

(2015) 06 GAU CK 0067
In the Gauhati High Court
Case No : Criminal Appeal No. 9 of 2014 (J)

Lianchungnunga	Vs	APPELLANT
State of Mizoram		RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Constitution of India, 1950 — Article 161, 72
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433
Penal Code, 1860 (IPC) — Section 323, 376(1)

Citation : (2016) 1 CCR 302 : (2015) CriLJ 3883

Hon'ble Judges : M.R. Pathak, J

Bench : Single Bench

Advocate : C. Lalramzauva, Amicus Curiae, for the Appellant; Linda L. Fambawl, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

M.R. Pathak, J—Heard Mr. C. Lalramzauva, learned Sr. Advocate as Amicus Curiae appearing for the accused/appellant and Mrs. Linda L. Fambawl, learned Public Prosecutor, Mizoram appearing for the State. This matter was earlier heard at length.

2. The learned Additional Sessions Judge, Aizawl Judicial District, Aizawl-III vide Judgment & Order dated 04.02.2014 passed in Criminal Trial No. 1429 of 2012 (SR No. 240/2012) arising out of Bawngkawn Police Station Case No. 161/2012 convicted the accused-appellant Sh. Lianchungnunga, son of Chawngchhingpuia, resident of Thingsulthliah under Section 376(1)/323 of the Indian Penal Code and further, vide order dated 10.02.2014 passed in said CrI. Trl. No. 1429/2012 for the offence under Section 376(1), IPC sentenced him to undergo Rigorous Imprisonment for a period of 7 (seven) years and to pay a fine of Rs. 20,000/- under Section, in default to further undergo simple imprisonment for 2 (two) months and further, for the offence 323, IPC to undergo Rigorous Imprisonment for a period of 6 (six) months, which are to run concurrently and set of the

period of detention already undergone by him during the investigation and trial of the case.

3. On verification of the records, it is seen that the accused-appellant above named did not challenge the impugned order of sentence and his conviction, but by an application before this Court only prayed for mercy & forgiveness for his mistake and for reduction of his term of conviction/period of sentence, imposed upon him by the learned trial Court as noted above. Said application of the accused-applicant was duly forwarded to this Court by the Special Superintendent of Central Jail, Aizawl on 18.03.2014, on the basis of which this Criminal Appeal was registered.

4. Section 432 of the Code of Criminal Procedure, 1973 as amended provides for power to suspend or remit sentences of a convicted accused and such power lies with the appropriate Government and it reads as follows:

"432. Power to suspend or remit sentences. (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions that the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the, unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eight years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and, -

(a) Where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) Where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means, -

(a) In cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government.

(b) In other cases the Government of the State within which the offender is sentenced or the said order is passed".

5. The Hon"ble Supreme Court in the case of State of Rajasthan Vs. Jamil Khan, (2013) 6 ABR 982 : (2013) 10 AD 287 : (2013) 13 JT 46 : (2013) 4 RCR(Criminal) 484 : (2013) 12 SCALE 200 : (2013) 10 SCC 721 : (2014) 1 SCJ 321 with regard to remission/commutation of sentence has held that -

"37. Punishment has a penological purpose. Reformation, retribution, prevention, deterrence are some of the major factors in that regard. Parliament is the collective conscience of the people. If it has mandated a minimum sentence for certain offences, the Government being its delegate, cannot interfere with the same in exercise of their power for remission or commutation. Neither Section 432 nor Section 433 of Cr.P.C. hence contains a non-obstante provision. Therefore, the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Government in exercise of their power under Section 432 or 433 of the Cr.P.C.. Wherever the Indian Penal Code or such penal statutes have provided for a minimum sentence for any offence, to that extent, the power of remission or commutation has to be read as restricted; otherwise the whole purpose of punishment will be defeated and it will be a mockery on sentencing".

6. In the case of Yakub Abdul Razak Memon Vs. State of Maharashtra, (2013) 5 JT 142 : (2013) 4 SCALE 565 , the Hon"ble Apex Court has held that -

"921. In order to check all arbitrary remissions, the Code itself provides several conditions. Sub-sections (2) to (5) of Section 432 of the Code lay down basic procedure for making an application to the appropriate Government for suspension or remission of sentence either by the convict or someone on his behalf. We are of the view that exercise of power by the appropriate Government

under sub-section (1) of Section 432 of the Code cannot be automatic or claimed as a right for the simple reason, that this is only an enabling provision and the same would be possible subject to fulfillment of certain conditions. Those conditions are mentioned either in the Jail Manual or in statutory rules. This Court, in various decisions, has held that the power of remission cannot be exercised arbitrarily. In other words, the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure laid down in Section 432 of the Code itself provides this check on the possible misuse of power by the appropriate Government".

7. In the case of Shankar Kisanrao Khade Vs. State of Maharashtra, (2013) 4 ABR 567 : (2013) 6 AD 286 : (2013) CriLJ 2595 : (2013) 6 JT 315 : (2013) 3 RCR(Criminal) 588 : (2013) 6 SCALE 277 : (2013) 5 SCC 546 , the Hon"ble Apex Court has held that-

"43. Off and on, the issue has been the interpretation of "life sentence" -does it mean imprisonment for only 14 years or 20 years or does it mean for the life of the convict. This doubt has been laid to rest in several cases, more recently in Sangeet (Sangeet and Another Vs. State of Haryana, AIR 2013 SC 447 : (2013) CriLJ 425 : (2013) 1 Crimes 25 : (2013) 1 RCR(Criminal) 114 : (2012) 11 SCALE 140 : (2013) 2 SCC 452 where it has been unequivocally laid down that a sentence of imprisonment, for life means imprisonment for the rest of the normal life of the convict. The convict is not entitled to any remission in a case of sentence of life imprisonment, as is commonly believed. However, if the convict is sought to be released before the expiry of his life, it can only be by following the procedure laid down in Section 432 of the Code of Criminal Procedure or by the Governor exercising power under Article 161 of the Constitution or by the President exercising power under Article 72 of the Constitution. There is no other method or procedure".

8. As provided under the Code of Criminal Procedure, it is only the Appropriate Government who under Section 432 of the Code can suspend or remit sentence imposed upon a convict and not this Court.

9. In view of the above, the said application of the accused-applicant-appellant Sh. Lianchungnunga be forwarded to the Chief Secretary, Government of Mizoram, Aizawl for its necessary consideration by the Appropriate Government, in accordance with law, following the provisions of Section 432 Cr.P.C. and the laws settled by the Hon"ble Supreme Court of India with regard to such remittance & commutation of sentence.

10. Registry shall forward the said application of the accused-applicant Sh. Lianchungnunga that was forwarded by the Special Superintendent of Central Jail, Aizawl on 18.03.2014 to the Chief Secretary, Government of Mizoram, Aizawl along with a copy of this Order for its necessary consideration by the Appropriate Government. Registry shall also send down the LCR to the trial Court forthwith.

11. The State Legal Services Authority, Mizoram shall pay an amount of Rs. 5,000/- to Mr. C. Lalramzauva, Learned Amicus Curiae for his assistance rendered in the matter. With the above observation and direction, this appeal stands disposed of.