
(2012) 10 BOM CK 0132

In the Bombay High Court

Case No : Criminal Writ Petition No. 2976 of 2011

Laxman Ramchandra Kamble Convict No. C-10544, Yeravada
Central Prison, Pune-6, Maharashtra

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Constitution of India, 1950 — Article 161, 226, 227, 72
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A
Penal Code, 1860 (IPC) — Section 302, 337

Citation : (2012) 10 BOM CK 0132

Hon'ble Judges : V.M. Kanade, J;P.D. Kode, J

Bench : Division Bench

Advocate : Prantik Majumdar, Amicus Curiae, for the Appellant; J.P. Yagnik APP
for the State, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Kode, J.—By the present petition under Article 226 and 227 of the Constitution of India, sent through jail, the petitioner, convict lodged at Yeravada Central Prison, Pune, has prayed for quashing and setting aside the order dated 22nd July, 2011 passed by the respondent in respect of premature release and further directing the respondent for reconsidering his case for premature release. The Additional Sessions Judge for Greater Bombay vide his judgment and order delivered on 19.3.1999 in Sessions Case No. 1420 of 1995 has convicted the petitioner for commission of offences u/s 302 and 337 of the Indian Penal Code and has sentenced him to suffer imprisonment for life for the offence u/s 302 of IPC but has not awarded separate sentence for commission of offence u/s 337 of IPC. At the said trial the petitioner was tried for committing murder of his wife Smt. Shantabai and for causing burn injuries to his minor sons aged about eight years and two years. Learned Counsel for the petitioner urged that the petitioner is in custody since his arrest effected on 7th September, 1995 in connection with the said crime and thus by September 2010 he has completed the statutory

period of actual imprisonment as provided u/s 433A of the Code of Criminal Procedure. The petitioner sought an order of remission from the respondent in accordance with Short Sentencing Policy which was in force at the time when the offence was committed i.e. as per the guidelines issued by respondent in the year 1992. However, without application of mind respondent wrongly categorised him in category 1(d) of the said guidelines of the year 1992 and passed impugned order dated 22nd July, 2011.

2. Learned Counsel urged that the said category 1(d) is meant for the person who had committed murder with premeditation and hence commission of murder with premeditation is required to be established before placing the accused in category 1(d). He further urged that perusal of the judgment passed by the trial Court does not reveal any such finding given by the trial Court and hence placing the petitioner in said category 1(d) is without any basis or without there existing material warranting to place him in such a category.

3. Learned Counsel for the petitioner by placing reliance upon the judgments in Maru Ram and Others Vs. Union of India (UOI) and Others, ; Swaran Singh Vs. State of U.P. and Others, ; State of Haryana and Others Vs. Jagdish and Harpal, ; Epuru Sudhakar and Another Vs. Govt. of A.P. and Others, ; Satpal and Another Vs. State of Haryana and Others, ; Ravindra Shantaram Sawant Vs. The State of Maharashtra and Another, ; urged that ratio of the said judgment leads to the conclusion that judicial review of the order of the President or Governor under Article 72 or Article 161 as well as Orders of the State Government under Sections 432 and 433 of the Criminal Procedure Code, 1973, as the case may be, is permissible upon the following grounds:

- (a) that the order has been passed without application of mind;
- (b) that the order is malafides;
- (c) the order has been passed on extraneous or wholly irrelevant considerations;
- (d) that relevant materials have been kept out of consideration;
- (e) that the order suffers from arbitrariness.

Hence the petitioner has approached this Court with the prayers of quashing and setting aside the same and directing the respondent for reconsidering his case on rational basis.

4. He further contended that in view of the said proposition the order impugned deserves to be quashed and set aside as the same apparently does not reveals the reasons for the respondent coming to conclusion that the murder committed by the petitioner was with premeditation. He further contended that considering nature of crime occurred at the hands of petitioner, his case would never fall under category 1(d) of 1992 Guidelines and would fall under Guidelines 1(a) or atleast 1(c). He thus prayed for quashing and setting aside the order and remanding the matter back to respondent no. 1 for reconsideration of the case of

the petitioner for premature release.

5. The aforesaid submissions were countered by learned A.P.P. by urging that the bare perusal of the impugned order reveals that the respondent has duly taken into consideration the decision in case of State of Haryana v. Jagdish (supra) and as per paragraph no. 43 of the said judgment, the case of the petitioner has been considered on the Guidelines which were applicable on the date of his conviction as well as Guidelines which were in force at the time of considering the case of the petitioner to ascertain as to which of the said Guidelines were beneficial for the petitioner. It was urged that there is no substance in the submissions that the reasons are not given in the order impugned as the same duly reveals that the judgment dated 6th September, 1995 delivered by the trial Court was duly considered and the fact that the same discloses of the petitioner having committed murder of his wife with premeditation by setting her on fire by means of kerosene, due to his suspicion of her character was taken into account while categorising the petitioner in category 1(d) of 1992 Guidelines and category 2 (b) of the Guidelines of 2010. Learned A.P.P. urged that since as per both the Guidelines, the period of total imprisonment to be undergone by the petitioner being one and the same i.e. of 26 years with remission inclusive hardly the submission would survive of the case of the petitioner being not considered upon the Guidelines which were beneficial/Favourable to him as observed in the decision of State of Haryana Vs. Jagdish (supra). Learned A.P.P. thus contended that the order impugned can never be said to have been arbitrarily passed. He further urged that on the contrary the order being passed after duly considering the material against the petitioner, no interference is warranted with the same.

6. Since the submission advanced by Learned Counsel for the petitioner regarding scope of the judicial review regarding the powers of the State Government of granting pardon and/or remission are in consonance with the decisions referred by the petitioner no dilation about the same would be necessary. Now considering the case of the petitioner the moot question for consideration would be whether the murder of wife committed by him was with premeditation justifying placing him in the category 1(d) of 1992 Guidelines by the respondent.

7. Notably the judgment dated 9th March, 1999 reveals the prosecution case that about five years prior to the date of incident the petitioner had married Smt. Shantabai - victim, complainant. The petitioner alongwith her and the children was residing at Bhambrekar Nagar hutment near Mhada Colony Kandivali (W). According to the prosecution the petitioner started suspecting character of his wife and started neglecting her. He was not giving money for domestic expenses for which there were quarrels between them. It is the main case of the prosecution that on the date of incident dated 6.9.1995 at about 6 pm the petitioner returned home. He suspected about her character and there ensued a quarrel. The petitioner poured kerosene over empty gunny bags in the hut and set the said gunny bags on fire and pushed Shantabai into burning flames. She

sustained burn injuries. Similarly, two children namely Firdos aged eight years and Vijay aged two years present at the said place came in contact with burning flames and they also sustained injury. The petitioner ran away from the spot. After hearing the cries of Shantabai, P.W. 4 and other persons residing in the Neighbourhood came to the spot and extinguished the fire. The victim - Shantabai alongwith her children went to nearby Malvani colony where the persons from her native place were residing. They took her from Malvani to Bhagwati Hospital, Borivali for treatment. Ultimately on 8.9.1995, she succumbed at the said hospital. She had sustained 70% burn injuries.

8. The perusal of the judgment reveals that son Firdos, who was eye witnesses for the said incident had not supported the prosecution of the stand taken by him during the investigation in consonance with the prosecution case. Similarly, neighbours P.W. 2 Smt. Chandan Babu Pathan, P.W. 3 Abdul Gani Abdul Bari and P.W. 4 Sukhdev Bandoji and P.W. 5 have also not supported the case that the deceased Shantabai had told them that the petitioner had pushed her towards gunny bags which were set on fire by him in the hut. A perusal of the judgment also reveals that the trial Court had accepted dying declaration of the deceased recorded by Special Executive Magistrate P.W. 1 S.B. Jadhav, dying declaration cum FIR recorded by P.W. 7 P.I. Shaikh and history given by the deceased Smt. Shantabai to P.W. 8 Dr. V.P. Mali that burns sustained by her were homicidal burns given by her husband. The trial Court has also recorded the conflicting defence taken by the petitioner in paragraph 12 of the judgment.

9. Considering the aforesaid material on the backdrop that there used to be quarrels between couple, even prior to the incident and manner in which crime was committed we are unable to accept that the same does not disclose that the petitioner had murdered his wife with premeditation. Such inference is apparent from the fact of himself having set gunny bags on fire and thereafter pushed his wife towards burning flames and having ran away from the spot. The perusal of the judgment does not afford any reason to come to the conclusion that the said incident had occurred either at the spur of moment or in heat of anger. In the same context the fact of the petitioner having not taken any steps for saving the life of his wife and/or arranging for medical treatment for her and on the contrary ran away are self eloquent.

10. On the said backdrop considering the order impugned it is difficult to accept that the same is passed without application of mind, as the same in terms disclose that relevant matters from the judgment of trial Court were duly taken into consideration by the respondent while considering the case of the petitioner for Categorisation and placing him in appropriate categories. Similarly, it is extremely difficult to the accept that the order impugned does not disclose the reason for placing the petitioner in category 1(d). The same is abundantly clear from the crucial recital mentioned in the order to the effect "The perusal of decision of the court makes it abundantly clear that the prisoner on the count of suspicion of the character of wife by means of kerosene set her ablaze in a

planned manner". Now reference to the Guidelines of 1992 the relevant part of the same containing category 1(d) runs as under :

Similarly, the reference to the Guidelines of 2010 of which the relevant part of category 2 runs as under :

Now considering the matters from both the Guidelines we find it difficult to find any fault of placing the petitioner in Guideline 1(d) of 1992 Guidelines and 2(c) of 2010 Guidelines by the respondent. We are of such a opinion due to specific category being provided under the guidelines of 2010 for causing the murder of a wife by burns, Similarly, the period of imprisonment to be undergone for such a type of crime as committed by the petitioner being of 26 years under both the categories it is difficult to accept that the case of the petitioner was not considered in the light of the observations made by the Apex Court in the case of State of Haryana Vs. Jagdish. In the light of the aforesaid discussion we are unable to find any fault with the order passed by the respondent and as such we find no merit in the present petition and hence dismiss the petition.