

Dinesh Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-23-2006

Reported in : RLW2006(3)Raj1738; 2006(2)WLC699

Judge : Shiv Kumar Sharma and; R.S. Chauhan, JJ.

Acts : Indian Penal Code (IPC) - Sections 304; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 428

Appeal No. : D.B. Criminal Misc. Application No. 263 of 2006

Appellant : Dinesh Kumar

Respondent : State of Rajasthan

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta, Adv.

Disposition : Application allowed

Judgement :

Shiv Kumar Sharma, J.

1. Applicant was the appellant in D.B. Criminal Appeal No. 569/2001 which was partly allowed on July 18, 2005 and the applicant was convicted and sentenced under Section 304 Part I IPC to suffer rigorous imprisonment for a period of 8

years and fine of Rs. 10,000/- in default to further undergo rigorous imprisonment for one year. Now the applicant has prayed to issue direction under Section 428 Cr.P.C. for setting off the period for which he was in detention during investigation and as under trial prisoner.

2. It appears from the record that the applicant remained in police custody from March 19, 1999 till March 20, 1999 and in judicial custody from March 20, 1999 till the date of judgment of the Trial Court i.e. July 24, 2001, but since this period was not incorporated in the warrant of commitment, benefit of set off was not given to him.

3. The reasons behind the enactment of Section 428 Cr.P.C. were the distressing facts noticed by the Joint Select Committee about the accused persons who were kept in prison for very long period as under trial prisoners. The object of enacting Section 428 was to relieve the anguish of prolonged detention of under-trial and to avoid over-crowding in jails. To dispense with slow-motion justice and long-distance investigation and trial proceedings the wholesome provision has been introduced. It simply aims at setting off or crediting the period of pre-conviction detention of the accused of a case towards the sentence ultimately awarded to him after his conviction in that very case. Section 428 provides for the setting off of the period of detention of an offender during investigation, inquiry or trial against the imprisonment awarded to him on his conviction. He will thus be liable to undergo imprisonment only for the remainder period, if any. If after such set off there is no remainder, the accused has to be released forthwith.

4. On a close scrutiny of Section 428, following principles may be deduced:

(i) When the accused is sent to jail, an endorsement should always be made on the warrant of commitment of the accused, specifying the period of pre-conviction detention, if any, which is to be set off against the term of imprisonment imposed on him.

(ii) The period for which the accused had been in jail after conviction before he could be released on bail cannot be given a set-off. This section applies only to a stage before conviction.

- (iii) For the purpose of set-off, imprisonment in default of payment of fine cannot be taken into account and the convict has to undergo that period of imprisonment.
- (iv) The period of detention undergone by the accused after the grant of bail, which could be availed of due to inability to furnish surety or otherwise has to be set off.
- (v) In all cases in which a convict has undergone detention during the investigation, inquiry or trial, the benefit of Section 428 would be available to the convict. Two requisites postulated by Section 428 before the benefit of set off could be derived under it are:
- (a) During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period;
- (b) He should have been sentenced to a term of imprisonment. [State of Maharashtra v. Najakat Ali Mubarak : 2001 CriLJ2588]
- (vi) The accused arrested in two criminal cases is entitled to be given the benefit of set-off in both the cases after conviction.
- (vii) The provisions contained in Section 428 are mandatory in nature. Therefore if a trial judge fails to make the endorsement on the warrant of commitment of the accused, when he is sent to jail, specifying the period of pre-conviction detention, if any, which is to be set-off against the term of imprisonment imposed on him, the Jail Authorities itself shall take necessary steps to comply with the provisions of Section 428 in letter and spirit.
5. In the instant matter the applicant is entitled to the benefit of set-off of the period of detention during investigation inquiry or trial against the imprisonment awarded to him.
6. Consequently, we allow the application and direct that the period of detention undergone by the applicant from March 19, 1999 till March 20, 1999 in police custody and from March 20, 1999 till July 24, 2001 in judicial custody shall be set off against the term of imprisonment imposed on him vide judgment dated July 18, 2005.

