

(2019) 08 BOM CK 0127

In the Bombay High Court

Case No : Criminal Writ Petition No. 1107 Of 2018

Imtiyajbi

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307
Constitution Of India, 1950 — Article 19, 21

Citation : (2019) 08 BOM CK 0127

Hon'ble Judges : T.V. Nalawade, J;K.K. Sonawane, J

Bench : Division Bench

Advocate : Kayyum N. Shaikh, D.R. Kale

Final Decision : Allowed

Judgement

T.V. Nalawade, J

1) Rule. Rule made returnable forthwith. By consent heard both sides for final disposal.

2) The present proceeding is filed for giving directions to the respondents to pay compensation to the petitioner in respect of her illegal detention of 36 days in a prison as convict.

3) The petitioner was convicted in Sessions Case No.301/2000 which was pending in the Court of the learned Additional Sessions Judge Aurangabad for offence punishable under section 307 of IPC. The sentence of rigorous imprisonment of 4 years was given and a fine of Rs.500/- was imposed on her. In default of payment of fine, she was ordered to suffer rigorous imprisonment for one month. This decision was challenged by the petitioner by filing Criminal Appeal No.456/2001 in this Court. This Court dismissed the appeal by decision dated 25-4-2017. This decision was challenged by filing proceeding for special leave to appeal in the Supreme Court. By the order dated 18-8-2017 the Hon'ble Apex Court passed the following order :-

"Heard learned counsel for the petitioner.

Delay condoned.

We do not find any ground to interfere with the conviction of the petitioner.

However, the sentence is reduced to one year.

The special leave petition is disposed of.

Pending application(s), if any, shall also stand disposed of."

4) As Jail Authority felt that there was some confusion, the jail authority was not ready to release the petitioner from jail even when she had completed the period of one year of imprisonment. Then she filed Misc. Application No.1841/2018 in the aforesaid proceeding. Then the Apex Court made following order.

" By order dated 18th August, 2017 this court was pleased to dispose of the special leave petition by passing the following order:

"Heard learned counsel for the petitioner.

Delay condoned.

We do not find any ground to interfere with the conviction of the petitioner.

However, the sentence is reduced to one year.

The special leave petition is disposed of.

Pending application(s), if any, shall also stand disposed of."

By the aforesaid order, this court has awarded a total jail sentence of one year under the present set of offences in question. In other words, this Court has awarded only one year jail sentence and therefore, if the petitioner has already undergone one year jail sentence, then she has to be released forthwith, unless required in any other case.

A copy of this order shall be telegraphically or through any other electronic mode be communicated to the concerned jail today itself and the jailor shall report compliance within three days from the receipt of the order.

With this direction/clarification, the application under consideration stands disposed of."

5) It is the case of the petitioner that she had completed one year of imprisonment on 12-6-2018 considering the period in respect of which set off was available and so her detention for further period is illegal. It appears that after the order of the Apex Court dated 18-7-2018 the petitioner came to be released from jail on 19-7-2018. Thus, according to the petitioner she was illegally detained in jail for a period of about 36 days and so she is entitled to get compensation. She has claimed compensation of Rs.5 lakh.

6) The respondents have filed reply-affidavit and it is contended that as the jail authority was not sure about the meaning of order made by the Apex Court and it was in dilemma as to whether the sentence was reduced by one year or the sentence which was to be suffered was of one year. It is contended that as the petitioner herself sought clarification and guidance of the Apex Court and it was received on 19-7-2018 on the same day she was released from jail and so the detention was not illegal. It is also contended that the so called illegal detention is not of 36 days but it is of 20 days. It is the contention of the respondents that due to aforesaid circumstances the petitioner is not entitled to get compensation.

7) The first order of the Apex Court dated 18-8-2017 is clear and it shows that the sentence was reduced to one year. If the Apex Court had intention to reduce the sentence of 4 years by one year then the word 'by' would have been mentioned in the order. As there was no other alternative before the petitioner than to approach the Apex Court, due to the approach of the jail authority, she approached the Apex Court again by filing Misc. Application No.1841/2018 and the second order was made by the Apex Court. The second order is very much clear and it shows that in the first order itself it was made clear that the petitioner was to undergo imprisonment for the period of one year. In view of these circumstances this Court holds that the detention of the petitioner for the period subsequent to 12-6-2018 was illegal. When there is such illegal detention, there is violation of fundamental rights given to a person by Articles 21 and 19 of the Constitution of India. That fact itself is sufficient to award compensation. Further, due to the aforesaid approach of the respondent-authority the petitioner was required to approach the Apex Court and spend money on one more litigation. She must have spent substantial amount on the aforesaid proceeding and for taking advice of the counsels for approaching the Supreme Court.

8) In the present proceeding the age of the petitioner is given as 70 years. When the case was filed in the year 2000 her age was 45 years. As she was kept in jail illegally for the period of around 36 days and as she had given her occupation as household in the past, this Court holds that some nominal amount in respect of illegal detention needs to be given in respect of the aforesaid period. Considering the amount which she must have spent for filing second proceeding in the Supreme Court, this Court holds that the respondent-State is liable to pay an amount of at least Rs.50,000/- to the petitioner.

9) Learned counsel for the petitioner placed reliance on the observations made by the Apex Court in following three cases.

(1) Rudul Sah v. State of Bihar [AIR 1983 SC 1086];

(2) Arvinder Singh Bagga v. State of U.P. [AIR 1995 SC 117]; and,

(3) .S.Nambi Narayanan v. Siby Mathews [2018 AIR SC 5112].

10) In all the three cases the Apex Court had considered the provision of Article 21 of the Constitution of India and had held that in such cases person who is

illegally detained is entitled to get compensation from the State. In the case reported as Ram Dass Ram v. State of Bihar, [AIR 1987 SC 1333] the Supreme Court held that such detention would be unjustified. It can be said that the authority ought to have acted confidently and there was nothing in the operative order which could have confused the authority. In such cases the State needs to be made to pay compensation first and then the State can be allowed to recover the amount from the officer who has committed error or who was found negligent in taking urgent steps for release of the prisoner. In the result, following order.

11) The petition is allowed. The respondents are hereby directed to pay amount of Rs.50,000/- (Rupees Fifty Thousand only) as compensation to the petitioner. The State to pay the compensation amount first within 45 days from today and ascertain the liability of the officers who were negligent in not complying the order of the Supreme Court and the amount can be recovered from them. Rule is made absolute in those terms.