
(2002) 09 RAJ CK 0017

In the Rajasthan High Court

Case No : Criminal Miscellaneous Jail Applications No. 668 and 654 of 2002

Ram Chandra and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 09-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428, 482

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 8

Citation : (2003) 1 WLC 680 : (2003) 2 WLN 8

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—Both the above mentioned petitions have been received from jail and both of them have been registered by the office u/s 482, CrPC and since in both the petitions, common point of interpretation of Section 428, CrPC is involved, therefore, they are being decided by this common order.

S.B. Cr. Misc. Jail Appeal. No. 668/2002

2. It arises in the following circumstances:

In this case, the accused petitioner Ram Chandra in Sessions Case No. 241/1994 was convicted by the learned Special Judge, NDPS Cases, Udaipur for the offence u/s 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") vide judgment dated 13.9.1995 and vide order of sentence dated 13.9.1995, he was sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs. one lac, in default of payment of fine, to further undergo two years RI.

In compliance of the aforesaid judgment and order dated 13.9.1995, warrant of commitment to jail was prepared by the learned Special Judge, NDPS Cases, Udaipur on 13.9.1995 and in that warrant of commitment to jail, it was mentioned that the accused petitioner Ram Chandra would not get the benefit of

the provisions of Section 428, CrPC.

Against the judgment and order dated 13.9.1995 passed by the learned Special Judge, NDPS Cases, Udaipur, an appeal was filed by the accused petitioner Ram Chandra before this Court which was registered as S.B. Criminal Appeal No. 49/96 and this Court through judgment dated 27th March, 2001 dismissed the said appeal of the petitioner Ram Chandra. It may be stated here that by the same judgment, this Court also dismissed the appeal being S.B. Cr. Appeal No. 50/1996 filed by the another accused petitioner Virma Ram of S.B. Cr. Misc. Jail Appeal No. 654/2002.

Aggrieved from that portion of the warrant of commitment to jail issued by the learned Special Judge, NDPS Cases, Udaipur on 13.9.1995 directing that accused petitioner Ram Chandra would not get the benefit of the provisions of Section 428, CrPC, the accused petitioner Ram Chandra has preferred this petition from jail.

3. In this petition, it has been submitted by the learned Counsel appearing for the accused petitioner that the directions contained in the warrant of commitment to jail dated 13.9.1995 issued by the learned Special Judge, NDPS Cases, Udaipur that the accused petitioner Ram Chandra would not get the benefit of the provisions of Section 428, CrPC are wholly illegal for two reasons:

(i) That as per the provisions of Section 428, CrPC, the period of investigation, inquiry or trial undergone by the accused shall be set off against the term of sentence imposed on him, and the word "shall" indicates that these directions should be complied with in mandatory form; and

(ii) That in the present case, the observations made by the learned Special Judge in the warrant of commitment to jail that the accused petitioner Ram Chandra would not get the benefit of the provisions of Section 428, CrPC are wholly illegal because such directions were not made by the learned Special Judge in the order of sentence dated 13.9.1995.

4. I have Heard the learned Counsel appearing for the accused petitioners and the learned Addl. Advocate General and gone through the materials available on record.

5. The learned Addl. Advocate General has frankly conceded that since directions were not passed in the order of sentence dated 13.9.1995 that the accused would not get the benefit of the provisions of Section 428, CrPC, therefore, making such directions in the warrant of commitment to jail are illegal and should be set-aside.

6. Section 428, CrPC makes a clear provision to the effect that when an accused has been sentenced to an imprisonment for a term, the period of detention undergone by him during investigation, inquiry or trial before the date of conviction shall be set off against the term of imprisonment and the liability of such person to undergo imprisonment on such conviction shall be restricted to

the remainder.

7. Thus, the accused petitioner Ram Chandra was entitled to the benefit of provisions of Section 428, CrPC and the directions given by the learned Special Judge in the warrant of commitment to jail dated 13.9.1995 that the accused petitioner Ram Chandra would not get benefit of the provisions of Section 428, CrPC are wholly illegal and liable to be set-aside and this petition from jail deserves to be allowed.

Accordingly, the petition filed by the accused petitioner Ram Chandra being S.B. Cr. Misc. Jail Application No. 668/2002 is allowed and the directions given by the learned Special Judge, NDPS Cases, Udaipur in the warrant of commitment to jail dated 13.9.1995 to the effect that the accused petitioner Ram Chandra would not get the benefit of the provisions of Section 428, CrPC are set-aside and the learned Special Judge, NDPS Cases, Udaipur is directed to amend the warrant of commitment to jail dated 13.9.1995 accordingly in the manner that the accused petitioner-appellant Ram Chandra shall be entitled to the benefit of the provisions of Section 428, CrPC.

S.B. Cr. Misc. Jail Application No. 654/2002

8. This petition raises the same point as involved in the above S.B. Cr. Misc. Jail Application No. 668/2002 and thus, for the reasons given in S.B. Cr. Misc. Jail Application No. 668/2002, this petition also deserves to be allowed.

Accordingly, the petition filed by the accused petitioner Virma Ram being S.B. Cr. Misc. Jail Application No. 654/2002 is also allowed and the directions given by the learned Special Judge, NDPS Cases, Udaipur in the warrant of commitment to jail dated 13.9.1995 to the effect that the accused petitioner Virma Ram would not get the benefit of the provisions of Section 428, CrPC are set-aside and the learned Special Judge, NDPS Cases, Udaipur is directed to amend the warrant of commitment to jail dated 13.9.1995 accordingly in the manner that the accused petitioner Virma Ram shall be entitled to the benefit of the provisions of Section 428, CrPC.

Both the afore-mentioned petitions stand allowed accordingly in the manner as indicated above.