

(1983) 04 P&H CK 0032
In the Punjab And Haryana At Chandigarh

Joginder Singh

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 28-04-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428

Citation : (1984) CriLJ 435 : (1984) 1 ILR (P&H) 37 : (1983) 1 RCR(Criminal) 508

Hon'ble Judges : S.S. Sandhawalia, C.J.;A.S. Bains, J

Bench : Division Bench

Judgement

S.S. Sandhawalia, C.J.—The meaningful common question in this set of eight connected criminal writ petitions which necessitated this reference is whether persons sentenced to imprisonment for life are entitled to set off their under-trial period of detention against their sentence u/s 428 of the Cri. P. C for the purpose of their premature release.

2. Within this jurisdiction, there exists some conflict of judicial opinion on the point. In Criminal Writ Petition No. 52 of 1980 - Darshan Singh v. The State of Haryana, decided on the 28th of May, 1981, the learned single Judge took the view that Section 428 of the Criminal P. C. was applicable only to the cases of persons sentenced to imprisonment for a term and, therefore, had no application in the context of life convicts. Consequently it was held that an accused person sentenced to imprisonment for life could not claim to set off the period of his detention as an undertrial prisoner for the purposes of his premature release. However, in Raghbir Singh v. State of Haryana Cr. W. P. No. 212 of 1981 decided on the 20th of January, 1982. Reported in (1982) 2 CLR 1 the learned single Judge took a contrary view by holding that the life convict was entitled to set off the period of detention as an undertrial prisoner as well for consideration of his premature release by the Government. The earlier view in Darshan Singh's case apparently was not brought to the notice of the learned single Judge,

3. It seems unnecessary to advert individually to the reasoning in the aforesaid

two conflicting judgments. This is so because the identical question now stands authoritatively settled by their Lordships in Kartar Singh and Others Vs. State of Haryana, . Tulzapurkar, J., speaking for the Bench after consideration of principle and precedent has held therein that the benefit of the set off contemplated by Section 428, Criminal P. C. would not be available to life convicts. Following the ratio therein it has necessarily to be held that Raghbir Singh's case (supra) was not correctly decided and is hereby overruled. The view in Darshan Singh's case (supra) is hereby affirmed.

4. In the light of the aforesaid legal position the briefest reference to the facts in Criminal Writ No. 33 of 1982, Joginder Singh v. State of Haryana suffices. Therein the petitioner, whose death sentence had been commuted to that of imprisonment for life had claimed a set off for one year and eight days spent by him as an undertrial prisoner for the purposes of his premature release. Plainly enough in the wake of Kartar Singh and Others Vs. State of Haryana, this stand is no longer sustainable. Indeed learned Counsel for the writ petitioner was fair enough to concede that he had little or nothing to urge now in view of the aforesaid authoritative pronouncement. The writ petition has consequently to be dismissed.

5. It is common ground that the position in the other connected cases is identical. These also must accordingly fail and are hereby dismissed.