

(2016) 03 SC CK 0063

In the Supreme Court Of India

Case No : Civil Appeal No(S). 2980 of 2016(@ SLP(C) No. 15854 of 2011)

G. Balachandran

APPELLANT

Vs

C.S. Ramachandran Nair & Ors.

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432

Citation : (2016) 3 KHC 465 : (2016) 3 Scale 623

Hon'ble Judges : V. Gopala Gowda;Arun Mishra, JJ.

Bench : Division Bench

Advocate : Dr. S.Gopakumaran Nair, Sr. Adv. T.G. Narayanan Nair, K.N. Madhusoodhanan, Rajiv Nanda, Kumar Parimal, B. Vbalram Das, Arvind Kumar Sharma and Jogya Scaria, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.
2. Heard learned senior counsel/learned counsel for the parties.
3. This appeal is directed against the judgment and order dated 26.11.2010 passed by the Division Bench of the High Court of Kerala at Ernakulam in Writ Appeal Nos. 1582 of 2010, 1905 and 1733 of 2010 filed by the convictees and the State, challenging the correctness of G.O.(Rt.) No.04/2205/Home dated 01.01.2005, passed by the State Government-respondent no. 4, granting remission of sentence to respondent nos. 2 and 3, in exercise of its power under Section 432 of the Code of Criminal Procedure (for short "CrPC"), without following due procedure on the representation filed by them and surrendering to the jurisdictional jail for undergoing the punishment of sentence imposed upon them for the offence committed by them and convicted for the same. Aggrieved of the said judgment and order, instant appeal is filed by the complainant-appellant urging that contesting respondent nos. 1 to 3, while serving as Circle Inspector of Police, Head Constable and Sub-Inspector of Police respectively in a

police station summoned the appellant herein along with his wife to the police station, on the basis of a complaint filed by some of their relatives and manhandled them, for which cases were registered under Section 323, 324, 341 and 379 read with Section 34 of the Indian Penal Code, which ultimately led to conviction of respondent nos. 1 to 3. However, respondents, instead of surrendering to serve the sentence imposed upon them for the proved offences, filed separate representations before the State Government seeking remission of their sentence under Section 432 of CrPC. The State of Kerala-respondent no. 4 issued GO (Rt.) No.04/2005/Home dated 01.01.2005 granting remission of the sentence imposed on respondent nos. 2 and 3 under Section 432 of CrPC, which was challenged by the appellant by filing Writ Petition (C) No.9401 of 2007. Respondent no. 1 has also filed Writ Petition (C) No.13760/2007 seeking a direction for not executing the sentence imposed on him pending his application for remission before the State Government, which was dismissed by the High Court holding that no such direction could be issued by it as in view of the proviso to Section 432(5) of CrPC the application of respondent no. 1 could not have been entertained unless the applicant was in jail and consequently, the State Government has dismissed the application seeking remission, filed by respondent no. 1. Respondent no. 1 filed another application before the State Government under Section 433 of CrPC for commutation of his sentence and also filed W.P.(C) No.27098 of 2007 before the High Court for issuing a direction to the State Government to consider his application for commutation of sentence. Learned Single Judge of the High Court has allowed W.P.(C) No.9401 of 2007 setting aside GO (Rt.) No.04/2005/Home dated 01.01.2005, Annexure P/1, holding that the same is unsustainable either under Article 161 of the Constitution or under Section 432 of CrPC as it was passed at the level of the Governor without the aid and advice of the Council of Ministers. Consequently, W.P.(C) No.27098 of 2007 was also dismissed. Thereagainst, Writ Appeal Nos. 1582, 1905 and 1733 of 2010 have been filed before the Division Bench of the High Court. Out of the three writ appeals, two were filed by convictees and one by the State. The Division Bench of the High Court has allowed Writ Appeal Nos.1582 and 1905 of 2010 by setting aside the judgment of the learned Single Judge and Writ Appeal No. 1733 of 2010 was disposed of with direction to the Government to pass orders on the representation, Annexure A-2, filed under Section 432 of CrPC.

4. The incident pertains to the year 1998 and in course of time, respondent no. 1 got promotions and became Superintendent of Police, respondent no. 2 has become Head Constable and respondent no. 3 got promotion to the post of Sub-Inspector of Police and all of them have retired from service.

5. In our considered view, the learned Single Judge has rightly held that there is procedural illegality in granting remission in exercise of power under Section 432 of CrPC without surrendering to jail authorities to undergo imprisonment. Learned Single Judge further held that the State Government has, without taking opinion of the presiding officer of the court who has convicted the respondent

nos. 1 to 3, remitted the sentence upon them in terms of sub-section (2) of Section 432 of CrPC before deciding the representation. The file was forwarded to the Governor for decision under Article 161 of CrPC only by the Chief Minister and not by the Council of Ministers in terms of Article 161 of the Constitution and therefore, the order of remission passed by the State Government is vitiated in law. The correctness of the said order was questioned before the Division Bench of the High Court on various legal grounds. The Division Bench, after extracting the provisions contained under Section 432 of CrPC and Article 161 of the Constitution, has interpreted Section 432 of CrPC, holding that the State Government has got the statutory power for remission/suspension of sentence at any time, before surrendering to undergo sentence.

6. We have perused the impugned judgment and order and reasons assigned by the Division Bench. The same is contrary to sub-sections (2), (4) and (5) of Section 432 of CrPC, which are extracted hereunder for better appreciation of rival legal contentions:

"(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) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the

person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and,-

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or (b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means,-

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

7. The legal contention urged is that the interpretation sought to be given to Section 432(1) of CrPC is that before surrendering, the order of remission can be passed by the Government in exercise of its power under Section 432 of CrPC. The said contention is not tenable in law for the reason that Section 432 of CrPC enables the State Government to suspend or grant of remission for sentence. In the instant case what is done is that for grant of such a relief, the procedure contemplated under sub-section (4) of Section 432 of CrPC is required to be followed by the State Government. Here, respondent nos. 1 to 3 have not surrendered to the trial court to undergo the sentence, therefore, exercise of power under sub-section (1) of Section 432 of CrPC by the State Government, which is held to be invalid by the learned Single Judge by recording valid reasons, the said order has been erroneously set aside by the Division Bench of the High Court, which requires interference by this Court.

8. Further, the learned Single Judge has rightly held that under Rules 34(1)(i) and 34(2)(i) of the Rules of Business of the Government of Kerala, proposes for the grant of pardons, reprieves, respites or remissions of punishment or the suspension, remission or commutation of a sentence in pursuance of Article 161 of the Constitution or under Section 432 and 433 of CrPC, the representation/application has to be submitted to the Chief Minister, who in turn submit the same to the Governor before issue of orders. The procedure in the Rules of Business providing for circulating the file to the Governor without the aid and advice of the Council of Ministers is unconstitutional. Therefore, we are of the considered view that the learned Single Judge has rightly quashed the GO (Rt.) No.04/2005/Home dated 01.01.2005, which was passed at the level of the Governor without the aid and advice of the Council of Ministers. In this view of

the matter, we accept the case of the appellant and set aside the impugned judgment and order insofar as affirming the grant of remission by the State Government. Insofar as allowing the writ petition of one of the convictees and allowing the writ appeal giving direction to the State Government-respondent no. 4 to consider the representation is partly correct. The said representation shall be considered after respondent nos. 1 to 3 surrender to undergo the imprisonment imposed upon them.

9. For the reasons stated supra, the impugned judgment and order is set aside, the State Government is directed to consider the representation of respondent nos. 1 to 3 subject to the condition that they shall surrender to undergo the sentence imposed and then only their representation shall be considered and disposed of expeditiously within a reasonable time before the period of sentence imposed shall expire.

10. With the aforesaid observations and direction, the appeal is allowed.

11. Pending application(s), if any, stand(s) disposed of.