
(1972) 11 DEL CK 0022

In the Delhi High Court

Case No : Criminal Writ Appeal No. 24 of 1972

Shanker Das

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 28-11-1972

Acts Referred:

Citation : (1973) RLR 21

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : K.R. Gupta and D.C. Mathur, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The petitioner was convicted u/s 302 Indian Penal Code . and sentenced to life imprisonment by the Court of Session on 19-3-1968. He had filed an appeal against the said conviction in 1968 itself which was finally disposed of on 2-11-1970 modifying his conviction into one u/s 325 Indian Penal Code . ; the sentence was reduced from rigorous imprisonment for life to 7 years rigorous imprisonment only.

(2) A Notification was issued by the Delhi Administration u/s 401 Criminal Procedure Code . on 27-9-1959 giving certain remissions to persons whose convictions had become final ; this was not, however, to apply, among others, to persons whose appeals were then pending in courts against their convictions. The apparent object of such an exclusion was that the Administration did not wish to interfere with cases which were pending in courts as against convictions which had not become final and thus at least seem to interfere with matters pending before courts. It is not disputed that if the Notification applied to the petitioner, he also would get the benefit of remissions which were ordered under the said Notification and that would probably mean fairly immediate release ; if it is not to apply he would have to stay in jail for some more time.

(3) Shri K.R. Gupta, who appeared amicus curiae for the petitioner, urged that

the exclusion of persons who had .appealed against their convictions and whose appeals were pending on the date of the Notification was discriminatory and offended Article 14 of tte Constitution. Reliance was placed by him on certain observations of Govinda Menon, J. (as his Lordship then was), speaking for a Division Bench of the Madras High Court in re Maddela Yerra Channugadu and others (A.I. R. 1954 Madras 1911). In that case after the Separation of Andhra from the erstwhile State of Madras and during the period there was a common High Court for both the States, the successor to State of Andhra Pradesh granted a general amnesty to all condemned prisoners and that applied expressly even to those in respect of whom referred trials or petitions for mercy were actually pending. Having come to know of the said Notifications during, the hearing the referred trial in a case of murder the High Court of Madras requested the Advocate General, Andhra to appear and clarify the situation created by the general order of amnesty and whether the release of condemned prisoners, pending confirmation of their eminences by the court did or did not amount to an act of interference with due and proper course of justice in cases pending before that court and whether the Government of Andhra by its action prevented the proper disposal of those cases. The Advocate General conceded before the court when so directed, that even after the release of the condemned prisoners, the power of the High Court to go into the validity of the conviction and sentence still remained and that it was open to the court to find out whether the men had been properly convicted or not. Nonetheless both Govinda Menon, J. as well as as Chandra Reddy, J. (as his Lordship then was) went into the question of the power of the executive to grant pardon or reprieve of all offences, after their commission, either before trial or during trial or thereafter. Chandra Reddy, J. observed that in view of the concession of the Advocate General the hearing of the cases of the referred trials could proceed if necessary.

(4) In K.M. Nanavati Vs. The State of Bombay, Sinha, C.J., speaking for the majority, held that the Governor could grant a full pardon even during the pendency of the case and that the power was essentially vested in the head of the executive because the judiciary has no such mercy jurisdiction as the executive had. That case was concerned with the suspension of sentence by the Government. Referring to the power of the executive to suspend the sentence pending an appeal against the said conviction it was held that if the executive suspended the sentence it could inure only as long as the case came before the court and became sub judice when the power of suspension of the sentence thereafter could be exercised only by the court. The executive power, Therefore, would not extend to suspending a sentence during a period when the matter was sub judice.

(5) In Gopal Vinayak Godse Vs. The State of Maharashtra and Others, the Supreme Court pointed out that the question of remission was exclusively within the province of the appropriate Government u/s 401 Cr. P.C. It was, Therefore, held that Godse had not acquired any right to release as claimed by him. The argument of Godse that the Government could out of spite not remit the balance

of his sentence with the result that he would be deprived of the fruits of remission earned by him for good conduct was dealt with by Subba Rao, J. (as his Lordship then was) as follows: -

" THE Constitution as well as the Code of Criminal Procedure confer the power to remit a sentence on the executive Government and it is in its exclusive province. We cannot assume that the appropriate Government will not exercise its jurisdiction in a reasonable manner".

(6) It was observed by a Divisional Bench of the Kerala High Court in Mathammal Saraswathi v. The State of Kerala AIR 1957102 that the Court was concerned only with passing of the sentence; to carry it into effect was the function of the executive Government and that it was up to them to decide whether they should invoke their powers of granting remission in a particular case.

(7) Speaking for a Divisional Bench of the Hyderabad High Court in Re Secretary to the Home Department, Government of Hyderabad (Indian Law Reports 1956 Hyderabad 577) P. Jaganmohan Reddy, J. (as his lordship then was) did not agree with certain observations of Govinda Menon, J. in the Madras decision. After referring to the American view that pardons and reprieves could be granted before as well as after the conviction, because of Articles 72 and 161 of the Constitution of India being different from the American Constitution his lordship observed as follows :-

"...ART. 161 of the Constitution of India with which alone we are now concerned, confers on the Governor of a State the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person Convicted of any offence against any law relating to a matter to which the executive powers of the State extends". The purport in so far as this case is concerned of art. 72 is not dissimilar to art. 161. It is clear "from a comparison of these two provisions that while the power of the President of the United States is not limited to the cases of convicted persons and extends to the grant of reprieves and pardons for offences as such whether before or after conviction, the power conferred by the Constitution of India whether under art. 161 on the Governor, is limited only to cases of convicted persons Apart from the question of the advisability of indiscriminate application of American cases in interpreting the Indian Constitution, a course which has been discouraged and disapproved by their Lordships of Federal Court and of the Supreme Court in In the Matter of Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, 1939 F.C.I, and Bhikaji Narain Dhakras and others v. The State of Madhya Pradesh and another, 1956 S.C.A. 1 they have no application whatever when provisions to which their reasoning is sought to be applied are not in pan materia and differ considerably in scope and content."

(8) Having regard to the expression of such opinion it could not be seriously contended that when the Delhi Administration chose not to grant remission in the matter of cases where the convictions were being assailed in courts and appeals

were pending, out of a desire not to interfere or even appear to interfere with the even course of justice, Article 14 of the Constitution was not violated. I hold accordingly. The said Notification does not apply to the petitioner. The petitioner thus not having been granted remission of sentence to the extent needed for earning his immediate release, the present Cr. Writ is dismissed. The petitioner will have to undergo the sentence without regard to the Notification dated 27-9-1969.