
(1998) 03 MAD CK 0093

In the Madras High Court

Case No : Contempt Application No. 409 of 1997

J. Sudharsan and others

APPELLANT

Vs

Superintendent, Chennai Central Prison, Chennai-600 003

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 12
Criminal Procedure Code, 1973 (CrPC) — Section 428, 432
Penal Code, 1860 (IPC) — Section 193

Citation : (1998) 2 ALT(Cri) 97 : (1998) 1 CTC 661 : (1998) 1 LW(Cri) 242

Hon'ble Judges : Shivaraj Patil, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : Mr. J. Sudharsan, for the Appellant; Mr. R. Thirugnanasambantham, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Judgement pronounced by M. Karpagavinayagam, J.—This application has been filed under Sections 10 and 12 of the Contempt of Courts

Act seeking to punish the respondent/contemner herein for having committed contempt of Court disobeying. The order dated 27/30.8.1997 made

in W.A.No.102 of 1997.

2. The facts leading to the filing of the present application are:- By the order dated 18.12.1996 passed by the learned Single Judge, the applicants

were found guilty of the offence u/s 193, I.P.C. and sentenced to undergo rigorous imprisonment for three years. They were also punished for

contempt of Court and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,000, in default, to undergo, simple

imprisonment for one month. The learned Single Judge directed that the sentence of imprisonment imposed in both the cases to ran concurrently. In

respect of the above cases, they were arrested on 21.6.1996 and confined in Central Jail, Chennai.

3. On being aggrieved, the applicants filed an appeal before this Court in W.A.No.102 of 1997. When this appeal came up for hearing, the

applicants filed a memo stating that they do not wish to prosecute this appeal any further due to failing health condition and all that they wanted was

that lenient view may be taken as regards the sentence of imprisonment imposed, without going to the merits of the appeal. They requested through

the memo that the sentence imposed upon them by the learned Single Judge in W.P.Nos. 4538 to 4542 of 1996 and Contempt Application

No.182 of 1996 may be reduced to the period already undergone, since the rigorous imprisonment undergone by them till date amounted to two

years including usual jail remission and special remission for the Golden Jubilee of Independence and that they may be set at liberty forthwith.

4. On the basis of the above memo, this Court after hearing the counsel for the respondent, passed the following order: -

Having regard to what is stated in the memo filed by the appellants that their health is failing and they are suffering pre-existing ailments and that

they do not wish to proceed with the appeal, we think it is just and appropriate, while upholding the order under appeal, to reduce the sentence of

imprisonment imposed by the learned single Judge to two years from three years so far as the offence u/s 193 of Indian Penal Code is concerned.

We consider it unnecessary to reduce the sentence of imprisonment on the contempt side.

5. By way of clarification, this Court observed that both the sentences imposed in both the cases were to run concurrently, that for calculating the

period of sentence of imprisonment undergone by the applicants, the date of commencement shall be taken as 21.6.1996, that is, the date of

remand in connection with the offences mentioned in the order under appeal and that the Jail authorities shall set at liberty the applicants after

completion of sentence of imprisonment of two years including remission if any, so far it relates to the conviction and sentence covered by these

two cases and if they are not otherwise required in any other offence to serve sentence. This order was made on 27.8.1997.

6. The applicants, on the same day, filed a memo requesting this Court to release them immediately from jail, since jail authorities would take some

more time for their release. With reference to this memo, the arguments were heard from both the parties and this Court rejected the memo by

saying that it is open to the applicants to urge the jail authorities to calculate the period or remission correctly so as to give them the benefit in

accordance with law and that in case, they were wrongly denied the benefits, the applicants could seek for appropriate remedy. This order was

passed on 30.8.1997.

7. Now, the applicants having felt that they had been wrongly denied the benefits of remission and the act of wrong calculation committed by the

jail authorities, have resorted to filing of this Contempt Application against the respondent.

8. The following defects on the part of the respondent/contemner are shown as the wilful disobedience to the orders passed by this Court:-

(i) The sentences imposed in W.P.Nos.4538 to 4542 of 1996 and suo motu Contempt Application No.182 of 1996 have not been made in run

concurrently.

(ii) The remission calculation has not been done from 21.6.1996 which is the effective date of conviction after set off.

(iii) The remission of six months as per G.O. dated 12.9.1996 has not been extended to the applicants, since the conviction is effective from

21.6.1996.

(iv) The remission of 4 1/2 months granted to the prisoners on 15.8.1997 for Golden Jubilee of Independence which is applicable to the

applicants also has not been granted.

9. Arguing contra, the learned Additional Government Pleader would contend that there is no wilful disobedience and the remission relief has been

granted, to the applicants in accordance with the relevant sections of the Code of Criminal Procedure and Rules of Jail Manual.

10. According to the counter. filed by the respondent, the calculation after deduction of the remand period and the remission period entitled to

from the period of two years sentence reduced by this Court from three years would show that the applicants are entitled to be released on

8.6.1998. In the counter the respondent has categorically stated that both the applicants were entitled to the remission under G.O.Ms.No.1163,

dated 12.8.1997. The first applicant was granted special remission of 9 months,

since his aggregate sentence is more than 5 years but less than 10

years. The second applicant was granted 41/2 months special remission, since her aggregate sentence is more than 1 year but less than 5 years.

11. According to the counter, the total remission earned by the first applicant is 39 days + 9 months and by the second applicant is 39 days + 41/2

months. It is further stated that u/s 432, Cr.P.C. the Government is empowered to grant remission only to convicted prisoners and not to remand

prisoners and accordingly, in G.O.Ms.No.1342, dated 12.9.1996, the Government granted six months special remission to all convicted prisoners

who were undergoing sentence on 15.9.1996. Though the applicants were confined in jail from 21.6.1996, it is stated that both of them are not

eligible for special remission under G.O. dated 12.9.1996, since on the said date they were only remand prisoners.

12. In short, the case of the respondent is that in pursuance of the orders of this Court in W.A.No.102 of 1997 dated 27/30.8.1997, the jail

authorities have calculated the period of sentence of imprisonment imposed upon the applicants from the date of remand, that is on 21.6.1996, that

remission period has been calculated from the date of conviction, as per the wordings in the G.O. and in accordance with the provisions relating to

remission u/s 428, Cr.P.C. and Rules 313 and 314 of Tamil Nadu Prison Manual Volume II and that therefore, there is no wilful disobedience on

the part of the respondent.

13. At the outset, we may mention that even in the first order dated 27.8.1997 this Court in clear terms directed that the jail authorities shall set at

liberty the applicants after completion of sentence of imprisonment of two years including remission, if they are entitled for the same in accordance

with law. Again on 30.8.1997, by way of clarification, this Court, while passing an order on the memo filed by the applicants, requesting to release

them immediately from jail, rejected the same and observed that it is for the jail authorities, to calculate the period of remission correctly and in the

even of any wrong calculation of the remission period, the applicants can seek for appropriate remedy.

14. From the submission made by the learned counsel for the respondent and the counter filed by them, it is clear that the calculation has been

done by the jail authorities by taking the date of remand, that is, 21.6.1996 as

the date of commencement. So, this calculation is also made by taking into consideration of the observation made by this Court that both the sentence imposed in the writ petitions and the contempt application were to run concurrently.

15. The respondent in his counter clearly stated that the directions which have been given by this Court by the order dated 27/30.8.1997 have been complied with with full obedience. It is also made, clear from the counter that for calculating the period of imprisonment undergone by the applicants for both the cases, the jail authorities took 21.6.1996 as the date of commencement as directed by this Court. Therefore, entitlement of remission, if so, from what date the date has to be, reckoned for granting the remission, all have to be decided by the jail authorities. The respondent stated in the counter that they have followed the required provision and granted remission to the applicants in accordance with law.

Therefore, we do not find any wilful disobedience on the part of the respondent.

16. Now, the question whether the G.O. dated 12.9.1996 would be applicable to the remand prisoners cannot be the subject matter of the contempt proceedings. As already held by this Court, in the event of the applicants being aggrieved over the alleged wrong calculation, it is for the applicants to seek for appropriate remedy. Therefore, the applicants approaching this Court by way of contempt application, instead of approaching, the appropriate forum to seek for appropriate remedy; is misconceived. We further make it clear that it is Open to the applicants to seek for the interpretation of the said G.Os. with reference to Section 428, Cr.P.C. regarding the commencement of the date, of entitlement of the remission before the appropriate forum.

17. In view of the above discussion, the contempt application is dismissed.