

Y. Dass and anr. Vs. State

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Court : Karnataka

Decided On : Sep-28-1989

Reported in : 1990CriLJ234; ILR1989KAR3409; 1989(3)KarLJ595

Judge : K.B. Navadgi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 302, 324(34), 326 and 433A; [Constitution of India](#) - Articles 14, 20(1), 20(2) and 226; Foreign Exchange Regulation Act, 1947 - Sections 23(1) and 23-D; Criminal Law (Amendment) Act, 1978

Appeal No. : Writ Petn. No. 6675 of 1989

Appellant : Y. Dass and anr.

Respondent : State

Advocate for Def. : S.S. Koti, High Court Govt. Pleader

Advocate for Pet/Ap. : S. Shankarappa, Adv.

Judgement :

ORDER

1. Y. Dass, son of Yasu - petitioner No. 1. and G. Ananda Raj, son of Gangaiah - petitioner No. 2 sent the petition through the Senior Superintendent, Central Prison, Bangalore, to the Hon'ble Chief Justice with a prayer to admit the petition

as writ petition and direct the State Government to release them from the prison contending that they were entitled to premature release. The petition was restored as a Writ Petition and Rule Nisei was issued to the respondent (State) by the Order dated 13-4-1989. The return is filed by the respondent in the form of an affidavit of the Senior Superintendent, Central Prison, Bangalore.

2. The record is perused. The learned counsel for the petitioners and Sri S. S. Koti, the learned His Court Government Pleader for the respondent, are heard.

3. The facts relevant to dispose of the writ petition are these :

Y. Dass (petitioner No. 1) and G. Ananda Raj (petitioner No. 2) were accused No. 10 and accused No. 5 respectively in Sessions Case No. 16/78 on the file of the Sessions Judge, Kolar. Petitioners Nos. 1 and 2 were tried Alone with 8 others of the various offences including the offences punishable under Sections 148, 302, 326 read with S. 34/149 of the Indian Penal Code. The learned Trial Judge by the Judgment and Order dated 13-2-1979, contacted G. Ananda Raj (petitioner No. 2) along with 5 others arranged as A-1 to A-4 and A-6 for the offense punishable under S. 148 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for two years. Petitioner No. 1 was convicted along with 7 others arraigned as A-3 to A-9 for the offence punishable under S. 326 read with S. 149 of the Indian Penal Code and was sentenced to suffer Rigorous Imprisonment for a period of five years. He was also convicted along with two of his companions arraigned as A-3 and A-4 for the offence punishable under S. 326 read with S. 34 of the Indian Penal Code and was sentenced to suffer Rigorous Imprisonment for a period of one year. Petitioner No. 2 was convicted for the offence punishable under S. 324 read with S. 34 of the Indian Penal Code and was sentenced to suffer Rigorous Imprisonment for a period of one year. We are not concerned here with the particulars of the convictions entered and sentences imposed on other 8 persons who were tried of the offences along with these two petitioners.

These two petitioners and 8 persons arraigned with them as co-accused preferred an appeal to this Court air Criminal Appeal No. 120/79.

The respondent (State) being dissatisfied with the Judgment laid Order of the learned Trial judge acquitting petitioner No. 1 and petitioner No. 2 and four others arraigned as A-6, A-7, A-8 and A-9 of the offence punishable under S. 302 read with S. 149 of the Indian Penal code, sought leave to present an appeal against the same and on leave being granted, the appeal preferred by the State was registered in Criminal Appeal No. 279/79. There was also an appeal filed by the State in Criminal Appeal No. 280/79 for enhancement of the Life Imprisonment imposed on Ashokan and Vijayan arraigned as A-3 and A-4 respectively in the Sessions Case, to that of death.

Persons arraigned as A-1 and A-2 had been convicted for the offence punishable under S. 302 read with S. 34 of the Indian Penal Code on two counts and had been sentenced to death. There was a Reference made by the learned trial Judge under S. 366 of the Code of Criminal Procedure (the Code for short) for confirmation of the death sentences imposed on persons arraigned as A-1 and A-2, registered in Criminal Referred Case No. 2/79.

A Division Bench of this Court heard Criminal Appeals Nos. 120, 279 and 280 of 1979 along with Criminal Referred Case No. 2/79 and by the Judgment and Order dated 18-8-1980 disposed of the aforesaid three Criminal Appeals laid the Criminal Referred Case.

The Division Bench rejected the Reference, allowed Criminal Appeal No. 120/79 in part, set aside the conviction of A-1 and A-2 under S. 302 read with Section 34 and convicted them (A-1 and A-2) under S. 302 read with Section 149 of the Indian Penal Code and sentenced each of them to suffer Imprisonment for Life. The Division Bench allowed the appeal preferred by the State in Criminal Appeal No. 279/79 and convicted petitioner No. 2 and petitioner No. 1 and their four companions arraigned as A-6, A-7, A-8 and A-9 for the offence punishable under Section 302 read with Section 149 for having caused the murders of three deceased persons and sentenced each of the petitioners and four others to undergo Imprisonment for Life. The conviction of A-3 and A-4 for the offence punishable under S. 302 read with S. 34 was set aside and instead they were convicted for the said offence read with Section 149 and the sentences of Life

Imprisonment imposed on them were maintained. The Criminal Appeal No. 280/79, the appeal preferred by the State for enhancement of sentence of Life Imprisonment imposed on A-3 and A-4 to death was dismissed. Persons in the array not convicted by the trial Court in respect of the assaults caused on the persons of two witnesses examined as P.Ws. 1 and 7 were convicted for the offenses punishable under Sections 326 and 324 read with S. 149 of the Indian Penal Code and were sentenced to undergo Rigorous Imprisonment for five years and one year respectively. The convictions of petitioner No. 1 under S. 326 on two counts for having caused grievous hurt to two witnesses were ordered to be deleted.

The offenses which were tried were in respect of an occurrence that happened on 1-2-978 at about 7-30 p.m. in Bazaar Street, Ashok Nagar. Kolar Gold Field about a mile away from Robertsonpet Police Station. In the occurrence, three persons namely, Balram, Manoharan and Parasuraman were done to death and two, persons mere injured.

4. It was submitted by both the sides that during the course of investigation, petitioner No. 1 came to be arrested on 9-7-1978 and petitioner No. 2 was arrested on 27-2-1978. The trial Court rendered Judgment on 13-2-1979 and this Court (the Appellate Court) rendered the Judgment on 18-8-1980.

5. Before we proceed further, it appears necessary to decide the date on which it can be said that petitioners Nos. 1 and 2 were convicted of the offence punishable under S. 302 on three counts with the aid of S. 149 of the Indian Penal Code. Section 433-A entered Chapter XXXII of the Code and came into force with effect from 18-12-1978. Petitioners Nos. 1 and 2 had been acquitted in the trial Court of the offenses of murders and were convicted in the appeal.

6. It is by now well settled by the law pronounced by the judgment of the Supreme Court in Maru Ram v. Union of India, : 1980 CriLJ1440 , that when a person is convicted in appeal, it follows that the Appellate Court has exercised its power in the place the original court and the guilt conviction and sentence must be substituted for and shall have retroactive effect from the date of the judgment of the trial Court. The appellate convictions substitute the verdict of the trial Court. An

appeal is a continuation of an Appellate Court judgment as a replacement of the original judgment. In that view of the matter, the convictions of petitioners Nos. 1 and 2 by this court (the Appellate Court) must date back to 13-2-1979, the date of the trial Court's verdict.

7. For the reasons aforesaid, the date to be taken which would be material and relevant would be 13-2-1979, the date on which the trial Court gave its verdict. Obviously that is the date after December 18, 1978, the date on which Section 433-A came in to force.

8. Sri S. Shankarapa, the learned counsel for petitioners Nos. 1 and 2, submitted that the occurrence, in which three persons were murdered and two were injured, happened on 1-2-1978 though petitioners Nos. 1 and 2 were convicted and sentenced on 13-2-1979; that petitioners Nos. 1 and 2 were not responsible in any manner for the delay in the consideration of the trial of the offences; and that, therefore, the case of petitioners Nos. 1 and 2 should be considered in the background of the law that prevailed as on 1-2-1978 and not in accordance with the law that was in force on 13-2-1979. In other words, what he submitted was that the question as to whether petitioners Nos. 1 and 2 were entitled to release from the Prison should be examined without reference to the provisions contained in S. 433A of the Code after taking into account the pre-conviction detention of petitioners Nos. 1 and 2 and the remissions earned by them after 13-2-1979.

9. In support of his submissions, the learned counsel relied on three decisions of the Supreme Court, namely, (1) Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, : 1954 CriLJ1480 (2) Union of India v. Sukumar Pyne, : 1966 CriLJ946 ; and (3) State of Karnataka v. K. H. Annegowda, : 1977 CriLJ220 .

10. Having carefully examined the enunciations made by the Supreme Court in the aforesaid three decisions, it is difficult to hold that the enunciations have application to the case of petitioners Nos. 1 and 2.

11. In the case of Rao Shiv Bahadur Singh, : 1954 CriLJ1480 the Supreme Court had an occasion to consider the objections raised, placing reliance on Art. 20 of the Constitution.

12. Article 20(1) of the Constitution is as follows :

'No person shall be convicted of any offences except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.'

13. This article prohibits convictions and sentences under ex post facto laws. The principle underlying the prohibition of the kind mentioned in Art. 20(1) has been elaborately discussed and pointed out in the well known case of Phillips v. Eyre (1870) 6 QB 1 at pp. 23 and 25, and the Supreme Court of United States of America in Calder v. Bull. In Phillips v. Eyre, cited supra, it is explained that ex post facto laws are laws which voided and punished what had been lawful when done. The paramount importance of the principles is that such ex post facto laws which retrospectively create offences and punish them have been universally held as bad being highly inequitable and unjust. In the English system of jurisprudence repugnance of such laws to universal notions of fairness and justice is treated as a ground not for invalidating the law itself, but as compelling a beneficent construction thereof where the language of the statute by and means permits it. In the American system of jurisprudence, such ex post facto laws are themselves rendered invalid by virtue of Art. 1. Sections 9 and 10 of its Constitution.

14. The Supreme Court, in the case of Rao Shiv Bahadur Singh, : 1954 CriLJ1480 dealing with the objections raised after referring to the broad import of Art. 20(1) of the Constitution and the decisions in Phillips v. Eyre ((1870) 6 QB 1) and Calder v. Bull, ruled on the scope and object of Art. 20(1) of the Constitution and observed as under :

'(9) In this context it is necessary to notice that what is prohibited under Art. 20 is only conviction or sentence under an 'ex post facto' law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time cannot 'ipso facto' be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular Court or by a particular procedure. except in so far as any constitutional objection by way

of discrimination or the valuation of and other fundamental right may be involved.'

15. In the case on hand, petitioners Nos. 1 and 2 were tried for the offences of murder punishable under S. 302 of the Penal Code in respect of the murders that took place on 1-2-1978 by the competent court in accordance with the provisions contained in the Code. They were convicted of the offences of murder and were sentenced to Imprisonment for Life on 13-2-1979. The punishment provided for the offence of murder on 1-2-1978 was Death on Imprisonment for Life and Fine. In this view of the matter, in my considered view, petitioners Nos. 1 and 2 cannot derive any assistance from the enunciations made by the Supreme Court in the case of Rao Shiv Bahadur Singh, : 1954 CriLJ1480 to contend that view of the date of occurrence, their case should be considered without reference to S. 433A of the Code.

16. In the case of Union of India v. Sukumar Pyne : 1966 CriLJ946 following the recovery in 1954 of some foreign currency and Travellers Cheques at No. 311, Bow Bazar Street, Calcutta, where the respondent there in along with his mother and brother had carried the business of jewellers, the Director of Enforcement had issued a notice on April 23, 1958, on the petitioner calling upon him to show cause within 10 days of the receipt of the notice why adjudication proceedings should not be held against him for contravention of S. 23(1) of the Foreign Exchange Regulation Act. 1947 (the Act of 1947 for short). On May 10, 1958, the respondent had replied to the notice giving his version as to how he had come into possession of the foreign currency, but had denied having sold any Travellers Cheques. He had prayed that the proceedings may be dropped and the currency seized returned to him. The Director after considering the cause shown by the respondent had come to the conclusion that the adjudication proceedings should be held. He had, therefore, requested the respondent to arrange to be present either personal or through his authorized representative before the Director on May 13, 1958 in the Office of the Calcutta Branch of the Directorate. On May 13, 1959, the respondent had filed a petition under Art. 226 of the Constitution. challenging the adjudication proceedings on various grounds, the principal ground being S. 23(1)(a) and S. 23-D of the Act of 1947 were ultra vires of Art. 20(2) of the Constitution and that the offence having been committed in 1954, the proposed

adjudication was illegal and entirely without jurisdiction. The High Court had held that S. 23(1)(a) of the Act of 1947 violated Art. 14 of the Constitution and was ultra vires the Constitution. It had also held that the relative provision of S. 23-D must also be condemned. The High Court had come to the conclusion that the petitioner had a vested right to be tried by an ordinary Court of the land with such rights of appeal as were open to all and although S. 23(1)(a) substituted by the Amending Act XXXIX of 1957 was procedural, since a vested right had been affected, prima facie, it was not a question of procedure. On the basis of this reasoning the High Court had come to the conclusion that the provision as to adjudication by the Director could not have any retrospective operation. The learned Judge who had disposed of the writ petition had observed that the impairment of a right by putting a new restriction thereupon is not a matter of procedure only and that it impairs the substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment. Accordingly, the adjudication proceedings had been quashed as being without jurisdiction.

17. The Supreme Court, following its earlier decision in *Shanti Prasad Jain v. Director of Enforcement*, : [1963]2SCR297 , held that Section 23(1) and Section 23-D of the Act of 1947 did not violate Art. 14 of the Constitution. The Supreme Court after comparing S. 23(1) as it stood before its amendment by Act XXXIX of 1957 with that Section after amendment, held that the effect of the amendment of S. 23(1) and the addition of S. 23-D by the amendment was that after the amendment, adjudication proceedings or criminal proceedings could be taken up in respect of contravention mentioned in S. 23(1) while before the amendment only criminal proceedings before a Court could be instituted to punish the offender. The Supreme Court, quoting the view taken in the case of *Rao Shiv Bahadur Singh*, : 1954 CriLJ1480 . held that the general principle that alterations in procedure are retrospective unless there be some good reason against it was attracted to the case and that the principle underlying Art. 20 of the Constitution, would not constitute a good reason to hold that alterations in procedure brought about by Sections 23(1)(a) and S. 23-D by Act No. XXXIX of 1957 were prospective in nature. Negating the contention urged on behalf of the respondent on the basis of the principle of Art. 20 of the Constitution that a substantive vested right to be tried by an ordinary Court existed in favor of the respondent before the

amendment, the Supreme Court held that no person has a vested right in any course of procedure and that the said ordinary rule should prevail in the case before it. The Supreme Court also held that the principle underlying Art. 20 of the Constitution does not make a right to any course of, procedure a vested right. Interpretation S. 23(1) as substituted by Act XXXIX of 1957, the Supreme Court held that there was no breach of Art. 20 of the Constitution. The appeal by the Union of India was accepted with costs there and in the High Court and the petition filed by the respondent under Art. 226 was dismissed.

18. In the case on hand, there is no question of alternation in procedure. Petitioners Nos. 1 and 2 were tried of the offences in accordance with the procedure that held the field on 1-2-1978 and which was in force during the trial of the offences. Hence. I am firm in my mind that the enunciations made by the Supreme Court in the case of Union of India v. Sukumar Pyne, : 1966 CriLJ946 have no application to the facts of the case of petitioners Nos. 1 and 2.

19. In the case of State of Karnataka v. K. H. Annegowda : 1977 CriLJ220 , an interesting question of law relating to the interpretation of certain provisions of the Code of Procedure 1898 (the Old Code) had been raised.

20. In respect of the murder of one Bobegowda, a case had been registered in the jurisdictional Police Station on 13th October, 1973. The Police had laid charge-sheet against the respondents therein on completion of investigation in the Court of the Judicial Magistrate, Chikmagalur, and the case had been registered in C.C. No. 2819 of 1973. After holding an enquiry in accordance with the provisions of Chapter XVIII of the Old Code and being of the opinion that the respondents should be committed for trial, the learned Magistrate had framed a charge against the respondents under S. 302 read with S. 34 of the Penal Code and had read over and explained the charge to the respondents. After giving an opportunity to the respondents to give a list of the names of witnesses whom they then wished to be summoned to give evidence, the learned Magistrate had made an order committing the respondents for trial by the Court of Session, Chikmagalur. The order of committal had been made on 15th March, 1974. In pursuance of it, the record of the case had been forwarded to the Court of Session Chikmagalur. The

record had reached the Court of Session on 23rd March, 1974 and the case had been registered as S.C. No. 5 of 1974. The Sessions Judge had fixed the trial of the case on 15th July, 1974. But before that date, on 29th June, 1974, the Public Prosecutor had filed an application for permission to withdraw from the prosecution under S. 494 of the Old Code. The learned Sessions Judge by an order passed on the same day had accorded permission to the Public Prosecutor to withdraw from the prosecution and had discharged the respondents in respect of the offences charged against them. Instead of using the expression 'acquitted', the learned Sessions Judge had used the word 'discharged.'

21. The State thereafter had ordered fresh investigation into the offence and in consequence of such investigation, a new charge-sheet had been filed against the respondents and three others in the Court of the J.M.F.C., Chikmagalur. Since the charge-sheet had been after 1st April, 1974 when the Code had come into force, the learned Magistrate, following the provisions of the Code, had committed the respondents and the other three accused to stand their trial before the Court of Session, Chikmagalur for the same offence. When the case came up for hearing before the Sessions Judge, the respondents had made an application, contending that by virtue of the order dated 29-6-1974 made by the Sessions Judge under S. 494 of the Old Code, the respondents had been acquitted and that, therefore, they were not liable to be prosecuted again for the same offence in view of S. 300 of the Code. The Sessions Judge had reacted the application taking the view that the respondents had been discharged and not acquitted under the order dated 29th June, 1974, and, therefore, S. 300 of the Code was not applicable and there was no bar against their fresh prosecution for the same offence. The challenge made by the respondents by preferring Revision Application in this Court had succeeded. The State after obtaining Special Leave had challenged the order made by this Court. in the appeal.

22. The Supreme Court, on the facts, held that the case of the respondents was pending before the Court of Session for trial on 1-4-1974; that it was liable to be tried in accordance with the provisions of the Old Code, that the withdrawal of the prosecution was after the framing of the charge against the respondents; and that it had resulted in the acquittal of the respondents under Clause (b) of S. 494 of the

Old Code. The Supreme Court after comparing the procedure that was required to be followed by the Sessions Court where an accused had been committed to it for trial as laid down in Chapter XXIII of the Old Code with the procedure under the Code where there is no provision for framing a charge by the Committing Magistrate and where the Court of Session to which the case is committed finds, after considering the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution, that there is ground for presuming that the accused has committed an offence which is exclusively trouble by the Court of Session, is required by S. 228 frame a charge against the accused, held that the charge against the accused under the procedure prescribed in the Code is to be framed for the first time by the Court of Session while according to the procedure prescribed under the old Code, the charge was to be framed by the Committing Magistrate and the Court of Session was merely given power to alter or amend the charge if it thought necessary to do so. The Supreme Court, on the facts found, held that when the Court of Session commenced the trial of the respondents, there was already before it a charge framed by the Committing Magistrate, that it was that charge unless altered or amended under S. 226 of the old Code that was required to be read out and explained to the respondents and on which the plea of the respondents was required to be taken. The Supreme Court held that on withdrawal of the case by the Public Prosecutor with the consent of the Court of Session under S. 494 of the old Code, the respondents were entitled to be acquitted and not merely discharged and that, therefore, the respondents, who had been acquitted, were not liable to be tried again for the same offence in view of S. 300 of the Code. The law pronounced has no application to the case of petitioners Nos. 1 and 2.

23. Add to that, the challenge to the constitutional validity of S. 433A of the Code based on Art. 20(1) of the Constitution was negated by the Supreme Court in the case of Maru Ram : 1980 CriLJ1440 , cited supra. The Supreme Court examined the question whether the inflexible insistence on 14 years as a minimum term for release retroactively enlarged the punishment, and the question as to whether if at the time of the commission of the offence a certain benign scheme of remissions ruled, the penalty to which the person accused can be said to have been subjected was not the punishment stated in the Indian Penal Code, but that

sentence reduced or softened by the Remission Scheme or short-sentencing provision. The argument was that the lifers would ordinarily have been released well before 14 years, the mandatory minimum prescribed by S. 433A of the Code and that S. 433A would cast a heavier punishment than governed the crime when it was committed. The Supreme Court negated the contention in the following words (Para 28) :

'28. Neither argument has force. The first one fails because S. 302. I.P.C. (for 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 : 1961 CriLJ736a (supra) 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 S. 432. If this is not done, the prisoner will continue in custody. We assume here that the constitutional power is kept sheathed.'

24. These observations made by the Supreme Court, in my opinion, are sufficient to negative the contention urged on behalf of petitioners Nos. 1 and 2 with persuasive flavor that the question, as to whether petitioners Nos. 1 and 2 were entitled to release from the Prison, should be examined without reference to the provisions contained in S. 433A of the Code.

25. Section 433A of the code reads :

'433A. Notwithstanding anything contained in S. 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under S. 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.'

26. This Section was added by the Criminal Law Amendment Act, 1978 with the object of prescribing minimum imprisonment for 14 years for those who are convicted of an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under S. 433 into one of imprisonment for life.

27. In Maru Ram's case : 1980 CriLJ1440 , the Supreme Court held that S. 433A was within the legislative competence of Parliament by virtue of Entries 1 and 2 in List III, especially Entry 2 of the Seventh Schedule read with Art. 246 of the Constitution, that it was not violative of Art. 14 of the Constitution as it was based on reasonable classification and, as stated earlier, it was not violative of Art. 20(1) of the Constitution.

28. 'A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing.' (Vide Cries on Statute Law, Seventh Edition, page 387).

29. The Supreme Court in Maru Ram's case : 1980 CriLJ1440 has held that S. 433A is prospective. A Division Bench of this Court in Thimma v. Union of India, 1981 Cri LJ 244, has held that S. 433A creates no new obligation or imposes no new duty nor it impairs any vested right acquired by a life convict; that it is just a constraint on the unconditional and unlimited power of remission conferred by S. 432 on the State; and that, therefore, it cannot be said that S. 433A has been given any retrospective operation.

30. In the case on hand, both the petitioners were tried of the offences of murders for which death is one of the punishment provided by law and have been sentenced to Imprisonment for Life on their conviction for the offences of murders. They were convicted and sentenced after December 18, 1978.

31. Hence, I hold that case of petitioners Nos. 1 and 2 is governed by the provisions contained in S. 433A of the Code.

32. It is necessary to read Sections 432 and 433 of the code before deciding the merit of the contention of petitioners Nos. 1 and 2. They read :

'432. (1) When any person has been sentenced to punishment an offences, the appropriate Government may, at any time without conditions or upon any conditions or up on 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 of 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 there of as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which is sentences is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentences is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the

person sentenced is in jail, and -

(a) where such petition is made by the person sentenced. it is presented through the officer in charge of the jail or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under arid section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in S. 433, the expression 'appropriate Government' means, -

(a) in cases where the sentence is for an offences against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government

(b) in other bases the Government of the State the which the offender is sentenced or the said order is passed.

'433. The appropriate Government may, without the consent of the person sentenced, commute -

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1560);

(b) a sentence of imprisonment for life, for imprisonment for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of regress imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine;'

33. These two sections relate to remission and commutation of sentences S. 432 clothes the appropriate Government with the power to suspend the execution of the sentence of a person sentenced the punishment an offence, at any time,

without conditions or upon any conditions which the person sentenced accepts, to remit the whole or part of any sentence. The power given to the appropriate Government under S. 432 is a very wide power. In the absence of S. 433A, the power extends to remission of the entire life sentence if Government chooses to do so. A liberal use of the power of remission under S 433(a) may mean that many of killer or other offender who could have been given death sentence by the Court but has been actually awarded only life sentence may find his way out legally the very next morning, the very next year, after a decade or at any other time the appropriate Government is in a mood to remit his sentence :'

34. If we read the fascicles of Sections 432, 433 and 433A, it would be clear that while the Code confers wide powers of remission and commutation of sentences, it emphatically and in clear terms intends to carve out a category from the broad and large generosity of the executive power.

35. The non obstante clause, with which S. 433A opens in terms, excludes S. 432. The message rereading the intent of the Legislature is contained in the rest of the Section. This message necessarily subjects the operations of S. 433(a) to a serious restriction. The obligation enjoined by S. 433A is the actual detention in Prison for full 14 years as a mandatory minimum in the two classes of cases mentioned therein.

36. The embargo enacted in S. 433A directs that commutation in the category of cases coming within the mischief of S. 433A shall not reduce the actual duration of imprisonment below 14 years.

37. Once it is held, as it ought to be that the case of the petitioners is governed by S 433A of the Code and as is evident from the facts on record that both the petitioners have not Completed their detention in Prison for full 14 years, the inescapable impression and the inevitable conclusion is that they cannot claim any direction to the respondent (State) to consider their case for premature release.

38. Of course, the material on record shows that if the pre-conviction detentions and the remissions earned by petitioners Nos. 1 and 2 are taken into consideration, the total period of detention would well be beyond 14 years.

39. But the moot question would be whether the petitioners would be entitled to ask the Court to take into consideration their pre-conviction detentions and the remissions earned by them to calculate the mandatory minimum of 14 years enacted in S. 433A of the Code.

40. In *Gopal Vinayak Godse v. State of Maharashtra*, : 1961 CriLJ736a , the Constitution Bench of the Supreme Court held that a prisoner sentenced to life imprisonment is bound to serve the remainder of his life in Prison unless the sentence imposed upon him is remitted or commuted by the appropriate Government. The Supreme Court further held in the said case that since such a sentence could not be equated with any fixed term, the Rules framed under the Prison Act entitled such a person to earn remissions but that, such remissions were to be taken into account only towards the end of the term. As observed earlier, the appropriate Government in exercise of the power conferred on it under S. 432 of the Code may remit the whole or any part of the punishment to which a person has been sentenced. The appropriate Government in exercise of the power given to it under S. 433 of the Code, inter alia, may commute the sentence of Imprisonment for Life to imprisonment for a term not exceeding 14 years or to fine.

41. Indeed, in view of the decision of the Supreme Court in *Bhagirath v. Delhi Administration*; and *Rakesh Kaushik v. Delhi Administration*, : 1985 CriLJ1179 , both the petitioners would be entitled to set off of period of detention under girt by them as under-trial prisoners, but they would be so entitled subject to the provisions of S. 433A and provided the appropriate Government or the competent authority passes an order either under S. 432 or S. 433 of the Code.

42. In *Maru Ram's case* : 1980 CriLJ1440 , the Supreme Court, pointing out the distention between prisons and prisoners on the one hand and sentences and their executions, remissions and commutation on the other, has pronounced that the Remission Schemes cannot be read as upsetting sentence but as merely providing rewards and remissions for in-prison good conduct and the like and that if the sentence is Life Imprisonment, remissions as such cannot help. The, law laid down by the Supreme Court is that S. 433A not only excludes S. 432 and subjects operation of s. 433(a) to serious restriction, but also excludes all contrary Prison

Rules in respect of convicts contemplated by it.

43. The remissions earned by petitioners Nos. 1 and 2 can come up for consideration subject to the provisions contained in S. 433A.

44. For the reasons aforesaid, I hold that the petitioners are not entitled to the relief claimed in the Writ Petition. The case of petitioners Nos. 1 and 2 for their premature release can be considered by the State Government and the appropriate authorities only after they complete the term of 14 years in the Prison without reference to their precognition detentions and the remissions earned by them.

45. In the result, the Rule is discharged and the Writ Petition is dismissed.

46. Petition dismissed.

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