

(2024) 01 CHH CK 0024
In the Chhattisgarh High Court
Case No : Writ Petition (CR) No. 513 of 2023

Biseshar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 04-01-2024

Acts Referred:

Negotiable Instrument Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 432, 432(1), 432(2), 433A

Citation : (2024) 01 CHH CK 0024

Hon'ble Judges : Ramesh Sinha, CJ; Ravindra Kumar Agrawal, J

Bench : Division Bench

Advocate : Virendra Verma, Avinash K. Mishra

Final Decision : Disposed Of

Judgement

1. Heard Mr. Virendra Verma, learned counsel for the petitioner and Mr. Avinash K. Mishra, learned Government Advocate, appearing for the State/respondents.

2. Since the date of order which is impugned in this petition has not been mentioned in the relief clause, Mr. Virendra Verma, learned counsel for the petitioner is directed to make necessary amendment in the relief clause during course of the day.

3. The present writ petition has been filed by the petitioner with the following prayers:

"I. That, the respondents may be directed to reconsider the case of the petitioner for the grant of remission within a stipulated period.

ii. That, the order dated 12.05.2023 (ANNEXURE P/1) passed by the learned Respondent state and the opinion dated 28.01.2023 ANNEXURE P/2

passed by the learned court below be quashed and they may kindly be directed to reconsider the case of the petitioner in accordance with law and as per the guidelines in the matter of "Writ Petition (PIL) No. 78/2017" and "Union of India

Vs V. Sriharan and others”

iii. That, the petition be allowed and the Respondents be directed to consider the application made by the petitioner for the grant of remission and the petitioner may be released from jail.

iv. That, any other relief which deems to be fit for the petitioner by the Hon’ble Court in the interest of justice.”

4. The petitioner's application for remission under Section 432(2) of the CrPC has been rejected by order dated 12.05.2023 passed by the respondent No.1 (Annexure P/1).

5. Mr. Virendra Verma, learned counsel for the petitioner, submits that petitioner's application has been rejected without applying judicial mind and without considering the decision rendered by the Supreme Court in the matter of Ram Chander v. State of Chhattisgarh AIR 2022 SC 2017 and Laxman Naskar v. Union of India (2000) 2 SCC 595 and only on the basis of opinion given by the Sessions Judge the petitioner's application has been rejected, as such, the order passed by respondent No.1 be quashed and respondent No.1 may be directed to consider the petitioner's application afresh.

6. Learned State counsel submits that the petitioner's application for remission has rightly been rejected by the State Government strictly in accordance with law.

7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and perused the records with utmost circumspection.

8. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 432 of CrPC which states as under :

“432. Power to suspend or remit sentences. - (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) to (7) XXX XXX”

9. The power to consider remission under Section 432(1) of the CrPC has been conferred to the appropriate Government to consider and suspend the execution

of his sentence or to remit the whole or any part of the punishment to which the accused person has been sentenced i.e. the petitioner in this case.

10. It is well settled that Section 432 of the CrPC has application only in two situations firstly, where a convict is to be given "additional" remission or remission for a period over and above the period that he is entitled to or he is awarded under the Jail Manual, and secondly, where a convict is sentenced to life imprisonment, which is for an indefinite period, subject to procedural and substantive checks. (See: *Sangeet v. State of Haryana* AIR 2013 SC 447)

11. It is also settled that a convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the CrPC which in turn is subject to the procedural checks mentioned in the said provision and further substantive check in Section 433A of the CrPC. (See : *Mohinder Singh v. State of Punjab* 2013 Cri.LJ 1559)

12. The Supreme Court in the matter of *Ram Chander* (supra) has considered its earlier decisions including the Constitution Bench decision rendered in the matter of *Union of India v. Sriharan* (2016) 7 SCC 1 as well as in *Laxman Naskar* (supra) and has held as under :-

"20. In *Sriharan* (supra), the court observed that the opinion of the presiding judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the presiding judge would enable the government to take the 'right' decision as to whether or not the sentence should be remitted. Hence, it cannot be said that the opinion of the presiding judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432(2) of the CrPC would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission. It is possible then that the procedure under Section 432(2) would become a mere formality.

21. However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. If the opinion of the presiding judge does not comply with the requirements of Section 432(2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in *Laxman Naskar v. Union of India* (supra), the government may request the presiding judge to consider the matter afresh.

22. In the present case, there is nothing to indicate that the presiding judge took into account the factors which have been laid down in *Laxman Naskar v. Union of India* (supra). These factors include assessing (i) whether the offence affects the society at large; (ii) the probability of the crime being repeated; (iii) the potential of the convict to commit crimes in future; (iv) if any fruitful purpose is being served by keeping the convict in prison; and (v) the socio-economic condition of

the convict's family. In *Laxman Naskar v. State of West Bengal* (supra) and *State of Haryana v. Jagdish* (2010) 4 SCC 216, this Court has reiterated that these factors will be considered while deciding the application of a convict for premature release.

23. In his opinion dated 21 July 2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432(2) of the CrPC which require that the presiding Judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the concerned authority has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration :

"[005.066] Adequacy of reasons Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgement as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one.

Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor."

24. Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432(2) of the CrPC. Further, it will not serve the purpose for which the exercise under Section 432(2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors.

25. In view of the above discussion, we hold that the petitioner's application for remission should be re-considered. We direct the Special Judge, Durg to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission as laid down in *Laxman Naskar v. Union of India* (supra). The Special Judge, Durg must provide his opinion within a month of the date of the receipt of this order. We further direct the State of Chhattisgarh to take a final decision on the petitioner's application for remission afresh within a month of receiving the opinion of the Special Judge, Durg."

13. Reverting to the facts of the present case in the light of the principle of law

laid down by their Lordship of the Supreme Court, it appears that only relying upon the recommendation / opinion given by the trial Court petitioner's application has been rejected and it has not been considered on merits, which is in the teeth of the decision rendered by the Supreme Court in the matter of Ram Chander (supra). Accordingly, the order passed by respondent No.1 dated 12.05.2023 is hereby set aside and matter is remitted to the State Government to decide the petitioner's application for remission afresh. The State Government will call for the opinion of learned Sessions Judge afresh, who will provide his opinion on the petitioner's application within one month from the date of requisition as per Laxman Naskar (supra) and thereafter, the State Government will decide petitioner's application within two month from the date of receipt of opinion from learned Sessions Judge. As such, the State Government will decide petitioner's application in accordance with law within three months from the date of receipt of a copy of this order.

14. With the aforesaid directions, the instant writ petition stands disposed off. No order as to cost(s).