

**(1996) 11 KL CK 0034**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 6983/96C**

Salim Muhammed Nazir

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

**Date of Decision :** 26-11-1996

**Acts Referred:**

Constitution of India, 1950 — Article 20  
Criminal Procedure Code, 1973 (CrPC) — Section 433A  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 23, 27, 28, 32A, 33

**Citation :** (1997) 1 RCR(Criminal) 631

**Hon'ble Judges :** K.S. Radhakrishnan, J

**Bench :** Single Bench

**Advocate :** T.A. Unnikrishnan, for the Appellant; N. Radhakrishnan, Government Pleader, for the Respondent

**Final Decision :** Allowed

## **Judgement**

K.S. Radhakrishnan, J.—Petitioner is a Yemen national who was convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1 lakh u/s 28 read with Sections 23 and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Order was passed by the Additional Sessions Court in S.C. 128 of 1988. Petitioner was arrested on 22nd January 1988 and convicted on 28th March 1989. Petitioner has already undergone more than 8 years in the prison. According to Petitioner, he is entitled to remission as per rules and on the basis of computation of remissions, and on payment of fine of Rs. 1 lakh, he would become entitled to be released from jail and set at liberty. Petitioner's request for remission was not acceded to by the Respondents mainly on the basis of Section 32A of the Act.

2. Question to be considered in this case is as to whether Section 32A of the Act would apply to a case where the offence has been committed prior to 29th May 1989.

3. In Narcotic Drugs and Psychotropic Substances Act, 1985, as originally enacted, there was no provision prohibiting grant of suspension, remission or commutation of sentences. By Act 2 of 1989, Section 32A was inserted providing that no sentence awarded under the Act (other than Section 27) shall be suspended or remitted or commuted.

Section 32A is extracted below:

32A. No suspension, remission or commutation in any sentence awarded under this Act.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted.

Above mentioned provision came into force with effect from 29th May 1989. Main contention urged by Counsel for the Petitioner Sri T.A. Unnikrishnan is that under Article 20 of the Constitution of India Petitioner cannot be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of offence. Alleged offence was committed before 1988. It was contended that under the law in force at the time of the alleged commission of offence, Petitioner was entitled to grant of remissions and thus he would not have undergone the entire sentence of 10 years but a shorter sentence because of the benefit of remissions. Said benefit is being denied to the Petitioner because of Section 32A which, it is urged, is not legal as this section is not applicable to the case of the Petitioner, since it was inserted in the Act after commission of alleged offence. According to Counsel, stand of Respondents that Petitioner is not entitled to get remission is illegal and violative of Article 20 of the Constitution of India. Counsel relied on the decision of the Supreme Court in Maru Ram and Others Vs. Union of India (UOI) and Others, wherein the Supreme Court reiterated that it is trite law that civilised criminal jurisprudence interdicts retroactive impost of heavier suffering by a later law.

4. Counsel for the Respondents however maintained the stand that Petitioner is not entitled to get remission in view of Section 32A, which is applicable to the case of the Petitioner as well. According to Respondents legal provisions as existing on the date of consideration of the grant or otherwise of the remissions is the relevant consideration and not the legal provisions existing at the time of commission of the offence or at the time of conviction.

5. Article 20 of the Constitution of India says that no person shall be convicted of any offence except for violation of a law in force, at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Supreme Court in West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras, , took the view that the expression "law in force" refers to the law factually in operation at the time when the offence was committed and does not relate to a law deemed to be in force by the

retrospective operation of a law subsequently made. The law for the violation of which a person is sought to be convicted must have been in force at the time when the act with which he is charged was committed. Therefore a person cannot be convicted for an act which was not an offence under the law which was in force when that act was committed.

6. Supreme Court in its celebrated decision in Maru Ram and Others Vs. Union of India (UOI) and Others, while dealing with scope of Section 433A of the Code held that ordinarily a criminal legislation must be so interpreted as to speak futuritically. It was held the sound rationale is that expectations of convicted citizens of regaining freedom on existing legal practices should not be frustrated by subsequent legislation or practice unless the language is beyond doubt. I am of the view that the said decision squarely applies to the facts of this case as well. A Division Bench of the Delhi High Court in Waisuddin v. State (1994) II A.D. (Delhi) 409 took the view that Section 32A will have only prospective operation and it applies to a case where offence has been committed after its enforcement. Therefore if the offence is prior to the introduction of the said section, the convict is to be governed by the law then existing. I respectfully follow the said decision of the Division Bench of the Delhi High Court. I am of the view the action of the Respondents in applying Section 32A to the Petitioner and thus not considering his case for remission as per the remission policy of the Government is illegal and cannot be sustained. I declare so.

I allow the Original Petition and direct the Respondents to consider forthwith the case of the Petitioner for grant of remission without applying Section 32A of the Act.