

WaisuddIn Vs. State and ors.

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Court : Delhi

Decided On : Apr-22-1994

Reported in : 1994(2)Crimes490; 54(1994)DLT365; 1994(29)DRJ253

Judge : Y.K. Sabharwal and; S.C. Jain, JJ.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 32A;
[Constitution of India](#) - Article 20

Appeal No. : Criminal Writ Appeal No. 911 of 1993

Appellant : Waisuddin

Respondent : State and ors.

Advocate for Pet/Ap. : D.R. Sethi and; N.K. Handa, Advs

Judgement :

Y.K. Sabharwal, J.

(1) In [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short 'the Act') as originally enacted there was no provision prohibiting grant of suspension, remission or commutation of sentences. By Act No.2 of 1989, Section 32-A was inserted in the Act, inter-alia, providing that no sentence awarded under the Act (other than Section 27) shall be suspended or remitted or commuted. Section 32-A came into force with effect from 29th May, 1989. It reads as under:-

'32-A.No suspension, remission or commutation in any sentence awarded under this Act.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted.'

(2) The question for determination is whether Section 32-A would apply to a case where offence has been committed before 29th May, 1989.

(3) The petitioner says that by orders passed on 26th February 1987 by learned Additional Sessions Judge, he was sentenced to rigorous imprisonment for 10 years and a fine of Rs.1 lakh and in case of default of payment of fine, he has been ordered to suffer further rigorous imprisonment for two and half years and that his appeal has been dismissed. It is, however, claimed that Special Leave Petition is pending determination in the Supreme Court of India. The petitioner who is undergoing imprisonment in jail claims that he is entitled to grant of remission's per rules and on the basis of computation of remissions, on payment of fine of Rs.1 lakh, he would become entitled to be released from jail and set at liberty with effect from 8th November, 1993. The petitioner says that he is prepared to deposit the amount of fine immediately if remissions are given effect to and the same is communicated to him.

(4) The writ petition was filed from jail. Since the petitioner did not have the assistance of an advocate and the legal question involved was likely to affect number of other similarly placed persons in jail. We requested Mr. D.R. Sethi, a leading lawyer of this Court practicing on Criminal side, to act as amicus curiae for the petitioner and assist this court. Mr.Sethi readily agreed. We place on record our deep appreciation for the forceful and painstaking presentation of the case put forth by Mr.Sethi on behalf of the petitioner.

(5) The principal contention of Mr.Sethi is based on Article 20 of the [Constitution of India](#) in that the petitioner cannot be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence. Admittedly, the alleged offence was committed and even the order of conviction and sentence was passed before enforcement of Section 32A. It is

urged that under the law in force at the time of the alleged commission of the offence, the petitioner was entitled to grant of remissions and thus he would not have undergone the entire sentence of 10 years but a shorter sentence because of the benefit of remissions. The said benefit is being denied to the petitioner because of Section 32A which, it is urged is not legal as this Section is not applicable to the case of the petitioner since it was inserted in the Act after commission of alleged offence. It is urged that the stand of the respondents is violative of Article 20 of the [Constitution of India](#).

(6) MR.HANDA, learned counsel for the State, on the other hand contends that in view of prohibition contained in Section 32A the petitioner is not entitled to grant of any remission. It is urged that the remission is a concession which can be extended only if the law permits. According to Mr.Handa the legal provisions as existing on the date of consideration of the grant or otherwise of the remissions is the relevant consideration and not the legal provisions existing at the time of commission of the offence or at the time of conviction. In regard to the stand of the petitioner that various persons similarly placed were granted remissions, the respondents have taken the plea that from 11th May, 1993 no remissions were granted to persons convicted under the Act. The respondents have pleaded that before 11th May, 1993 suspensions/remissions of sentences under the Act were allowed under bonafide mistake in ignorance of the prohibitory provisions contained in Section 32-A of the Act.

(7) In support of the contention that the remissions are granted by way of concession and not as of right, reliance was placed by Mr.Handa on Regulations framed under the Prisons Act stating,inter-alia, that remission may be granted as a matter of concession and not as of right. The regulations have been framed under the provisions of Prisons Act. This Act has nothing to do with remissions and does not confer power to remit sentences. The Prisons Act provides for regulation of prisons and confers power to make rules for reward for good conduct etc. The power of appropriate government to grant remission flows from Section 432 of the Code of Criminal Procedure (for short 'the Code'). In our view, for deciding the question under consideration, the regulations have no relevance.

(8) No decision was cited before us touching directly the question under consideration. Mr.Sethi,however, placed strong reliance on the decision of Supreme Court in Kedar Nath Bajoria and another Vs . The State of West Bengal, : 1953 CriLJ1621 holding that on proper construction of Article 20 of the Constitution, the sentence of fine to the extentof'Rs.47,550.00 will, in any event, be set aside. The Supreme Court said:-

'AS regards the fine of Rs.50,000.00 inflicted on the first appellant, Mr.Chatterjee objected that it could not stand to the extent of Rs.47,550.00 found to have been received by the first appellant by the commission of the offence, as it is in contravention of Article 20 of the Constitution wch provides, 'inter-alia' that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The offences for which the first appellant has been convicted were all committed in 1947, whereas the Act which authorised the imposition of the additional punishment by way of fine equivalent to the amount of money or value of other property found to have been procured by the offender by means of the offence came into force in June, 1949. Mr.Chatterjee urged that Article 20 on its .true construction prohibits the imposition of such fine even in cases where the prosecution was pending at the commencement of the Constitution. This question, which turns on the proper construction of the article, was recently considered and decided in - 'Rao Shiva Bahadur Singh V. The State of Vindhya Pradesh', : 1954 CriLJ1480 , and according to that decision the sentence of fine to the extent of Rs.47,550.00 will be set aside in any event.'

(9) The aforesaid decision renders no assistance for-deciding the question under consideration as the court has not inflicted greater penalty than inflict able under the law in force at the time of commission of the offence. In the present case it would be by way of the effect of Section 32A, if applicable, that the petitioner would have to suffer incarceration for the entire period of sentence and may not be released after serving out a part of it. The question is whether under these circumstances Section 32-A would be applicable or not.

(10) The celebrated decision of Supreme Court in the case of Maru Ram b others v. Union of India & Others, Air 1980 SC 207 though does not directly deal with the question before us yet it provides considerable light and guidelines for answering the question. The scope of applicability of Section 433A of the Code as also the question about the constitutional validity of Section 433A are some of the questions which came up for consideration in the said case. The Supreme Court held that Section 433A which came into force on 18th December, 1978 would not be applicable where conviction is before that date. The Supreme Court said:

'IT is trite law that civilised criminal jurisprudence interdicts retroactive impost of heavier suffering by a later law.'

(11) The Supreme Court said that ordinarily a criminal legislation must be so interpreted as to speak futuristically. The observations of the Supreme Court that

'THE sound rationale is that expectations of convicted citizens of regaining freedom on existing legal practices should not be frustrated by subsequent legislation or practice unless the language is beyond doubt.'

are very relevant for answering the question under consideration.

(12) In Maru Ram's decision the challenge to the constitutional validity of Section 433A of the Code based on Article 20(1) of the Constitution failed because the Supreme Court was considering the question of remission not in the case of imprisonment for fixed term sentence but in the case of life imprisonment and agreeing with earlier decisions it said life sentence is nothing less than life-long imprisonment. The Supreme Court, however, added a word of caution that different considerations may weigh while considering a withdrawal of remission in cases of fixed term sentences. To quote:

'MAYbe, difference may exist in cases of fixed term sentences. Cooley lends support: Cooley's Constitutional Limitations, Vol.I, 8th Edn. p.544. Privilege existing at time of commission of offence (e.g. privilege of earning a shortening of sentence by good behavior) cannot be taken away by subsequent statute.'

(13) In the present petition we are considering the question of withdrawal of benefit of remission by a subsequent legislation, namely, Section 32-A, which was not on the Statute book at the time of commission of offence in the case of fixed term sentence. Our answer would depend upon whether we favor strict interpretation or we favor a liberal interpretation. The strict interpretation would be that penalty being inflicted' after enforcement of Section 32A and before its enforcement remains the same as was inflict able under the law in force at the time of commission of the offence and thus there is no illegality. We do not think that there arc any compelling reasons for favoring a strict interpretation as being suggested by the State. The hard fact and reality is that if Section 32A is held to be applicable where offence is committed after its enforcement, it would result in offender being subjected to longer period of incarceration as compared to the shorter period of incarceration had Section 32A been not there on the statute book. It is possible that the petitioner may not have undergone full term of imprisonment of 10 years if after commission of offence Section 32A had not been brought on the statute book. In absence of Section 32A the petitioner may have been granted remission. The result of making Section 32A applicable to the petitioner would be to deprive him of the benefit to which he would have been entitled under the law in force at the time of commission of offence. The effect of remission is reduction of actual period of incarceration. The acceptance of the stand of the State may throw open the question about the constitutional validity of Section 32A itself as being vocative of Article 20(1) of the Constitution. The strict interpretation would frustrate the expectation of regaining freedom at an early date on the basis of existing policy of remission. The liberal interpretation may reduce actual period to be undergone in jail. Even if two views are possible and we have to err, we would prefer the view and err on the side which favors personal liberty of a convicted person and may result in reducing his period of imprisonment. The other view will increase the period of actual imprisonment. We do not think that Section 32A admits of an interpretation that it is applicable to offences committed prior to its enforcement. In our view Section 32A is prospective in its operation. It applies to a case where offence has been committed after its enforcement.

(14) We may also notice that till 11th May, 1993 the respondents were not denying to the convicts under the Act benefit of remission though on the stated ground of

ignorance of the prohibition contained in Section 32A of the Act. The fact of the matter, however, remains that between May, 1989 and May, 1993 i.e. for a period of 4 years the benefit of remission was being granted to all the persons similarly placed as the petitioner and now it is being deprived by taking shelter under the provisions of Section 32-A of the Art.

(15) In our view, the action of the respondents in applying Section 32A to the case of the petitioner and thus not considering his case for remission as per the remission policy of the Government is illegal and cannot be sustained. We set it aside.

(16) For the reasons stated above, we would allow the petition, make the rule absolute and direct the respondents to consider forthwith the case of the petitioner for grant of remission without applying Section 32A of the Act.

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