
(1989) 12 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition (H.C) No. 250 of 1989

Pramod Isloor

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428, 433

Citation : (1990) ILR (Kar) 278 : (1990) 1 KarLJ 176

Hon'ble Judges : Venkatachala, J;Hakeem, J

Bench : Division Bench

Advocate : B.T. Parthasarathy, for the Appellant; N.K. Gupta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Venkatachala, J.—This habeas corpus writ petition was argued on behalf of the writ petitioner, a convict serving sentence of life imprisonment in the bangalore central prison, by shri b.t. parthasarathy a senior counsel, readily responding to our request made to him in that regard considering the importance of the claims in the writ petition that section 433 a of the code of criminal procedure, 1973 (for short "the code"), which has come into force on 18-12-1978, requiring that a person undergoing a sentence of imprisonment for life imposed on conviction for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted u/s 433 of the code into one of imprisonment for life, shall not be released from prison unless he had served atleast fourteen years of imprisonment, was not attracted to the writ petitioner's case and that the superintendent of bangalore central prison should be directed to examine his case for releasing him from prison by giving the benefit of remission rules and section 428 of the code relating to set off of the period of detention of a person as under-trial prisoner against the term of imprisonment imposed on him on conviction for an offence, as prevailing on 4-6-1977, the date on which he must be regarded to have been convicted and

imposed the sentence of life imprisonment.

2. The said claims in the writ petition were contested by shri n.k. gupta, government advocate appearing for the state of karnataka, on the basis of the averments in the counter-affidavit of the senior superintendent of the bangalore central prison filed in the writ petition. However, as desired by us, he got filed from the senior superintendent of the central prison the "roll of the prisoner" pertaining to the writ petitioner.

3. We shall mention, at the outset, the undisputed material facts which have to form the basis for our decision on the points arising for consideration from the arguments addressed by learned counsel on either side. Pramod isloor is the petitioner. He was arrested on 4-3-1977 by the sirsi police on a charge of murder. The sessions court of north kanara found him guilty of the offence of murder and convicted him for that offence and sentenced him to undergo imprisonment for life, by its judgment delivered on 4-6-1977. That judgment being appealed against before this court, it was set aside by this court and re-trial of the case by the sessions court was ordered. In pursuance thereof, re-trial being held by the sessions court, by its judgment dated 25-9-1978, the petitioner was convicted and sentenced to life imprisonment, again being found guilty of the offence of murder, of which he was charged. The later judgment being appealed against before this court, that judgment also was set aside and this court ordered re-trial of the case over again. Re-trial so ordered having been held by the sessions court, by its judgment dated 30-11-1979, the petitioner was found guilty of the charge of murder levelled against him and was convicted and sentenced to life imprisonment, then as well. Thereafter, the appeals taken up by the petitioner against the latest judgment before the high court and the supreme court having been proved futile, the petitioner has served a part of the sentence of life imprisonment in belgaum central prison and is continuing to serve the remaining part of the sentence of life imprisonment in the bangalore central prison. His request made to the senior superintendent of the bangalore central prison for his premature release by giving him the benefit of remission under the remission rules and the set off of the pre-conviction detention provided for u/s 428 of the code, being denied on the plea that the provision relating to serving of mandatory minimum sentence of fourteen years by a person sentenced to undergo life imprisonment being found guilty of an offence punishable with death, is applicable to his case, the petitioner got sent a petition to this court through the senior superintendent of the bangalore central prison and the same has been registered as a habeas corpus writ petition by this court.

4. From the arguments addressed before us by learned counsel on both sides, the points which arise for our consideration and decision could be formulated thus:

(i) whether the judgment of conviction and sentence passed against the petitioner by the sessions court on 30-11-1979 has to be regarded as the judgment of conviction and sentence passed on 4-6-1977.

(ii) if the answer to point (i) is in the affirmative, can the provision in section 433 A of the code relating to serving of mandatory minimum sentence of fourteen years imprisonment, be a bar for premature release of the petitioner by giving him the benefit of remission under the remission rules and the set off of the pre conviction detention provided for u/s 428 of the code.

5. We shall now proceed to consider the said points seriatim.

re. Point (i):

this point is whether the date of judgment of conviction and sentence passed against the petitioner by the sessions court after a third re-trial of the charge of murder, of which he was tried, relates back to the date of its judgment of conviction and sentence passed against the petitioner after the very first trial though that judgment and another similar judgment had been set aside in appeals therefrom leading to a re-trial after re-trial. While it was argued by the learned counsel for the petitioner that it was so, it was argued to the contrary by the learned counsel for the state. As we have found that the point in controversy cannot any longer be regarded as *res integra* by reason of the decision of the supreme court in *Maru Ram and Others Vs. Union of India (UOI) and Others*, the same may be adverted to. In that decision, the supreme court had to deal with several controversies raised respecting section 433 A of the code including its applicability to the offender acquitted by the trial court of the offence envisaged thereunder prior to the coming into force of that provision, but convicted of that very offence and sentenced to undergo life imprisonment by the appellate court subsequent to the coming into force of that provision. The controversy has been dealt with and resolved in paragraph 56 of that decision thus:

"56. We are mindful of one anomaly and must provide for its elimination. If the trial court acquits and the higher court convicts and it so happens that the acquittal is before section 433-A came into force and the conviction after it, could it be that the convicted person would be denied the benefit of prospectively and consequential non-application of section 433-A merely because he had the bad luck to be initially acquitted? We think not. When a person is convicted in appeal, it follows that the appellate court has exercised its power in the place of the original court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of judgment of the trial court. The appellate conviction must relate back to the date of the trial court's verdict, and substitute it. In this view, even if the appellate court reverses an earlier acquittal rendered before section 433-A came into force but allows the appeal and convicts the accused, after section 433-A came into force, such persons will also be entitled to the benefit of the remission system prevailing prior to section 433-A on the basis we have explained."

if what has been said above by the supreme court as to the non-applicability of section 433A to an offender acquitted by the trial court, but convicted by the

appellate court, the same should, in our view, apply to the case of an offender - the present petitioner, who was convicted by the trial court for the first time and again convicted by the trial court for the third time, in that, the convictions ordered by the trial court after the first trial and second trial, had been set aside by the appellate court not because of any fault on his part, but because of palpable procedural errors committed by the trial court in the course of those trials. If, as held above by the supreme court, conviction and sentence awarded to an offender by the appellate court has to be substituted for and shall have retroactive effect from the date of judgment of the trial court, it must follow as a necessary corollary thereto that the conviction and sentence awarded by the trial court to an offender after a third trial shall be regarded as the very conviction and sentence which had been awarded by it, after the first trial and as those which have retroactive effect from the date of the first judgment of the trial court.

we, therefore, hold that the judgment of conviction and sentence passed against the petitioner in the instant writ petition by the sessions court on 30-11-1979 has to be regarded as the judgment of conviction and sentence passed on 4-6-1977.

re. Point (ii):

The date on which a person is sentenced to imprisonment for life imposed on conviction for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted u/s 433 of the code into one of imprisonment for life, when is referable to a date prior to 18-12-1978, the date of coming into force of section 433A of the code, such person would be entitled to remission of sentence under the remission rules or remission scheme prevailing on the date to which such conviction and sentence becomes referable, is also a matter concluded by the decision of the supreme court in maru ram's case (supra) as could be seen from what is said towards the end of paragraph 55 thereof, which reads:

".....that every person who has been convicted by the sentencing court before december 18, 1978, shall be entitled to the benefits accruing to him from the remission scheme or short-sentencing project as if section 433A did not stand in his way. The section uses the word "conviction" of a person and, in the context, it must mean "conviction" by the sentencing court; for that first quantified his deprivation of personal liberty."

if the date of conviction of a person sentenced to imprisonment for life is referable to a date prior to 18-12-1978, he becomes entitled to the set off of his pre-conviction detention provided for u/s 428 of the code, is put beyond the pale of any controversy by the supreme court by its decision in bhagirath v. Delhi administration, air 1985 sc 1080? The controversy is considered and resolved by the supreme court in paragraphs 6 to 8 of that decision thus:

"6.....the relevant question and, the only one, to ask u/s 428 is: has this person been sentenced to imprisonment for a term? For the sake of convenience, the

question may be split into two parts. One, has this Person been sentenced to imprisonment? And, two, is the imprisonment to which he has been sentenced an imprisonment for a term? There can possibly be no dispute that a person sentenced to life imprisonment is sentenced to imprisonment. Then, what is the term to which he is sentenced? The obvious answer to that question is that the term to which he has been sentenced is the term of his life. Therefore, a person who is sentenced to life imprisonment is sentenced to imprisonment for a term.

7. We see but little warrant for qualifying the word "term" by the adjective "fixed" which is not to be found in section 428. The assumption that the word "term" implies a concept of ascertainability or conveys a sense of certainty is contrary to the letter of the law, as we find it in that section, even the marginal note to "the section does not bear out that assumption. It rather belies it. And, marginal notes are now legislative and not editorial exercises. The marginal note of section 428 shows that the object of the legislature in enacting the particular provision was to provide that "the period of detention undergone by the accused" should "be set off against the sentence of imprisonment" imposed upon him. There are no words of limitation either in the section or in its marginal note which would justify restricting the plain and natural meaning of the word "term" so as to comprehend only sentences which are imposed for a fixed or ascertainable period.

8. To say that a sentence of life imprisonment imposed upon an accused is a sentence for the term of his life does offence neither to grammar nor to the common understanding of the word "term". To say otherwise would offend not only against the language of the statute but against the spirit of the law, that is to say, the object with which the law was passed. A large number of cases in which the accused suffer long under trial detentions are cases punishable with imprisonment for life, usually, those who are liable to be sentenced to imprisonment for life are not enlarged on bail. To deny the benefit of section 428 to them is to withdraw the application of a benevolent provision from a large majority of cases in which such benefit would be needed and justified."

we, therefore, hold that the provision in section 433A of the code relating to serving of mandatory minimum sentence of imprisonment, cannot be a bar for premature release of the petitioner in the writ petition by giving him the benefit of remission under the remission rules and the set off of the pre-conviction detention provided for u/s 428 of the code, with reference to 4-6-1977, the date on which he must be regarded to have been convicted and sentenced to imprisonment for life for the offence of murder of which he was found guilty.

6. In the result, we allow this writ petition and direct the senior superintendent of central prison, bangalore, to give to the petitioner (pramod isloor) the benefit of remission under the remission rules and set off of the pre conviction detention allowed u/s 428 of the code, treating him as a person respecting whom the trial court (sessions court at north kanara) has passed a judgment" on 4-6-1977 convicting him for the offence of murder and sentencing him to imprisonment for

life, and release him prematurely, if the benefits of remission and set off entitle him for such release.

7. Before parting with this writ petition, we place on record our deep appreciation and grateful thanks for the assistance rendered by shri b.t. parthasarathy by arguing the case for the writ petitioner, who was unrepresented before us, though the stake in the writ petition was his personal freedom.