

(2001) 02 MP CK 0033

In the Madhya Pradesh High Court

Case No : Writ Petition No. 669 of 2000

Bandi Udham Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 432(1), 432(1)

Penal Code, 1860 (IPC) — Section 120

Citation : (2001) CriLJ 3259 : (2001) 2 MPHT 252 : (2001) 2 MPLJ 15

Hon'ble Judges : R.B. Dixit, J; Mr. S.P. Srivastava, J

Bench : Division Bench

Advocate : Shri Subhash Verma, for the Appellant; Shri J.D. Suryavanshi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Heard the learned counsel for the petitioner as well as the learned Government Advocate representing the respondent-State.

Perused the record.

The petitioner has prayed for a direction requiring the respondent to release him from the jail custody complying with the order issued by the State Government dated 10-8-1998, as he satisfied the requisite condition which entitled to the emission of the sentence and his unconditional release.

The record indicates that the petitioner had been convicted under Sections 395/397 and 396, IPC and sentenced to life imprisonment vide the judgment and order dated 31-5-1979 passed by the Sessions Judge and his appeal to this Court was dismissed vide the judgment and order dated 29-4-1980, confirming his conviction and the sentence awarded to him.

It may be noticed that the Stale Government had issued an order on 10-8-1998 exercising its jurisdiction contemplated u/s 432(1) of the Code of Criminal

Procedure, 1973, providing inter alia that the prisoners sentenced to imprisonment for life after 18th December, 1978 who had undergone 14 years of sentence inclusive of under-trial period and completed 20 years of sentence including the remission on 15-8-1998, and have continuously good conduct after admission till the time of release from prison, be released unconditionally.

The grant of the benefit as indicated above provided in Paragraph 1 sub-para (2) of the aforesaid order to which a reference has been made hereinabove was however made subject to the conditions as indicated in Paragraph 2 of the said order. It was provided that the remission as specified in sub-para (2) of Para 1 of the order with which we are concerned in the present case shall not be granted to the offenders convicted under Sections 120B, 224, 304B. Dowry Death, 376, 377, 395 and 498A of the Indian Penal Code, 1860 besides various other categories which had been enumerated in the aforesaid paragraph with which we are not concerned in the present case.

The submission of the learned counsel for the petitioner is that in the present case although the petitioner stands convicted for having committed the offence u/s 395, IPC, yet no period of sentence for the aforesaid offence had been specified.

It may be noticed at this stage that the Sessions Judge while awarding the sentence had observed that it was a case where the deterrent punishment was warranted and since the offence u/s 395 read with Section 397, IPC, stood included in the offence envisaged u/s 396, IPC, without passing an order awarding a sentence separately for the offence envisaged u/s 395 read with Section 397, IPC, the accused was being awarded the sentence of life imprisonment for the offence u/s 396, IPC.

In the aforesaid view of the matter, holding the petitioner to be guilty of the offence envisaged under the aforesaid sections of the Indian Penal Code, he was sentenced to undergo life imprisonment.

In its decision in the case of Laxman Naskar (Life Convict) v. State of W.B. and Anr., 2000 CriLJ 4017, the Apex Court after referring to its earlier decisions had indicated that the "imprisonment for life" ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life. It was further indicated that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence does not entitle the convict to be released automatically before the full life term is served. It was also clarified that though under the relevant rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose.

In its another decision in the case of State of Haryana and Others Vs. Mohinder

Singh, , the Apex Court had clarified that the circular granting remission is authorised under the law. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. The conditions for remission of sentence to the prisoners who are eligible are also prescribed by the circular. Prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued thereunder. That special remission shall not apply to a prisoner convicted of a particular offence can certainly be relevant consideration for the State Government not to exercise the power of remission in that case.

In the aforesaid view of the matter, since the circular issued by the State Government sought to be relied upon by the petitioner in support of his claim regarding unconditional release has itself been made subject to certain conditions to which a reference has been made hereinabove, it cannot be said that the petitioner has an indefeasible right to get his release unconditionally as sought for.

Taking into consideration the implications arising under the judgment and order passed by this Court dismissing the appeal filed by the petitioner upholding the conviction and also confirming the sentence awarded to him by the Sessions Judge, as well as taking into account the nature of the offence involved, the exception provided under the circular dated 10-8-1998, issued by the State Government stands clearly attracted.

In view of what has been indicated hereinabove, the petitioner cannot be held entitled to the unconditional release as sought for especially when the sentence of life imprisonment is permissible not only for the offence envisaged u/s 395, IPC, but also for the offence envisaged u/s 396, IPC, and the further fact that the Sessions Court itself was of the view that in the case of the petitioner a deterrent punishment was warranted.

This writ petition is devoid of merit and is accordingly dismissed.

Writ Petition dismissed.