration of his case for grant of clemency as per the policy dated 4.2.1993 prevailing on the date of his conviction. The respondent, having served more than 10 years' imprisonment, approached the High Court that in Criminal Writ Petition No.30 o

10. spite of having undergone the sentence as per the aforesaid policy dated 4.2.1993, his case for premature release was not being considered in view of the new policy of short-sentencing, introduced on 13.8.2008. In the above background the respondent filed a criminal miscellaneous application before the High Court. The Court placing reliance on the judgments in Mahender Singh's case (supra) and Bhup Singh's case (supra) came to the conclusion that the case of the respondent for premature release was to be considered in the light of the short-sentencing policy existing on the date of his conviction and thus, a direction was issued to the State authorities to consider his case for premature release in view of

the policy dated 4.2.1993 existing on the date of his conviction i.e. 20.5.1999 within a period of one month from the date of receipt of the certified copy of the judgment. The Hon'ble Supreme Court held as under :

25. In *Ashok Kumar V. Union of India* (1991)3 SCC 49, this Court considered the scope and relevancy of the Rajasthan Prisons (Shortening of Sentences) Rules, 1958 qua the provisions of Section 433-A Cr.P.C. The said Rajasthan Rules, 1958 provided that a lifer, who had served actual sentence of about nine years and three months was entitled to be considered for premature release if the total sentence including remissions worked out to 14 years and he was reported to be of good behaviour. The grievance of the petitioner therein had been that his case for premature release had not been considered by the authorities concerned in view of the provisions of Section 433-A Cr.P.C.(emphasis supplied) 27. In *Mahender Singh's case* (supra) this Court Criminal Writ Petition No.30 o

11. as referred to hereinabove held that the policy decision applicable in such cases would be which was prevailing at the time of his conviction. This conclusion was arrived on the following ground:

38. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder .

. The Hon'ble Supreme Court further held that the Constitution Bench of this Court in *Maru Ram* clarified that not only the provisions of Section 433-A Cr.P.C. would apply prospectively but any scheme for short-sentencing framed by the State would also apply prospectively. Such a view is in conformity with the provisions of Articles 20(1) and 21 of the Constitution. The expectancy of period of incarceration is determined soon after the conviction on the basis of the applicable laws and the established practices of the State....

. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction.

. (emphasis supplied) 15. We are, therefore of the view that if the liberal policy relating to remissions/short sentencing as prevalent on the date of conviction of an accused has overriding effect over the subsequent policy, the benefits flowing from a statutory enactment like the Act of 1926 would be on a Criminal Writ Petition No.30 o

12. much better footing. To hold otherwise would mean that there would be differential treatment for the convicts whose appeals are decided soon or many years after coming into force of the Repeal Act 2001 from those whose appeals were decided just before the said Repeal. Therefore we respectfully differ with the views expressed by the learned Single Judge and hold that Haryana Repeal Act of 2001 has prospective effect and would not come in the way of persons convicted before coming into force of the said Repeal Act. Question No.2 16. The answer to this question would depend on the proposition whether prescribing of minimum sentence for the offence under Section 304-B IPC introduced by Act No.43 of 1986 with effect from 19.11.1986 would have overriding effect on the provisions of the Act of 1926, even though the State legislature has not kept pace with the intent and purpose of Section 304-B IPC, by not including it in the Rule 9(a) of the Rules of 1927. Rule 9 of the Rules of 1927 reads as under :

9. Classes of offenders not eligible for conditional release.- The following classes of offenders shall not be eligible for conditional release under the Act:- (a) Persons who have been convicted for offence under the following Acts, or provisions thereof:- (i) Chapters VI and VII Sections 216A, 302, 303, 311, 328, 364, 376, 377, 382, 386 to 389, 392 to 402, 413, 455, 458 to 460 of the Indian Penal Code. (ii) The Indian Criminal Law Amendment Act, 1908; (iii) The Explosives Substances Act, 1908; (iv) The Prevention of Corruption Act, 1947; Criminal Writ Petition No.30 o

13. (v) The Prevention of Food Adulteration Act, 1954; (vi) The Drugs and Cosmetics Act, 1940; (vii) Offence of criminal conspiracy as defined in Section 120-A of the Indian Penal Code in so far as relates to any of the offences mentioned in sub- clause (i) or under the Acts mentioned in sub-clause (ii), (iii), (v) and (vi) above. (b) Except in the case of prisoners committed to prison on default

of furnishing security, prisoners, the unexpired term of whose term of imprisonment is less than six months. (c) Prisoners who have been sentenced to imprisonment for a term exceeding three years and have not completed 8 months of their sentence of imprisonment in prison. Note: The prohibition in clause (c) shall not apply to a prisoner whose age on the date of his latest sentence was not above 21 years. (d) Prisoners who have been convicted of an offence under Section 7 of the Act, or whose license has been previously revoked on account of a breach of the conditions of the license.

17. While analysing the issue recourse must be had to the provisions of Article 254 of the Constitution of India which reads as under :

254. Inconsistency between laws made by Parliament and laws made by the legislatures of State:(1) If any provision of a law made by the Legislature of a State is repugnant to any Criminal Writ Petition No.30 o

14. provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

18. Section 304-B IPC prescribes the minimum sentence of seven years whereas under the Rules of 1927 framed under the Act of 1926, the cases for conditional release are to be considered after completion of 8 months sentence as per clause

(c) of Rule 9 which would not only be inconsistent but repugnant to the clear object of Section 304-B IPC Criminal Writ Petition No.30 o

15. enacted by the Parliament and the later would definitely prevail. To overcome repugnance, the rule of mischief would apply in interpreting the provisions of the Act of 1926 and the rules framed thereunder.

19. The competency of Parliament in inserting Section 304-B in Indian Penal Code and prescribing minimum sentence for the offence of 'dowry death' is unquestionable. The matter can be analysed in the light of the controversy that was raised before the Hon'ble Supreme Court, in Maru Ram's case (supra) where the competency of the Parliament laying down the minimum period which a convict must serve in certain cases, before he can be released from prison, despite List-II of Seventh Schedule of the Constitution containing entry No.4 pertaining to Prisons, reformatories etc etc. The Hon'ble Supreme Court held as under :

15.It is trite law that the Lists in the Seventh Schedule broadly delineate the rubrics of legislation and must be interpreted liberally. Article 246(2) gives power to Parliament to make laws with respect to any of the matters enumerated in List III. Entries 1 and 2 in List III (especially Entry 2) are abundantly comprehensive to cover legislation such as is contained in s. 433A, which merely enacts a rider, as it were, to ss. 432 and 433(a). We cannot read into it a legislation on the topic of 'prisons and prisoners'. On the other hand, it sets a lower limit to the execution of the punishment provided by the Penal Code and is appropriately placed in the Chapter on Execution and Sentences in the Procedure Code. Once we accept the irrefutable position that the execution, remission and commutation of sentences primarily fall, as in the earlier Code Criminal Writ Petition No.30 o

16. (Criminal Procedure Code, 1898), within the present Procedure Code (Chapter XXXII), we may rightly assign s. 433A to entry 2 in List III as a cognate provision integral to remission and commutation, as it sets limits to the power conferred by the preceding two sections. This Limited prescription as a proviso to the earlier prescription relates to execution of sentence, not conditions in prison or regulation of prisoner's life. The distinction between prisons and prisoners on the one hand and sentences and their execution, remission and commutation on the other, is

fine but real. To bastardize s. 433A as outside the legitimacy of Entry 2 in List III is to breach all canons of constitutional interpretation of legislative Lists. Parliament has competency.

16. Let us assume for a moment that the laws of remission and short-sentencing are enacted under Entry 4 of List II. In that event the States' competency to enact cannot be challenged. After all, even in prison-prisoner legislation, there may be beneficial provisions to promote the habilitative potential and reduce warder-prisoner friction by stick-cum- carrot strategies. Offer of remission paroles, supervised releases, opportunities for self-improvement by family contacts, time in community work centres and even meditational centres, can properly belong to prison legislation. Rewards by remissions, like punishments by privations are permissible under Entry 4 of List II. Indeed, progressive rehabilitative prison laws which have a dynamic correctional orientation and Criminal Writ Petition No.30 o

17. reformatory destination, including meaningful intermissions and humane remissions is on the Indian, agenda of unfulfilled legislations. Apart from these futurological measures, we have here an existing Central Law, viz. the Prisons Act, 1894 which in s. 59(27) expressly sanctions rules for premature release. Even so, the power of the State is subject to Art. 246(1) and (2) and so parliamentary legislation prevails over State legislation. Moreover, Art. 254 resolves the conflict in favour of parliamentary legislation. If a State intends to legislate under Entry 2 of List III such law can prevail in that State as against a parliamentary legislation only if presidential assent has been obtained in terms of Art. 254 (2). In the present case there is hardly any doubt that s. 433A must hold its sway over any State legislation even regarding 'prison and prisoners' if its provisions are repugnant to the Central Law. We may read the Remission Schemes not as upsetting sentences but as merely providing rewards and remissions for imprison good conduct and the like. If the sentence is life imprisonment remissions, as such cannot help as Godse has laid down. If the sentence is for a fixed term, remissions may help but Sec. 433A does not come in the way. Thus, no incompatibility between Sec. 433A and remission provisions exists.

19. Clearly, therefore, the States have the power to make rules on Remission Systems and many States have, for long, made and worked such rules. They are intra vires, since even new legislations on remissions and rewards are good
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18. under Entry 4 of List II. These vintage schemes do not vanish with the enactment of the Constitution but suffer a partial eclipse if they conflict with and become repugnant to a Central law like the Procedure Code. If s. 433A, ' by sheer repugnancy, forces a permanent holiday on the prison remission laws of the States vis a vis certain classes of 'lifers', the former must prevail in situations of irreconcilability. Assuming that Rules under the Prisons Act are valid and cannot be dismissed as State law, a harmonious reading of s. 433A and the Prison Rules must be the way out. Otherwise, the later law must prevail or implied repeal may be inferred.....

20. The learned Single Judge observed thus : Helpless, newly married girls, for the greed of dowry, were being killed in the four-corners of the house. The menace of dowry deaths increased and it caught attention of the law makers. The Parliament, to curb this social evil, had to enact Section 304-B IPC which was inserted by Act No.43 of 1986 and it came into operation with effect from 19th November, 1986. The minimum sentence, which a convict is to undergo under Section 304- B IPC (dowry death), is 7 years. The minimum sentence so prescribed was to express deterrence of the law. The Indian Penal Code is the one legislation which, for various offences, provides sentences guided by principles of reformation or deterrence. Therefore, for certain offences, no minimum sentence is prescribed and probation can be granted. The Sections which prescribe minimum sentence,
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19. are those where one can infer intention of the legislature that qua these offences, deterrence should be there. Section 304-B IPC is one such offence where even a Judge trying an accused cannot award sentence less than seven years.....

21. Learned Counsel for the petitioner submits with vehemence that there are various sections under the Indian Penal Code which are more serious than

Section 304-B IPC and life sentence has been provided but still the legislature in its wisdom when drafted Rule 9 did not think proper to incorporate most of the Sections. For illustration Sections 306, 307, 313,314, 326, 371, 409, 412, 436, 438, 449, 467, 472, 474, 475, and 477 IPC are referred. We have gone through all these sections of the IPC and for none of them, the legislature provided minimum sentence. The petitioner's counsel has even not referred to any provision of the IPC which provide for the minimum sentence but still not incorporated within the ambit of excluded offences in Rule 9 of the Rules of 1927. The offences punishable under Sections 397 and 398 IPC provide minimum sentences which are included in Rule 9 of the Rules.

22. The matter can be looked from another angle. One of the excepted enactments under Rule 9 of the Rules of 1927 for which offenders were not eligible for the grant of the conditional release is Prevention of Corruption Act,1947. The Act not in force is Prevention of Corruption Act,1988. The State legislature has not kept pace to update Rule 9 of the Rules of 1927 by substituting the above Act of 1947 with the new enacatment of 1988 Act, before the Repeal Act of 2001. Can it be said,therefore that the offenders' convicted under various sections of Criminal Writ Petition No.30 o

20. Prevention of Corruption Act,1988 could be eligible for the grant of the benefit under the Act of 1926 ?.

23. The answer has to be in the negative. The learned Single Judge has rightly observed as under : It is not a well settled principle of statutory interpretation that Courts are not bound to follow the rule of literal interpretation on all occasions, especially when it leads to anomaly and absurdity. I have already given a brief background of the circumstances in which offence under Section 304-B IPC came on statute book and the mischief which was sought to be curbed by its introduction. It would be relevant to compare the object with which Section 304-B IPC was introduced vis-a-vis Probational Release Act as in my view, ends of justice mandate the invocation of rule of mischief or purposive construction. In view of the context in which provision of Section 304-B IPC was enacted, it is apparent that in the instant case rule of mischief needs to be adverted while

deciding the question as to whether the petitioner is entitled to invoke the beneficial provisions of the Act.

24. Even recently, it was held by Honble the Supreme Court in the case of M/s. Philips Medical Systems (Cleveland) Inc. v. M/s. Indian MRI Diagnostic & Research Ltd., AIR 2005 SC 105, that it is a settled principle of interpretation that when an amendment is made to an Act, or when a new enactment is made, Heydon's mischief rule is often utilized in interpreting the same. Criminal Writ Petition No.30 of 2015

21. 25. The abstract doctrine that the Court should not add or subtract any word into the plain meaning of a statutory provision, as contended by the learned petitioner's Counsel is not applicable in this case. In State through Central Bureau of Investigation V. Parmeshwaran Subramani & another 2009(9) SCC 729, relied upon by the petitioner, the question was whether sanction of competent authority under Section 19 of the Prevention of Corruption Act, 1988 (for brevity the Act.) for prosecuting the offender for an offence under Section 12 was required. Section 19 of the Act mandates the sanction for prosecuting Public Servants for offences under Sections 7, 10, 11, 13 and 15 of the Act. Hon'ble Supreme Court held that for the offence under Section 12 of the Act, no such sanction was required as not so provided in Section 19 of the Act itself. In M/s. Mandvi Co-op Bank Ltd V. Nimesh B. Thakore 2010(3) SCC 83, the other judgment relied upon by the petitioner, the matter related to the right of accused to lead defence evidence by way of affidavit. It was held by Hon'ble Supreme Court that the plain language of the Section permits leading of only evidence of the 'complainant' by way of affidavit and by analogy it cannot be said that the accused can have a similar right to lead his evidence by way of affidavit.

26. We are of the firm view that the opinion expressed by the learned Single Judge on this question is absolutely legal and correct interpretation of the law that for the offence of 'dowry death' as defined in Section 304-B IPC the benefit of the provisions of conditional release under the Act of 1926 cannot be extended. We, thus, fully endorse the above view expressed by learned Single Judge and answer question No.2 accordingly. 27. We, however, find that even on merits the

petitioner was Criminal Writ Petition No.30 o

22. ineligible to be considered for the conditional release under the Act of 1926 and the Rules framed thereunder as this right had not accrued to him inasmuch as he had not completed 8 months of sentence before the coming into force of the Repeal Act.

28. The custody period of the respondent as detailed in the reply filed by the respondent is under : Y M D 1. Undertrial period from 28.5.94 to 20.10.9

04. 23 D.A.P. From 21.10.95 to 12.06.9

07. 22 2. Conviction period from 2.4.10 to 27.6.1

02. 26 3. Actual Sentence undergone

03. 11 4. Remissions Earned (+

06. 27 5. Gross Total

10. 08 6. Less Parole Available (-

01. 26 7. Total sentence undergone

08. 12 The above chart would show that before the Repeal Act of 2001, the petitioner suffered sentence after his conviction from 21.10.1995 to 12.6.1996 i.e. for 7 months and 22 days. He was readmitted to the Jail on 2.4.2010. It is a well settled principle that though the petitioner is to be given the benefit of the period from 28.5.94 to 20.10.95 as an under trial by virtue of Section 428 of Code of Criminal Procedure but that cannot be a part of the 8 months period of sentence having been spent for the applicability of Clause (c) of Rule 9 of the Rules of 1927 to make him eligible for the benefit of conditional release. Therefore, when the Act of 1926 was repealed, the petitioner had not completed eight months of such sentence of imprisonment and, thus, the right did not accrue to him to be Criminal Writ Petition No.30 o

23. released under the provisions of Act of 1926.

29. It has been held by this Court in Criminal Writ Petition No.2042 of 2011 titled Dharam Pal V.State of Haryana and others decided on 3.10.2012 that the sentence of a convict would commence from the date he is awarded punishment and that the period undergone by an accused as an under-trial cannot be taken into consideration for awarding remission though that period shall be set off against the total period of sentence.

30. The petitioner's Counsel further contended that in the earlier writ petition bearing CWP No.1104 of 2011 by this very petitioner his prayer was allowed on 27.7.2011 with a direction to the respondents to consider his case for the conditional release under the provisions of Act of 1926 and the Rules framed thereunder. It is submitted that the said decision was not appealed against by the State of Haryana and, thus, attained finality. Therefore the decision dated 27.7.2011 should be binding upon the respondents. But this contention cannot be sustained after we have held that the principle laid down on the subject in Sunder Lal's case is not the correct law.

31. From the aforesaid discussion, we answer the questions referred to the larger Bench in the following terms: Question No.1: The Haryana Repeal Act of 2001 would have prospective operation and cannot come in the way of those persons who were convicted before coming into force of the said repealed Act. Question No.2 That for the offence of 'dowry death' as defined in Section 304-B Criminal Writ Petition No.30 o

24. IPC the benefit of the provisions of conditional release under the Act of 1926 and the rules framed thereunder cannot be extended. We respectfully disagree with the contrary principles laid down by this Court in Sunder Lal's case (supra) and Criminal Writ Petition No.1104 of 2011 of Satbir Singh petitioner decided on 27.7.2011 and overrule the same.

32. The reference is answered accordingly. Even on merits the instant petition deserves to be dismissed. We order accordingly.

33. A copy of this order be sent to the Principal Secretary (Home, Law and Justice), Haryana for compliance and further communication to all the concerned. (

SURYA KANT) (R.P. NAGRATH) JUDGE JUDGE December 20, 2012 sks

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