

(1994) 10 MAD CK 0005

In the Madras High Court

Case No : Criminal Original Petition No's. 3991 of 1994, 3994, 4008, 4009, 4392, 4449, 4501, 4502, 4555, 4612, 4618, 4619, 4625, 4635 and 5063 of 1994 and Criminal M.P. No's. 3271, 3274, 3405, 3407, 3414, 3415, 3422, 3431, 3432, 3433, 3434 and 3435 of 1994

K.G. Srinivasan and others

APPELLANT

Vs

P. Shanmugam and others

RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Constitution of India, 1950 — Article 161
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1995) 1 LW(Cri) 80

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : G. Krishnan for B. Jayaraman, S.K. Ravi and V. Padmanabhan, for the Appellant; B. Sriramulu, Public Prosecutor, for the Respondent

Judgement

Janarthanam, J.—The Petitioners in all these Criminal Original Petitions were some of the accused in C.C. No. 20 of 1974 on the file of the

Third Additional Special Judge, Madras (popularly known as "Corporation Muster Roll Case). All of them on trial, were found guilty for various

offence, convicted thereunder and sentenced to various periods of imprisonment, with a direction for the sentences to run concurrently. The

sentences imposed on them it is said, had been suspended even on the date of judgment itself, enabling them to prefer appeals and obtain orders

for suspension of their sentences, pending disposal of those appeals.

2. Aggrieved by the conviction and sentences, all of them preferred Criminal Appeals before this Court and obtained orders suspending their

sentence, pending disposal of those appeals. The appeals so preferred by them,

were however, allowed setting aside the conviction and the sentences and ultimately acquitting them of the offences, with which they stood charged.

3. Aggrieved by their acquittal, the State preferred appeals before the Supreme Court and their Lordships of the Supreme Court, on a

consideration of the materials on record, however, allowed the appeals, set aside the verdict of acquittal and restored the conviction and sentences

for the various offences, as had been imposed upon them by the trial Court, by a common judgment dated 13.5.1994.

4. The Petitioners in these Criminal Original Petitions, can be classified into four categories, in relation to the term of imprisonment imposed upon

them, which ranged from one to four years.

5. The term of imprisonment imposed on the Petitioners in Crl.O.P. Nos. 4008, 4449, 4501, 4618, 4619, 4623 and 5063 of 1994, is one year,

while the term of imprisonment imposed on the Petitioners in Crl.O.P. Nos. 3994, 4502, 4612 and 4635 of 1994, is two years. Likewise, the term

of imprisonment imposed on the Petitioners in Crl.O.P. Nos. 3991 and 4392 of 1994, is three years, while the term of imprisonment imposed on

the Petitioners in Crl.O.P. Nos. 4009 and 4555 of 1994, is four years.

6. The various Petitioners filed these Criminal Original Petitions u/s 482, Code of Criminal Procedure, 1973 (Act No. II of 1974--for short the

Code") seeking a direction to the first Respondent not to arrest them as they are entitled to remission and set off, which would exceed the period

of imprisonment imposed upon them. In amplification of such a prayer what they would contend is that the pre-trial detention, undergone by them,

would roughly come to a period of two months, which they are entitled to have a set off, u/s 428 of the Code, as against the term of imprisonment

imposed upon them. What they would further contend is that the Government of Tamil Nadu, passed various Government Orders between

24.12.1978 and 23.2.1994, granting special remission to various categories of prisoners and convicted persons for specified periods and they are

also entitled to all such remissions.

7. They have filed Criminal Miscellaneous Petitions, praying for the very same relief, as had been prayed for in the main petitions by way of interim

measure, till the disposal of the main petitions. This Court granted such interim

relief in all those applications for a specified period. When all those

Criminal Miscellaneous Petitions came up for further hearing, learned Counsel appearing for the respective Petitioners and learned Public

Prosecutor representing the Respondents-State agreed for the disposal of the main petitions themselves and consequently, their arguments were heard.

8. The Government of Tamil Nadu, during the period as stated above, have passed The seven (7) G. Os. referred to herein are published for the

benefit of the practitioner in the Journal Section at pages 1 to 7 in this issue. -- Ed. seven Government Orders granting special remissions to various

categories of prisoners for specified periods and the occasions, which impelled the Government to pass such special G. Os. were relatable either

to Birth Centenary or the Death Anniversary of political statwarts or poet laureate or the assumption of offence by a new Government: They are:

1.G.O. Ms. No. 3171 Home Dept. dt.24.12.1978

2.G.O. Ms. No. 3143, Home Dept. Dt.22.12.1979

3.G.O. Ms. No. 180 Home (Prisons IV)Dept, 28.1.1989

4.G.O. Ms. No. 781 Home (Pr.C) Dept, dt.11.4.1990

5.G.O. Ms. No. 279 Home (Pr.C) Dept dt.23.2.1992

6.G.O. Ms. No. 296 Home (Prisons IV) Dept. dt.20.2.1993

7.G.O. Ms. No. 205 Home (Prisons IV. Dept, dt.23.2.1994.

9. A perusal of the various Government Orders, however, does indicate that their terms and tenor are not one and the same. Such being the case,

the applicability of the said G. Os. to the various categories of prisoners must have to be determined with reference to the expression or language,

in which each of them is couched. But, the grant of remission relatable to certain categories of prisoners in all the G. Os. is more or less uniform.

The special remissions granted in the various G. Os. are not admissible in the cases of civil prisoners, prisoners undergoing sentence in lieu of fine,

detenus under the laws relating to detention, persons convicted for offences u/s 3 to 10 of the Official Secrets Act 1923, Sections 2 and 3 of the

Criminal Law Amendment Act, 1961, Sections 121 to 130 of the Indian Penal Code, Foreigners and Passports Acts and those convicted by

Courts of Criminal Jurisdiction of other States. However, the remission as

ordered, were made applicable to prisoners, who were convicted in this State, but are undergoing their sentence in the jails of other States or Union Territories. They also specify the date from which they shall take effect.

These things apart, they also specify the period of remission applicable to various categories of prisoners other than the excluded categories of

prisoners. Some of the G. Os. were issued in exercise of the powers conferred by Section 432 of the Code 1973 (Central Act 2 of 1974), while

some others have been issued by virtue of the powers conferred under Article 161 of the Constitution of India. The respective G. Os. also specify

the applicability of remission to various categories of prisoners, such as pre-trial prisoners, convicted prisoners and prisoners undergoing

imprisonment.

10.G.O. Ms. No. 3171 is relatable to special remission granted to prisoners serving in the jails of this State as on 24.12.1978 on the graded scales

specified therein .G.O. Ms. No. 3143 as originally issued, was couched in the same language as in G.O. Ms. No. 3171, in the sense of granting

special remission to prisoners serving in jail on the graded scales specified therein as on 22.12.1979. By letter No. 200322/Pr.IV/79-I Home

Dept. dt.29.12.1979 from the Commissioner and Secretary to Government addressed to the Inspector General of Prisons, the special remission

granted under G.O. Ms. No. 3143, was made applicable to persons, who went on bail but convicted before 22.12.1979 and later on their

convictions were confirmed by the appellate courts. To put it otherwise, by such a clarification, the special remission was made applicable to all

categories of prisoners mentioned therein, notwithstanding the fact whether they were in jail or not, on the specified date. Since G.O. Ms. No.

3143 does not mention as to the remission relatable to prisoners sentenced to imprisonment above three years, but below five years, in G.O. Ms.

No. 69, Home Department, dated 9.1.1980 the Government granted Special remission of three months to the prisoners sentenced to above three

years, but less than five years and this was made applicable also to prisoners, who went on bail, but convicted before the date of issue of that

order and later on their convictions were confirmed by the Appellate Courts.

11. The rest of the G.O. Ms. Nos. 180, 781, 279, 296 and 205 are relatable to grant of remission to certain classes of prisoners, who have been

convicted for various offences on the graded scales specified therein, and for claiming remission under those G. Os. it is not necessary that the prisoners should have been undergoing the terms of imprisonment on the respective dates and what is necessary is that such prisoners must be convicted persons, in the sense of being punished for imprisonment by a Court of law, though not actually undergoing their imprisonment on the respective dates, referred to therein.

12. In G.O. Ms. Nos. 180, 781, 279, 296 and 205, the prisoners, other than ife convicts and other excluded categories of prisoners, are granted remission for a period of six months under each of the G.O.

13. Out of these five G. Os. G.O. Ms. Nos. 180 and 781 have been issued in exercise of the powers conferred u/s 432 of the Code, while the other three G. Os. viz. G.O. Ms. Nos. 279, 296 and 205 have been issued in exercise of the powers conferred by Article 161 of the Constitution of India.

14. In J. Boopalan Vs. Inspector of Police, Pallavaram, Madras 43, this Court came to consider the extent and amplitude of the inherent power of this Court u/s 482 of the Code and expressed thus:

(7) On a cursory glance and first look of the provisions of the Section, as extracted above, it may appear as if the section consists of three parts, viz.,

(i) to make such orders as may be necessary to give effect to any order under this Code:

(ii) to prevent abuse of process of any Court; or

(iii) otherwise to secure the ends of justice.

But in reality, such a thinking is not warranted and this is made fluidly clear by the syntax of various clauses therein by the express incorporation

and omission of a comma, after the phraseologies "under the code" and "process of any Court", respectively in the section.

(8) Viewed in the above light, the inherent power is there for the High Court only for two specified purposes, viz.

(i) to make such orders as may be necessary to give effect to any order under this Code; and

(ii) to prevent abuse of process of any Court or otherwise to secure the ends of

justice.

9. Then comes for interpretation of the relevant scope and ambit of the aforesaid two clauses. The construction of the first clause by the usage of

the language incorporated therein is no simple as to make one understand the meaning conveyed by the clause with ease and grace and without any

difficulty whatever. This clause connotes that the inherent power of the High Court can come into free play for giving effect to any order under this

Code. To put it otherwise, the inherent power cannot be exercised as against the express bar of law engrafted in any other provision of this Code.

(10) The language used in the second clause though appears to be as simple as the first clause, yet an insurmountable difficulty is posed in

understanding the scope of the clause by extracting its meaning to the surface, hidden under the various words couched in the formation of the

clause. This clause signifies that the inherent power of the High Court can only be extended to make suitable orders to prevent the abuse of

process of the Court, but it does not empower the Court to interfere with the orders passed by the Executive Authorities and the order under the

Section to secure the ends of justice must be in relation to a proceeding in this Court or any subordinate Criminal Court and that proceeding too

must have judicial character and not of an executive or administrative one.

In view of the dictum, as stated above, a direction can issue u/s 482 of the Code to give effect to G.O. Ms. No. 180 dated 28.1.1989 and 781

dated 11.4.1990, as they are issued under the provisions of Section 432 of the Code, but not to the other G. Os. viz, G.O. Nos. 279, 296 and

205 which all were issued in exercise of the powers under Article 161 of the Constitution of India. When I say this, I should not be mistaken that

the Petitioners convicted prisoners are not entitled to remission as specified in those G. Os. for such a direction cannot be issued u/s 482 of the

Code.

15. In this connection useful reference may be made to the case of Sukhraj Sanghvi, Champalal Sanghvi v. State (1990 L.W.(Crl.)532) , in which

this Court had to consider the phraseology "she have been convicted to punishments for various offences" in G.O. Ms. No. 180 (Prison. IV)

Department, dated 28.1.1989, referred to above. For a better appreciation, the facts of the case may be referred to in a sharp and incision

fashion.

In a State appeal against acquittal, the Petitioners therein were convicted u/s 465, 468 and 471 read with 420 of the Indian Penal Code and

sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 1000/- each with a further sentence of R.I. for 2 months in default to

pay the fine. They paid the fine and obtained stay of the operation of the judgment. The revision filed by P.W.1 against their acquittal, however had

been separately heard and it came to be dismissed. The conviction rendered in the State appeal was taken up by them to the Supreme Court and

the conviction was confirmed. Their mercy petition was also dismissed. Subsequently, they initiated writ proceedings. Ultimately the writ petition

was also dismissed. Thereafter, they resorted to the inherent jurisdiction of this Court u/s 482, of the Code praying for the benefit of the remission

as granted by the Government of Tamil Nadu under G.O. Ms. No. 180. They contended that in order to get the benefit of the above said G.O. it

was not necessary for the Petitioners to be actually undergoing imprisonment on the date when the G.O. came into force and it was sufficient that

they were convicted to punishment by a Court. The Government opposed it on the ground that the benevolence of the G.O. would be ensuring to

the benefit of the Petitioners only when they were actually undergoing imprisonment on the date when the G.O. came into force. In consideration of

such a contention, the Court said in para 5 (at page 534) thus:

The relevant clause of the G.O. Ms. No. 180 dated 28.1.89 would point out that in no uncertain terms to claim the benefit of the above said G.O.

It is not at all necessary that they should be undergoing imprisonment on the date when the G.O. came into force what is necessary is that there

should be a conviction by Court to punishment for the offences with which they are charged. This aspect of the matter will emerge to surface on a

reading of last portion of the opening paragraph. It is couched in the following terms, namely, The Government have decided to grant remission to

certain classes of persons who have been convicted to punishment for various offences.

The phraseology "who have been convicted to punishments for various offences" has clearly indicated that persons convicted to punishments can

claim benefits of the G.O. The G.O. further provides a remission of one year in

the case of life convicts and remission of six months in the case of all other class of prisoners. In the case of women prisoners, the G.O. provides for the remission of the entirety of the sentences for offences other than those relating the murder and smuggling activities. So far as the case on hand is concerned, the Petitioners are men prisoners convicted to imprisonment for the various offences to a period of six months of rigorous imprisonment. As adverted to earlier, they are not undergoing imprisonment and they are outside by the stay of operation of the judgment of this Court in the abovesaid Criminal Appeal upto 31.3.89 and it is also the admitted fact that the Petitioners neither surrendered before the Court for undergoing the imprisonment nor the police arrested them subsequent to 31.3.89. The relevant factor is that they were convicted and the proceedings before Court were pending till upto 31.3.1989 long subsequent to coming into force of the G.O. In the said state of affairs there is no need for them to undergo any further imprisonment inasmuch as the sentence of imprisonment of six months imposed on them by this Court in the abovesaid Criminal Appeal must be deemed to have been remitted by the abovesaid G.O. The petition is ordered accordingly.

16. The provisions contained in Section 428 of the Code state that the period of detention prior to the date of conviction shall be set off against the term of imprisonment impose on an accused and the liability of the person to undergo imprisonment, shall be restricted to the reminder, if any, of the term of imprisonment imposed on him. It is obvious ,therefore, that the statute mandates that the set off must be regarded as part of the sentence imposed upon and therefore the set off period is also a period of confinement.

17. No doubt true it is, no tangible materials had been placed on record as to what is the exact period of pre-trial detention undergone by each of the Petitioners in these cases. However, learned counsel for the Petitioner submitted that they had roughly undergone a period of two months it may be assumed for the purpose of this case that the pre-trial detention period undergone by the various Petitioners herein is about two months and such period deserves to be set off against their term of imprisonment. Further, a special remission for a period of six months granted each under G.O. Ms. Nos. 180 and 781 is applicable to them and they would be entitled for a

direction to be issued for the remission of sentence of 12

months, besides the set off period of about 2 months. The Petitioners, whose term of imprisonment is for a period of one year, need not undergo

the ordeal of either arrest or surrender before Court or Competent authority for undergoing the term of imprisonment. But, it is not so in the case of

the Petitioners, whose term of imprisonment exceeds one year.

18. In this view of the matter, the term of imprisonment of one year impose on the Petitioners in Crl.O.P. Nos. 4008, 4449, 4501, 4618, 4619,

4623, and 5063 of 1994 must be deemed to have been remitted and set off and they need not undergo the ordeal of either arrest or surrender

before the Competent Authority and their petitions deserve to be allowed.

19. The term of imprisonment imposed upon the Petitioners in Crl.O.P. Nos. 3994, 4502, 4612 and 4635 of 1994 is two years. Apart from the

period of set off and remission, i.e. about 14 months as referred to above, they are also entitled to remission for a total period of 18 months, under

G.O. Ms. Nos. 279, 296 and 205, issued by virtue of the powers conferred under Article 161 of the Constitution of India. I have already stated

that while exercising powers u/s 482 of the Code, this Court has no jurisdiction to issue a direction for the grant of remission under those G. Os.

However disallowing the remission, to which they are legally entitled on the technical ground of want of jurisdiction, is nothing but a travesty of

justice. But, if those petitions are treated as ones filed under Article 226 of the Constitution of India, the relief as prayed for by them, can be

granted. In that view of the matter, I do not think it would be besides justice to treat those Crl.O. Ps. as Writ Petitions filed under Article 226 of

the Constitution of India and grant them the relief as prayed for by them, subject to the payment of the requisite and necessary Court-fee payable

by them within a period of one week from today (21.10.1994).

20. Three years imprisonment had been imposed on the Petitioners in Crl.O.P. Nos. 3991 and 4392 of 1994 and four years imprisonment had

been imposed on the Petitioners in Crl.O.P. Nos. 4009 and 4555 of 1994. Even granting the remission, as had been granted to the Petitioners in

Crl.O.P. Nos. 3994, 4502, 4612 and 4635 of 1994, these Petitioners have to undergo some more period of imprisonment and in such state of

affairs, it goes without saying that the relief they have prayer for in these

petitions is incapable of being granted.

21. In fine, Crl.O.P. Nos. 4008, 4449, 4501, 4618, 4619, 4623 and 5063 of 1994 are allowed. Crl.O.P. Nos. 3994, 4502, 4612 and 4635 of

1994 are, however, allowed, subject to payment of necessary Court fee as aforesaid, Crl.O.P. Nos. 3991 and 4392 of 1994, as well as Crl.O.P.

Nos. 4009 and 4555 of 1994, are dismissed.

22. Consequently all Crl.M. Ps. are dismissed.

Mr.B. Jayaraman, Advocate addressed a letter dated 25.10.1994 praying for listing of Criminal O.P. Nos. 3991, 4009, and 4392 of 1994 for

being spoken to. Accordingly, those matters had been listed before this Court today 28.10.1994.

2. Arguments of Mr. G. Krishnan, learned senior counsel for the Petitioners in those Criminal O. Ps. and Mr. B. Sriramulu, learned Public

Prosecutor were heard.

3. An argument had been raised by learned Senior Counsel that there is an apparent error, on the face of the records, in the sense that if all the

seven G. Os. in question had been properly considered and given effect to, all these Petitioners would be entitled to a remission of 34 months,

besides set off of two months u/s 428 of the Code of Criminal Procedure, and consequently, there might be no need at least for the Petitioners in

Crl.O.P. Nos. 3991 and 4392 of 1994, who had been sentenced only to three years rigorous imprisonment, to undergo the order of surrendering

before the Competent Authority or to face arrest.

4. To such an argument, I am unable to affix my seal of approval, on the facts and in the circumstances of the case. There is no error, apparent on

the face of the records, in the sense that even if the construction of the seven G Os. as above, is accepted, the Petitioners would, if at all, be

entitled to a remission of 32 months only, besides a set off for a period of about two months u/s 428 of the Code of Criminal Procedure, provided

what they say as to the period of pre-trial detention runs to more than two months is true. Even giving remission to them for a period of 32 months

as per those seven G Os. and giving set off to the period of pre-trial detention of about two months u/s 428 of the Code of Criminal Procedure,

they have to undergo the remaining period of imprisonment. So far as the Petitioners in Crl.O.P. No. 4009 of 1994 are concerned, their sentence

of imprisonment is for a period of four years. In such state of affairs, there is some more period of imprisonment to be undergone by the Petitioners in all these Crl.O. Ps.

5. In this view of the matter, there is no error apparent on the face of the records in the common order already made and nothing requires to be rectified.