
(2008) 09 CAL CK 0091
In the Calcutta High Court
Case No : C.R.R. No. 3140 of 2008

Govind Prasad Verma (In Jail)

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 411

Citation : (2008) 09 CAL CK 0091

Hon'ble Judges : Tapan Mukherjee, J

Bench : Single Bench

Advocate : Jayanta Narayan Chatterjee, Ms. Paramita Mukhopadhyay and Mr. S. Sengupta, for the Appellant; Alope Roychowdhury for State, for the Respondent

Final Decision : Allowed

Judgement

Tapan Mukherjee, J.—Heard the learned lawyers for the respective parties.

2. It has been contended by the learned lawyer for the petitioner that the convict-petitioner was convicted for the offence u/s 411 of the Indian Penal Code on acceptance of plea of guilt made by the accused and he was sentenced to suffer imprisonment for a term of three years. He was detained in custody in connection with the said case being G.R. Case No. 3278 of 1996 u/s 411 of the Indian Penal Code but the detention period was not taken into account and there was no order for setting off the period of detention in terms of section 428 of the Code of Criminal Procedure. Afterwards, a petition was filed by the convict on 29.7.2008 for release of the convict after setting off the period of detention undergone by him in view of the provision u/s 428 of the Code of Criminal Procedure. The learned Magistrate by the impugned order passed on 02.8.2008 rejected that prayer.

3. Being aggrieved with the said order, the convict has moved the revisional application before this Court.

4. The learned counsel, for the State, submits that the convict-petitioner was entitled to order of setting off the period of retention against the term of detention imposed upon him u/s 428 of the Code of Criminal Procedure and he was entitled to be released by the learned Magistrate and the learned Magistrate should have passed such order.

5. I have considered the submissions made by the learned lawyers for the respective parties. It appears that the accused pleaded guilty and his plea was accepted and he was convicted u/s 411 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a term of three years. It further appears that in course of the investigation, inquiry and trial of that case, the convict was detained in custody.

6. In view of the clear provision of section 428, of the Code of Criminal Procedure, the convict was entitled to order of setting off the period of detention against the term of imprisonment imposed upon him. It was incumbent on the part of the learned Magistrate to pass such order on the date of conviction and imposition of sentence but the learned Magistrate did not pass such order and subsequently he rejected the application u/s 428 of the Code of Criminal Procedure.

7. The period of detention undergone by the petitioner during investigation, enquiry and trial of the case being No. G.R. 3278 of 1996 u/s 411 of the Indian Penal Code be set off against the term of imprisonment imposed upon the petitioner sentencing him to suffer imprisonment for a term of three years in view of provision u/s 428 of the Code of Criminal Procedure.

8. On receipt of a copy of this order, the learned Magistrate is directed to send a copy of this order to the Superintendent, Alipore Central Correctional Home, for information and necessary action.

The Superintendent, Alipore Central Correction Home, is also directed to take necessary action in the matter.

With this observation, the instant C.R.R. stands disposed of.

Urgent Xerox certified copy of this order, if applied for by the petitioner, be given by the criminal section at once.

Revisional application allowed.