

Narain Singh Vs. Emperor

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Court : Allahabad

Decided On : Aug-30-1935

Reported in : AIR1936All12; 160Ind.Cas.884

Appellant : Narain Singh

Respondent : Emperor

Judgement :

ORDER

Ganga Nath, J.

1. This is an application in revision by Narain Singh against the Order of the learned Sessions Judge of Mainpuri disallowing his application to deduct the period between 4th November 1931 and 27th February 1935, from the term of his sentence of imprisonment. It is a very curious case in which after the dismissal of the applicant's appeal he remained unarrested from 4th November 1931 to 27th February 1935. The applicant was convicted under Section 395, I.P.C., and sentenced to six years' rigorous imprisonment by the Additional Sessions Judge, Mainpuri, on 29th April 1931. He was released on bail on 2nd May 1931 by this Court. His appeal was dismissed on 4th November 1931, and an order was passed that he would surrender forthwith to his bail and serve out the remainder of his sentence. It does not appear under what circumstances he was not arrested. He did not surrender himself as he was ordered to do. On 14th February 1935, the

was arrested. On his objection he was again released on bail and then again (be was arrested on 27th February 1935. He filed an application before the learned 'Sessions Judge, Mainpuri, praying that 'the period from 4th November 1931, to: 37th February 1935, should be deducted from his term of sentence. The learned Counsel for the applicant relies on Clause (3), Section 426, Criminal P.C., which lays down:

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

2. This clause does not lay down that the period during which a person is released shall be excluded from the term; what it lays down is that this period will be excluded in computing the term which means that this period will be left out in making calculation, On the plain interpretation of the clause the period during which a person is released on bail cannot, reduce the term of the sentence. On the other hand it will not affect the term at all as it will not be taken into consideration in computing the period of the term which the applicant has to serve on the dismissal of his appeal The learned Counsel for the applicant relies on Sheikh Karim v. Emperor 1926 Nag 279. It refers to the case of a suspension of a sentence and the remarks there are only obiter dicta. If the observations made therein mean that the term of the sentence would be reduced by the period during which a person is released on bail, with all respect to the learned Judge who decided that case, I am unable to agree with him. This point was considered in Darsu v. Emperor 1934 All 845 . It was held:

That the provision in Section 426, governs the case of a person against whom an order under Section 120 is passed and who is released on bail by the appellate Court. But whether it governs it or not, the general principles of criminal law require that the period during which such person is released on bail must be excluded from the period of one year for which he was required to undergo imprisonment failing the giving of the, security.

3. The principle involved there and in this case is the same. There is no force in the application. It is therefore ordered that the application is rejected.

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