

Robert Sebatian Vs. the State

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Court : Kerala

Decided On : Jul-20-1981

Reported in : 1982CriLJ1127

Judge : P. Subramonian Poti, Actg. C.J. and; George Vadakkal, J.

Appellant : Robert Sebatian

Respondent : The State

Judgement :

Subramonian Poti, Actg. C.J.

1. These are two petitions we received from the same convict undergoing sentence of imprisonment in the Central Prison at Cannanore. The second petition followed the earlier one. The complaint in both the petitions is the same. Actually the second petition appears to be by way of reminder to this Court of the earlier petition. We have taken on file these petitions, numbered them and treated as petitions for issue of habeas corpus. We ordered notice on these petitions. The learned Advocate General appeared and placed the facts fairly before us. The petitioner was not represented by counsel. We requested Sri K. R. B- Kaimal to assist us in this case and present the case for the petitioner. We place on record our appreciation of the efforts of the learned Counsel in having elaborately gone into the matter and in presenting to us the case of the petitioner very effectively.

2. Before coming to this Court the petitioner had made several approaches to the Government seeking his release in view of orders of remission passed by the Government from time to time. But evidently taking the view that he was not entitled to the benefit of such remissions he was not released.

3. The petitioner was convicted and sentenced to life imprisonment in Sessions Case No. 13/72 of the Sessions Court of Alleppey. He was so convicted on 8-8-1972. He was undergoing the sentence of imprisonment for life in the Central Prison at Trivandrum from 8-8-1972 to 26-7-1978. There appears to have been a mass hunger strike in the Trivandrum Central Jail in Nov. 1977. Ultimately it ended in a jail riot and murder of one of the jail employees. In Sessions Case No. 5/78 before the 1st Additional Sessions Judge's Court of Trivandrum the petitioner was convicted for offence Under Section 304 Part II and certain other provisions of the Code. He was sentenced to 7 years Under Section 304 Part II read with Section 149 of the Penal Code, to two months for offence Under Section 427 of the Code, for one month for offence Under Section 448 of the Code, for one month for offence Under Section 225(B) of the Code and for six months Under Section 148 of the I.P.C. The sentences were to be suffered only concurrently with the sentence of life imprisonment which he was undergoing. He was transferred to the Central Prison at Cannanore on 26-7-1978 as convict No. 1505 and he is undergoing imprisonment there at the moment.

4. Pursuant to the conviction arising from the jail riot on 3-11-1977 the Inspector General of Prisons issued an order on 11-9-1978 cancelling all remissions earned by the petitioner up to 7-7-1978. On 31-1-1980 the Government passed G.O. (MS) 47/81/Home dt. 11-3-1981 in exercise of the powers under Article 161 of the Constitution of India directing the premature release of all prisoners convicted by the Courts in this State who had completed eight years of imprisonment including remissions as on 31-1-1980 remitting the unexpired portion of their sentences. The period of eight years thus to be reckoned included such remissions as they had earned by 31-1-1980. The case of the petitioner before us is that he is entitled to the benefit of the above-said Government order and so he is entitled to release pursuant to the order of Government G.O. (MS) 47. The report of the Superintendent of the Central Prison, Cannanore sent to this Court shows that on

31-1-1980 the petitioner had actually undergone imprisonment of 7 years 5 months and 23 days. Besides this for the period from 7-7-1978 to 31-1-1980 he had earned a remission of two months and 27 days which remission is admittedly not forfeited- Only remissions up to 7-7-1978 had been cancelled by the order of the Inspector General of Prisons. Hence with the addition of remissions earned after 7-7-1978 the sentence the petitioner had undergone accounted to a total of 7 years 8 months and 20 days. It was in this view that the benefit of the Government Order G.O. (MS) 47 was not given to the petitioner. He was short, according to Government, of more than 3 months for earning the benefit of the order G.O. (MS) 47.

5. learned Counsel Sri Kaimal drew our attention to various provisions of the Kerala Prisons Rules particularly provisions in Chap. XVIII and Chap. XXII of the Rules. It may be necessary to refer to them to understand the scope of remissions contemplated under the scheme of the Kerala Prisons Rules. Rule 301 in Chap. XVIII deals with forfeiture of remissions. This is relevant because to what extent the order of the Inspector General of Prisons would operate by way of forfeiture of the remissions earned by a convict must necessarily depend on a reading of this Rule. This Rule reads thus:

301'. Forfeiture of remission.- If a prisoner is convicted of an offence committed after admission to jail Under Sections 147, 148, 152, 224, 225B, 302, 303; 304, 304A, 306, 307, 308, 323, 324; 325; 326; 332; 333, 352, 353, or 377 of the I.P.C. or of an assault committed after admission to jail on a warder or other officer or having been released under Rule 542 breaks his bond given in Form No. 61-B the remission of whatever kind earned by him under these rules up to the date of the said conviction or his temporary release may, with the permission of the Inspector General of Prisons be cancelled. A prisoner temporarily released under Rule 542 who breaks his bond and is again admitted to jail after recapture shall earn no remission under these rules for such period as the Inspector-General of Prisons may order.

What is of relevance to this case and is of importance is to notice that the Rule refers to cancellation of remission of whatever kind earned by the prisoner 'under

these Rules.' (emphasis supplied). Rule 303 deals with ordinary remission. Under Sub-rule (a) two days per month for thoroughly good conduct and scrupulous attention to all prison regulations is provided for by way of remission. Under Sub-rule (b) two days per month for industry and due performance of the daily task imposed is again provided for-R. 306 deals with additional remission to prisoners employed on prison services such as cooks and sweepers who work on Sundays and holidays and who thereby earn two days ordinary remission per quarter in addition to any other remission. Rule 307 provides for remission for any prisoner who, for a period of one year from the day of the quarter following the date of his sentence or the' date on which he was last punished for a prison offence has committed no prison offence whatsoever, such remission being 15 days' ordinary remission in addition to other remission. Rule 312 deals with special remissions not exceeding 60 days in a year. This is granted for special services as for example (IV assisting in detecting or preventing breaches of prison discipline or regulations,

(2) success in teaching handicrafts,

(3) special excellence or greatly increased outturn of work of good quality,

(4) protecting an officer of the prison from attack,

(5) assisting an officer of the prison in the case of outbreak of fire or similar emergency,

(6) economy in wearing clothes and

(7) donating blood. These are the relevant provisions in Chap- XVIII. If the words 'under these Rules' relate to Chap. XVIII only the reference can only be to these provisions, but if they refer to all the Rules in the Kerala Prisons Rules the reference can, in addition, be to Rule 384-A in Chapter XXII also which rule deals with another type of remission, namely, remission of sentence in lieu of wages. This is really by way of purchasing the remission on payment of the value from out of the wages of a convict, the cost of such remission being 25np. per day subject to not more than 30 days special remission by the Superintendent of the Jail and

60 days by the Inspector-General of Prisons per year. The case of the petitioner before us is that special remission earned by him by donating his blood under Rule 312 cannot be forfeited, as really he had irrevocably purchased his remission by parting with his blood. Similar is the case with the remission on surrender of wages. This is a very important question which may have to be considered in an appropriate case. On the facts of this case we are not called upon to consider this question, for, even without it we can dispose of this case. Therefore we do not propose to go into it here.

6. The more important question in this case is whether the order of forfeiture of all remissions up to 7-7-1978 passed by the Inspector General of Prisons would operate to forfeit remissions outside the scope of the Kerala Prisons Rules. Under Article 161 of the Constitution the Governor has power to remit sentences and under Article 72(1) of the Constitution the President of India has the power to order remission. Section 432 of Cr.P.C. enables the appropriate Government to remit the whole or any part of the sentence. Whether such remissions would be covered by the forfeiture provision in Rule 301 of the Kerala Prisons Rules is the question which we have to consider. In the case before us the remissions which are relevant are the following:

(1) By G.O. Rt. 1182/72/Home dt. 9-8-1972 remission was ordered by the President of India in connection with the celebrations of the 25th Anniversary of Independence on 15th Aug., 1972. Such remission was to be granted on the 15th of August, 1972 to the prisoners on the scales and conditions mentioned in the said Government order. That provided that in the case of prisoners sentenced to imprisonment of more than 10 years or imprisonment for life a remission of one year shall be granted. The petitioner was convicted and sentenced prior to 15th August, 1972 and therefore he is entitled to the remission of the abovesaid one year.

(2) G.O. (MS) 61/75/Home dt.14-5-1975. By this the Kerala Government granted a remission Under Section 432 of the Cr.P.C. of sentences of imprisonment of prisoners in commemoration of the 2500th year of Mahaveer Jayanthi. Such remission in the case of those sentenced to life imprisonment was one month for

each period of one year of sentence,

(3) There is yet another order of general remission and that was in 1976 by the Kerala Government on the completion of a term of six years of the ministry. That was by G.O. (MS) 139/76 Home dt. 14-10-1976. That was in exercise of the powers Under Section 432 of the Cr.P.C. The said order provided that lifers will be granted remission of one month for each completed year of sentence without interruption subject to a minimum of three months. The petitioner would get about three months under this Government Order and not less than two months under the earlier order dt. 14-5-1975- We need not find out what exactly is the period, for, even under the order of 1972 if he gets one year's remission not liable to be forfeited that would be sufficient to bring his case within G.O. (MS) 47.

7. The Kerala Prisons Rules cannot override the provisions of the Constitution. In fact Rule 301 does not purport to infringe upon the power of remission of the State Government or the Central Government. It deals only with forfeiture of remissions earned under 'these Rules' and therefore it is only remissions, ordinary or special, earned under the Kerala Prisons Rules that could be forfeited by order of the Inspector General of Prisons. Such forfeiture would not in any way operate upon the general remissions made by the Governor or the President of India and hence remissions Under Section 432 of the Cr.P.C. would be outside the purview of the power of forfeiture conferred on the Inspector General of Prisons under the Kerala Prisons Rules.

8. If remissions outside the purview of the Kerala Prisons Rules to which the petitioner is entitled are taken note of it would be much more than a year and since the petitioner has a period of 7 years 8 months and 20 days excluding such remissions, on reckoning them too he would be entitled to the benefit of G.O. (MS) 47/81/Home dt. 11-3-1981. Consequently he has to be released. We direct his release forthwith.

9. Perhaps in applying the rule of remission and the scope of Rule 301 in the manner it has been done in this case others who are still in the prisons of the State may be found entitled to release. In view of what we have explained here the matter calls for immediate examination. The case of all those in the Central Prison

who would be entitled to release based on G.O. (MS) 47 dt. 11-3-1981 read in the light of this shall be examined by the Government immediately and a decision taken thereon so as to release those who are qualified for it within one month from today. The matter be reported to this Court immediately after one month for which purpose we post the case to 24-8-1981.

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