

Emperor Vs. Narain Singh

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Court : Allahabad

Decided On : Aug-30-1935

Reported in : 158Ind.Cas.906

Judge : Ganga Nath, J.

Appellant : Emperor

Respondent : Narain Singh

Judgement :

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 November 4, 1931, and February 27, 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 November 4, 1931, to February 27, 1935. The applicant was convicted under Section 395, Indian Penal Code, and sentenced to six years' rigorous imprisonment by the Additional Sessions Judge, Mainpuri, on April 29, 1931. He was released on bail on May 2, 193-1, by this Court. His appeal was dismissed on November 4, 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 February

14, 1935, he was arrested. On his objection he was again released on bail and then again he was arrested on February 27, 1935. He filed an application before the learned Sessions Judge, Mainpuri, praying that the period from November 4, 1931, to February 27, 1935, should be deducted from his term of sentence. The learned Counsel for the applicant relies on Clause (3) of Section 426, Criminal Procedure Code 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 effect 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* A.I.R. 1926 Nag. 279 : 92 Ind. Cas. 703 : 27 Cr. L.J. 319. 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.

3. This point was considered in *Darsu v. Emperor* : AIR1934 All845 . It was held:

that the provision in Section 426, governs the case of a person against whom 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.

4. The principal 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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