
(1984) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 15562 and 15565 of 1984

Ramulu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-12-1984

Acts Referred:

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

Citation : (1985) CriLJ 1679

Hon'ble Judges : Lakshmana Rao, J;K. Jayachandra Reddy, J

Bench : Division Bench

Advocate : K.G. Kannabhiran, for the Appellant; A.A.G., for the Respondent

Judgement

Jayachandra Reddy, J.—Common questions arise for consideration in these two writ petitions and they can be disposed of by a common order. The petitioners were tried for offences of murder in S.C. No. 64 of 1978 and S.C. No. 85 of 1977 and were acquitted. Appeals against acquittals were filed and the High Court set aside the orders of acquittal and sentenced the petitioners to undergo imprisonment for life, and they are undergoing the sentence. The State Government, by G.O. Ms. No. 580 D/- 20th October 1984, granted remission of sentence to certain categories of prisoners on the occasion of the anniversary of the formation of Andhra Pradesh on 1st November 1984. The petitioners claim that they are entitled to the benefit of remission under the G.O., but since they are denied, they filed these writ petitions.

2. The learned counsel for the petitioners submits that the petitioners, who were sentenced to imprisonment for life, are not governed by S. 433-A, Cr.P.C. and, in the G.O., a distinction is made between prisoners sentenced for life by the Courts and other prisoners who are also undergoing imprisonment for life. It is also submitted, that if Clause 2(b) of the G.O. is applied to the petitioners, then all of them are entitled to be released. To appreciate this submission, it is necessary to extract the G.O. to the extent it is relevant. Clause 2 of the G.O. reads thus :

"2. Accordingly in exercise of the powers conferred by S. 432, Cr.P.C., 1973, (Central Act 2 of 1974) the Government is pleased to remit and reduce the sentence of the following categories of prisoners in the State who have been convicted by civil courts of Criminal jurisdiction on the scales specified against each; except to the extent specified in Para 3 below;

(a) The prisoners sentenced for the life imprisonment and not governed by S. 433-A, Cr.P.C., and who have completed 7 years of actual sentence and 10 years of total sentence including remissions shall be released;

(b) The other lifers not governed by S. 433A, Cr.P.C., and who have undergone a total sentence of 5 years shall be released;

xx xx xx xx xx xx"

The rest of the G.O. is not relevant for our purpose.

3. Before we examine the scope of Clause 2(a) and (b) of the G.O., it is necessary to note that the prisoners are not governed by S. 433A, Cr.P.C., inasmuch as the date of their conviction is deemed to be prior to 18-12-1978, viz., before S. 433-A was introduced. The trial Court, acquitted accused (petitioners in W.P. No. 15562 of 1984) on 2-11-1978 and the other (petitioners in W.P. No. 15562 of 84) on 7-11-1977. The High Court allowed the State Appeal in respect of the first set of petitioners on 28-7-1980 and the other case on 4-9-1981, which dates are subsequent to the date on which S. 433-A came into force. But, in Maru Ram and Others Vs. Union of India (UOI) and Others, , the Supreme Court held that the appellate conviction must relate back to the date of the trial Court's verdict and substitute it. Therefore, the convictions of the petitioners should be deemed to have been awarded prior to the coming into force of S. 433-A and consequently they are not governed by S. 433-A.

4. Now, we shall examine the scope of Clause 2(a) and (b) of the G.O. Clause 2(a) applies to that category of prisoners sentenced to life imprisonment and not governed by S. 433-A, Cr.P.C. and who have completed 7 years of actual sentence and ten years of total sentence including remissions and if they satisfy these conditions they should be released as per this clause. Admittedly, the petitioners have not completed 7 years of actual sentence and therefore, they cannot claim benefit under this clause. Clause (2)(b) applies to the "other lifers" not governed by S. 433-A and who have undergone a total sentence of 5 years and they are entitled to be released. It is the contention of the learned Counsel for the petitioners that the petitioners are also "lifers" not governed by S. 433-A, and, therefore, there is no reason as to why they should not be given the benefit under Clause 2(b) inasmuch as they have undergone a total sentence, i.e. including remissions, a period of more than five years. We are unable to agree. The words "the other lifers" under Clause 2(b) are very significant in this context. To understand the meaning of these words, we have to necessarily read Clause 2(a) and Clause 2(b) together and Clause 2(b) cannot be read in isolation. The "other lifers" contemplated under Clause 2(b) are other than those lifers who are

governed by Clause 2(a). "The other lifers" mentioned in Clause 2(b) are those who, in the first instance, are sentenced to death and which sentence is commuted under S. 433, Cr.P.C. to one of imprisonment for life. Such prisoners whose death sentence is commuted to life imprisonment are "they whom Clause 2(b) applies. That there are two such categories of lifers becomes clear from a reading of S. 433-A. In Maru Ram and Others Vs. Union of India (UOI) and Others, also this distinction is noted; and their Lordships observed :

"All the petitioners belong to one or other of two categories. They are either sentenced by Court to imprisonment for life in cases where the conviction is for offences carrying death penalty as a graver alternative or are persons whom the Court has actually sentenced to death which has since been commuted by the appropriate Government under S. 433(a), Cr.P.C. to life imprisonment. The common factor binding together these two categories of "lifers" (if we may use this vague word, for brevity) is obvious".

It is, therefore, clear that, while Clause 2(a) applies to the prisoners sentenced to life imprisonment by the Court, and who are not governed by S. 433-A, Clause 2(b) applies to the "other lifers" other than those mentioned in Clause 2(a) and also not governed by S. 433-A. The petitioners who are sentenced to life imprisonment by the Court do not come under the category of "the other lifers" contemplated under Clause 2(b), but they come under the category in Clause 2(a). Therefore, they are not entitled to the benefit of Clause 2 and since they have not completed 7 years of actual sentence, they are also not entitled to be released under Clause 2(a).

5. The learned counsel for the petitioners, however, submits that the prisoners governed by Clause 2(a) and the prisoners governed by Clause 2(b) are of one and the same category and they should be treated equally and any unequal treatment offends Art. 14 of the Constitution. According to the learned counsel under S. 433A, both those categories of prisoners have to undergo a minimum period of 14 years of imprisonment and that itself shows that they are treated equally and therefore there cannot be any discrimination among them. The learned counsel also submits that "the lifers" sentenced by the Court are treated differently under Clause 2(a), viz., that they have to complete 7 years of actual sentence and 10 years of total sentence for being released, where as the "other lifers" by virtue of Clause 2(b), are being released even though they have undergone only a total sentence of 5 years, and the same amounts to discrimination.

6. No doubt, under S. 433-A, Cr.P.C. the prisoners sentenced by a Court to imprisonment for life as well as prisoners sentenced to death and which sentence has been commuted to life imprisonment have to serve a minimum period of 14 years of imprisonment. In that view of the matter, it can be said that they are treated equally. But the power to suspend or remit sentences under S. 432 rests with the appropriate Government and in granting such remission the Government may take into consideration other circumstances also. No doubt, in exercising the

power under S. 432, the Government should not act arbitrarily. In the instant case, "the other lifers" governed by Clause (2)(b) are those who were sentenced to death and who had undergone the agony of being confined in a condemned cell awaiting execution. The learned Additional Advocate General submits that the mental agony undergone by such prisoners before their death sentence was commuted is one of the factors taken into consideration by the State Government in treating them differently. In Maru Ram and Others Vs. Union of India (UOI) and Others, , their Lordships also observed :-

"It requires that State Action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality".

By treating those "other lifers" somewhat differently, it cannot be said that the State Government has acted arbitrarily or is guided by any extraneous or irrelevant considerations. The mental torture and agony undergone by such prisoners is a relevant consideration in putting them under a different category under clause 2(b). Therefore, it cannot be said that Art. 14 of the Constitution is violated. For all these reasons, the writ petitions are dismissed.

7. Petitions dismissed.