

(1999) 04 MAD CK 0148

In the Madras High Court

Case No : Criminal Original Petition No. 22483/99 and Criminal M.P. No. 10927/98 and 1987/99

Mukundan @ Suresh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Constitution of India, 1950 — Article 161, 72
Criminal Procedure Code, 1973 (CrPC) — Section 433, 435, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 471
Prevention of Corruption Act, 1988 — Section 5(1)(d), 5(2)

Citation : (1999) 2 LW(Cri) 557

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : K.V. Sridharan, for the Appellant; E. Jacob Daniel, Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—Petition filed by the petitioner u/s 482 Cr.P.C. for the relief that the petitioner is entitled to the benefit or remissions in G.O.Ms. No. 279 dated 23.2.1992, G.O.Ms. No. 296 dated 20.2.93 and G.O.Ms. No. 205 dated 23.2.94 and direct the second respondent to give effect to these GOs. and set him at liberty in C.C. No. 26/87 on the file of IX Additional Sessions Judge, Madras now re-designated as VI Additional Sessions Judge, Madras.

2. The case in brief is as follows:

The petitioner is the first accused in C.C. No. 26/87 and by judgment dated 30.9.1991 the Trial Court convicted him for an offence under Sections 120B, 420, 467, 471 read with 467 IPC and 5(1)(d.) read with 5(2) of the Prevention of Corruption Act and sentenced him to undergo imprisonment as well as fine. The petitioner preferred C.A. No. 641/91 and by Judgment dated 30.4.1998, set aside the conviction u/s 120-B IPC, but confirmed the convictions recorded by

the Trial Court under other charges, and the imprisonment was reduced to R.I. for 1 year and to pay a fine of Rs. 1,000/- for each of the offence under IPC. (3 counts). The sentences were ordered to run concurrently.

The petitioner is entitled to get remission as per the GOs issued by the Government of Tamil Nadu under Article 161 of the Constitution of India. The Government of Tamil Nadu has allowed the remission of 6 months out of the imprisonment to certain classes of prisoners who have been convicted for the various offences by the Courts in the State of Tamil Nadu and sentenced to various terms of imprisonment other than life imprisonment. His case was investigated by C.B.I., Special Police Establishment, - Madras since the offences were committed while he was working in a Nationalised Bank and it is the case of the prosecution that the Nationalised Bank was cheated. The State Police Agency is also investigating and filing cases in respect of offences mentioned earlier.

The petitioner also relied upon the decisions of the Apex Court in 1991 S.C.C. (Cri) 845 (Ashok Kumar 3(a) Golu vs. Union of India and others) and also 1990 S.C.C. (Cri.) 419 (State of Punjab and others v. Joginder Singh and others). Even after the introduction of Section 435-A of Cr.P.C., the Government of Tamilnadu in exercise of the power conferred under Article 161 of the Constitution of India has issued Government Orders remitting the unexpired portion of sentence of imprisonment for life passed on the 370 convicts who had completed 10 years of actual imprisonment on 15.09.96. The persons awarded life imprisonment were also granted concession inspite of the provisions contained in Section 433 Cr.P.C. Whenever the Government wanted to deny the benefit of premature release/concession/remission for prisoners of certain categories, they were specifically mentioned in the G.O. The persons whose cases come u/s 435 Cr.P.C. were also excluded from consideration. When the case of persons who were convicted and whose case were investigated by C.B.I, under the Special Police Establishment is specifically excluded under Clause 2(b) and Clause 3 of the 3 G.Os referred to, it can be said that the case of the petitioner is covered under the above 3 G.Os and he is entitled to remission as the same was issued under Article 161 of the Constitution of India. Further, it is not necessary that while invoking Article 161 of the Constitution of India, the Governor of Tamil Nadu should consult the Central Government. Article 72 and 161 are beyond any legislative power to curb or confine.

Now, Non-Bailable warrant has been issued to execute the warrant. The petitioner is entitled to get the benefit of remission in view of the aforesaid 3 G.Os and hence the petition.

3. The learned Public Prosecutor for C.B.I, opposes the application and stated that in view of Section 435 Cr.P.C, the petitioner is not entitled to claim the benefit of the aforesaid 3 GOs.

4. Heard the learned counsel of both sides.

5. There is no dispute that the petitioner was sentenced to suffer R.I. for one

year and to pay a fine of Rs. 1,000/- in each count for an offence under sections 120B, 420, 467, 471 read with 467 I.P.C. and 5(1)(d) read with 5(2) of the Prevention of Corruption Act. Now the petitioner claims benefit of remission in view of G.O.Ms. No. 279 dated 23.3.92, G.O.Ms. No. 296 dated 20.2.1993 and G.O.Ms. No. 205 dated 23.2.1994. It is admitted that the case of the petitioner was investigated by the C.B.I. Special Police Establishment, Madras, since the offence was committed while he was working in a Nationalised Bank.

6. Perusal of the G.Os indicated that they were issued in exercise of the power conferred by under Article 161 of the Constitution of India, Clause 3 provides that Special remission sanctioned above will not be admissible in the cases mentioned therein. The learned counsel for the petitioner contended that since the G.Os were issued under Article 161 of the Constitution of India, this can be made applicable in the case of the petitioner also in spite of the fact that the investigation has been done by the C.B.I. However, the learned Public Prosecutor for the first respondent would contend that the petitioner is not entitled to claim the benefit of the aforesaid G.Os since they were not issued in accordance with Section 435 Cr.P.C.

7. Section 435 Cr.P.C. reads as follows:

State Government to Act after consultation with Central Government in certain cases:

1) The powers conferred by Section 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence.

a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946, or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

b)....

c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty shall not be exercised by the State Government except after consultation with the Central Government.

8. The language enumerated u/s 435 Cr.P.C. is definitely clear that the cases covered u/s 1(a) and 1(c), it shall not be exercised by the State Government except after consultation with the Central Government. It is mandatory in nature. There is nothing in the aforesaid 3 G.Os to show that they were issued in accordance with Section 435 Cr.P.C.

9. The learned counsel for the first respondent relied upon a decision of this Court reported in 1992 (CrL.) M.L.J. 161 wherein it is observed as follows:

Person convicted of offence investigated by Central Bureau of Investigation - Order of remission passed by State Government without consulting Central

Government - Orders of remission will not apply to such person.

10. Reliance was also placed upon another decision of this Court in 1997 1 L.W. (CrI) 237 wherein it is observed that G.Os passed by the State Government cannot be made applicable to remission regarding-of-fences investigated by C.B.I.

11. It is therefore clear from the aforesaid decisions of this Court that if the Investigation and filing of final report has been done by the C.B.I, then the remission passed by the State Government cannot be made applicable in view of Section 435 Cr.P.C.

12. The learned counsel for the petitioner relied upon judgments reported in 1990 S.C.C. (CrI) 419 State of Punjab and others v. Joginder Singh and others and 1991 S.C.C. (CrI) 845 (Ashok Kumar (a) Gobu v. Union of India and others) and these decisions have no application to the facts on hand. They do not relate to one u/s 435 Cr.P.C.

13. In the light of the aforesaid discussions, it is evidently clear that the petitioner is not entitled to claim benefit of the aforesaid 3 G.Os. simply because the G.Os were issued under Article 161 of the Constitution of India, it cannot be concluded that even in cases registered and investigated by C.B.I., without consultation of the Central Government, the G.Os. can be made applicable cannot be accepted. The language used in Section 435 Cr.P.C. would give an idea as to the intention of the drafters of the legislation and this being so, I am of the view that the petitioner is not entitled to claim the benefit under the aforesaid 3 G.Os.

14. For the reasons stated above, the petition is devoid of any merit and it is dismissed.