
(2015) 02 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition No. 3939 of 2004

Bharat

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Constitution of India, 1950 — Article 161, 226, 227, 72
Criminal Procedure Code, 1973 (CrPC) — Section 433-A
Penal Code, 1860 (IPC) — Section 147, 149, 302

Citation : (2015) CriLJ 1601 : (2015) 2 RCR(Criminal) 1051

Hon'ble Judges : Prashant Kumar Mishra, J.

Bench : Single Bench

Advocate : Vimlesh Bajpai, for the Appellant; Arun Sao, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—In this petition under Article 226/227 of the Constitution of India, the petitioner has assailed the legality and validity of the orders Annexure-P/11 and P/12 whereby the Hon"ble Governor of Chhattisgarh has pardoned respondents 5 and 6 in exercise of powers under Article 161 of the Constitution of India and has directed their release from jail.

2. Facts of the case, briefly stated, are that respondents 5 and 6 along with several other accused persons were tried for committing offences under Sections 147 and 302 read with Section 149 of the IPC for committing murder of deceased Hanua at 8.30 am on 11th July, 1975. The trial Court acquitted Arjun, Bhikham, Nanku and Parethan. Respondents 5 and 6 along with some other accused persons were convicted by the trial Court and the said conviction was affirmed by the High Court. The Supreme Court, by judgment dated 5.10.1990 in Cr.A. No. 168/79, allowed the appeal and set aside the conviction and sentence of all other accused except respondents 5 and 6, Baran and Karan. Thus, out of 19 accused persons only 4 stood convicted. When respondents 5 and 6 were

undergoing the jail sentence, an application for pardon was moved before the Hon"ble Governor and the same has been allowed by the impugned order.

3. The petitioner happens to be the son of the deceased. It is argued on his behalf that the sentence of life imprisonment would mean that the convict shall remain in jail for his entire life, therefore, his release by granting remission or pardon is contrary to the settled legal position. Learned counsel would refer to the provisions contained in Section 433-A of the Cr.P.C. and the law laid down by the Supreme Court in Maru Ram and Others Vs. Union of India (UOI) and Others, , Kehar Singh and Another Vs. Union of India (UOI) and Another, , Swaran Singh Vs. State of U.P. and Others, .

4. Per contra, learned State counsel would submit that Hon"ble Governor has exercised the power of pardon under Article 161 of the Constitution and it is not a case of remission of sentence, therefore, Section 433-A of the Cr.P.C. has no application in the case. He would refer to the judgments of the Supreme Court in State of Punjab and others Vs. Joginder Singh and others, and Remdeo Chauhan @ Rajnath Chauhan Vs. Bani Kant Das and Others, .

5. The petitioner has referred to the provisions contained in Section 433-A of the Cr.P.C. to argue that a person convicted for life cannot be released from jail without serving at-least 14 years of imprisonment. Therefore, the impugned orders are illegal.

6. Perusal of the impugned orders would indicate that the same are based on the order passed by the Hon"ble Governor on 17.7.2004 (in Annexure-P/11) and 26.6.2004 (in Annexure-P/12) by the Hon"ble Governor under Article 161 of the Constitution.

7. The power of clemency or pardon conferred on the Hon"ble Governor under Article 161 of the Constitution is a plenary power and is not circumscribed by any fetter imposed under the Code of Criminal Procedure. It overrides Section 433-A of the Cr.P.C., as is settled by the Supreme Court in Maru Ram (supra).

8. Though not argued that the impugned orders do not satisfy the requirement for exercise of powers under Article 161 of the Constitution and the said exercise is perverse, this Court proceeded to peruse the original record wherein clemency has been granted, the same having been supplied to the Court by learned State counsel.

9. A perusal of the record would indicate that an application for commuting the sentence was earlier moved in the year 2002 which was considered and rejected by the State Government. In May, 2004, an application was directly sent to the Hon"ble Governor, on which a report was summoned from the concerned department. On this occasion, the department recommended for pardon which was also approved by the Hon"ble Chief Minister. Report of the jail authorities is also available on record wherein on account of their good conduct and age, their applications for pardon were recommended for acceptance.

10. In *Ram Deo Chauhan alias Raj Nath Chauhan (Supra)*, the Supreme Court considered the extent of judicial review in respect of exercise of power by the Hon'ble Governor under Article 161 of the Constitution and held in paras-65 to 69 thus:--

"65. However, on the extent of judicial review in respect of exercise of power by the Governor under Article 161, or by the President under Article 72, there are authoritative pronouncements by this Court and the matter is no longer *res integra*.

66. In *G. Krishta Goud and J. Bhoomaiah Vs. State of Andhra Pradesh and Others*, this Court while construing the extent of judicial review in connection with exercise of clemency power by the President or the Governor respectively under Articles 72 and 161 held that even though the power granted to the highest executive authority is not totally immune from judicial review, but the Court makes an almost extreme presumption in favour of bona fide exercise of such power (SCC para 8). However, in SCC para 9 the Court sounded a note of caution that where the exercise of power is just by way of a rule of thumb and totally arbitrarily or out of personal vendetta, the Court is not helpless (see SCC para 9).

67. This question again came up for detailed consideration before the Constitution Bench in *Maru Ram and Others Vs. Union of India (UOI) and Others*, . In SCC para 72 at p.153 of the Report, this Court was summarising its conclusions and in sub-para 9 it was held that only in rare cases the Court would examine the exercise of power by the appropriate authority. Subsequently, in *Kehar Singh and Another Vs. Union of India (UOI) and Another*, , again by a Constitution Bench of this Court, the extent of exercise of this power of clemency was considered.

68. In SCC para 13 of *Kehar Singh case (supra)*, Pathak, C.J., speaking for the Constitution Bench, held:

"13....Nor do we dispute that the power to pardon belongs exclusively to the President and the Governor under the Constitution. There is also no question involved in this case of asking for the reasons for the President's Order. And none of the cases cited for the respondents beginning with *Mohinder Singh Vs. State of Punjab*, advance the case of the respondent any further." It also appears from para 11 of *Kehar Singh (supra)* that it relies on the formulations of principles in *Maru Ram (Supra)*. SCC paras 7 and 15 of *Kehar Singh (supra)* would also show that *Maru Ram* ratio was followed in *Kehar Singh (supra)*.

69. In view of such consistent view of the two Constitution Benches of this Court clearly stating that unless the exercise of power by the Governor under Article 161, is *ex facie* perverse or is based on a rule of thumb, the Court should not interfere for mere non-disclosure of reason, the finding to the contrary in the judgment under review, by relying on a two-Judge Bench decision in *Epuru Case Epuru Sudhakar and Another Vs. Govt. of A.P. and Others*, is vitiated by errors

apparent on the face of the record. Even in SCC para 37 in *Epuru* (supra), the observation of *Kehar Singh* (supra), underlined hereinabove was noted."

11. In the case at hand, the record would indicate that an application for clemency/pardon was processed in the department and report was called from the jail authorities. Based on the report, their cases were recommended by the department as also by the Hon''ble Chief Minister and thereafter Hon''ble Governor exercised the power under Article 161 of the Constitution. No material has been placed before this Court as to how exercise of power is vitiated on account of being malafide, perverse or in excess of power conferred under Article 161. There is absolutely no pleading or material even to allege that what kind of political influence was exerted by respondents 5 and 6 or their relatives to secure their release. Therefore, it is not a case where power has been exercised in an arbitrary or unreasonable manner. Since there exists presumption in favour of bona fide exercise of power under Article 161 of the Constitution, as observed by the Supreme Court in *G. Krishta Goud* (supra) and reiterated in *Ram Deo Chauhan alias Raj Nath Chauhan* (Supra) and in the absence of any material to rebut the said presumption or to compel this Court to take view that exercise of power is vitiated for any good or sound reason, this Court does not find any infirmity in the impugned orders.

12. The writ petition being bereft of any substance deserves to be and is hereby dismissed.