

**M. Lakshmi Devi Vs. Director General of Police, Govt. of A.P. and anr.**

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**Court :** Andhra Pradesh

**Decided On :** Sep-05-2001

**Reported in :** 2001(2)ALD(Cri)516; 2001(5)ALT90; 2001(2)ALT(Cri)366; 2002CriLJ1928

**Judge :** Ramesh Madhav Bapat and ;B. Prakash Rao, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 109, 380, 382, 395, 412 and 457; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 428

**Appeal No. :** W.P. No. 13228 of 2001

**Appellant :** M. Lakshmi Devi

**Respondent :** Director General of Police, Govt. of A.P. and anr.

**Advocate for Def. :** Adv. General

**Advocate for Pet/Ap. :** Kunareddy Anji Reddy, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Ramesh Madhav Bapat, J.**

1. This writ petition is filed by one Smt. Lakshmi Devi, wife of M. Venkatramana. The averments made in the writ petition are as under: The petitioner is the wife of Venkatramana. The petitioner is also related to M. Veeraiah. Both of them are convicts. It is submitted that her husband Venkatramana was firstly remanded on 10-11-1987 in connection with P.R.C.No. 19 of 1988 of Uppal Police Station. He was in jail in connection with this case for three years. Later on he was on bail until 31-3-1993. He was arrested once again and was kept in Nalgonda jail in connection with Sessions Case No. 315 of 1997 which was pending on the file of the Assistant Sessions Judge, Miryalaguda at Nalgonda District. When he was in Nalgonda jail, the concerned Police have shown him in the year 1998 as detenu in connection with P.R.C.No. 19 of 1988 of Uppal Police Station. The Assistant Sessions Judge, Miryalaguda, acquitted the husband of the petitioner in S.C.No. 315 of 1997. Then he was transferred to Chenchalguda jail. After three years of remand he was in jail about two years and 9 months. The total remand period is about five years three months and after conviction in the cases the total period of 8 years he Was in jail after computing the remand period.

2. It is the further case of the petitioner that Mr. M. Veeraiah was firstly remanded on 31-3-1993 in connection with S.C.No. 315 of 1997 which was pending on the file of the Assistant Sessions Judge, Miryalaguda. Later on he was shown in the records as if he was arrested in connection with S.C. No. 314 of 2000 and S.C.No. 315 of 2000 which are pending on the file of the First Additional Assistant Sessions Judge, Rangareddy District. Later on he was shown in S.C.No. 462 of 2000. Thus, since 1993 till to-day he was in jail on remand for three years in connection with S.C.No. 314 of 2000 and S.C.No. 315 of 2000.

3. It is further submitted by the petitioner herein that both the detenus were convicted in S.C.No. 314 of 2000, S.C.No. 315 of 2000 and S.C.No. 462 of 2000 under Section 395 IPC by the First Additional Assistant Sessions Judge, Rangareddy District by his order dated 21-2-2001. In S.C.NO. 314 of 2000 two years of sentence was imposed and in other two cases three years of sentence were imposed. The sentences were made to run concurrently by giving set-off under Section 428 Cr.P.C.

4. It is the further case of the petitioner that both the detenus were in jail on remand for more than 8 years. They were given set-off and further detention of the alleged detenus is illegal. Therefore, it is prayed by the writ petitioner that the alleged detenus be released.

5. On filing of the writ petition, notices were issued to the respondents herein. The 2nd respondent herein filed his counter. The counter was sworn in by one A. Siva Prasad, s/o A. Pattabhiramaiah, Superintendent, Central Prison, Chenchalguda. He has stated in the counter that M. Venkatramana, Convict No. 1280, was convicted on 21-3-2001 by the First Additional Assistant Sessions Judge, Rangareddy District in S.C.No. 314 of 2000 for an offence punishable under Section 395 IPC and was made to undergo R.I. for a period of three years. He was also convicted in S.C.No. 315 of 2000 under Section 395 IPC by the First Additional Assistant Sessions Judge, Rangareddy District and was sentenced to undergo R.I. for 2 years. Both the sentences were made to run concurrently. He further stated that as per the directions issued by the First Additional Assistant Sessions Judge, Rangareddy District, he was in judicial custody since 5-12-1998 in Sessions Case Nos. 314 and 315 of 2000 wherein the convict was sentenced to undergo R.I. for a period of 3 years and 2 years respectively. He further stated that the remand period was furnished by the Court taking that fact into consideration, the convict completed the total sentence of 2 years 7 months and 25 days including the remand period. He has still to undergo the remaining sentence of 4 months and 5 days. In the counter he further contended that the allegation of the convict that he was in remand for a period of 5 years 3 months and 8 days is false and baseless. It is further contended in the counter that the convict was remanded on 10-11-1987 in connection with P.R.C.No. 19 of 1988 of Uppal Police Station and he was in jail for a period of 3 years.

6. As far as M. Venkatramana, convict, is concerned, it is stated in the counter that he was lodged in the District Jail, Nalgonda in connection with the following cases.

(i) S.C.No. 233/95 in P.R.C.No. 119/93 in Cr.No. 70/92 of Suryapet Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.

- (ii) S.C.NO. 234/95 in P.R.C.No. 107/93 in Cr.No. 71/92 of Chiveinla Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.
- (iii) S.C.No. 141/96 in P.R.C.No. 18/94 in Cr.No. 27/93 of Kodad Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.
- (iv) S.C.No. 142/96 in P.R.C.No. 39/94 in Cr.No. 1/93 of Kodad Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.
- (v) S.C.No. 311/97 in P.R.C.No. 25/94 in Cr.No. 34/93 of Nereducharla Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.
- (vi) S.C.No. 313/97 in P.R.C.No. 26/94 in Cr.No. 57/92 of Nereducharla Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.
- (vii) S.C.No. 314/97 in P.R.C.No. 6/94 in Cr.No. 13/93 of Garidepally Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.
- (viii) S.C.No. 315/97 in P.R.C.No. 5/94 in Cr.No. 1/93 of Garidepally Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.
- (ix) C.C.No. 36/94 in Cr.No. 34/93 of Miryalaguda Police Station Under Sections 382 and 109 IPC of Judicial First Class Magistrate, Miryalaguda.
- (x) C.C.No. 31/94 in Cr.No. 16/93 of Miryalaguda Police Station Under Sections 457 and 380 IPC of Judicial First Class Magistrate, Miryalaguda.
- (xi) C.C.No. 402/94 of Vemulapally Police Station Under Section 382 IPC of Judicial First Class Magistrate, Miryalaguda.
7. As far as the second convict viz., M. Veeraiah s/o Ramulu is concerned, it is stated that he was convicted on 21-3-2001 in S.C.No. 314/2000, S.C.No. 315/2000 and S.C.No. 462/2000 and he was made to undergo R-1 for 2 years, 3 years and 3 years respectively. The sentence was passed by the 1st Addl. Asst.

Sessions Judge, Rangareddy District. The three sentences were made to run concurrently. In the counter it is further stated that the remand period furnished by the Court was taken into consideration; as on the date the convict completed 10 months and 14 days total sentence including the remand period. He is still to undergo the remaining period of two years one month and 16 days. As per the conviction warrants issued by the 1st Addl. Asst. Sessions Judge, Rangareddy District, the convict was in judicial remand since 5-12-1998 in connection with S.C.No. 314/2000 and S.C.No. 315/2000 and from 15-9-2000 in connection with S.C.No. 462/2000. The respondent further gave a list regarding the cases in which the present detenu has to face the trial.

(xii) S.C.No. 233/95 in P.R.C.No. 119/93 in Cr.No. 70/92 of Suryapet Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.

(xiii) S.C.No. 234/95 in P.R.C.No. 107/93 in Cr.No. 71/92 of Chiveinla Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.

(xiv) S.C.No. 141/96 in P.R.C.No. 18/94 in Cr.No. 27/93 of Kodad Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.

(xv) S.C.No. 142/96 in P.R.C.No. 39/94 in Cr.No. 1/93 of Kodad Police Station Under Section 395 IPC of Asst. Sessions Judge, Suryapet.

(xvi) S.C.No. 311/97 in P.R.C.No. 25/94 in Cr.No. 34/93 of Nereducharla Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.

(xvii) S.C.No. 313/97 in P.R.C.No. 26/94 in Cr.No. 57/92 of Nereducharla Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.

(xviii) S.C.No. 314/97 in P.R.C.No. 6/94 in Cr.No. 13/93 of Garidepally Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.

(xix) S.C.NO. 315/97 in P.R.C.No. 5/94 in Cr.No. 1/93 of Garidepally Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.

(xx) C.C.No. 36/94 in Cr.No. 34/93 of Miryalaguda Police Station Under Sections 382 and 109 IPC of Judicial First Class Magistrate, Miryalaguda.

(xxi) C.C.No. 31/94 in Cr.No. 16/93 of Miryalaguda Police Station Under Sections 457 and 380 IPC of Judicial First Class Magistrate, Miryalaguda.

(xxii) C.C.No. 402/94 of Vemulapally Police Station Under Section 382 IPC of Judicial First Class Magistrate, Miryalaguda.

(xxiii) S.C.No. 312/97 in P.R.C.No. 37/94 in Cr.No. 62/92 of Garidepally Police Station Under Sections 395, 412 and 109 IPC of Asst. Sessions Judge, Miryalaguda.

With these averments it was prayed that the writ petition be dismissed.

8. After filing the counter, this Court had directed the learned First Additional Asst. Sessions Judge, Rangareddy District to file his report. The report filed by the I Addl. Asst. Sessions Judge, Rangareddy District in which it is reported by the learned Judge as under:

'1. S.C.No. 314/2000

M. Veeraiah Sentenced to Undergone 817 days of R-1 for 2 years. Imprisonment during the remand period from 5-12-98 to 20-3-2001 and the period of sentence is already over. 2. S.C.NO. 315/2000

M. Veeraiah R.I. for 3 years 14-2-2001 M. Venkatramana R.I. for 3 years 04-12-2001 3. S.C.No. 462/2000 M. Veeraiah R.I. for 3 years 27-04-2003'

In addition to the above report, the respondents have furnished the tabular form showing in which both the convicts have to undergo the sentences.

| ordered | Remand | period | Sentence | to and | S.C.No. | Sentence date | be |
|---------|--------|--------|----------|--------|---------|---------------|----|
|---------|--------|--------|----------|--------|---------|---------------|----|

undergone-----S.C.No. 314/2000 2 years R.P. 5-12-1998 to The sentence is set-off 21-3-2001 20-3-2001 - 837 20-3-2001 -837 days with remand period.S.C.No. 315/2000 3 years R.P. 5-12-1998 to The sentence is set off 21-3-2001 20-3-2001-837 days with remand period R.P. 17-5-1988 to 8-2-1989 - 268 days 3 years 10 days S.C.No. 462/2000 3 years R.P. 15-9-2000 to 2 years 1 month 21-3-2001 20-3-2001 -187 days and 7 days R.P. 26-9-1988 to 8-2-1989 -136 days 10 months and 23 days-----From the above, the convict Mekala Veeraiah has to undergo 2 years 1 month and 7 days sentence being the larger sentence from 21-3-2001 as the sentences were ordered to run concurrently release would be as shown under

Date of sentence 21-03-2001 Sentence ordered 00-00-0003-----Date of Release 20-03-2004 Remand period (-) 21-10-0000-----Actual Date of Release 27-04-2003 Probable Date of Release 15-08-2002 (excluding the remission period that would be earned by him.)

|                                                                              |                          |          |         |         |
|------------------------------------------------------------------------------|--------------------------|----------|---------|---------|
| MEKALA                                                                       | VENKATARAMANA            | -        | CONVICT | NO.     |
| 1280-----                                                                    | S.C.No. Sentence ordered |          |         |         |
| Remand                                                                       | period                   | Sentence | to and  | date be |
| undergone-----                                                               | S.C.No. 314/200          |          |         |         |
| 2 years R.P. 5-12-1998 to Substantive sentence is 21-3-2001 20-3-2001 - 837  |                          |          |         |         |
| days set-off with remand period.S.C.No. 315/2000 3 years R.P. 5-12-1998 to 8 |                          |          |         |         |
| months 13 days 20-3-2001 -837 days 2 years 3 months and 17                   |                          |          |         |         |
| days-----                                                                    |                          |          |         |         |

From the above, the convict Mekala Venkatraman has to undergo 8 months 12 days sentence being the larger sentence from 21-3-2001 as the sentences were ordered to run concurrently and his probable date of release would be as shown under:

Date of sentence 21-03-2001 Sentence ordered 00-00-0003-----Date of Release 20-03-2004 Remand Period (-) 17-03-0002-----Actual Date of Release 03-12-2001-----Probable Date of Release 09-09-2001(excluding the remission period that would be earned by him)'

9. With this factual data on record, the learned Counsel Mr. Kunareddy Anji Reddy submitted at the Bar that the calculation made by the respondents herein is not correct.

10. Now the question arises for our consideration as to how the calculation is to be made regarding the period of remission.

11. Section 428 Cr.P.C. reads as under:

'428. Period of detention undergone by the accused to be set-off against the sentence of imprisonment:-- When as accused period has, on conviction, been (sentenced to imprisonment for a term not being imprisonment in default of payment of fine) the period of detention, if any, undergone by him during the investigation, inquiry Or trial of the same case and before the date of such conviction, shall be set-off against the term of imprisonment imposed on him on such conviction and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.'

12. By reading the legal provision, it is evident that if a convict is convicted and sentenced to undergo different periods of imprisonment and if they are made to run concurrently, then the remission has to be given to the convict with reference to each case for which he was an under-trial prisoner. For example, if a convict is sentenced to undergo R.I. for 3 years in one case and in that case he is under remand for one year, then one year has to be deducted from the sentence of 3 years and if the same convict is facing another case in which he is also convicted to undergo R.I. for 2 years and with reference to that case if he has been an under-trial prisoner for a period of six months, then the period of six months has to be deducted from the conviction period of 2 years and if the same convict is convicted and sentenced in third case and was made to undergo sentence for a period of 2 years and with reference to that case if he has been an under-trial prisoner for a period of one year, then the period of one year has to be deducted from the conviction period of two years. Thus, the said convict has to undergo the maximum sentence left out in the above three cases. In the given example he will have to undergo sentence for a period of two years because in the first case the



maximum sentence which he has to undergo is two years after deducting the remand period of that case and other sentences are to run concurrently along with the maximum sentence awarded to the convict in a given case.

13. Thus, following the above principle, this Court is of the considered view that the convicts have not completed the period of sentence as alleged by them. Therefore, the writ petition is dismissed. No costs.

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