

(1998) 03 MAD CK 0140

In the Madras High Court

Case No : Criminal O.P. No. 1854 of 1998 and Cri. M.P. No's. 1225 and 1468 of 1998

Padma and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 13-03-1998

Acts Referred:

Constitution of India, 1950 — Article 161, 72
Criminal Law (Amendment) Act, 1961 — Section 2, 3
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A
Official Secrets Act, 1923 — Section 10, 3
Penal Code, 1860 (IPC) — Section 121, 122, 123, 124, 125
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)
Tamil Nadu Prison Manual Rules — Rule 341

Citation : (1999) 1 ALT(Cri) 191 : (1998) CriLJ 4335

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : R. Singaravelan, A. Packiaraj and K. Balaji, for the Appellant; R. Shanmugasundaram, Public Prosecutor and C.M. Gunasekaran, Government Advocate (Crl. side), for the Respondent

Final Decision : Allowed

Judgement

A. Ramamurthi, J.—Cri. M.P. No. 1225/98 : Petition for direction to release the petitioner from custody holding that after computing the period of remission passed by the Government of Tamil Nadu in G.O. Ms. No. 279/92, 296/93 and 205/ 94, the petitioner need not serve the sentence.

Cri. M.P. No. 1468/98 :- Petition to grant remission to the petitioner in view of the Government order issued by the Government of Tamil Nadu on various dates.

Crl. O.P. 1854/98 :- Petition filed to direct the respondents to extend the benefit of G.O.Ms. Nos. 781, 279, 296 and 205 and release the petitioner's husband forthwith on the basis of the remission of sentence and award damages and costs for keeping him inside the prison from 8-9-97 onwards without calculating

the remission period in accordance with the Government orders.

2. The case of the petitioners in brief in all the applications is as follows:

The petitioner in Cri. M.P. No. 1225/98 was sentenced to suffer rigorous imprisonment for two years for an offence u/s 5(1)(d) of the Prevention of Corruption Act by the learned Chief Judicial Magistrate, Erode, by the judgment dated 10-12-90 and subsequently confirmed by this Court in Criminal Appeal 829/90. The petitioner in Cri. M.P. No. 1468/98 was sentenced to suffer rigorous imprisonment for one year u/s 161, IPC and simple imprisonment for one year for the offence u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act imposed by the learned II Additional Special Judge, Special Court, Chennai in C.C. 33/87, dated 12-2-90 and confirmed by this Court in Criminal Appeal No. 124/90, dated 28-10-97. The husband of the petitioner in Cri. O.P. No. 1854/98 was sentenced to rigorous imprisonment for eighteen months with a fine of Rs. 1000/- for the offence u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, by the learned Chief Judicial Magistrate and Special Judge, Salem in C.C. 8/88, dated 20-3-89 and the sentence was also confirmed by this Court in Criminal Appeal No. 290/89, dated 29-7-97. The Government Orders passed u/s 432 of the Code of Criminal Procedure are to take effect from the date of the judgment. The convicted persons under the Prevention of Corruption Act, investigated by the Vigilance and Anti-Corruption, Tamil Nadu, are also entitled to claim the benefit of the various Government Orders. This Court also has extended the benefit of the, various Government Orders of remission in other cases also.

3. So far as the petitioner's husband in Cri. O.P. No. 1854/98 is concerned, this Court though dismissed the appeal, it is clearly stated that the jail authorities will give remission of sentence in accordance with the Government orders passed by the Government of Tamil Nadu. The petitioner's advocate forwarded a petition dated 12-8-97 to the Inspector General of Prisons, Chennai, requesting him to consider the case of her husband for remission of sentence in the light of the aforesaid Government Orders. In reply to that, he passed an order on 26-9-97 rejecting his request on the ground that the Government Orders are not applicable to the persons convicted under the Prevention of Corruption Act. The petitioner's husband is entitled to remission of sentence and none of the Government Orders has said in any place that they are not applicable to the cases covered under the Prevention of Corruption Act, when the Government Orders are silent in respect of the Prevention of Corruption Act and they specifically exclude certain cases from the purview of the Government Orders, the benefit of the Government Orders cannot be extended only to those sentences which are specifically elided and not for any other sentence including the sentence awarded under the Prevention of Corruption Act. In fact, the Inspector General of Prisons, Madras, has released under the various set of facts and circumstances, another person who was also sentenced under the Prevention of Corruption Act on the basis of the aforesaid Government Orders, hence, these

petitions are filed, seeking remission of sentence in pursuance of the various Government Orders issued by the Government of Tamil Nadu in the respective applications.

4. Heard the learned counsel for the parties.

5. The learned counsel for the petitioners contended that no doubt, the petitioners were convicted for an offence under the Prevention of Corruption Act but, however, they are entitled to claim benefit under various Government Orders issued by the Government of Tamil Nadu, giving remission of sentence.

6. The learned Public Prosecutor contended that since the persons were convicted under the Prevention of Corruption Act, the remission of Government Orders are not applicable to them and it has been specifically excluded in one of the Government Orders issued by the Government of Tamil Nadu. The learned Public Prosecutor mainly relied upon G.O.Ms. No. 1762/87 Home (Prisons-J) Department, dated 20-7-87 in support of his contention. A reading of this Government Order discloses that no guideline has been issued relating to premature release of the prisoners. Under the circumstance, the All India Committee on Prison Reforms recommended category of prisoner should not be considered for premature release. This recommendation was subsequently accepted and on the basis of which only, the aforesaid Government Order was issued and Clause 3 indicated that prisoners sentenced under Prevention of Corruption Act, Suppression of Immoral Traffic in Women and Girls Act, Drugs Act and Prevention of Food Adulteration Act are not entitled to be considered for premature release. The Director General of Prisons was also requested to send necessary draft amendment to Rule 341 of the Tamil Nadu Prison Manual, Volume II.

6.1 The entire argument of the Public Prosecutor is mainly based upon G.O. Ms. No. 1762/87 referred to supra and contended that since the persons were convicted under the Prevention of Corruption Act, are not entitled to claim remission of sentence.

6.2 The petitioners in all these cases relied upon G.O.Ms.No. 781 dated 11-4-90, G.O.Ms. No. 279 dated 28-2-92, G.O.Ms. No. 296/93 dated 20-2-93 and G.O.Ms. No. 205 dated 23-2-94. It is necessary to point out that in all these Government orders, there is no reference about G.O.Ms. No. 1762/87 dated 20-7-87 which is relied upon by the public prosecutor. The language employed in all these Government Orders are more or less the same, excepting the reason. In exercise of the powers conferred by Section 432 of the Code of Criminal Procedure, the Government of Tamilnadu permitted the remission of sentence relating to G.O.Ms. No. 781. So far as the other Government orders are concerned, in exercise of the power conferred by Article 161 of the Constitution of India, they were issued. It is clearly stated that in the case of men who have been sentenced to punishment for various offences other than those relating to murder, robbery and smuggling Activities, six months out of their imprisonment

can be remitted.

6.3. It is necessary to point out that the punishment under the Prevention of Corruption Act is not included in this Category. Further more, Clause 3 of the aforesaid Government orders relates to non-applicability to some category of persons. It reads as follows :-

the Special commission sanctioned above will not be admissible in the case of civil prisoners and detenus under the laws relating to detention and also in the case of persons convicted for offences under Sections 3 to 10 of the Official Secrets Act, 1923, Sections 2 and 3 of the Criminal Law Amendment Act 1961, Sections 121 to 130 of the Indian Penal Code, Foreigners and Passport Acts and persons convicted by Courts of Criminal jurisdiction of other states.

It is pertinent to point out that even under Clause 3, person convicted under the Prevention of Corruption Act has been excluded.

7. Learned counsel for the petitioners relied on a decision of this Court in K.G. Srinivasan v. P. Shanmugam, (1995) 1 LW (Cri) , wherein this Court came to the conclusion holding that the Government orders issued by virtue of the powers conferred under Article 161 of the Constitution is applicable even to persons convicted under the Prevention of Corruption Act and they are entitled to remission of sentence.

8. Learned Public Prosecutor, however 1998 Cri. L.J./272 XI pointed out that G.O.Ms. No. 1762 was not at all brought to the notice at the relevant point of time and as such, this decision may not be applicable to the facts on hand. However, it is necessary to state that the state has preferred an appeal before the Apex Court and in Special Leave to Appeal (Criminal) Nos. 1202 to 1228 of 1995 dated 10-4-95, wherein it is observed as follows :-

Though a question of law does arise with regard to G.O.Ms. No. 1762 dated 20th July 1987 being considered in these matters, we do not think that we should disturb the status quo, as resorted to by the High Court of Madras. Leaving the question of law open, we dismiss the Special Leave petitions.

9. No doubt, it is clear from the decision in 1995 (1) LW 80 K.G. Srinivasan's case (supra) that the Government orders are applicable even to the persons convicted for an offence under Prevention of Corruption Act. considering the fact that G.O. Ms. No. 1762 dated 20-7-87 has not been brought to the notice, it can be safely concluded that the aforesaid decision cannot be made applicable straightway to the case on hand since the question of law has been left open by the apex Court.

10. Learned public prosecutor relied upon an unreported judgment of this Court in Raji v. State of Tamil Nadu Rep. by the Inspector of Police, Vellore North Police Station Cri. R.C. 433/90 dated 7-7-95 relating to the same subject-matter, wherein it is observed as follows:

I have considered the effect of G.O.Ms. No. 1762 dated 20-7-87 and the subsequent plethora of remissional government Orders. Even in the subsequent Government Orders, remission of sentences, to certain categories of prisoners stands excluded. It is easily possible to comprehend that such exclusion is on the basis of the nature of offence allegedly committed and the impact that it would have on the social fabric.

I am unable to understand as to why G.O.Ms. No. 1762 dated 20-7-87 would cease to have any application so long as it has not been rescinded.

11. The petitioners relied upon a decision of this Court in *R. Dhason, Inre* 1991 LW Cri 523, wherein it is clearly held that the remission Government Orders issued by the Government of Tamil Nadu is applicable to persons convicted under the Prevention of Corruption Act also.

12. Learned counsel for the petitioners pointed out that G.O. 1762 relates to premature release whereas the subsequent Government orders issued u/s 432 of the Code of Criminal Procedure and also under Article 161 of the Constitution of India is one of remission. It is admitted that G.O. 1762 has been passed under the present Rules relating to the persons eligible for consideration of premature release. Further more, it has been passed on the basis of the recommendation made by the Director General of Prisons in relations to the conduct of the prisoners and behaviour of such prisoners during the tenure of stay in the prison and this cannot have any overruling effect relating to the Government orders issued u/s 432 of the Code of Criminal Procedure or under Article 161 of the Constitution of India. In fact, the learned counsel also pointed out the decision in *State of Punjab and others Vs. Joginder Singh and others*, wherein it is observed as follows at page 1468 of Cri LJ :

While exercising the constitutional powers under Article 72/161 the "President or the Governor as the case may be must Act on the advice of the Council of Ministers. The power under Article 72 and 161 of the Constitution is absolute and cannot be fettered by any statutory provision such as Sections 432, 433 and 433A of the Code of Criminal Procedure. This power cannot be altered, modified or interfered with in any manner, whatsoever by any statutory provisions or prison.

13. Article 161 of the Constitution of India reads as follows :

The Governor of a state shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

There is no dispute that most of the Government Orders were issued under Article 161 of the Constitution, which clearly disclose that they have power to grant remission of punishment or to remit the sentence for any person convicted of any offence against any law. This would clearly indicate that it will override the

Clause provided under the Tamil Nadu Prison Manual with a reference to the premature release.

14. It is unfortunate that the official confused themselves with respect to the various Government orders without knowing the difference between premature release and remission of sentence. The authorities were of the view that whatever applicable to the premature release also can be made applicable to the remission of sentence also. Premature release is one depending upon various conditions. The power has been conferred to release the prisoners even before the expiry of the punishment period by virtue of constitutional provision under Article 161 of the Constitution. The remission Government orders were issued and as adverted to, in none of the Government orders, Prevention of Corruption Act is included. When a conviction under the Prevention of Corruption Act is specifically excluded under Clause 3 of the various Government orders, the present contention of the learned public prosecutor that persons convicted under the Prevention of Corruption Act are also not entitled to get remission of sentence, is not a correct proposition. When a Government order has been issued under Article 161 of the Constitution, it cannot be said that G.O.Ms. No. 1762 prevails over the same.

15. The Government of Tamil Nadu have passed number of Government orders granting special remissions to various categories of prisoners for specified periods on the occasions which impelled the Government to pass such special Government orders were relatable either to the birth centenary or death anniversary of political stalwarts or poet laurets or the resumption of office by a new Government. The grant of remission relatable to certain categories of prisoners in all the Government orders is more or less same. The excluded categories are clearly given in the various Government orders themselves. They also specified a date for which they shall take effect. These things apart, they also specified the period of remission applicable to various categories of prisoners other than the excluded category of prisoners.

16. It is therefore, clear that any Government order issued by virtue of the power conferred under Article 161 of the Constitution is absolute and cannot be overruled by any statutory provision and it cannot be altered, modified or interfered with in any manner, whatsoever by any statutory provision or present Rules. G.O. Ms. No. 1762 has no relevance so far as the remission of sentences is concerned. It is applicable only for consideration of the eligibility of the convicted persons for deciding their premature release. In fact, there will be a Review committee and only to enable them to consider the case, guidelines were prepared and incorporated in the prison manual subsequently and unfortunately by making use of this G.O.Ms. No. 1762, the Inspector General of prisons has wrongly rejected the contentions of the petitioners and although they are entitled to claim benefit under the various remission Government orders mentioned above, they were detained in prison unnecessarily. Hence, there is no difficulty in coming to the conclusion that persons convicted under the Prevention of

Corruption Act are also entitled to claim the benefit under G.O.Ms. No. 781 dated 11-1-90, 297 dated 23-2-92, 296 dated 20-2-93 and 205 dated 23-2-94.

17. The petitioner's advocate in Crl. O.P. 1854/98, in fact, forwarded a petition dated 12-8-97 to the Inspector General of Prisons Chennai requesting him to consider the remission of sentences in the light of the various Government orders. It is unfortunate that the Inspector General of Prisons, Chennai has sent a reply dated 26-9-97 rejecting the request on the ground that the executive instructions issued in G.O.Ms. No. 1762 dated 20-7-87 that the prisoners convicted under Prevention of Corruption Act, are not entitled for consideration of premature release are still in force, as they have not been modified and as such, he is not eligible for consideration of premature release. They have not claimed any premature release and the authority has been misled by G.O.Ms. No. 1762 and one can even say that the Government Order issued for remission of sentence by a constitutional authority itself has been flouted by the authorities and as a result of which unnecessarily prisoners were detained in custody. It only exposes the fact that although the Government issued Government Orders giving remission of sentence to various prisoners because of the inaction of some officials., the benefit could not reach to them and as a result is any of which, prisoners have to suffer. Even if there is any doubt on the part of the official concerned, he ought to have obtained opinion from the competent authorities and instead he had simply rejected the request without any application of mind and, as such, the action of the official is an improper one and is highly condemnable. Because of the inaction or non-application of mind of officials of this type, the parties are driven to the necessity to move the Court again and again for interpretation and by this process, they are kept in custody unnecessarily.

18. For the reasons stated above, the petitions are allowed and the petitioners are entitled to claim remission of sentence in accordance with the Government orders 781 dated 11-4-90, 279 dated 23-2-92, 296 dated 20-2-93 and 205 dated 23-2-94 and the Superintendent, Central Prison, Coimbatore is directed to give effect to this order forthwith and release the petitioners in custody after granting remission and if they are not required for any other case. Consequently, Crl.O.P. 1311/98 and Crl.M.P. 1146/98 are dismissed.