

**(1997) 08 MAD CK 0077**  
**In the Madras High Court**  
**Case No : Criminal Appeal No. 210 of 1990**

Radhakrishnan

APPELLANT

Vs

State

RESPONDENT

**Date of Decision :** 19-08-1997

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 464  
Penal Code, 1860 (IPC) — Section 225, 227, 302, 433

**Citation :** (1999) 1 LW(Cri) 381

**Hon'ble Judges :** T. Jayarama Chouta, J

**Bench :** Single Bench

**Advocate :** Mr.P.K. Rajagopal, for the Appellant; Mr. Babu Muthu Meeran, Government Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

T. Jayarama Chouta, J.

1. The appellant who has been convicted u/s 227 IPC and sentenced to undergo rigorous imprisonment for a period of one year by the Sessions

Judge, West Thanjavur Division, Thanjavur in Sessions Case No.70 of 1988 has filed this criminal appeal challenging the said conviction and sentence.

2. The appellant/accused who has been convicted for an offence punishable u/s 302, IPC and sentenced to undergo imprisonment for life by the

Principal Sessions Court, Thanjavur, West in Sessions Case No.89 of 1982 dated 7.2.1983 was released on parole for a period of 15 days from

28.5.1986 with a condition that he should return to the said prison on or before 13.6.86 as per GO No.2025/Home (Prison)/dated 28.5.1986.

Since the appellant has not surrendered to the prison and he was arrested only

on 9.7.1987 and brought to the prison. A charge has been framed for an offence punishable u/s 227, IPC by the Sessions Judge, West Thanjavur Division, Thanjavur. During the Course of the trial on behalf of the prosecution, three witnesses have been examined namely P.Ws.I to 3 and got marked Ex.P.I, Ex.P.2 and MO 1.

3. The defence of the accused/appellant was that, he was not feeling Well and he was undergoing treatment and hence he could not surrender to the prison.

4. The learned Session Judge after concluding the said trial has convicted the accused and sentenced him to undergo imprisonment as stated above. The above said conviction and sentence have been challenged in this criminal appeal.

5. I heard the learned Advocate Mr. T.K. Rajagopal on behalf of the appellant and the Government Advocate on behalf of the respondent. The

main ground of attack of the learned Advocate for the appellant was that the charge framed against the accused/appellant and the conviction for an

offence punishable u/s 227, IPC could not be sustained in view of the fact that the non-fulfilling the condition imposed while releasing the accused

on Parole will not come within the purview of section 227 of IPC. He has submitted that the Sessions Judge was not justified in framing the charge

u/s 227, IPC and trying the accused for the said offence and convicting him for the same. His alternate argument was that in view of Section

433(A) of the Code of Criminal Procedure, the appellant could not have been sentenced to undergo imprisonment.

6. On the other hand, the learned Government Advocate tried to support the conviction and sentence imposed by the Sessions Judge, and he has

further submitted that eventhough the offence does not fall u/s 227, IPC, it may be an offence u/s 225A of IPC and hence mere framing of charge

under a different head had not caused any prejudice to the appellant and hence in view of Section 464 of the Criminal Procedure Code, this Court

need not interfere with the said conviction and sentence.

7. Now let me consider the present case in the light of the arguments advanced by the advocates on either side. Section 227 of the IPC reads as

follows;

Violation of condition of remission of punishment: whoever having accepted any

conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

From the above section, it is quite clear that the section will be applicable only in a case of remission of punishment. In the present case the

appellant/accused has been granted parole by the Jail Authorities Remission has to be granted by the Government u/s 432 of the Criminal

Procedure Code. Section 432 of the Cr.PC reads as follows;

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 which the person sentenced accepts, suspend the execution of his sentence, suspend the execution of his sentence or remitting 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 a statement of such opinion a certified copy

or 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 unexpired portion of the sentence.

8. Other provisions of the section are not necessary for the disposal of this case similarly, section 433 of the Criminal Procedure Code is to the

following effect;

Power to commute sentence;- The appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for any other punishment provided by the Indian Penal

Code; (b) a sentence of imprisonment for life for imprisonment for a term not exceeding fourteen years or for fine; (c) a sentence of rigorous imprisonment, for, simple imprisonment for any term to which that person might have been sentenced, or for fine; (d) a sentence of simple imprisonment, for fine",

Section 433-A is hi the following effect;

Restriction on powers or remission or commutation in certain cases;- Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person 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, Cr.PC into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

9. A reading of the above sections clearly goes to show that remission is altogether different from parole. Parole is a provision other than release from confinement, but is deemed to be a part of the imprisonment. Parole is thus a grant of partial liberty or lessening of restrictions on a convicted prisoner. But release on parole has not changed the status of the prisoner. It is thus clear that parole and remission are different things.

10. Section 227, IPC deals only in respect of remission. That being so, the Session Judge was not justified in framing a charge and convicting the accused/appellant for the offence punishable u/s 227 IPC.

11. The learned Government Advocate however, submitted that if the offence is riot u/s 227 IPC, then it may amount to an offence u/s 225A, IPC which deals with.

Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for";

This section is not applicable to the present case. There is no question on which the appellant could escape from confinement. He has been legally

granted parole, however, he had not complied with the conditions imposed in the said order by submitting himself to the prison within the time

prescribed in the said order.

12. Under those circumstances, the argument of the Learned Government Advocate that the offence would fall u/s 225A cannot be accepted.

Further more, it will not come within the purview of section 462 of Code of Criminal Procedure, wherein the section deals with cases where there is no failure of justice. Under those circumstances, the conviction and sentence imposed on the appellant/accused cannot be sustained.

13. Hence, for the reasons stated above, I allow this Criminal Appeal, set aside the conviction and sentence imposed on the appellant.