

Shankar Yadav Vs. State

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Court : Rajasthan

Decided On : Apr-29-2005

Reported in : RLW2005(3)Raj1983; 2005(3)WLC425

Judge : V.K. Bali and; Harbans Lal, JJ.

Acts : Parole Rules; Code of Criminal Procedure (CrPC) - Sections 428, 432, 433, 433A and 482; Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 818 of 2004

Appellant : Shankar Yadav

Respondent : State

Advocate for Def. : B.N. Sandu, Public Prosecutor

Advocate for Pet/Ap. : Biri Singh, Adv.

Judgement :

V.K. Bali, J.

1. The matter has come up on an application filed under Section 482 Cr.P.C. by and on behalf of accused- appellant Shanker Yadav for issuing directions to the jail authorities for setting-off the period of his detention in police and judicial custody during investigation, inquiry and trial.

2. On the aforesaid application being moved, this court while disposing of the application directed on 25.2.2005 the Government Advocate to communicate to the authorities for calculating the period of his detention expeditiously, but not later than four weeks.

3. It appears that a letter dated 22.03.2005 was addressed by the Superintendent, Central Jail, Jaipur to the learned Addl. Sessions Judge (Fast Track) No. 1, Alwar seeking directions/guidance as to whether the period spent by the appellant in custody during investigation, inquiry and trial was to be set-off under Section 428 Cr.P.C. or not against the sentences imposed upon him and a copy whereof was endorsed to the Deputy Registrar (Judicial) of this bench with reference to the order of this Court dated 25.2.2005. Learned Addl. Sessions Judge (Fast Track) No. 1, Alwar in his reply to the Superintendent, Central Jail, Jaipur vide letter dated 23.3.2005 informed him that the record having been sent to this Court, it was not possible for him to say in the absence of record as to whether the benefit of set-off under Section 428 Cr.P.C. was to be given to the appellant or not.

4. The appeal in which the instant application in filed was preferred by appellant Shanker Yadav against the judgment and order dated 7.7.2004 passed by the learned Addl. District & Sessions Judge (Fast Track) No. 1, Alwar in Sessions Case No. 102/2001 (102/2000) State v. Shankar Yadav', whereby he has been convicted and sentenced for various offence including the offence under Section 302 IPC. However, the substantive sentences imposed upon him under various counts have been directed to run concurrently.

5. Learned counsel representing accused appellant contends that the Trial Court has inadvertently not passed the order of set-off under Section 428 Cr.P.C., as a result of which the jail authorities are not releasing him on parole, though, he is otherwise entitled to be released on parole under the relevant Parole Rules.

6. Learned Public Prosecutor has also not disputed that the applicant-appellant is entitled to set-off under Section 428 Cr.P.C., the period spent by him in custody during investigation, inquiry and trial.

7. We have perused the record.

8. It is true as contended by the learned counsel of the accused-appellant that the Trial Court has not mentioned in the impugned judgment as to whether the accused-appellant shall be entitled to set-off of under Section 428 Cr.P.C. the period spent by him in custody during investigation, inquiry and trial. This fact is also not mentioned in the warrant of commitment to jail.

9. A perusal of the record reveals that accused-appellant Shanker Yadav was arrested on 17.10.1999 by the police Station Aravali Vihar, Alwar. He remained in police custody up to 21.10.1999. Thereafter, he was sent to judicial custody and continued to be in judicial custody all through till the date of judgment dated 7.7.2004 as he was declined bail. After the judgment and order of conviction and sentence, he was sent to the jail to serve-out the sentences imposed upon him under various counts. However, as mentioned above, the substantive sentences imposed upon him under various counts were directed to run concurrently.

10. The Hon'ble Apex Court, over-ruling the decision in Kartar Singh v. State of Haryana : 1982 CriLJ1772 , has held in Bhagirath v. Delhi Administration : 1985 CriLJ1179 , that the sentence of imprisonment for life is a sentence for a term and the convict is entitled to set-off period of his detention undergone by him as an under trial prisoner, subject to the provisions of Section 433A provided the competent authority passes an order under Section 432 or under Section 433 Cr.P.C. Thus, the benefit of set-off under Section 428 Cr.P.C. is available to applicant-appellant Shanker Yadav like other life convicts.

11. In view of the aforesaid discussion, we direct that the period undergone by accused-appellant Shanker Yadav in custody during investigation, inquiry and trial w.e.f. 17.10.1999 till the date of judgment i.e. 7.7.2004 shall be set-off under Section 428 Cr.P.C. as per law against the sentences imposed upon him.