

(1977) 09 BOM CK 0013

In the Bombay High Court

Case No : Criminal Application No. 957 of 1977

Rafiq Abdul Rehman

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-09-1977

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66
Criminal Procedure Code, 1973 (CrPC) — Section 428, 433
Penal Code, 1860 (IPC) — Section 302, 324, 53, 53A

Citation : (1977) 79 BOMLR 576 : (1978) MhLj 211

Hon'ble Judges : Kanade, J;Deshmukh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deshmukh, J.—This is an application by a convict through jail. It raises a point of some interest relating to the real meaning and interpretation of Section 428 of the Code of Criminal Procedure, 1973.

2. The petitioner has been convicted in three different cases. One was Sessions Case No. 347 of 1962 which resulted in his conviction u/s 302 as well as u/s 324, Indian Penal Code. The judgment was delivered in that case on February 18, 1963. He was sentenced to life imprisonment u/s 302 and to undergo rigorous imprisonment for one year each under two different counts u/s 324, Indian Penal Code. The two sentences of one year each were not only to run concurrently with each other but they were both to run concurrently with life imprisonment. In relation to this Sessions case he was arrested on or about September 1962 and was in continuous detention for the purpose of investigation, inquiry and trial of Sessions Case No. 347 of 1962. This was till February 18, 1963 when the sentence was pronounced upon him.

3. He was also convicted in two criminal cases both u/s 66(1)(b) of the Bombay Prohibition Act. In Criminal Case No. 525/P of 1962 the Presidency Magistrate of the 14th Court, Bombay, sentenced him to suffer rigorous imprisonment for five

months and to pay a fine of Rs. 1,000, or in default, rigorous imprisonment for one month. In Criminal Case No. 6180/P of 1962 the 18th Court of the Presidency Magistrate, Bombay, sentenced him to suffer rigorous imprisonment for nine months and a fine of Rs. 200, or in default, rigorous imprisonment for one month.

4. While the petitioner was serving life imprisonment for his conviction in Sessions Case No. 347 of 1962, his sentence has been commuted by the State Government u/s 433 of the Code of Criminal Procedure, 1973, to a term of fourteen years under Clause (b) thereof. The petitioner, therefore, applies by this application to grant him concession of 158 days, which was the period of detention in relation to Sessions Case No. 347 of 1962 from the sentence of fourteen years rigorous imprisonment which is the commuted sentence due to the State Government's orders u/s 433 of the Code. He has also urged that he is entitled to a set off in relation to that period even in the cases of convictions under the Prohibition Act by the 14th and the 18th Courts of the Presidency Magistrates, Bombay. The application is opposed by the public prosecutor.

5. So far as the request of the petitioner to grant him the relief u/s 428, Criminal Procedure Code in relation to the prohibition cases is concerned, it is not possible to accept the application at all. Section 428 lays down in terms that:

Where an accused person has, on conviction, been sentenced to imprisonment for a term, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction,...

It is, therefore, clear that an accused person must in the first instance be sentenced, on conviction, to imprisonment for a term. That description is answered by the sentences pronounced in the two prohibition cases. They are respectively for the terms of five months and nine months. However, in order that a set off should be given u/s 428, the detention must have been undergone by the accused during the investigation, inquiry or trial of the "same case". The facts stated by the accused in the petition clearly show that he was arrested in September 1962 only in relation to the offence of murder, which is the subject-matter of Sessions Case No. 347 of 1962. The detention from September 1962 to February 18, 1963 is in relation to the Sessions Case No. 347 of 1962 and it is not a detention in relation to the investigation, inquiry or trial of the prohibition cases. That being so, the petitioner is not entitled to claim any remission of the detention period in relation to the prohibition cases.

6. So far as the Sessions case is concerned, it is no doubt true that the detention undergone by the petitioner is in relation to the investigation, inquiry or trial of the Sessions case. However, it is to be now seen, whether he is entitled to the remission of this period in relation to the Sessions case. For that purpose the requirement of Section 428 of the Criminal Procedure Code is that an accused

person must have been sentenced to imprisonment "for a term". In Sessions case No. 347 of 1962, the conviction is under three different heads. u/s 302 the sentence of imprisonment is life imprisonment. Under the second and the third heads, both u/s 324 of the Indian Penal Code, the sentence pronounced is one year rigorous imprisonment each. However, it is a part of the judgment and the pronouncement of the Sessions Court is that all the three sentences have to run concurrently. In other words, on conviction, the only liability of the accused person is now to undergo the sentence of imprisonment for life only. Can the accused person in such circumstances still take advantage of Section 428, Criminal Procedure Code?

7. This point is already considered by¹ a division Bench of this. Court in an unreported judgment in Rajahusein Gulamhusein Lakhani v. The State of Maharashtra (1976) Criminal Application No. 1726 of 1975, by a Bench consisting of Vaidya and Rege JJ. The learned Judges have pointed out, and we are in respectful agreement with that interpretation, that the remission of detention period is available only when the sentence is of imprisonment "for a term". That expression, viz. imprisonment for a term, has been used in Sections 53 and 53A of the Indian Penal Code and they show that there is a distinct difference between a sentence which is one for imprisonment for life and a sentence which is an imprisonment for a term. It is only in the case of a sentence of the second type, viz. for a term, that the remission contemplated by Section 428 is to be made available to a convict.

8. In the present case, it can be argued that there is a sentence of one year u/s 324, which is undoubtedly a sentence of imprisonment for a term. Why not, therefore, deduct the detention period of 158 days from that part of the sentence? We do not find that such a futile exercise can be done, because the sentence read as a whole, as pronounced by the Court itself, points out that the imprisonment for a term u/s 324 is to run concurrently with the life imprisonment u/s 302. The effective sentence is that of life imprisonment. That being so, the remission u/s 428 cannot be made available to the petitioner.

9. The petitioner's main argument in the petition, however, is that the sentence of life imprisonment has now been commuted by the State Government to an imprisonment for fourteen years, and this creates a situation where as if he is sentenced for a term of fourteen years. Out of these fourteen years he should be given the remission of 158 days. We are unable to accept the logic of this argument. Section 428 undoubtedly contemplates a conviction by the Court, whereas Section 433 deals with commutation by the appropriate State authority. When the Court has sentenced the accused to imprisonment for life, there is no sentence for a term in law and the liability of the accused is to undergo imprisonment for the entire period of his natural life. That has already been pointed out by the Supreme Court in the case of Gopal Vinayak Godse Vs. The State of Maharashtra and Others, . It is entirely different that a different authority vested with powers u/s 433 reduces the rigour of this sentence in its

own discretion by commuting the period of life imprisonment to fourteen years and the accused person undergoing the sentence as per the directions of the appropriate Government is released from the jail by the Superintendent after he serves a period of fourteen years. That does not amount to the accused person being sentenced to an imprisonment for a term. His sentence was undoubtedly one for life and not for a term. If he gets the advantage of the State Government's orders u/s 433 of the Code, he would be entitled to be released at the end of that period to which his imprisonment has been commuted by the State Government. However, the provisions of Section 428, which operated at the time of the pronouncement of the sentence by the Court and declare the liability of the convicted accused to undergo certain imprisonment in terms of Section 428, cannot be read in the context of a separate provision like Section 433 and cannot be subjected to the consequence that may follow from the provisions of Section 433. These are two independent provisions and their fields of operation are different. This being so, the petitioner is not entitled to any deduction or remission of the sentence. He has been sentenced in Sessions Case No. 347 of 1962 to imprisonment for life and not an imprisonment for a term. In this view, in neither of these matters is the petitioner entitled to a remission.

10. The petition fails and is rejected. Rule discharged.