

Chella Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Sep-17-1976

Reported in : 1977CriLJ589; 1976(9)WLN605

Judge : Kalyan Dutta, J.

Appellant : Chella

Respondent : The State of Rajasthan

Judgement :

ORDER

Kalyan Dutta, J.

1. This is an application-in-revision filed by Chella alias Chela Ram against an order of the Additional Sessions Judge No. 2, Jodhpur, dated 8th May, 1976, whereby setting off of the period of detention undergone by the petitioner during the investigation, inquiry or trial of each of the three cases against the term of imprisonment imposed on him on conviction in the same case was refused and the reference made by the Superintendent, Central Jail, Jodhpur, on the question of extending benefit under Section 428, Criminal P.C. (new) to each case separately was answered accordingly.

2. The relevant facts giving rise to this revision-petition may be briefly stated as follows:

Chella petitioner was tried by the Additional Sessions Judge, Jodhpur, in three sessions cases Nos. 3 of 1968, 4 of 1968 and 5 of 1968 for offences punishable under Sections 392, 394, 397, 380, I.P.C. The petitioner was convicted by the Additional Sessions Judge No. 2, Jodhpur, in Sessions Case No. 4 of 1968 on 27th November, 1970, under Section 394 read with Section 398, I.P.C and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 500/-, in default of payment of fine to further suffer rigorous imprisonment for four months. Thereafter the Additional Sessions Judge No. 2 convicted the petitioner under Sections 392/397, I.P.C. and 394/ 397, I.P.C. in Sessions Case No. 3 of 1968 on 18-1-1971 and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 500/-, in default of payment of fine to undergo rigorous imprisonment for four months. The learned Additional Sessions Judge, however, ordered, that the sentence of seven years' rigorous imprisonment passed in this Sessions Case (3 of 1968) shall run concurrently with the sentence of imprisonment awarded to him in Sessions Case No. 4 of 1968. In the third Sessions Case (No. 5 of 1968) also the petitioner was convicted under Section 394 read with Section 397, I.P.C. on 30-1-1971 and sentenced to undergo rigorous imprisonment for seven years but the sentence passed in this case was not ordered to run concurrently with the sentence passed against him in the previous two sessions cases, i.e. Nos. 3/1968 and 4/1968. The petitioner filed separate jail appeals in the High Court against his conviction and sentence in each case but his appeals were dismissed by this Court. The period of detention undergone by the petitioner during investigation, inquiry or trial of each case is mentioned in the letter of the Superintendent, Central Jail, Jodhpur, addressed to the Additional Sessions Judge No. 2, Jodhpur, No. Jud./Pratham/2211 dated 5-4-1976. It is as follows:

Sessions Date of Period of Case No. decision detention.
1. 4/1968 27-11-1970. 21-4-67 to 21-3-68. 30-5-68 to 26-11-70.
2. 3/1968 18-1-1971. 5-4-67 to 21-3-68. 30-5-68 to 18-1-71.
3. 5/1968 30-1-1971. 30-5-68 to 30-1-71.
The Superintendent, Central Jail, Jodhpur, vide his referred to above letter had made a reference to the Additional Sessions Judge No. 2, Jodhpur, on the question whether the petitioner was entitled to the benefit of the provisions of Section 428, Criminal P. C (new) in each case in spite of the fact that the period of detention is almost

common to a considerable extent in all the three cases. The Additional Sessions Judge No. 2 applied his mind to the legal question and passed the impugned order, the concluding portion of which is reproduced below in his own words:

Giving him the benefit in three cases would amount to entitling him to undergo shorter term of sentence in at least two cases, which, in my opinion, cannot be permitted. Considering these facts I am of the opinion that where an accused is under detention in more than one case simultaneously and there is a common period of detention, he is entitled to a set off of that common period of detention, only against the sentence of one case and not in each case separately under Section 428, Criminal P.C.

Let the Jailor be intimated accordingly.

The petitioner has now challenged this order of the Additional Sessions Judge No. 2, Jodhpur, before me by way of this revision-petition as stated above.

3. The revision petition was admitted by this Court on 13-7-1976 and a notice of the date, time and place at which the revision-petition shall be heard was given to the Public Prosecutor and to the petitioner through the Superintendent, Central Jail, Jodhpur. The petitioner did not appear before me despite due service. As the question involved in this revision-petition is a legal one of vital importance to the petitioner, I thought it proper in the interest of Justice to make him available the help of the Rajasthan Legal Aid Society. Mr. S.R. Bajwa, whose name appears in the list of Advocates who have offered their services to plead for impecunious accused persons, was permitted to argue the revision-petition on behalf of the petitioner. Mr. M.C. Bhati appeared, on behalf of the State.

4. I have heard the arguments of the learned Counsel and perused the records of the three sessions cases in which the petitioner was convicted and sentenced to imprisonment by the Additional Sessions Judge No. 2, Jodhpur. At the outset I may observe that Section 428, Criminal P.C. is a new provision, which provides for the setting off of the period of detention, if any, undergone by an accused person during investigation, inquiry or trial of the same case in which, upon conviction, he has been sentenced to imprisonment for a term. Their Lordships of the Supreme

Court have held in clear and definite terms in the case of B.P. Andre v. Supdt. Central Jail, Tihar, 1975 Cri LJ 182 : AIR 1975 SC 164, that the accused person who has been convicted and sentenced to a term of imprisonment and is still serving his sentence at the date of coming into force of the new Code of Criminal Procedure, would be entitled to claim set off or adjustment under Section 428 of the Criminal Procedure Code, 1973 of the period of detention, if any, undergone by him during investigation, inquiry or trial of the case and his liability to undergo imprisonment on conviction shall be restricted to the remainder of the term of imprisonment awarded to him. On the basis of the aforesaid decision of the Supreme Court, it may be safely held that the period of detention undergone by the petitioner during investigation, inquiry or trial of each case should be set off against the term of imprisonment imposed on him in that case and his liability should be restricted to the remainder of the term of imprisonment. In this view of the matter, the petitioner is entitled to claim set off or adjustment of the period of detention undergone during the investigation, inquiry or trial of each of the three Cases Nos. 3/1968, 4/ 1968 and 5/1968 irrespective of the fact whether such period of detention is or is not common to a considerable extent in all the three cases. To interpret the provisions of Section 428, new Criminal P.C. in the manner suggested by the Additional Sessions Judge No. 2, Jodhpur, would result in grave injustice to the petitioner.

5. The effect of the clear words used in Section 428, new Criminal P.C. cannot be altered or cut down so as to deprive the prisoner of the benefit of set off arising from their literal construction. This Court has no power to read into Section 428, new Criminal P.C. words which it does not contain. The proper course is to ascertain the correct meaning of the language used in this section uninfluenced by any such consideration as the Additional Sessions Judge had in his mind. Hence in Sessions Case No. 4 of 1968, decided on 27-11-1970, the period of detention undergone by the petitioner during investigation, inquiry or trial of this case from 21-4-1967 to 21-3-1968 and from 80-5-1968 to 26-11-1970 as mentioned in the letter of the Superintendent, Central Jail, Jodhpur, dated 5-4-1976, shall be set off from the term of imprisonment awarded to him in that case On his conviction. Likewise, in Sessions Case No. 3 of 1968, decided on 18-1-1971, the period of detention undergone by the petitioner during the course of investigation, inquiry or

trial of the same case, i.e. from 5-4-1967 to 21-3-1968 and from 30-5-1968 to 18-1-1971 as reported by the Superintendent, Central Jail, Jodhpur, in his referred-to-above letter dated 5-4-1976 shall be set off against the term of imprisonment imposed on him on his conviction. Likewise, in Sessions Case No. 5 of 1968, decided on 30-1-1971, the petitioner's period of detention undergone by him during investigation, inquiry or trial of the same case, i.e. from 30-5-1968 to 30-1-1971 shall be deducted from the term of imprisonment imposed on him upon his conviction in that case. After setting off of the aforesaid period of detention against the term of imprisonment imposed on the petitioner on his conviction in each case, his liability to undergo imprisonment in each case shall be restricted to the remainder, if any of the term of imprisonment imposed on him. As the sentence awarded to the petitioner upon his conviction in Sessions Case No. 3 of 1968 is ordered to run concurrently with his previous sentence awarded to him in Sessions Case No. 4 of 1968, the remainder of his term of imprisonment awarded to him in Sessions Case No. 3 of 1968 shall run concurrently with the remainder of the term of imprisonment awarded to him in Sessions Case No. 4 of 1968. The sentence imposed on the petitioner in Sessions Case No. 5 of 1968 is not ordered to run concurrently with his previous sentences, so the remainder of the term of imprisonment in this case shall commence at the expiration of the remainder of the terms of imprisonment in sessions cases Nos. 3 of 1968 and 4 of 1968, which are running concurrently.

6. Consequently, the order of the Additional Sessions Judge No. 2, Jodhpur, dated 8th May, 1976, is set aside and the revision-petition is disposed of accordingly. The petitioner may be informed of this decision through the jail authorities.

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