

(2009) 07 MAD CK 0036

In the Madras High Court

Case No : Criminal O.P. No. 14165 of 2009

S. Sankar and Iruthayaraj @ Iruthi

APPELLANT

Vs

State: Inspector of Police, Central Crime, The Superintendent
of Central Prison and The Superintendent of Central Prison

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428, 432, 433, 433A, 482
Penal Code, 1860 (IPC) — Section 109, 201, 302, 347, 364

Citation : (2010) 1 LW(Cri) 51

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

**Advocate : P. Vijendran, for the Appellant; I. Paul Nobel Devakumar,
Government Advocate (Crl. Side), for the Respondent**

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The Petitioners 1 and 2 herein were prosecuted along with 16 other persons (total number OF accused persons 18)

for various offences, including an offence of murder punishable u/s 302 IPC in S.C. No. 87/2003 before the Additional District and Sessions

Judge (Fast Track Court No. 1), Chennai. The Petitioners 1 and 2 herein figured as accused Nos. 6 and 7 in the above said sessions case. The

learned Additional District and Sessions Judge (Fast Track Court No. 1), Chennai by a judgment dated 19.04.2004 convicted the first Petitioner

for an offence punishable u/s 365 r/w 109 IPC, the second Petitioner for an offence punishable u/s 365 IPC and both the Petitioners for offences

punishable under Sections 387, 382, 347, 364 and 201 IPC. The Petitioners were awarded the punishment of rigorous imprisonment ranging from

three years to 10 years for the offences other than the offence of the murder

punishable u/s 302 IPC and awarded life imprisonment for the offence

punishable u/s 302 IPC. Besides substantive punishment, fine was also imposed ranging from Rs. 5,000/- to Rs. 50,000/-. The trial court also

directed that the substantive sentences awarded for the above said offences would run concurrently. The appeal preferred against the conviction

and sentence was also dismissed by this Court. The maximum punishment awarded to each one of the Petitioners is the life imprisonment.

However, the judgment does not contain any specific direction to set off the period of pre-conviction imprisonment. According to the Petitioners,

they had undergone such pre-conviction imprisonment for a period of 761 days, which period they are entitled to set off against the imprisonment

awarded. As there is no indication in the judgment regarding the period to be set off, the Petitioners have come forward with the present petition

u/s 482 Code of Criminal Procedure for a direction to the Respondents to set off the period of pre-conviction imprisonment of 761 days

undergone by the Petitioners against the imprisonment awarded by the trial court, namely Additional District and Sessions Judge (Fast Track Court

No. 1), Chennai in Sessions Case No. 87/2003 which was subsequently confirmed by the High Court.

2. The submissions made by Mr. P. Vijendran, learned Counsel for the Petitioners and by Mr. I. Paul Nobel Devakumar, learned Government

Advocate (Crl. Side) representing the Respondents were heard. The materials placed before the court by the Petitioners were also perused.

3. The Petitioners, who are life convicts have come forward with the present petition u/s 482 Code of Criminal Procedure for a direction to the

Respondent to set off the period of imprisonment undergone by them during the course of investigation, inquiry and trial in the case in which they

were convicted and sentenced to undergo rigorous imprisonment for various period for various offences ranging from three years to ten years and

also to undergo life imprisonment for an offence punishable u/s 302 IPC. The Petitioners herein who figured as accused Nos. 6 and 7 in Sessions

Case No. 87/2003 on the file of the Additional District and Sessions Judge (Fast Track Court No. 1), Chennai were convicted and sentenced as

follows:

I.

Offence Sentence Imposed

a) First Petitioner (A6) 365 r/w 1097 years rigorous

IPC imprisonment + fine of Rs.

5,000/- and a default

sentence of one year

rigorous imprisonment in

case of default in payment

of fine

lb) 2nd Petitioner (A7) 365 r/w 1097 years rigorous

IPC imprisonment + fine of Rs.

5,000/- and a default

sentence of one year

rigorous imprisonment in

case of default in payment

of fine

II. Petitioners 1 and 2 (A6 and A7)

Offence Sentence Imposed

387 IPC 7 years rigorous

imprisonment + fine of Rs.

5,000/- and a default

sentence of one year

rigorous imprisonment in

case of default in payment

of fine

302 IPC Life imprisonment + fine of

Rs. 50,000/-

347 IPC 3 years rigorous

imprisonment + fine of Rs.

5,000/- and a default

sentence of six months

rigorous imprisonment in
case of default in payment
of fine

364 IPC 10 years rigorous
imprisonment + fine of Rs.
5,000/- and a default
sentence of two years

rigorous imprisonment in
case of default in payment
of fine

201 IPC 7 years rigorous
imprisonment + fine of Rs.
10,000/- and a default
sentence of one year

rigorous imprisonment in
case of default in payment
of fine

Total fine amount is Rs. 80,000/-. All the sentences were directed to run concurrently.

4. The Petitioners have now sought for a direction that the period of imprisonment undergone by them prior to the date of conviction as under trial prisoners and prisoners during investigation in the above said case should be set-off against the sentence of imprisonment awarded against them.

5. Relying on a judgment of the Hon''ble Apex court in Bhagirath Vs. Delhi Administration, , the learned Counsel for the Petitioners has submitted

that it has become necessary for the Petitioners to seek a direction u/s 482 Code of Criminal Procedure to set off the period of imprisonment

undergone by the Petitioners before the date of conviction in the above said case, as the order of sentence does not contain any direction to set off

the period of pre-conviction imprisonment against the sentence awarded in the case.

6. Section 428 of Code of Criminal Procedure reads as follows

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment. - Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, 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, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him: Provided that in case referred to in Section 433-A, such period of detention shall be set off against the period of fourteen years referred to in that section.

8. Section 433-A of Code of Criminal Procedure reads as follows:

433-A. Restriction on powers of 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 punishment provided by law, or where a sentence of death imposed on a person has been commuted u/s 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

Section 433-A of Code of Criminal Procedure imposes a restriction on the powers of the government in Section 432 and 433 Code of Criminal

Procedure It relates to cases of: 1) a sentence of life imprisonment imposed on conviction of a person for an offence which is punishable also with

death sentence and 2) commutation of sentence of death imposed on a person to life imprisonment u/s 433. In such cases the person convicted

shall not be released from prison unless he has served at least 14 years of imprisonment including the pre-conviction imprisonment. A conjoint

reading of Section 428, 432, 433 and 433-A of Code of Criminal Procedure will make it clear that a person sentenced to life imprisonment for an

offence for which death sentence is also one of the punishments prescribed, shall not be released from prison, unless he has served in the prison for

at least 14 years, which period shall include the pre-conviction imprisonment.

9. It is not the case of the Petitioners that they would be entitled to seek release as they would have completed at least 14 years of imprisonment, if

the pre-conviction imprisonment is taken into consideration. When the right u/s 428 is a statutory right, it is of no consequence whether the trial

court in its judgment does or does not direct the pre-conviction imprisonment to be set off. The court does have no discretion in this regard.

10. Referring to Section 428 and 433-A of Code of Criminal Procedure and also relying on a judgment of the Hon''ble Apex court in Bhagirath

Vs. Delhi Administration, , the learned Counsel for the Petitioners has submitted that since the order of sentence does not contain any direction to

set off the period of pre-conviction imprisonment undergone before conviction in the very same case, it has become necessary for the Petitioners to

seek such a direction u/s 482 Code of Criminal Procedure In the above said judgment of the Hon''ble apex court, relied on by the learned Counsel

for the Petitioner, it was held that imprisonment for life shall also be an imprisonment for a term and hence the benefit of Sections 428 and 433-A

shall enure to such prisoners also. When such an emphatic pronouncement has already been made by the Hon''ble Supreme Court besides the

provisions being so clear without giving any room for ambiguity, this Court is at a loss to understand what is the occasion for the Petitioner to

approach this Court for a direction u/s 482 Code of Criminal Procedure It was contended in the case before the Hon''ble Supreme Court that the

prisoner therein would have completed 14 years of imprisonment in accordance with Section 433-A, if the set off stipulated in Section 428 and

433-A of Code of Criminal Procedure was taken into consideration. On that ground alone the prisoner therein moved for a direction to refer his

case to the Delhi Administration to consider his case for commutation and an order of release on the ground that he had completed actual

imprisonment for a period of 14 years.

11. In this case, the Petitioners were convicted by the trial court on 19.04.2004. As per the particulars found in the petition, the Petitioners had

undergone imprisonment before conviction for a period of 761 days. It is not the case of the Petitioners that time has ripened for seeking their

release u/s 433-A Code of Criminal Procedure Admittedly, no order commuting the life sentence into a fixed term sentence has been passed by

the appropriate government u/s 433 till date.

12. Under such circumstances, the present petition filed by the Petitioners on the

assumption that the authorities may not consider the provisions regarding remission properly, is not only pre-mature but also misconceived. For that reason alone, the present petition deserves to be dismissed.

Accordingly, this petition is dismissed.

However, it is made clear that the Petitioners, at appropriate time can make a representation to the authorities for their release.