
(2015) 12 SHI CK 0079
In the High Court Of Himachal Pradesh
Case No : CWP No. 3082 of 2015

Ramesh Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432, 433
Penal Code, 1860 (IPC) — Section 302, 376

Citation : (2016) CriLJ 1115

Hon'ble Judges : Rajiv Sharma and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : Praveen Chandel, Advocate, for the Appellant; M.A. Khan, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The petitioner was convicted for committing offences punishable under Sections 376 and 302 of the Indian Penal Code whereupon sentence of life imprisonment was imposed upon him. The petitioner in sequel to his being sentenced to undergo life imprisonment, has completed 27 years 9 months and 29 days in Jail. On completion of the aforesaid period in Jail, the petitioner had applied to the Himachal Pradesh State Sentence Review Board to (hereinafter referred to as "the Board") after affording him the benefits of remissions or commutations envisaged under the relevant provisions engrafted in Sections 432 and 433 of the Code of Criminal Procedure, 1973 pre-maturely release him from Jail. The Board (respondent No. 3) vide Annexures R-3, R-4 and R-5 rejected the claim ventilated by the petitioner before it for his being prematurely released from prison. The Board, while rejecting the claim of the petitioner for his being prematurely released from prison had applied its mind to Para 3.1 of the Policy Guidelines manifested in Annexure R-1 governing the premature release of life convicts from prison on their completing 14 years of imprisonment. The application of mind by the Board to the apposite policy guidelines governing the pre-mature release of life convicts from prison on their

completing 14 years of imprisonment is incisive and in depth besides does not suffer from any legal fallibility of non application of mind by it qua their application to the factual scenario qua the petitioner for hence warranting displacement by this Court of the opinion adverse to the petitioner formed thereon by the Board. The provisions envisaged in Sections 432 and 433 of the Code of Criminal Procedure empowering the Government concerned to exercise powers of remissions or commutations of sentence of imprisonment imposed upon life convicts on theirs completing 14 years of imprisonment is not an untrammelled power nor would a life convict ipso facto on his completing 14 years imprisonment stand entitled to claim the statutory benefit engrafted therein of remissions or commutations of sentence rather is a power whose exercise stands governed by the mandate of Annexure R-1 whereto for reasons afore-stated apposite reverence stands meted by the Board besides by a rendition of the Hon''ble Apex Court of 9.7.2014 modified on 23.7.2015 enjoining for reverence by the State Governments, the herein-after extracted prescriptions:---

(i) Where life sentence has been awarded specifying that-

(a) The convict shall undergo life sentence till the end of his life without remission or commutation;

(b) The convict shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or like;

(c) Where no application for remission or commutation was preferred or considered suo motu by the concerned State Governments/authorities;

(d) Where the investigation was not conducted by any Central investigating Agency like the Central Bureau of Investigation; and

(e) Where the life sentence is under any central law or under Section 376 of the Indian Penal Code, 1860 or any other similar offence."

Concomitantly the State Governments while exercising powers of remissions or commutations of sentence conferred upon them under Sections 432 and 433 of the Code of Criminal Procedure qua life convicts are encumbered with a legal obligation to when a sentence of life imprisonment stands imposed upon a convict for commission of an offence under Section 376 of the Indian Penal Code or any other similar offence even on the life convict completing 14 years in prison refuse remissions or commutations to him.

2. Furthermore, a perusal of the afore-stated prescriptions enjoined upon the State Governments by a rendition of the Hon''ble Apex Court of 23.7.2015 on whose occurrence the restraint imposed by the Hon''ble Apex Court under its rendition of 9.7.2014 qua the exercise of powers of remissions or commutations of sentence of life imprisonment conferred upon them by Sections 432 and 433 of the Code of Criminal Procedure was yet operable upsurges the factum of the restraint or embargo imposed by the Hon''ble Apex Court under its rendition of 9.7.2014 though standing modification subsequently in its rendition of 23.7.2015

yet remaining intact qua prescription (e) herein-above extracted for reiteration on whose occurrence hence the State Governments were debarred from exercising their powers of remissions or commutations conferred upon them under Sections 432 and 433 of the Code of Criminal Procedure qua life convicts. Necessarily when the petitioner is a life convict and stands sentenced to undergo life imprisonment for committing offences under Section 376 of the Indian Penal Code and under Section 302 of the Indian Penal Code, obviously given the satiation of the herein-above extracted prescription (e) qua him its rigour comprised in the rendition of the Hon''ble Apex Court of 9.7.2014 restraining the State Governments besides debarring them from affording the benefit of remission or commutation of sentence under Sections 432 and 433 of the Code of Criminal Procedure qua life convicts stood squarely attracted qua him. Obviously for reiteration, when the bar or restraint envisaged in the rendition of the Hon''ble Apex Court against the exercise by the State Governments of powers of remissions or commutations under Sections 432 and 433 of the Code of Criminal Procedure stood attracted qua the petitioner given his being meted a sentence under Section 376 IPC besides a sentence for life under Section 302 IPC, as a corollary, the rejection of the case of the petitioner by the Board for his premature release from prison was legally warranted.

3. Dehors the above, a perusal of the reply furnished by the respondents to the writ petition unveiling the factum of the petitioner having on numerous occasions jumped parole besides his having committed other penal misdemeanors both inside and outside the Jail rendered his conduct to be not warranting any affording to him of the benefit as asked for by him especially moreso when his conduct despite his prolonged incarceration remained incorrigibly uncorrected, hence defeating the begetting of the salutary purpose of his reformation during his imprisonment concomitantly constituting it to be a grave deterrent which tenably weighed with the Board while rejecting his claim for his pre-mature release from prison. Consequently, the rejection of the case of the petitioner by the Board for his premature release from prison was not beyond the purview of the rendition of the Hon''ble Apex Court of 9.7.2014 nor it suffers from any non application of mind by it to the apposite material devolving upon the conduct of the petitioner, which for reasons afore-stated warranted rejection of his application.

4. In view of the above discussion, the writ petition merits dismissal and is accordingly dismissed. Pending application(s), if any, also stand dismissed. No costs.