
(2014) 01 SC CK 0002

In the Supreme Court Of India

Case No : Crl. A. Nos. 973 of 2008 and 239 of 2014 (Arising out of SLP (Crl.) No. 4461 of 2009)

Krishan and Others

APPELLANT

Vs

State of Haryana and Others
The State and Another Vs
Banumathy

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Constitution of India, 1950 — Article 101, 14, 161, 72
Criminal Procedure Code, 1973 (CrPC) — Section 433A
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 27, 32A, 33
Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2014) 3 Crimes 320 : (2014) 2 RCR(Criminal) 724 : (2014) 4 SCALE 1

Hon'ble Judges : M. Yusuf Eqbal, J;Jasti Chelameswar, J;Balbir Singh Chauhan, J

Bench : Full Bench

Judgement

1. Leave granted in SLP (Criminal) No. 4461 of 2009. These two appeals were directed to be tagged by an order dated 17th July 2013 made in SLP (Criminal) No. 4461 of 2009, though in our opinion the questions arising in each of these matters are totally different.

2. Criminal Appeal No. 973 arises out of the judgment of the High Court of Punjab & Haryana dated 22nd February 2007 in Criminal Miscellaneous No. 63845-M of 2006. The said petition was filed challenging a letter of the Director General of Prisons, Haryana. The relevant portion of the said letter reads as follows:

It has come to the notice of this office that remission is being granted to convicts who have been convicted and sentenced under N.D.P.S. Act.

In this regard, the opinion of L.R. has been sought, who has opined that Section 32A1 of N.D.P.S. Act creates a specific bar to the suspension or remission or commutation of sentence awarded under this Act.

You are therefore directed that no remission be granted to convicts who have

been convicted under the N.D.P.S. Act. You are further directed that remission already granted be withdrawn immediately under intimation to this office and an entry to this regard be made in their record.

3. It appears that the Petitioners (Appellants herein) who were convicted under the N.D.P.S. Act challenged the abovementioned letter and sought a direction to the Respondents not to withdraw the remission granted to them from time to time under the various provisions of the Punjab Jail Manual.

4. The High Court by its order dated 22nd February 2007 dismissed the petition holding that the Parliament (under Section 32A of the Act) gave overriding effect to the N.D.P.S. Act over any other law including the Code of Criminal Procedure, 1973 and therefore, there was no illegality in the impugned letter.

5. When the matter was heard by a Bench of this Court on 8th January 2013, the Bench noticed that the constitutional validity of Section 32A of the Act was upheld by this Court in *Dadu @ Tulsidas Vs. State of Maharashtra*, by a bench of three Judges. Notwithstanding the said judgment, the bench consisting of two-Judges opined that the matter is required to be considered by a larger Bench.²

6. Subsequently, another Bench of which one of us (Hon'ble Dr. Justice B.S. Chauhan) was a member by its order dated 7th May 2013 also opined that the matter is required to be heard by a bench of either three Judges or five Judges.

7. Learned Amicus Curiae Mr. Huzefa Ahmadi and Mr. Paras Kuhad, Additional Solicitor General argued that the bar contained u/s 32A of the N.D.P.S. Act can not fetter the constitutional authority either of the President or the Governor respectively under Articles 72 and 161 of the Constitution of India.

8. We are of the opinion that such a question is not required to be examined in this case. It is nobody's case that either the President or the Governor is inhibited by the impugned letter of the Director General of Prisons. The letter only advises or instructs all the Superintendents of Jails in Haryana not to grant any remission to those who are convicted under the N.D.P.S. Act. It further instructs the Superintendents of Jails that remission if any already granted be withdrawn.

9. Both from the contents of the impugned letter and the source from which it emanated (the Director General of Prisons) it is obvious that such a direction could be issued only to those authorities such as the Superintendents of Jails who are subordinate to the Director General of Prisons. It is well known that under the Jail Manuals prepared in various States in this country either in exercise of or referable to the delegated powers conferred under the provisions of the Prisons Act³ and the Prisoners Act⁴. Various provisions in their manual are made for granting remission to the convicts. Such provisions entitle the prisoners for remission of the sentence under various heads, such as, good conduct etc. Such an entitlement is a creature of subordinate legislation duly authorised by the sovereign legislature. However, if by a subsequent enactment, such as the

N.D.P.S. Act, the Parliament chose to deny the grant of remission to a particular class of convicts such as the convicts under the N.D.P.S. Act, - we do not see any illegality therein. Even otherwise the constitutionality of Section 32A has already been upheld by this Court in *Dadu @ Tulsidas* (supra).

10. The impugned letter only highlights the need to comply with the mandate of the Parliament as evidenced in Section 32A of the N.D.P.S. Act. To declare the impugned letter to be illegal on the ground that it is inconsistent with either the provisions of the said Manual or some other statutory provision anterior to the N.D.P.S. Act - would be impermissible because the subordinate legislation cannot override the provisions of a statute. Nor can an anterior legislative command be a basis for judging the legality of the later legislative command. One of the cardinal principles of the constitutional law is that the latest will of the sovereign should prevail.

11. For the abovementioned reasons, we do not see any error in the judgment under appeal. The question whether Section 32A is a fetter on the authority and the powers of either the President of India or the Governor under Articles 72 and 161 of the Constitution respectively does not arise on the facts of the case. It is well settled principle that this Court will not adjudicate issues which do not arise strictly on the facts presented before this Court, more particularly when the question falls within the realm of the Constitutional interpretation. We, therefore, see no reason to examine the said question. The appeal is dismissed.

CRIMINAL APPEAL No. 239 of 2014 (Arising out of SLP (Criminal) No. 4461 of 2009)

12. In this case, the Respondent's son was convicted for the offence under Sections 302, 120B etc. of the Indian Penal Code. He was sentenced to death by the trial court. However, the High Court modified the sentence to one of the imprisonment for life. The same was confirmed by this Court by its judgment in Criminal Appeal Nos. 1268-1270 of 1999 dated 24th April 2002.

13. The Government of Tamil Nadu issued an order vide G.O.(Ms) No. 1155, Home (Pri. IV) Department dated 11th September 2008. It was an order purportedly issued by the Governor of Tamil Nadu in exercise of the power under Article 161 of the Constitution of India remitting the unexpired portion of the sentence of imprisonment for life of 1406 convicts mentioned in the three annexures to the said order. The Respondent's son however did not get the benefit of the said order because the said order excluded prisoners who were awarded death penalty by the trial court but later commuted to the life imprisonment by the appellate court.⁶

14. In the background of the abovementioned facts, the Respondent challenged the said exclusionary clause of the abovementioned G.O. on the ground that it is discriminatory and violative of Article 14 of the Constitution.

15. By judgment under appeal (in Habeas Corpus Petition No. 1894 of 2008)

dated 29th April 2009, the Division Bench of the Madras High Court opined that such an exclusionary clause is "unreasonable restriction". The operative portion of the order reads as follows:

We have heard the learned Counsel for the Petitioner and the learned Additional Public Prosecutor and done through entire materials available on record. The Government has taken a policy decision to release prisoners, who have completed 7 years of actual imprisonment as on 15.09.2008 on the eve of the Birth Centenary of Perarignar Anna on 15.09.2008 by imposing the above said condition, which is contrary to Section 433A of the Code of Criminal Procedure, and hence, the same is struck down as it is an unreasonable restriction. Accordingly, the Respondents are directed to pass appropriate orders, on the representation made by the writ Petitioner or her son, the detenu herein, within a period of two weeks from the date of receipt of a copy of this order.

From the abovementioned facts, it can be seen that this appeal has nothing to do with the subject matter of the Criminal Appeal No. 973 of 2008. Though we do not agree with the reasoning adopted by the High Court for allowing the writ petition, we agree with the conclusion arrived at by the High Court. The exclusionary clause creates an artificial class of convicts which is unsustainable tested on the touchstone of Article 14 of the Constitution of India. Neither there is any rational basis for creation of such a class nor are we able to discern any legitimate purpose sought to be achieved by the State in creating such a class. Therefore, the appeal is dismissed.

1Section 32A. No suspension, remission or commutation in any sentence awarded under this Act - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted.

2Notwithstanding the decision of the 3-Judge Bench in *Dadu @ Tulsidas v. State of Maharashtra*, we would like to be satisfied whether the matter requires reconsideration by a larger Bench.

3The Prisons Act, 1894 (Act 9 of 1894)

4The Prisoners Act, 1900 (Act 3 of 1900)

5G.O.(Ms) No. 1155, Home (Pri. IV) Department dated 11.09.2008:- Para 6. In exercise of the powers conferred under Article 161 of the Constitution of India, the Governor of Tamil Nadu hereby remits the unexpired portion of sentence of imprisonment for life passed on the 1405 life convicts mentioned in Annexures I, II and III to this order, confined in various Central Prison, Special Prisons for Women and the prisons in the State of Kerala subject to the conditions mentioned in para. 1 above.

6G.O.(Ms) No. 1155, Home (Pri. IV) Department dated 11.09.2008:- Para 1(i). That the following categories of prisoners will not be eligible for this concession:-

- a) The prisoners who are convicted for the offences specified in G.O.(Ms) No. 1762, Home, Dated 20.07.1987.
- b) The prisoners who were awarded death penalty and whose sentence was later commuted to life imprisonment by the appellate Court.