
(2013) 12 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5440 and 7795 of 2010

Smt. Ambati Aruna

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 2 ALD(Cri) 98 : (2014) 1 ALD(Cri) 557

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : Nagarju Naguru, for the Appellant;

Final Decision : Disposed Off

Judgement

A. Ramalingeswara Rao, J.—The facts in these two cases are similar and hence they are disposed of by this common order.

W.P. No. 5440 of 2010

The husband of the Petitioner was murdered due to political rivalry on 07-06-1992. The case was tried in S.C. No. 5 of 1994 by the learned II Additional Sessions Judge, Kadapa at Proddatur and sentenced Accused Nos. 2 to 7 with imprisonment for life by judgment dated 27-02-1998 for the offence under Sections 302 read with 149 IPC. All the accused preferred two appeals before this court in Crl. A. Nos. 408 and 409 of 1998 and this court by judgment dated 11-02-1999 allowed Crl. A. No. 408 of 1998 filed by A-2 and modified the conviction and sentence in respect of A-2 to A-7 in Crl. A. No. 409 of 1998 to a punishment u/s 304-II IPC and sentenced them to undergo rigorous imprisonment for a period of four (4) years with fine of Rs. 5,000/- each in default to suffer rigorous imprisonment for one year. Accused No. 7 was acquitted of all charges levelled against him. The accused preferred Crl. A. Nos. 1342 and 1343 of 1999 before the Supreme Court and the same was dismissed on 18-11-2004 confirming the judgment of this court in Crl. A. Nos. 408 and 409 of 1998 dated 11-02-1999.

It is the case of the Petitioner that A-3 to A-6 were in jail from 27-02-1998 to the date bail was granted by the Apex Court in Crl. A. No. 1343 of 1999 for about a period of 15 months and when no action was taken to apprehend A-3 to A-6 the present writ petition was filed for taking further action consequent to the dismissal of the appeal by the Supreme Court.

2. The 1st Respondent filed a counter-affidavit admitting the facts leading to the disposal of Criminal Appeal by the Hon''ble Supreme Court of India and stating that A-3 to A-6 were in jail for a period of 23 months 5 days. It was also stated that A-6 Bemu Narasimha Reddy son of Sesha Reddy died on 28-02-2004. It is stated that for execution of the NBWs issued by the learned II Additional Sessions Judge, Kadapa at Proddatur against A-3 to A-6, a special team was constituted headed by the Sub-Inspector of Police, Mannur Police Station for apprehending the accused in order to produce before the court but they were absconding and hence the NBWs could not be executed. During the pendency of the execution of NBWs, A-3 to A-5 approached this court and filed W.P. No. 7795 of 2010 and this court at the admission stage granted interim orders as follows:-

Post on 23-04-2010.

Prima facie, G.O.Ms. No. 189, Home (Prisons) department, dated 07-08-2004, applies to the cases of the Petitioners as by the time of issuance of the said G.O, the Petitioners are stated to have undergone imprisonment for more than half of the sentence imposed on them.

In view of the same, the Respondents are directed not to arrest the Petitioners for a period of two weeks.

3. It is further stated that in obedience to the interim order, the police are unable to execute the NBWs issued against A-3 to A-6 who filed W.P. No. 7795 of 2010.

4. The 2nd Respondent filed a counter-affidavit stating that the certified copy of the order in Crl. A. No. 1342 and 1343 of 1999 dated 18-11-2004 was sent by the Hon''ble Registrar General, Supreme Court of India by covering letter dated 10-02-2005 and the same was received in the Court of II Additional Sessions Judge, Kadapa at Proddatur on 23-02-2005. On the same day records were also received from the Apex Court. On 27-06-2005 the then Additional District Judge sent the records in S.C. No. 5 of 1994 to the Central Record Room, District Court, Kadapa without issuing warrants to the A-3 to A-6 for the reasons best known to him and thereafter there were no records available on the file of the Court of II Additional Sessions Judge, kadapa at Proddatur with regard to S.C. No. 5 of 1994. After nearly five (5) years the writ petitioner sent a fax message to the Principal District Judge, Kadapa on 22-02-2010 and the same was forwarded to the II Additional Sessions Judge, Kadapa for taking necessary action against the accused. On 10-03-2010 the Registrar General, High Court of A.P. has sent a fax message to the Principal District Judge, Kadapa along with a copy of petition and affidavit in W.P. No. 5440 of 2010 filed by the Petitioner and requested to send para wise remarks and connected records and the same was communicated to

the II Additional Sessions Judge, Kadapa at Proddatur on the same day. Some correspondence ensued and searches were conducted for the records and it revealed that A-3 to A-6 were released on bail on 01-02-2000 and the time spent by them in judicial custody and imprisonment after conviction are as follows:-

A-3 and A-6 were in remand during the following period:

1. During the Crime stage from 1-06-1992 to 07-12-1992 i.e., 5 months 28 days at Central Prison, Kadapa.

2. A-4 and A-6 were in remand in Sub-Jail, Rajampet. From the date of Judgment in S.C. No. 5/94 till the date of release of accused basing on the bail order of Hon'ble Supreme Court i.e., from 27-02-1998 to 01-02-2000 i.e., 23 months 5 days. All the accused were at Central Prison, Kadapa.

Thus they were in jail for a total period of 29 months 3 days. On 15-03-2010 the 2nd Respondent issued Non-bailable Warrants (NBW) against A-3 to A-6 and forwarded them to the Judicial First Class Magistrate, Rajampet for execution and as and when they are produced before the court after execution of the NBWs, the 2nd Respondent would take immediate action against the accused. W.P. No. 7795 of 2010.

5. This writ petition was filed by A-3 to A-5 in S.C. No. 5 of 1994 stating that the learned Sessions Judge convicted the Petitioners u/s 148 and 302 of IPC and sentenced them to undergo rigorous imprisonment for one year and a fine of Rs. 100/- u/s 148 IPC and imprisonment for life and fine of Rs. 100/- u/s 302 IPC and ordered that both sentences should run concurrently. Aggrieved by the said conviction and sentence, they preferred Crl. A. No. 409 of 1998 and the conviction and sentence passed by the trial court was modified into one u/s 304-II IPC and sentenced all the Petitioners to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 5000/-. The State carried the matter to the Supreme Court in Crl. A. No. 1343 of 1999 and when the matter was pending before the Supreme Court they were granted bail and were released from jail on 01-02-2000. Ultimately, the appeal was dismissed on 18-11-2004. According to the Petitioners, they served the sentence for a period of two years 8 months including judicial remand, actual sentence and remission granted by the jail authorities. The Government issued G.O.Ms. No. 189, Home (Prisons-C) Department, dated 07-08-2004 and as per Clause 2(a) of the said G.O, all the convicted prisoners other than life convicts who have undergone half of the sentence including remission as on 31-07-2004 are entitled for release. On enquiry they came to know that the widow of the deceased in the case filed W.P. No. 5440 of 2010 seeking their arrest and the Respondents without verifying the fact issued warrants yielding to political pressures even after issuance of G.O. Hence they sought a writ of Mandamus declaring that they undergone and served the total sentence imposed on them by virtue of the remission granted by the 1st Respondent in G.O.Ms. No. 189, Home (Prisons-C) Department, dated 07-08-2004 and consequently for a declaration that the issuance of the NBWs is

illegal.

6. The 2nd Respondent filed a counter-affidavit stating that the Petitioners have undergone a total sentence as shown hereunder as on 01-02-2000.

Sl. No

Name

Actual Sentence Y-M-D

Remand period Y-M-D

Remission

Y-M-D

Total sentence undergone

Y-M-D

1

K. Gangi Reddy

01-11-04

0-06-01

0-04-15

02-09-20

2

M.V. Subba Reddy

01-11-04

0-04-05

0-04-15

02-07-24

3

M. Srinivasulu Reddy

01-11-04

0-04-27

0-04-07

02-08-08

It was further stated that at the time of issuance of G.O.Ms. No. 189, Home

(Prisons-C) Department, dated 07-08-2004, the Petitioners were on bail and hence they are not eligible/entitled for grant of remission in terms of the said G.O. Further in Circular No. SA2/423/2004 dated 13-08-2004 issued by the Director General and Inspector General of Prisons and Correctional Services, A.P., Hyderabad all the Superintendents of Jails were informed that prisoners who are not in the prison as on the date of issuance of G.O., are not entitled to be released. It was further stated that the Petitioners are not serving sentence as on the date of issuance of G.O. and hence they are not entitled for the benefit.

7. Heard the learned counsel for the Petitioners, the counsel for the Respondents and the learned Government Pleader for Home.

8. The learned counsel for the Petitioner in W.P. No. 5440 of 2010 submits that since the Petitioners in W.P. No. 7795 of 2010 were not in prison as on the date of issuance of G.O.Ms. No. 189, dated 07-08-2004, they are not entitled for the relief granted under the said Government order. He relied on a decision reported in State of Haryana and Others Vs. Mohinder Singh, . He contends that in view of the Circular dated 13-08-2004 issued by the Director General and Inspector General of Prisons, A.P., Hyderabad which says that prisoners who are not in prison and overstaying on Parole/Furlough unauthorisedly are not entitled to be released. The Petitioners in W.P. No. 7795 of 2010 were not in prison as on the date of the issuance of the Government order and hence in view of the Circular, they are not entitled to get the benefit of the Government order. On the other hand, Sri T. Bali Reddy, the learned Senior Counsel appearing for the Petitioners in W.P. No. 7795 of 2010 relied on Full Bench Judgment of this Court in Indian Association of Lawyers (Andhra Pradesh Chapter) Vs. The Principal Secretary, Home Department, Government of Andhra Pradesh and Others, . He drew the attention of this court to the observations of the Division Bench quoted by the Full Bench in the aforesaid decision, which reads as under:-

It is, however, clear that the administrative interpretation of any G.O. given by the executive is not binding upon this Court. This Court can independently interpret the G.O. and come to its own conclusion. In that process of construction, it may be that the interpretation placed by the executive can also be considered. We have already, however, stated that the G.O. is incapable of being understood in any other way except the one to which we have already made reference.

He also relied on the observations of the Full Bench to the effect that when the convicts were released on bail, they were actually undergoing their sentence pending their appeal. Therefore, they were prisoners and they should not be actually undergoing imprisonment. Hence the benefit of G.O.Ms. No. 189 should be extended to the Petitioners also.

9. The learned Government Pleader for Home submitted that the Government Order does not confer any right on the Petitioners and it is only an order enabling the authorities to consider the cases of the prisoners who are entitled for the

benefit of the said Government Order. It is also submitted by the learned Government Pleader that the Petitioners should surrender before the authorities and claim benefit under any Government Order thereafter and each case will be considered by the Committee which recommends to the Government for consideration.

10. A perusal of the G.O.Ms. No. 189, Home (Prisons-C) Department, dated 07-08-2004 shows that the said G.O. was issued on 07-08-2004 and it is applicable to all the convicted prisoners other than life convicts who have undergone half of the sentence including remission as on 31-07-2004. As on 31-07-2004 the appeals were pending before the Apex Court and the Petitioners were on bail. As per the Memo No. SA2/423/2004-Vol. 3, dated 13-08-2004 issued by the Director General and Inspector General of Prisons and Correctional Services, Andhra Pradesh, Hyderabad the prisoners who are not in prison and overstaying on Parole/Furlough unauthorisedly as on that date are not entitled to get the benefit of the said Government order.

11. There is no dispute with regard to the facts of the case. The Petitioners in W.P. No. 7795 of 2010 were convicted by the Criminal Court in S.C. No. 5 of 1994 on 27-02-1998. They filed Criminal Appeal Nos. 1408 and 1409 of 1998 before this Court. The appeals were allowed on 11-02-1999 modifying the sentences awarded by the Sessions Court and convicting the accused u/s 304-II IPC for a period of four (4) years. Against the said Criminal Appeals, the Petitioners and the State filed Appeals before the Hon''ble Supreme Court and they were granted bail on 01-02-2000. Ultimately, the Hon''ble Supreme Court dismissed the appeals on 18-11-2004.

12. The argument of the learned counsel for the Petitioner in W.P. No. 5440 of 2010 and the learned Government Pleader for Home is based on the Circular bearing No. SA2/423/2004-Vol. 3, dated 13-08-2004 issued by the Director General and Inspector General of Prisons, Andhra Pradesh, Hyderabad and the relevant portion of the Circular is as follows:-

1. Prisoners who are not in Prison and overstaying on Parole/Furlough unauthorizedly are not entitled to be released even if their names are found in the Annexure to the G.O. 3rd cited.

Basing on the said Circular, it is contended by the learned Counsel that the prisoners should be in prison as on the date of issuance of the Government order in order to get benefit of the order. It is apparently based on misconception. The Circular came to be issued on the request of the Superintendents of Jails seeking clarification with regard to the release of prisoners who were overstaying on Parole/Furlough unauthorisedly and some of the prisoners who are convicted to substantive as well as default sentences. The Petitioners in W.P. No. 7795 of 2010 do not fall in the said category. However, the learned counsel split the sentences extracted portion above and submit that prisoners who are not in prison as one category and those who are overstaying on Parole/Furlough

unauthorisedly as another category and contend that since the convicted Petitioners were not in prison as on the date of the Government order, they are not entitled for the relief. The Circular came to be issued only in respect of the category of prisoners who are overstaying on Parole/Furlough unauthorisedly and a reading of the entire sentence makes it clear by the adjunctives "and" it cannot be split into two categories. Thus the submission of the learned counsel for the Petitioner and the learned Government Pleader is untenable, a reading of the Circular makes it clear. But in the counter-affidavit filed by the Director General and Inspector General of Prisons, Andhra Pradesh, Hyderabad, a different interpretation which was unwarranted was given. It is stated in the counter-affidavit that according to Instruction No. 1 in the Circular, the benefit of the said Government order can be extended only to the prisoners who are rendering sentences on the date when the Government order was issued. This meaning was not attributed in the Circular but given a new meaning in the counter. Hence in order to apply the benefit of the Government order, the convicted prisoners need not be in prison as on the date of the Government order. While considering the case of the terms bail/parole/furlough, the Hon"ble Supreme Court in the decision in State of Haryana and others case (1st cited), observed as follows:-

Terms bail, furlough and parole have different connotations. Bail is well understood in criminal jurisprudence. Provisions of bail are contained in Chapter XXXIII of the code. It is granted by the officer-in-charge of a police station or by the Court when a person is arrested and is accused of an offence other than non-bailable offence. When a person is convicted of an offence he can be released on bail by the appellate court till his appeal is decided. If he is acquitted his bail bonds are discharged and if appeal dismissed he is taken into custody. Bail can be granted subject to conditions. It does not appear to be quite material that during the pendency of appeal though his sentence is suspended he nevertheless remains a convict. For the exercise of powers u/s 432, it may perhaps be relevant that the State Government may remit the whole or any part of the punishment to which a person has been sentenced even though his appeal against conviction and sentence was pending at that time. Appeal in that case might have to abate inasmuch as the person convicted has to accept the conditions on which State Government remits the whole or in part of his punishment.

In the said decision, the Supreme Court referred to an earlier decision of Gulzar Ali Vs. State of H.P., wherein it was observed as follows:-

We find merit in the contention because the scheme of remission formulated under the GO is with reference to the period of sentence actually undergone by different classes of prisoners and in the case of some the period of actual sentence together with the remissions earned for reckoning the total sentence. The GO does not stipulate that in order to get the benefit of remission the prisoners must actually be in jail on the date of GO was issued.

In the instant case, the Petitioners are not claiming the remission for the period

they were on bail but they are claiming the benefit of the Government order on the ground that they have completed half of the sentence including the remission as on 31-07-2004. There is no dispute that they have undergone half of the sentence as on 31-07-2004. In the facts and circumstances of the case, the Petitioners are entitled for the benefit of G.O.Ms. No. 189 Home (Prisons-C) Department, dated 07-08-2004 and consequently the Non-bailable Warrants (NBWs) issued by the learned II Additional Sessions Judge, Kadapa at Proddatur are liable to be recalled. The 1st Respondent shall consider the case of the Petitioners in accordance with the above said G.O. and pass appropriate orders thereon within a period of three(3) months from the date of receipt of a copy of this order.

Accordingly, W.P. No. 7795 of 2010 is allowed. W.P. No. 5440 of 2010 is dismissed.

Miscellaneous Petitions pending, if any, in both the writ petitions shall stand closed. In the circumstances, there shall be no order as to costs.