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Court : Delhi

Decided On : Apr-25-1978

Reported in : 1979CriLJ362; 14(1978)DLT16B

Judge : V.D. Misra and; Avadh Behari Rohatgi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 428

Appeal No. : Criminal Writ Appeal Nos. 5, 12 and 14 of 1978

Appellant : K.C. Dass and ;n.K. Chatterjee

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur and; K.K. Sud, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) These are three petition for habeas corpus. The point raised in all of them is the same. It is a point of principle. It relates to set off of the period of detention undergone by the accused under s. 428 of the Criminal Procedure Code, 1973.

(2) The three accused in the three writ petitions were convicted of crimes in more cases than one. They were awarded separate sentences at different times. Each of the accused was arrested in one case to begin with and thereafter he was also

placed under arrest at different times in other cases. This means that formally he was put under arrest in other cases, though he was already in detention.

(3) Take a simple illustration. An accused is arrested in one case on 1-1-1977. He is arrested in another case on 1-1-1978, while the trial of the first case is proceeding. In the first case he is convicted and sentenced on 31-1-1978 to two years imprisonment. Under s. 428 the accused will be entitled to set off his period of detention from 1-1-1977 to 31-1-1978 against the term of imprisonment imposed on him in the first case. This legal position is incontestable.

(4) To take the illustration further, suppose in the second case the accused is convicted on 31-3-78 and sentenced to three years imprisonment. Now the accused claims that he is entitled to set off the pre-trial detention in the second case as well. In other words he claims that the period of detention from 1-1-1977 to 31-3-1978 be set off against the sentence of imprisonment imposed on him in the second case. The short question is : Is he entitled to set off the period of detention against his sentence in the second case though he had had the benefit of s. 428 once in the first case

(5) The Delhi Administration opposes these petitions. Counsel for the Administration submitted that the accused person is entitled to set off in the second case only up to the date of conviction in the first case as the period of detention undergone by the accused in prison after conviction was being undergone under the sentence imposed in the first case and not during the investigation, inquiry or trial of the second case.

(6) S. 428 of the Code lays down the rule of 'set off'. It reads :

'Where an accused person has, on conviction, been sentenced to imprisonment for a term, 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.'

(7) On a true interpretation of the section it appears to us that in the second case also in which the accused person was convicted on 31st March, 1978 he will be entitled to set off the period of pre-trial detention i.e. 1st January, 1977 to 31st March, 1978 against the sentence of three years imposed on him. The Statute does not make any distinction between the first case and the second case. The principle is the same. It has to be applied to all cases even-handedly and uniformly.

(8) The key words of the section are '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'. This 'period of detention' shall be set off against the term of imprisonment imposed on him on conviction. The liability of such person to undergo imprisonment shall be restricted to the remainder of the term of imprisonment imposed on him.

(9) The words 'of the same case' are important. The section speaks of the 'period of detention' undergone by the accused person, but it expressly says that the detention mentioned refers to the detention during the investigation, inquiry or trial of the case in which the accused person has been convicted. The section makes it clear that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be during the investigation, inquiry or trial in connection with the 'same case' in which he has been convicted. (See Government of A.P. v. A. V. Rao Air 1977 Sc 1097 .

(10) S. 428 provides that the period of detention of an undertrial prisoner shall be set off against the term of imprisonment imposed on him on conviction. Will it not be true to say that the accused is an undertrial prisoner in the second case in our illustration. If it is so he will be entitled to set off his pre-conviction period against the term of imprisonment imposed on him in the second case as in the first. We see no ground to deny him the benefit in the second case.

(11) The provision as to set off expresses a legislative policy (See Government of A.P. supra). We sit here to carry out the will of Parliament. The Supreme Court has said :

'S- 428 is absolute in its terms. It provides for set off the pre-conviction detention of an accused person against the term of imprisonment imposed on him on conviction'

(B. P. Andre v. Supdt. Central Jail, : 1975 CriLJ182 .

(12) The principle of s. 428 has to be applied in all cases whether the accused is convicted in one case or many, whether simultaneously or at different times. The reason is that in the second case the accused person remains an untried and unsentenced prisoner till his trial is concluded. At the end of the trial he is convicted and sentenced to a term of imprisonment. Before trial is finished he remains an unconvicted person accused of a crime. Nothing more than this. The statute says that if on trial he is convicted and a term of imprisonment is imposed allow him set off of the period of pre-trial detention. thereforee, if the accused person is in detention as an unconvicted, untried or unsentenced prisoner and is, on trial, convicted and sentenced to a term of imprisonment he is entitled to set off. Whether such period of pre-trial detention is common to a considerable extent in the two cases is of no consequence to the application of s. 428.

(13) If the sentences awarded on conviction are to run concurrently s. 427 applies. If sentences in the two cases in our illustration are not ordered to run concurrently, the remainder of the term of imprisonment, after adjustment of the pre-trial period already undergone in the second case, shall commence at the expiry of the term of imprisonment in the first case after setting off the pre-trial detention period. In both cases he will be entitled to set off.

(14) The view we take was also taken by one of us sitting singly (v. D. Misra, J.) in two cases: Bahadur Chand v. G. K. Marwaha, Criminal Writ 14 of 1977 decided on 13th May, 1977(3) and Sunil Kumar v. State Criminal Misc. (Main) No. 2079 of 1975 decided on August 21, 1975(4). A learned single Judge of Rajasthan High Court has also taken the same view in Chella v. State of Rajasthan 1977 Cr. L.J. 589.

(15) A learned single Judge of this Court in K. C. Dass @ N K. Chatterjee v. State, Cr. Misc. (Main) No. 121 of 1978 decided on March 10, 1978(6) held to the

contrary. He held that in the second case the accused person is entitled to set off the period of detention up to the date of conviction in the first case. In our illustration, according to the learned judge he will be entitled to set off from 1st January, 1977 to 31st January, 1978 and not up to 31st March, 1978. The learned Judge thought that on conviction in the first case the accused person was serving the sentence and was not in pre-trial detention so far as the second case is concerned. We do not agree with this reasoning. The accused person is in pre-trial detention as regard the second case. It is certainly a pre-conviction period and the statute operates in his favor.

(16) We have not dealt with the particular facts of each case. We have settled a point or principle. We therefore direct the Superintendent of jail to compute the period of detention in each of the cases in the light of opinion expressed by us. The petitioners may be informed in jail.

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