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Pious Vs. State of Kerala

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Court : Kerala

Decided On : Feb-21-2006

Reported in : 2006CriLJ2387; 2006(2)KLT36

Judge : V.K. Bali, C.J. and; J.B. Koshy, J.

Acts : Probation Act, 1938 - Sections 432, 433 and 433A; Kerala Prisons Rules - Rules 225(2), 280A, 433A, 452B, 453 and 461; ;Constitution of India - Articles 14 and 161; Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 482; Kerala Prisons Act, 1958

Appeal No. : W.A. No. 2007 of 2005

Appellant : Pious

Respondent : State of Kerala

Advocate for Def. : K. Lakshminarayanan, Sr. Govt. Pleader

Advocate for Pet/Ap. : M.K. Damodamn, Sr. Adv. and; Sojan Micheal, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Bali, C.J.

1. The appellant, petitioner in the original lis is undergoing sentence for an offence under Section 302 of the Indian Penal Code. He has been on study leave for 6 years 10 months and 13 days. He availed of this leave during the period of imprisonment. In the Writ Petition filed by him he sought this period to be included in the sentence imposed upon him. If the period as referred to above, is taken as period of sentence undergone, it is further his case that he would be eligible for release. His plea for a direction to be issued to the respondents, i.e. The State of Kerala and Superintendent of Central Prison, Kannur to treat the period of study leave as period of sentence already undergone and direct the second respondent to consider his name for release on parole, however, failed before the learned Single Judge vide order dated 30.3.2005 recorded in W.P. (C) No. 11012 of 2004. It is against this order that the present Writ Appeal has been filed.

2. The respondents in the counter affidavit filed by them however pleaded that no kind of remission can be treated as part of the actual sentence undergone and therefore the appellant was not eligible to have his case placed before the Prison Review Committee as he had not completed the mandatory period of 8 years of actual sentence. The details of the sentence since the date of commencement of sentence were detailed in the counter affidavit which reads as follows:

Date of sentence : 10.12.1991 Period covered as on 18.2.2005 : 13 years 2 months 8 daysfrom the date of sentenceLess period of suspension of sentence : 6 years 10 months 13 daysActual imprisonment undergone : 6 years 3 months 25 daysAdd remand period undergone : 1 month 17 daysTotal period undergone : 6 years 5 months 12 months

3. It appears from a reading of the impugned judgment passed by the learned Single Judge that the desired relief was sought by the appellant on the basis of Rule 461 of the Kerala Prisons Rules. Based on the provisions of the said rule it was argued that the period of leave has to be taken as period of sentence undergone. The appellant also places reliance upon Rule 280-A by contending that the said rule provides release of a person undergoing a sentence of imprisonment for the purpose of study and that it provides that such release shall be governed by the rules if any issued by the Government in this behalf. While

considering the rule aforesaid and also Rule 225(2) the learned Single Judge observed as follows:

Rule 225(2) makes this very much explicit. I find that the contention of the counsel for the petitioner that Rule 461 i.e. the provision for treatment of the period of leave as the sentence undergone cannot be made applicable to the study leave period. The same is abundantly clear from the fact that at the time of commencement of study leave, the sentence stands suspended whereas for the emergency leave or ordinary leave, the above suspension is not contemplated under Chapter 26 of the Prison Rules. It is also seen from the concerned Rules as noted above, i.e. Rule 453 that the period of emergency and ordinary leave are confined to a short period and the same is not granted continuously and also that a gap of six months is contemplated as per Rule 452(B) for further release of a prisoner granting ordinary leave. Emergency leave as already noted vide Section 455 is limited to extreme situations like death or serious illness. But so far as study leave is concerned, it is seen that the same is granted somewhat liberally. The petitioner himself was outside the prison for more than six years. He was outside the prison more than the period he spent inside.

4. The learned Single Judge while considering a judgment of this Court in suo motu proceedings in Section 482 Cr. P. v. State of Kerala, Article 161 of the Constitution of India and also a judgment of the Honourable Supreme Court in Mam Ram and Ors. v. Union of India : 1980 CriLJ1440 further held thus:

It was in the absence of guidelines in this regard misuse or abuse of process of the exercise of power under Article 161 of the Constitution was noticed and to stem the same, the High Level Committee was constituted and the guidelines enunciated. Hence, the contention that the benefits that the co-accused derived in the previous set up should be accorded to the writ petitioner as well, cannot be upheld or the contention that the same would result in discrimination violative of Article 14 of the Constitution countenanced. It was also to be noticed that the. 1st accused remained in the prison during the mandatory period whereas the writ petitioner was residing at his house with his wife and children attending college and also running a shop (mentioned in the report of the Probition Officer) and

hence that cannot be said to be a similar situation so as to attract the fundamental rights under Article 14.

5. It appears that finding no escape from the findings/observations of the learned Single Judge as extracted above, the appellant still persists with the matter on the basis of some judicial precedents which were not cited before the learned Single Judge. Counsel for the desired relief places reliance upon a judgment of the Supreme Court in Maru Ran v. Union of India and Ors.. : 1980 CriLJ1440 , Nalamolu Appala Swamy and Ors. v. State of Andhra Pradhesh, : [1989]1SCR796 and State of Haryana v. Nauratta Singh and Ors. : 2000 CriLJ1710 .

6. In Maru Ram v. Union of India (supra) counsel has placed reliance upon the observation made by the Supreme Court in paragraph 71 which reads as follows:

One point remains to be clarified. The U.P. Prisoners' Release on Probation Act, 1938, a welcome measure, what with population pressure on prisons and burden on the public exchequer, will survive Section 433-A for two reasons. Firstly, government may resort to the statutory scheme, not qua law but as guide-line. Secondly, and more importantly, the expression 'prison' and 'imprisonment' must receive a wider connotation and include any place notified as such for detention purposes. 'Stone walls and iron bars do not a prison make'; nor are stone walls and iron bars' a sine qua non to make a jail. Open jails are capital instances. Any life under the control of the State, whether within the high-walled world or not, may be a prison if the law regards it as such. House detentions, for example. Palaces, where Gandhiji was detained, were prisons. Restraint on freedom under the prison law is the test. Licensed releases where instant recapture is sanctioned by the law, and, likewise, parole, where the parole is no free agent, and other categories under the invisible fetters of the prison law may legitimately be regarded as imprisonment. This point is necessary to be cleared even for computation of 14 years under Section 433-A, Sections 432,433 and 433-A read together, lead to the inference we have drawn and liberal though guarded, use of this Act may do good. Prison reform, much bruited about though, is more visible on the skin than in the soul and needs a deeper stirring of consciousness than tantrums, threats and legalised third degree, if the. authentic voice of the Father of the Nation be our

guide. To chain the man is not to change him; the error is obvious - a human is more than a simian. Our reasoning upholds Section 433-A of the Procedure Code but upbraids the abandonment of the healing hope of remissions and release betimes. To legislate belongs to another branch but where justice is the subject the court must speak. There was some argument that Section 433-A is understood to be a ban on parole. Very wrong. The section does riot obligate continuous fourteen years in jail and so parole is permissible. We go further to say that our Prison Administration should liberalise parole to prevent pent-up tension and sex perversion which are popular currency in many a penitentiary (see Sethna: Society and the Criminal, Tripathi Publications, 4th edn., p. 296).

7. All that we would like to mention on the aforesaid contentions of the learned Counsel is that relief cannot be granted only on the ground that parole is permissible under law. That indeed is and for that, support is not required to be taken from any judicial precedents. The question, however involved in the present case is not as to whether the appellant was entitled to be released on parole while undergoing sentence, but the question is as to whether the study period that he availed can be set off from the total period of the imprisonment. There is no such observation, nor anything has been pointed cut to us from the Judgment of the Supreme Court in Maru Ram v. Union of India (supra.) In Nalamoltu Appala Swamy and Ors. v. State of Andhra Pradesh (supra) the question was only as to whether the prisoners who were on bail when government order bearing MS No.580/Home (Prisons C) Department dated October 20,1984 came into effect put to benefit of remission. It was held that remission of sentence in terms of the government letter aforesaid would be granted to persons who were on bail on the date of the G.O. This judicial precedent can be of no solace to the appellant. Equally inapplicable is the judgment of the Honourable Supreme Court in State of Haryana v. Nauratta Singh (supra) wherein it was held that even though the conviction by Supreme Court related back to the date of judgment of the trial court which was anterior to the date of enactment of Section 433-A of the Code of Criminal Procedure, grant of remission in respect of the period of enlargement of bail would be impermissible. It was further held that the instructions issued by Government of Haryana under which the respondent claimed remission cannot be interpreted so as to enable him to count the period during which he was on bail

towards remission and that the expression 'parole or furlough' in the aforesaid instruction could not be stretched to the period during which the person was enlarged on bail during the pendency of the trial or appeal or revision. The judgment of the Supreme Court primarily deals with difference between suspension of sentence when a person is on bail from remission of any part of the punishment to which a person is sentenced.

8. The appellant as mentioned above, has been sentenced to undergo rigourous imprisonment for life. As interpreted by the Honourable Supreme Court the life imprisonment means imprisonment for life. Even though, a person may be entitled to release within 14 years or so, in view of the jail rules, that may be applicable, by no stretch of imagination can it be said that the period of sentence can be reduced for such period that the prisoner may have on study leave. Setting off periods such as study leave, from the total period of sentence would result in an anomalous situation and in certain cases would be repugnant to the very administration of criminal justice. The facts of the present case itself reveal that the appellant has remained outside the jail for a period of 6 years 10 months and 13 days since the date of commencement of his imprisonment, i.e. 10.11.1991. If the period that he remained on study leave which is very substantial is reduced from the total period of sentence, the appellant shall have to be released by just over six years in jail, inspite of the fact that he has been sentenced to undergo rigorous imprisonment for life.

Finding no merit in this appeal we dismiss the same, leaving however the parties to bear their own costs.

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