

Trilochan Das and ors. Vs. the State

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Court : Orissa

Decided On : Nov-18-1960

Reported in : 1961CriLJ136

Judge : R.L. Narasimham, C.J.

Appellant : Trilochan Das and ors.

Respondent : The State

Judgement :

ORDER

R.L. Narasimham, C.J

1. This revision raises an interesting question of law. Petitioners 1 and 2 namely Trilochan Das and Radiha Charan Das along with other petitioners and another person named Krushna Chandra Das were convicted and sentenced to various terms of imprisonment by the Additional Sessions Judge of Cuttack on 11-5-1956. On 14-5-1956 their appeal was admitted by the High Court and they were directed to be released on bail. Eventually on 20-12-1957 the conviction of petitioners 1 and 2 and the sentence of three years rigorous imprisonment passed on each of them by the learned Additional Sessions Judge were maintained by the High Court by its Judgment in Criminal Appeal No 65 of 1950.

The High Court also maintained the conviction and sentence passed on the remaining appellants, except Krushna Das, who was acquitted. Intimation of the

result of the appeal was sent to the Additional Sessions Judge and the records were also sent, in due course, to the lower court. But it appears that no immediate steps were taken to recommit the petitioners to jail to serve out their sentence of imprisonment and they were at large for nearly two years. Eventually, sometime in March 1960 they surrendered before the Magistrate and were sent to jail.

2. Mr. Sahu for the petitioners urged that as soon as the appellate judgment was delivered by this Court, it was the duty of the lower Court to take immediate steps to apprehend the convicted persons and send them to jail to serve out the unexpired portion of their sentence and that on account of the negligence of the Court concerned they were not actually sent to jail till they surrendered sometime in March 1960. He rightly invited my attention to Section 383, Cr. P.C. which says that as soon as a sentence is pronounced the Court shall forthwith forward the warrant to the jail for the detention of the accused person.

Where a convicted person has been released on bail by the appellate Court pending the hearing of the appeal and the appeal is eventually dismissed, Sub-rule (4) of Rule 79 of G. R., and Co. Vol. 1, Criminal Chapter XII (page 31) gives detailed instructions as to what the appellate Court and the trying Court should do for re-committing the convicted persons to jail. There is therefore some justification for the criticism of Mr. Sahu that the delay in re-committing the accused persons to jail was due mainly to the delay in the office of the lower Court. This is a matter which will be dealt with separately on the administrative side.

3. But the legal question for consideration is whether the petitioners can be deemed to be 'undergoing imprisonment' from the date of judgment of this Court in Criminal Appeal No. 65 of 1956, namely, 20-12-1957, till the date on which they surrendered before the Magistrate, i.e. sometime in March 1960. It is admitted that as a fact they were not undergoing any imprisonment at all during this period. It is immaterial as to whether this unfortunate result was brought about due to the negligence of the Office of the Lower Court or otherwise.

Whatever that may be, in the absence of any authority, I cannot hold, as a matter of law, that the petitioners must be deemed to be undergoing imprisonment from the date of dismissal of their appeal by this Court, namely, 20-12-1957 till the date

of their surrender, so as to entitle them to the benefit of this long period in computing the period of imprisonment undergone. Such period should be computed from the date on which they surrendered sometime in March 1960. The short period of imprisonment which they underwent from the date of judgment of the Additional Sessions Judge, till the date of their release on bail by this Court pending the hearing of their appeal will of course be included in determining the total period of sentence undergone.

4. Mr. Sahu cited a decision of the Lahore High Court reported in *Gulzar Mohammad v. The Crown*, 52 Cri LJ 238, regarding the construction of Section 397, Cr. P.C. I have carefully gone through the judgment in that case, but find that it has absolutely no application to the facts of the present case. There, three sentences were pronounced on an accused in Court at the same time, and he was immediately taken into custody. In such circumstances, the learned Judge held that the second and third sentences must be deemed to have been pronounced when the accused was undergoing the sentence of imprisonment for the first offence which had also been pronounced immediately before. Here, however, the petitioners were not taken into jail custody at all till they surrendered in March 1960.

5. The question as to whether the petitioners should be given liberal remissions of sentences while undergoing imprisonment in view of the abnormal delay in recommitting them to jail for which they were not mainly responsible, may be considered by Government in accordance with the provisions of the Jail Manual, This Court cannot obviously express any opinion on the subject. But on a question of law it must be held that the period of imprisonment commenced only from the date on which the petitioners actually surrendered before the Magistrate in March 1960.

6. The revision petition is disposed of accordingly.