

(1972) 09 P&H CK 0033
In the Punjab And Haryana At Chandigarh

Shavinder Singh	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 18-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 72
Penal Code, 1860 (IPC) — Section 302, 303
Prisons Act, 1894 — Section 59

Citation : (1973) CriLJ 1633

Hon'ble Judges : S.C. Mittal, J

Bench : Single Bench

Judgement

S.C. Mittal, J.—On 29th August, 1950, Shavinder Singh was convicted u/s 302, Indian Penal Code, and sentenced to death by Sessions Judge, Hoshiarpur. On appeal, the High Court on 11th December, 1950, declined to confirm the death sentence and commuted it to life imprisonment. While Shavinder Singh was serving the sentence of life imprisonment, he on 23rd July, 1958, committed the murder of a convict in the premises of the Central Jail, Ferozepur. His trial for the second offence ended in his conviction u/s 303, Indian Penal Code, and sentence to death by the judgment dated 21st March, 1959, of Sessions Judge, Ferozepur. On 13th May, 1959, the High Court confirmed the death sentence. Thereafter, Shavinder Singh applied for mercy and on 14th September, 1959, the President of India commuted his death sentence to life imprisonment. Shavinder Singh who is undergoing the sentence of imprisonment aforesaid in jail in Nabha has filed this petition under Articles 226 and 227 of the Constitution of India read with Section 491, Criminal Procedure Code, praying for his release. In pursuance of the notices of the petition, the Union of India and the State of Punjab and also the Superintendent Jad, Nabha, have filed returns.

2. In order to appreciate the points canvassed before me, I sent for the original file containing the order dated 14th September, 1959, of the President of India. A perusal thereof shows that the mercy petition of Shavinder Singh was dealt with by Shri B. N. Datar, the then Home Minister on 1st September, 1959. For the

various reasons contained in his note, the Minister concluded:?

I, therefore, recommend that the petition for mercy from Shavinder Singh, son of Prem Singh, a life convict, resident of Hoshiarpur in Punjab State, be accepted and the sentence of death passed on him commuted to one of the imprisonment for life.

I am also anxious that he must serve out the whole sentence of life imprisonment according to the rules and that no steps be taken on his behalf for a premature remis-sion of his sentence. We might, therefore, while conveying the President's directions, request the State Government to keep in mind the fact that no orders for remission should be passed without consulting the Government of India in this respect.

3. When the case was placed before Shri Rajindra Prasad, President of India, on 14th September, 1959, the President ordered:?

The sentence of death passed on Shavinder Singh, son of Prem Singh, a life convict, is commuted to one of imprisonment for life in terms of the recommendation of the Minister.

4. In due course, the order of the President was conveyed to the Punjab State and the Superintendent of the Jail.

5. Section 401 of the Code of Criminal Procedure provides that when any person has been sentenced to punishment for an offence, the appropriate Government may at any time suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced. Section 402 of the Code lays down that the appropriate Government may commute the death sentence for imprisonment for life. Now, Section 402-A of the Code reads:?

The powers, conferred by Sections 401 and 402 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

6. learned Counsel for the Union of India rightly contended that if the Central Government were to exercise the powers conferred on it by Section 402-A the Minister above-named who dealt with the mercy petition of Shavinder Singh, under the Rules of Business was competent to commute the sentence of death. That the Minister did not do so and the mere petition was placed before the President of India leaves no room for doubt that the Central Government did not exercise the powers u/s 402-A. learned Counsel for the Union of India then referred to Article 72 of the Constitution of India, the relevant terms of which are:?

(1) The President shall have 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?

(a) * * * * (b) * * * * (c) In all cases where the sentence is a sentence of

death.

(2) * * * * (3) Nothing in Sub-clause (c) of Clause (1) shall affect the power to suspend, remit or commute the sentence of death exercisable by the Governor of a State under any law for the time being in force.

In view of the above, there can be no two opinions and I may say that the learned Counsel for the parties are agreed that the President of India commuted the sentence of death imposed on Shavinder Singh in the exercise of his powers under Article 72 of the Constitution.

7. learned Counsel for Shavinder Singh laid emphasis on the provisions of Sub-section (2) of Section 397 of the Code which are:?

When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment or imprisonment for life, the subsequent sentence shall run cocurrently with such previous sentence.

The argument then proceeded that since Shavinder Singh was already undergoing imprisonment for life, the sentence of life imprisonment after commutation had to run concurrently with the previous sentence. In this behalf, reference was made to paragraph 13 of the joint return dated 20th December, 1971, filed by the Punjab State and the Superintendent, District Jail, Nabha, to the following effect:?

It is stated that the correct position is that the petitioner has so far undergone the below noted actual sentence in respect of his sentences:?

(a) EARLIER SUBSEQUENT SENTENCE SENTENCE _____ Date
of sentence 29-8.50 21-3-1959 Y M D Y M D Actual sentence 21 3 20 12 8 29
undergone Total remission 8 10 17 5 11 6 earned Total sentence 30 2 8 18 8 5
_____ Balance sentence Nil 1 3 25

It is further submitted that the petitioner is being detained on the strength of the order of subsequent sentence dated 21-3-1959.

8. learned Counsel then pressed into service the roll of Shavinder Singh annexed to the return of the said two respondents indicating that on 19th March, 1970, the proposal was for the premature release of Shavinder Singh on his furnishing a bond in the sum of Rs. 5,000/- with two sureties in the like amount. All these facts go to show that benefit of Sub-section (2) of Section 397 of the Code was given to Shavinder Singh. Having regard to the date of the return, that is, 20th December, 1971, learned Counsel further urged that although Shavinder Singh has now served out the balance of sentence of one year three months and twenty-five days, yet he has not been released. A perusal of the returns filed by the three respondents and the documents annexed thereto brings out some disagreement between the Central Government and the Punjab Government on the question whether Shavinder Singh has served the full term in accordance with the condition imposed by the President at the time of the passing of the

order of commutation.

9. As ruled by their Lordships of the Supreme Court in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, it is now well-settled that the sentence of imprisonment for life must, *prima facie* be treated as imprisonment for the whole of the remaining period of the convicted person's natural life and that without formal remission made by the appropriate Government u/s 401 of the Code, the convict cannot be set at liberty. Now what is required to be seen is which is the appropriate Government in the instant case. As said above, the Central Government did not exercise its powers u/s 402-A of the Code which provides that the powers conferred by Section 401 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government. As such, for the purpose of Section 401, the Central Government cannot be said to be the appropriate Government. Having regard to the facts that Shavinder Singh committed both the offences within the territory of Punjab State and he was convicted by the Courts in Punjab States the "appropriate Government" within the meaning of Section 401 would be the Government of Punjab State vide Division Bench decision of this Court dated 26-5-1972 *Surjit Singh v. State of Punjab*, Criminal Writ No. 11 of 1971 (Punj).

10. On behalf of Shavinder Singh, it was vehemently urged that chart of the sentences undergone by Shavinder Singh, as quoted above, is based on the statutory rules framed u/s 59 of the Prisons Act and contained in the Punjab Jail Manual. He having been awarded remission according to rules, by now he is deemed to have served the full term. A complete reply to the argument is in the following observations of their Lordships of the Supreme Court in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, :?

The Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, *inter alia*, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the Act. The rules, *inter alia*, provide for three types of remissions by way of rewards for good conduct, namely, (i) ordinary, (ii) special and (iii) State. For the working out of the said remissions, under Rule 1419 (c) of the rules framed by the State of Bombay, transportation for life is ordinarily to be taken as 15 years" actual imprisonment. The rule cannot be construed as a statutory equation of 15 years" actual imprisonment for transportation for life. The equation is only for a particular purpose, namely for the purpose of, "remission system" and not for all purposes.

11. As regards the submission on behalf of Shavinder Singh that the Punjab Government being the appropriate Government is under no obligation to consult the Central Government, suffice it to say that the argument ignores the basic fact that at the time of passing the commutation order, the President of India, directed the Punjab Government to keep in mind the fact that no order for

remission should be passed without consulting the Central Government.

12. In the result, the petition, fails and the same is hereby dismissed.