

Prabhat Kumar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jun-19-1996

Judge : N. Pandey and B.P. Sharma, JJ.

Appeal No. : Cr.W.J.C. No. 404 of 1990

Appellant : Prabhat Kumar Singh

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Mr. Pramod Kumar Singh

Prior history : N. Pandey, J. 1. This petition under Articles 226 and 227 of the Constitution of India on behalf of the petitioner is for issuance of an appropriate writ quashing the order of the State Government whereby and respondent Nos. 4 and 5 were granted remission of their sentences as per the provisions of Sub-section (2) of Section 432 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'). 2. Before proceeding to adjudicate the crucial contention, it would be appropriate to

Judgement :

N. Pandey, J.

1. This petition under Articles 226 and 227 of the Constitution of India on behalf of the petitioner is for issuance of an appropriate writ quashing the order of the State

Government whereby and respondent Nos. 4 and 5 were granted remission of their sentences as per the provisions of Sub-section (2) of Section 432 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code').

2. Before proceeding to adjudicate the crucial contention, it would be appropriate to have a brief survey of some of the facts:

On 18.12.1979, informant Kameshwar Singh lodged a first information report alleging that respondent Nos. 4 and 5 variously armed with lethal, weapons, came to the place of the occurrence and assaulted the informant as well as his manager with a view to commit their murder. The Assistant Sessions Judge, I Patna ultimately having found the respondents 4 and 5 guilty of the charges, convicted them and sentenced for a period of five years under Section 307 of the Indian Penal Code.

3. The respondent Nos. 4 and 5, being aggrieved by the judgment of the Sessions Judge, preferred an appeal but the same was dismissed. They also filed a criminal revision before this Court but the same was also dismissed on 24.2.1987. Thereafter one S.L.P. (Criminal) No. 968 of 1987 was also preferred before the Supreme Court which also met the same fate.

4. It is alleged that having failed to get any relief before the Court of Law the respondent Nos. 4 and 5, somehow or the other, maneuvered the State authorities and got an order of remission without obtaining opinion of the Presiding Judge or the High Court as required under Sub-section (2) of Section 432 of the Code.

5. Mr. Pramod Kumar Singh, learned Counsel for the petitioner, raised a solitary question whether the respondent authorities had power to grant remission to the convict (respondent Nos. 4 and 5) under Sub-section (1) and (2) of Section 432 of the Code including the appropriate Government as mentioned in Sub-section (7) without having opinion of the Presiding Judge or the High Court.

6. Before answering the aforesaid proposition, it would be appropriate to notice that unfortunately, no counter affidavit has been filed on behalf of the State to convert the facts as alleged in the writ application nor the impugned order of the

authority granting remission in favour of respondent Nos. 4 and 5 was produced before us. It appears from the statement made in the writ petition that respondent Nos. 4 and 5 were convicted and sentenced for a period of five years by the judgment of the Assistant Session Judge dated 18.1.1982. Therefore, even if the order granting remission is set aside, it would not be proper to direct them to suffer the remaining period of sentence.¹ Thus, any finding to the aforesaid proposition would be mere academic.

7. It is important at this stage to set out the provisions of Sub-sections (1) and (2) of Section 432 of the Code dealing with suspension, remission and commutation of sentences:

432. Power to suspend or remit sentences.-(1) When any person has been sentenced to punishment for an offences, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentences or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was has or confirmed, to state his opinion as to whether the application should be granted or refused together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

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8. It can be observed from the provisions as made out under Sub-section 432 of the Code that whenever an appropriate Government is moved under that provisions, it 'may require' the Court to state its opinion as to whether the application should be granted or refused, the Presiding Judge of the Court is required in terms of the statute of give his opinion after a reference has been made.

9. Mr. Singh urged vigorously that a power like one given under Sub-Section (2) entails a corresponding duty of acceptance on the part of the State opinion furnished by the Presiding Judge. In other words, the appropriate Government is bound to abide by the opinion of the Presiding Judge. Sub-section (1) of Section 432 of the Code is independent of Sub-section (2) which undoubtedly vests in the appropriate Government an absolute discretion to remit or suspend a sentence.

10. It cannot be disputed that power of remissions controlled by Sub-section (1) and it must, therefore, be held that even after an opinion is obtained from the Court, the power of the appropriate Government to remit a sentence can still be exercised only under Sub-section (1). But certainly, while taking a different view, the appropriate Government will have to justify reasons. It is well known that the power of the State Government to grant remission or suspending of the sentence is itself discretionary. The opinion of the Court even if it favours the applicant can bestow no right to be enforced. It is true that enabling provisions may be compulsory where there are words to effectuate a legal right. But as is clear from a reading of Sub-sections (1) and (2), a discretion is independent of the opinion which may be given by a Court under Sub-section (2). In absence of any legislative provisions it would be difficult to avoid the conclusion that no statutory duty develops on the appropriate Government to accept the opinion of the Court.

11. But it cannot be ignored that the legislature in their wisdom, while inserting the words 'the State Government may require the Presiding Judge of the Court to state his opinion as to whether the application should be granted or refused' have taken care that discretion of the State Government while granting remission must not be arbitrary and whimsical. In order to have a check and balance, the opinion of the Presiding Judge would be essential in such matters. The Government may or may not accept the opinion of the Court but must assign reasons while refusing to accept such opinion.

12. It would be appropriate to notice that the object behind such a provisions to get opinion of the Court has been evolved with a view to safeguard against mala fide and whimsical discretion of the State authorities. Therefore, at least to the extent indicated above, the word 'may' as inserted under Sub-section (2) of Section 432

of the Code should be construed as mandatory in regard to obtaining an opinion of a Presiding Judge.

13. In order to clarify that word 'may' as used in a particular statute is not always directory, it would be useful to notice a decision of the apex Court in the case of State of Uttar Pradesh v. Manbodh Lal Srivastava : (1958)IILLJ273SC .

14. For the foregoing reasons, this writ application is partly allowed. But in the circumstances of the case, there shall be no order as to costs.

B.P. Sharma, J.

I agree.

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