

(2009) 04 DEL CK 0450

In the Delhi High Court

Case No : Criminal Revision Petition 468 of 2008 and Criminal MAs. 1275 and 9937/08 and 2392/09

Harinderjit Singh Walia

APPELLANT

Vs

Registrar General, Delhi High Court

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 340, 401, 428, 482
Penal Code, 1860 (IPC) — Section 120B, 165, 166, 193, 406

Citation : (2009) 7 ILR Delhi 178

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : D.K. Garg, for the Appellant; Rajiv Bansal, Pawan K. Behl, APP, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This petition u/s 401 of the Code of Criminal Procedure 1973 ("CrPC") is directed against the judgment dated 26th July 2008 passed by the learned Additional Sessions Judge ("ASJ"), Patiala House Courts, New Delhi in Criminal Appeal No. 2/2007 filed by the Petitioner.

2. The Petitioner was named as accused in FIR No. 479 of 1993 registered at Police Station Sriniwas Puri under Sections 406/420/468/471/120B IPC. The said FIR was registered on the complaint made by M/s. R.M.B. Associates Limited, New Delhi. Consequent upon the investigations that ensued the Crime Branch of the police filed a charge sheet against the Petitioner and other accused persons on 3rd September 1994.

3. The Petitioner filed Criminal Misc. (Main) No. 912 of 1997 in this Court u/s 482 CrPC seeking the quashing of the charge sheet in FIR No. 479 of 1993. In the said petition the Petitioner was granted interim protection against his arrest by this Court and this continued till 2nd November 1999 when the petition was dismissed and the Petitioner was asked to surrender before the trial court and

apply for regular bail. On 12th November 1999 the Petitioner sought exemption from personal appearance which was granted by the learned MM and the Petitioner was asked to appear on 3rd December 1999. It is stated that on 3rd December 1999 the learned MM enquired as to whether the Petitioner had been earlier on bail. The proceedings that transpired before the learned MM read as under:

03.12.1999 Present: APP with R.N. Mittal, Advocate for the complainant.

Accused No. 1 in person. He states that he is on bail under order passed by Sh. O.P. Gupta, Ld. MM vide order dated 27.3.1997 Ahlmad to report on 3.00 pm.

Ahlmad report

Sir,

There is no bail order passed by Ld. MM on 27.3.1997 and no bail bond accepted till date of Accused No. 1.

Sd/-

(Ahlmad)

3.12.1999

3.12.1999 (3.25 PM)

Present Ld. APP for the State with R.N. Mittal, Advocate for the complainant. In the morning accused No. 1 Harjinderjit Singh appeared in person stating that he is on bail in this case, Bail order was passed by Sh. O.P. Gupta, Ld. MM, the report of Ahlmad indicates that no bail order was ever passed by Sh. O.P. Gupta with regard to accused No. 1 nor bail bonds were ever accepted. Accused was supposed to be present in Court at 3.00 pm. Case recalled. It is now 3.25 pm. Accused Harjinderjit Singh is not present in the Court. He left the Court without intimation. Issue NBW against the accused No. 1 Harjinderjit Singh.

It is stated by Ld. APP that two more accused namely Harjit Kaur and Sweetie Walia also absent today. Issue NBW against them also for 6.1.2000. The exemption application moved on behalf of Mrs. Harjeet Kaur and Sweetie is rejected vide separate order.

Sd/-

(KS. Mohi), MM

3rd December 1999

4. Aggrieved by the issuance of the NBW, the Petitioner filed CrI Misc (M) No. 3837 of 1999 in this Court. In the said petition the Petitioner again claimed to have been granted bail by the learned MM on 27th March 1997. In the circumstances the following order was passed by this Court in the said petition on 16th December 1999:

16.12.1999

Present: Mr. K.K. Sud, Sr. Advocate with Mr. Pradeep Balgopal for the petitioners.

Crl M (M) No. 3837/1999

Issue notice to the respondent/State, returnable on 3rd February 2000.

Crl M C 11101/1999

Issue notice to the respondent, returnable on 3rd February 2000. In the meanwhile, the execution of the non-bailable warrants issued against the Petitioners in the criminal proceedings arising out of FIR No. 479/93 registered at Police Station Srinivaspuri, New Delhi is stayed subject to the condition that the petitioners will appear in person before the trial court on 6th January 2000.

Let copy of this order be given dasti.

Crl M No. 11102/99

Allowed. Certified copies of the documents be filed as soon as they are available.

5. On 28th April 2000 the complainants filed an application being Crl Misc. No. 1732 of 2000 in the aforementioned petition Crl Misc (Main) No. 3837 of 1999 pointing out that the Petitioner should be held guilty of the offences under Sections 193, 465, 466, 471 and 120B IPC for making not only numerous false statements in the earlier petition before this Court but tampering with the judicial records as well. On 3rd December 2003 this Court passed an order directing the Registrar General to conduct a preliminary inquiry to the allegations.

6. The report dated 26th April 2004 the Registrar General held that prima facie there was a tampering and replacing of two pages in the petition Crl Misc (Main) No. 912 of 2007 and that this had been done only after the Respondent had filed the said petition on 20th May 1997. Further it was plain that the averments made by the Petitioner in the replaced pages were contrary to the record in the sense that the Petitioner stated that he was granted regular bail in terms of an order dated 21st April 1997 passed by the learned MM when in fact he was not. It was plain from the order dated 6th December 2001 passed by this Court in Crl Misc (Main) No. 3827 of 1999 that the Petitioner was never released on bail by the trial court. On 7th December 2004, after a perusal of the said report, this Court directed the Registrar General to file a complaint against the Petitioner before the learned Additional Chief Metropolitan Magistrate ("ACMM") for the offences under Sections 193/465/466/471 IPC and any other offence that may be made out.

7. Consequent upon the aforementioned complaint, the learned ACMM by an order dated 13th December 2006 found the Petitioner guilty of the aforementioned offences and awarded the following sentence:

Rigorous imprisonment for a period of 5 years with fine for a sum of Rs. 3,000/- for the offence u/s 193 IPC., in default of payment of fine the convict shall

undergo simple imprisonment for a period of one month. Further I punish the convict rigorous imprisonment for a term of 2 years for the offence u/s 165 IPC with fine for a sum of Rs. 3,000/- in default of payment of fine the convict shall undergo simple imprisonment for a period of one month. I further sentence him rigorous imprisonment for a period of 5 years for the offence u/s 166 IPC with fine for a sum of Rs. 3,000/- in default of payment of fine the convict shall undergo simple imprisonment for a period of one month. The convict is further punished to rigorous imprisonment for a period of 5 years for the offence u/s 471 IPC. All the punishments shall run concurrently and benefit of Section 428 CrPC is being given to the convict for the period already undergone by him.

8. Aggrieved by the aforementioned order dated 13th December 2006 the Petitioner filed Criminal Appeal No. 2 of 2007 in the court of the learned ASJ. By the impugned judgment dated 26th July 2008 while maintaining the conviction of the Petitioner, it was directed that the order of the learned MM regarding the benefit of concurrent running of sentences of imprisonment and the benefit of set-off of period of detention of the Petitioner during the trial of the case was also confirmed. It was further held that "the appellant in addition shall also be entitled to the set-off of the period of detention u/s 428 CrPC from 27th January 2004 to 26th February 2004 during which period he appeared from custody in the enquiry proceedings before Registrar General." This was the only modification made by the learned ASJ to the order passed by the learned MM.

9. Mr. D.K. Garg, learned Counsel appearing for the Petitioner confined his arguments to the question of set-off of the sentence u/s 428 CrPC. According to him, the trial against the Petitioner in FIR No. 479 of 1993 is pending. An application was filed in the said proceedings on behalf of the Petitioner on 9th April 2001 seeking exemption from his personal appearance on the alleged ground that he was dead on the said date. The statement of mother of the Petitioner was recorded on 9th April 2001. On 18th April 2001 a certificate stating that the Petitioner had expired was submitted to the court of the learned MM thereupon the learned MM directed the Investigating Officer ("IO") to verify the facts. On 19th May 2001 the IO reported that the death as reported was doubtful and that in his investigations he would not find anyone by name of H.S. Walia to have been cremated in Ankleshwar, Gujrat or nearby. The concerned MM thus directed the Deputy Commissioner of Police ("DCP") to investigate the matter in terms of Section 156(3) CrPC. It is stated that on 21st July 2008 in connection with the above case the Petitioner was arrested in Jaipur and then remanded at Delhi on 1st April 2008 when he was sent to judicial custody. Thus the third case was registered as an FIR and the trial in the said case is also stated to be pending.

10. Mr. Garg submitted that u/s 428 CrPC the Petitioner should be given the benefit of period of detention already undergone by him since 21st July 2001. If the benefit is so given in terms of Section 428 CrPC, the Petitioner should be held to have completed the entire sentence period. Consequent upon the order dated

28th November 2006 passed by the learned MM and modified by the impugned judgment dated 26th July 2008 passed by the learned ASJ, he seeks to rely upon the judgment of the Supreme Court in State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali, .

11. Mr. Rajiv Bansal, learned Counsel appearing for Respondent No. 1 opposes this request by relying upon certain passages in the said decision in Najakat Alia Mubarkar Ali. It is submitted that the benefit of Section 428 would not be available to the Petitioner since he did not undergo the detention since 21st July 2001 in the same case which, according to him, is the very case in which he has been convicted and sentenced. According to him, the period of detention as far as the present case is concerned can only be reckoned from the date of order of the learned MM.

12. This Court finds merits in the contention of learned Counsel for the Petitioner. The law in respect of the set-off of the period already undergone by the person in one case has been explained very clearly in Najakat Alia Mubarkar Ali where in paras 15 to 21 (SCC p. 391-92):

15. The purpose is therefore clear that the convicted person is given the right to reckon the period of his sentence of imprisonment from the date he was in jail as an under-trial prisoner. In other words, the period of his being in jail as an under-trial prisoner would be added as a part of the period of imprisonment to which he is sentenced. We may now decipher the two requisites postulated in Section 428 of the Code.

(1) During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.

(2) He should have been sentenced to a term of imprisonment in that case.

16. If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, inquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words "if any" in the Section amplifies that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. In other words, if the convict was in prison, for whatever reason, during the stages of investigation, inquiry or trial of a particular case and was later convicted and sentenced to any term of imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him.

17. In the above context it is apposite to point out that very often it happens when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such

sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other count as well.

18. Reading Section 428 of the Code in the above perspective, the words "of the same case" are not to be understood as suggesting that the set off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words "of the same case" were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words.

19. Various High Courts have expressed on this question. A Division Bench of Delhi High Court has dissented from a contrary view taken by a Single Judge of that High Court and held in *K.C. Dass and N.K. Chatterjee Vs. State*, that the statute does not make any distinction between the first case and the second case for application of Section 428 of the Code. A Division Bench of the High Court of Gauhati in *Lalrinfela v. State of Mizoram* and Ors. 1982 Criminal Law Journal 1793 has adopted the same view. *Lahiri and Hansaria, JJ*, said in the said decision that "if the accused is simultaneously arrested and detained in two or more cases and on conviction obtains set off for the period of his detention in the first case he is not ineligible to obtain set off for the period in the subsequent cases, in each case the court is to count the number of days the accused was in such detention separately and the liability to undergo imprisonment on conviction should be restricted to the remainder of the terms of the imprisonment imposed on him in that case."

20. A Division Bench of the Andhra Pradesh High Court in *Gedala Ramulu Naidu Vs. State of Andhra Pradesh and Another*, and a Division Bench of the Madras High Court in *Chinnasamy v. State of Tamil Nadu* and Ors. 1984 Cri LJ 447 have also adopted the same view in tune with the interpretation given by us. While speaking for the Division Bench of the Madras High Natarajan, J. (as he then was) has made a survey of most of the decisions thus far rendered by different High Courts and opted to flow with the view adopted by all the other High Courts almost uniformly.

21. We have no reason to think that the High Courts mentioned above have gone wrong in taking the view that Section 428 of the Code permits the accused to have the period undergone by him in jail as an under-trial prisoner set off against the period of sentence imposed on him irrespective of whether he was in jail in connection with the same case during that period. We therefore, respectfully dissent from the view expressed by the two Judge Bench of this Court in *Ragbir Singh v. State of Haryana*.

13. A perusal of the aforesaid judgment shows that the Supreme Court rejected the contention that the expression "of the same case" would be allowable only if the period already undergone by the accused was exclusively for the case in which sentence is imposed. It was specifically held that "the period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case." In doing so the Supreme Court upheld the views expressed by the Division Bench of this Court in *K.C. Dass and N.K. Chatterjee Vs. State*, , decision of the High Court of Gauhati in *Lalrinfela Vs. State of Mizoram and Others*, , the Andhra Pradesh High Court in *Gedala Ramulu Naidu v. State of A.P.* 192 Cri LJ 2186 (AP) and the decision of Madras High Court in *Chinasamy v. State of T.N.* 1984 Cri LJ 447.

14. As far as the present case is concerned, the earlier case was FIR No. 493 of 1997 in which the Petitioner was not arrested, NBW was issued and the trial is still pending. The next case was proceeding u/s 340 CrPC leading to the filing of the present complaint before the learned ACMM. Subsequent to the commencement of the aforementioned case, a third case emanating from the FIR No. 201 of 2000 led to the Petitioner's arrest in Jaipur on 21st July 2001. The custody certificate issued by the Superintendent, Central Jail No. 7, Tihar, New Delhi shows that as on 17th march 2009 the Petitioner had undergone the sentence of seven years eight months and 15 days in Jail in terms of order dated 28th November 2006 passed by the learned ACMM convicting the Petitioner for the offence under Sections 193/465/466/471 IPC, which sentences have been directed to run concurrently. Going by the law as explained by the Supreme Court in *Najakat Alia Mubarak Ali* it is clear that the Petitioner has already undergone the sentence awarded to him by the learned ACMM.

15. This Court has, therefore, no hesitation in accepting the submission of learned Counsel for the Petitioner that the period of sentence already undergone by the Petitioner in custody since 21st July 2001 should be adjusted towards the sentence awarded to him in the present case. It is mentioned by learned Counsel for the Petitioner that the Petitioner is already on bail in FIR No. 479 of 1993 and in the FIR emanating from the false death certificate submitted by the mother of the Petitioner to this Court.

16. The Petitioner will set liberty forthwith. The period already undergone by him to the extent of five years will be set-off in terms of Section 428 CrPC against total period of detention undergone by him. The balance period of the sentence already undergone will be set off against the sentence, if any, awarded to him pursuant to the trial in the aforementioned two FIRs.

17. The appeal is accordingly allowed in the circumstances with no order as to costs.

18. Order dasti. A copy be sent to the concerned trial court as well as to the Jail Superintendent forthwith.