

Santosh Kumar Vs. State

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Court : Delhi

Decided On : Nov-24-1989

Reported in : 1990RLR20

Judge : P.K. Bahri, J.

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

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1539 of 1989

Appellant : Santosh Kumar

Respondent : State

Judgement :

P.K. Bahri, J.

(1) The petitioner, who is undergoing sentences in two cases, has filed this petition through Jail praying that he should be given benefit of S. 428, Cr. P.C. in respect of the sentences imposed upon him two cases, namely, in F.I.R. No. 617/80 u/s 61-1-14, Punjab Excise Act and F.I.R. No. 459/86 u/s 394 read with S. 34, Indian Penal Code ,

(2) The facts of the case, in brief, are that the petitioner was taken into custody as undertrial prisoner in both the said cases only on 25/26.11.1986, and he was awarded sentence of 1' year's R.I. and a fine of Rs. 1,000.00 and in default, to

undergo 6 months further R.I. in the first case and this judgment was delivered on 26.4.1988 and he was sentenced to undergo R.I. for 3 years and to pay a fine of Rs. 500.00 and in default, to undergo 2 months simple imprisonment for an offence punishable u/s 394 r.w.S. 34, Indian Penal Code . vide judgment dt. 11.5.1989. The petitioner prays that the period spent by him as undertrial be taken into consideration and adjusted and set off in respect of both these sentences.

(3) Section 428, Cr. P.C. reads :

'WHERE an accused person 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.'

This particular Section came up for consideration before a D.B. of this Court in K.C. Das. vs . The State : 14(1978)DLT16B , and it has been held that if a convict is an undertrial prisoner in two cases then he is entitled to have set off for the pre-trial period of detention against the sentences imposed in respect of both the cases. So, the petitioner is entitled to have set off for the undertrial period of detention in respect of both the sentences. However, he has to undergo the sentences in addition which have been imposed on him in default of payment of fines. So, I order accordingly. The petition is disposed of in above terms.

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