
(1982) 06 GAU CK 0014
In the Gauhati High Court

Lalrinfela

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 16-06-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 128, 427, 428, 482, 484

Penal Code, 1860 (IPC) — Section 380, 75

Prisons Act, 1894 — Section 27, 3

Citation : (1982) CriLJ 1793

Hon'ble Judges : K. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Judgement

K. Lahiri, J.—This is a petition for habeas corpus which involves computation of the period of detention required to be set off u/s 428 of Cr. P.C., for short "the Code", when an accused is convicted in more than one case and the periods of detention during the investigation, inquiry and trial of one case overlaps the other.

2. The petitioner was arrested on 6-9-80 in connection with G. R. Case No. 456/80. While in such detention as an Under Trial prisoner he was formally arrested at different times in other cases, including G. R. Case No. 496 of 1981. In the last case, he was formally put under arrest on 22-9-80, though he was already in detention in connection with G. R. Case No. 456/80. On 12-1-1982 he was convicted in G. R. Case No. 496 of 1980 u/s 380 I.P.C. and sentenced to suffer R. I. for 10 months and a fine of Rs. 200/-, in default, to suffer simple imprisonment for 20 days and further sentenced to R. I. for 2 months said to be u/s 75 I.P.C. At the time of awarding the sentences the learned Magistrate allowed "set off" from 22-9-80, (the date on which he was formally arrested in the said case) till 12-1-81 (the date of his conviction). Thereafter, on 18-2-81 the accused was convicted in G. R. Case No. 456/80 and sentenced to suffer R. I. for 2 years. But the learned Magistrate did not allow any "set off" to the accused.

3. The petitioner contends that in G. R. Case No. 456 of 1980 he was entitled to

set off on and from the date of his arrest, that is, 6-9-80 to 18-2-81 as enjoined by Section 482 of the "the Code" Mr. M. Sarma, learned Standing Counsel for Mizoram submits that he is entitled to set off from 6-9-80 to 21-9-80 and that far and no further. According to him the petitioner had been granted set off for the period commencing from 22-9-80 to 12-1-81 in G. R. Case No. 496 of 1980, and, as such he was not entitled to set off in respect of the same period for the second time in G. R. Case No. 456 of 1980. Counsel further submits that the petitioner upon his conviction in G. R. Case No. 496/80 ceased to be an Under Trial Prisoner, as he was a convict in G. R. Case No. 496/80, so he was disentitled to set off from 13-1-1981 to 18-2-1982 as Section 428 is applicable only to a UTP and not to a convict.

4. Why Section 428 Cr. P.C. was brought in the statute book? What are the object, scope and nature of the Section?

The Section has been inserted in the "new Code" to mitigate the evils of delayed trial, to prevent over-crowding in jails and to uphold public interest. Sluggish justice is the antithesis of decent and fair procedure enshrined in our Constitution. The inability of investigating agencies and the Courts to provide prompt trial has contributed to various evils including backlog of cases; delay in investigation contributes to the overcrowding and deplorable states of local jails, lengthy, exposures to these Conditions in jail have destructive effects on human character, the time spent in jail is dead-time apart from the detrimental Impact it has on the prisoners - it often means loss of a job, it disrupts family life and it enforces idleness. To help dispense swift but deliberate justice and dispense with slow motion justice and long distance investigation and trial proceedings the wholesome provision has been introduced. The provision is preventive as well as curative in nature and character.

5. In Suraj Bhan Vs. Om Prakash and Another, the Supreme Court has held that the benefit of Section 428 could be claimed by a person convicted before coming into force of the new Code provided his sentence was continuing when the new Code was enforced. The conclusion was reached without reference to Section 484(2)(b) of the of the new Code, In Matabar Parida, Bisnu Charan Parida, Batakrushna Parida and Babaji Parida Vs. The State of Orissa, their Lordships reached the same conclusion with the aid of Section 484(2)(b) of the Code. The section confers a statutory right to a convict to claim reduction of his liability to undergo imprisonment provided the conditions set-forth in Section 428 are available. It is indeed a beneficial provision and confers on the convicts a legal right to claim reduction of his liability to undergo imprisonment for the period he had already served as an accused. The contours of Section 428 was considered by the Supreme Court in Govt. of Government of Andhra Pradesh and Another Vs. Anne Venkatesware and Others, in a different setting and under peculiar circumstances. The accused was in detention under the Preventive Detention Act. He was wanted in connection with a sessions case immediately after the lodgment of the First Information Report and he was available in jail, however,

the service of warrant was delayed until the period of his preventive detention was over. The accused was convicted and sentenced in the sessions case but he was not granted set off from Dec. 19, 1969 to April 13, 1970 against his terms of imprisonment. During the said period the accused was in detention under the preventive detention but the accused claimed that he could have been formally arrested in jail on Dec. 19, 1969 but he was not so arrested and it was a lapse on the part of the authorities. So, the accused claimed set off the period between Dec. 19, 1969 and April 13, 1970 against his term of imprisonment, treating the said period as the period of detention undergone by him as an accused in the Sessions case. He claimed that the said period should be taken into account as if he were in detention for the purpose of Section 428 of "the Code". He claimed that he was available for arrest on Dec. 10, 1969 when the FIR was lodged, he would have immediately surrendered if informed about the case or, at any rate, he could have been arrested and produced before the Court for remand, or he could have been arrested at least on the 13th but the concerned authorities who could but did not take immediate and necessary steps to arrest and produce him before the Magistrate, and, for the laches or inactions of the authorities he should not suffer. In other words, he claimed that his right to obtain set off could not have been wrecked and ruined by the negligence or inaction of the concerned authorities. Their Lordships have held that the provisions dealing with set off clearly express a legislative policy to accord an extraordinary or special benefit to the convicts. Only a convict is entitled to set off the period of his detention against the term of his imprisonment imposed on him on conviction; he is entitled to set off for the period of detention during the investigation, inquiry or trial in connection with the same case in which he has been convicted. Their Lordships have held that a detenu under the Preventive Detention Laws is not entitled to set off u/s 128. The reason is not far to seek, a detenu is, not detained as an accused nor does he undergo detention in connection with any investigation inquiry or trial, so the provisions of Section 428, Cr P.C. are not attracted. Their Lordships considered the case of accused Rao and observed that the authorities, could have easily arrested and produced the accused before the Magistrate when the FIR was lodged; there was no reason, why the accused was not formally arrested and produced before the Court in accordance with the provisions of the Code. Their Lordships allowed set off for the period commencing from the date when the accused ought to have been formally arrested in the criminal case i.e. 19-12-1969 to the date on which he was released from the preventive detention, i.e., 12-4-1970. Their Lordships directed that the period from Dec. 19, 1969 to April 12, 1970 also should be treated as the period during which the accused Rao was under detention in the Sessions case, It follows that the benefit of the provision was considered to be so wholesome as to grant it to a person who ought to have been arrested and detained by the authorities under the Code but was not so arrested under some wrong impression or laches. A person who in fact was not arrested, but could have been arrested by the authorities was deemed to be an accused in detention on and from the date on which he could have been so arrested, and, he was granted the benefit of set off

for the said period. Such is the depth and width of the Section. Indeed it is a wholesome social legislation which confers certain specific statutory rights to the accused. The salutary object of the Section was the driving force to apply the provision of Section 428 even in such an extreme case. The section is remedial as well as preventive. According to ordinary rule of construction the provision should take a liberal construction in favour of convicts. However, we do not desire to take refuge in the clouds and mists of liberal construction as it may be said that confronted by the hardship and injustice in a particular case we are giving a liberal construction to the Section. We, therefore, propose to interpret the Section according to reason and best conveniences to mould it to the truest and best "use".

6. To get a grip, of the controversies it is, necessary to set out the provisions of 5. 428 of the Code, which read as follows:

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment. Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

(Emphasis added)

The Section is mainly divided into two compartments. First, it lays down the conditions precedent to obtain the benefit of set off and, secondly, it prescribes the manner or method of computation of the period of set off. The Conditions Precedent for, Applicability of The Sections are: (1) The benefit of the Section can be claimed only by a person accused of an "offence;" A person detained under the Preventive Detention Laws or detained under any other preventive law is not entitled to the benefit of the section. He must be an accused of an offence; (2) An accused can claim the benefit only upon his conviction. If he is discharged and acquitted the question of entitlement cannot arise. (3) However, all convicts are not entitled to set off as the nature of the imprisonment on conviction must be of substantive and not imprisonment in default of fine. (4) An accused can claim set off against the term of imprisonment imposed on him "on. such conviction". It follows that the period of detention undergone by an accused after his conviction cannot be set off as the period of set off is to be determined upon conviction of an accused by the trial court. An accused is entitled to set off the period of detention undergone by him during the investigation, enquiry or trial of the same case and before the date of such conviction. Therefore, the detention of an accused during the pendency of an appeal or revision cannot be set off against the sentence of his imprisonment. It follows that the terminating point to claim set off is "the date of conviction", a set date fixed by the legislature. (5)

Only the period of detention undergone by an accused during the investigation, inquiry or trial of the same case is set off. His detention must be during the course of the investigation, inquiry or trial of a particular case. An accused is entitled to set off the period of detention undergone by him during the investigation, inquiry or trial of "the same case" and "before the date of such conviction". The key words are "the same case" and "before the date of such conviction". The detention must be in the case and, the period of detention terminates on the date of such conviction in that case. Therefore, in every case set off must be computed separately. An accused is not entitled to set off the period of detention undergone by him in another case, nor is the court empowered to grant such relief. The period of detention (a) must be in the same case, "(b) the computation of the period must terminate on the date of conviction in the case, and, (c) the liability of the accused to undergo imprisonment on such conviction must be restricted to the remainder, if any, of the terms of imprisonment imposed on him "in the case". The section lays down the rights and liabilities of an accused in each individual case. It does not permit the accused to claim set off for the period of detention in another case. Similarly, the period of detention undergone by him in one case cannot be exclusively set off in another case even if the period of detention overlaps the other case.

7. Now, let us turn to the question of computation of the period of set off: The starting point is the date of the initial detention of an accused and the period terminates on the date of his conviction. He may remain in detention intermittently or throughout but only the actual period of his detention during the course of investigation, inquiry or trial of the case is to be computed. The period when he was free, being on bail or on parole, could not be counted as "the period of detention". As such, u/s 428, Cr. P.C. on the date of conviction, the trial court is to compute, in terms of days, the period of detention. The court must focus its attention to the number of days he was so detained in "that case" and in no other case. It follows that such computation should be done in each case separately. The period of detention undergone by an accused in a particular case can be set off in that case, Neither the period of detention after his conviction, nor the period of detention in another case can be tagged. Section 428 does not inhibit an accused to obtain set off in the second or the subsequent cases for the overlapping period of detention in those cases. If an accused is simultaneously arrested and detained in two or more cases and on conviction obtains set off for the period of his detention in the first case he is not ineligible to obtain set off for "the period in the subsequent cases. In each case the Court is to count the number of days the accused was in such detention separately and the liability to undergo imprisonment on conviction should be restricted to the remainder of the terms of the imprisonment imposed on him in that case. The Section also prescribes the manner and procedure, of computation of the period of detention to be set off. The term "period" means any point of time, span of time or division of time. The prescribed period commences on a fixed day and terminates on another fixed day. The question of double or triple benefit does not arise in any

case as the court is only to compute the number of days the accused was in detention in each case and to grant set off accordingly in each case separately. If this be not the true construction of Section 428, there is possibility of complete deprivation of the right or benefit under certain contingencies. To take but one example, if an accused was arrested on 1-1-81 and convicted on 31-1-81, he should be entitled to set off for 31 days provided he was in detention during the period. Suppose he was also formally arrested on Jan. 6, 1981 and was in detention until convicted on October 26, 1981 in connection with another case. Is he disqualified to claim set off for the period commencing from 6-1-81 to 31-1-81 in the second case for he had obtained set off in the previous case for the said period? Suppose he was sentenced to 4 months' imprisonment in the first case and had obtained the set off to 31 days but ultimately acquitted in December, 1981, will he lose his right to obtain set off from 6-1-81 to 31-1-81 in the second case? If the contention of Dr. Sharma, learned Standing Counsel for Mizoram is accepted we find that in certain contingencies an accused may not get the benefit of set off for a certain period in either of the cases. It is hardly possible to accept such a construction. This contingency can be avoided if we interpret the Section according to reason and best convenience to mould it to the truest and best use. In our opinion, such interpretation or construction of a provision should be avoided where, an accused may altogether be deprived of his right to claim set off for a portion of the period of detention. In the result, we reach the conclusion that if an accused is arrested and detained in two cases, the computation for the period of set off must be done separately and he shall be entitled to claim set off the period in both the cases.

8. Now let us consider as to whether on conviction of the accused on 12-1-1981 in G. R. Case No. 496/80 the status of the accused in G. R. Case No. 456/80 changed that of the convict in "the latter" case. The accused undoubtedly became a convict in the former "case," but his status in G.R. Case No. 456/80 remained and continued to remain unchanged until his conviction on 18-2-81. His conviction in the former case or change of his status in that case has had nothing to do with G. R. Case No. 456/80. There is no provision under the Cr. P. C. or as a matter of fact in any other law including Sections 3(3) and 27(3) of the Prisons Act, 1894 which alters the status of a UTP to that of a convict before his conviction. In our opinion, the status of the petitioner in G. R. Case No. 456/80 continued to remain as UTP until his conviction on 18-2-1981. Under these circumstances, the accused is entitled to set off in G. R. Case No. 456/80 from the date of his arrest (6-9-80) to the date of his conviction (18-2-81). There is no wrangle at the bar that during the entire period he was in detention during the course of the investigation, inquiry or trial of the case.

9. At the bar, Subramonian Vs. Officer Commanding, Armoured Static Workshop, was cited. However, the decision was in a different setting. The question for determination was whether an army personnel was entitled to set off u/s 428, Cr. P.C. when he was convicted and sentenced by the General Court Martial under the Army Act for alleged commission of offence under the Penal Code. The

learned single judge held that the accused was entitled to set off. We express no opinion on the point as the question does not come up for consideration in the instant case. In *Onkar Singh Vs. Police Officers, Prashasan and Others*, the petitioner claimed set off for the period during which he was in hospital but in custody of the police and also for the period when on alleged violation of the terms of parole he was arrested and detained in connection with the case. The High Court accepted the contention of the petitioner that he was entitled to set off while he was in hospital but in custody. The High Court also accepted the second claim of the petitioner. It was held that although the petitioner was arrested for not surrendering after the period of parole was over and a different case was started against him, the period of his detention in that case also should be treated as the period spent by him in connection with the case in question. The decision clearly supports the view that we have taken. In *Gangada Vs. The State of Rajasthan*, the learned single Judge held that an accused convicted before the new Code is entitled to the benefit of Section 428 of the new Code. We respectfully agree with the view however, the point has been finally determined by the Supreme Court. Similarly, the principles in *Param Dev Vs. The State*, are not applicable in the instant case. The learned single Judge held that an accused is entitled to set off only to the stage before his conviction and the period of detention in prison after conviction cannot be set off. We respectfully agree with the view for the reasons set forth in our order. In *K.C. Dass and N.K. Chatterjee Vs. State*, , *A.B. Rohtagi, J.* scanned the Section and analysed it thoroughly and explained the nature and character of the computation to be made when an accused is convicted in more than one case We entirely agree with the reasoning and the conclusion reached by Rohtagi, J.

9A. Dr. Sharma has brought to our notice *Jaswantlal Harjivandas Dholakia Vs. State of Maharashtra*, Their Lordships held that if the period of set off in two cases overlaps the accused is not entitled to set off the overlapping period in the second case. For the reasons set forth in paras 6, 7 & 8 of our judgment, we respectfully differ from the views expressed therein.

10. At this juncture, we observe that the trial court should consider the effect of Section 427 of "the Code" when an accused, already underlying a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life must commence at the expiration of the imprisonment to which he has been previously sentenced unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. In the instant case, the accused was sentenced to imprisonment in G. R. Case No. 496/80 on 12-1-81 and while he was undergoing the sentence of imprisonment he was convicted on 18-2-81 in the second case and sentenced to suffer imprisonment and there is no order in the second case that the subsequent sentence should run concurrently with the previous sentence. As such, the sentence of imprisonment in the second case shall commence at the expiration of the imprisonment to which he had been previously sentenced. This facet must be carefully observed by. the learned

Magistrate.

11. These are the reasons on which we accepted the petition on 12-5-82 and held that the petitioner was entitled to set off from 6-9-80, the date of his arrest in the case, to the date of his conviction. However, we were not properly informed as to the exact date of his conviction and accordingly we recorded the date of his conviction in G. R. Case No. 456/80 as 12/19-2-81 and 21/19-2-81. On scrutiny of the entire records we find that the date of his conviction in G. R. Case No. 456/80 was on 18-2-81. However, we specifically expressed that the petitioner would obtain the benefit of set off in G. R. Case No. 456/80 from the date of his arrest in that case, namely, 6-9-80 to the date of his conviction.

12. In the result, the petition is allowed.