
(1990) 03 SC CK 0066

In the Supreme Court Of India

Case No : Criminal Appeal No's. 718-719 of 1981 With 205-212; 213-217 and 204 of 1990

State of Punjab and others

APPELLANT

Vs

Joginder Singh and others

RESPONDENT

Date of Decision : 23-03-1990

Acts Referred:

Constitution of India, 1950 — Article 161, 72
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A
Prisons Act, 1894 — Section 59

Citation : AIR 1990 SC 1396 : (1990) CriLJ 1464 : (1990) 2 Crimes 260 : (1990) 2 JT 323 : (1990) 1 SCALE 610 : (1990) 2 SCC 661 : (1990) 2 SCR 147 : (1990) 2 ShimLC 118

Hon'ble Judges : M. Fathima Beevi, J;A. M. Ahmadii, J

Bench : Division Bench

Advocate : D.N. Dwivedi and Sarwa Mitter, for the Appellant; S. Srinivasan and C.L. Sahu Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

1. Special leave granted in all the above matters.
2. These appeals involve the interpretation of paragraphs 516-B and 631 of the Manual for the Superintendence and Management of Jails in the Punjab. The preface to the Manual shows that those paragraphs of the Manual against which a black line appears are, in substance, either quotations from the law, or, from the Rules having the force of law, the authority having been indicted on the upper right hand margin of each paragraph whereas the paragraphs which have not been black lined are executive instructions issued from time to time by the Government of India, or the Local Government or the Inspector-General with the sanction and approval of the Local Government. It may at once be mentioned that paragraph 516-B contained in Chapter XV entitled 'Release of Prisoners' is not black lined while paragraph 631 contained in Chapter XX entitled 'Remission System' is black lined. The note in the upper right hand margin of paragraph

516B refers to G of I Resolution No. 159-167 dated 6th September, 1905 and P.G. No. 18608?Jails-dated 28th June, 1920. There is no dispute that this paragraph contains an executive instruction only. Paragraph 631 contains a note on the upper right hand margin referring to the G of I Resolution No. 161-172 of 2nd May, 1908 and P.G. Letter No. 1669-S (Home) of 31st July, 1908. At the foot of paragraph 631 is a 'Note' in small type with a right hand marginal note 'See para 516B'. While there can be no controversy that paragraph 631 which is black lined has statutory force, the question is whether the Note at the foot thereof, which is not black lined, also has statutory force.

3. Paragraph 516-B provides that the case of every convicted prisoner (except females and males below 20 years at the date of the commission of the crime) sentenced to imprisonment for life or imprisonment aggregating to over 14 years and who has undergone a period of detention in Jail amounting, together with remission earned, to 14 years, 'shall be' submitted to the State Government, through the Inspector General of Prisons, for orders. In the case of female prisoners or prisoners who were below 20 years on the date of commission of the crime, reference is required to be similarly made to the State Government on their completing a detention period of 10 years inclusive of remissions. Clause (v), however, provides that notwithstanding anything contained in the earlier part of the paragraph, a Superintendent of jail 'may', in his discretion, refer at anytime, for the orders of the State Government, the case of any prisoner sentenced to imprisonment for life whose sentence might in the Superintendent's opinion be suitably commuted to a term of imprisonment. It would appear from a plain reading of this paragraph that in the case of a prisoner who has completed 14 years of detention in jail, inclusive remissions earned, it is imperative on the part of the Superintendent of the Jail to submit his case, through the I.G. of Prisons, to the State Government for consideration. The use of the words 'shall be submitted' bring out this intention when we contrast them with the word 'may' and the words 'in his discretion' used in Clause (v) thereto which begins with a non-obstante clause. Therefore, where the intention was to confer a mere discretion on the Superintendent of Jail, it was made manifest by the use of the expression 'may' followed by the words 'in his discretion' and where the intention was to cast a duty to submit the case of the State Government, it was brought out by the word 'shall' preceding the words 'be submitted...for the orders of the State Government'. We have, therefore,, no doubt in our minds that paragraph 516B, though an executive: instruction, has been couched in language which clearly shows that in the former type of cases where the prisoner has completed 14 years of detention in jail, inclusive of remissions, his case must be referred to the State Government for consideration. Notwithstanding this limitation of completion of 14 years, Clause (v) confers a discretion on the Superintendent of the jail to refer or submit the case of a prisoner to the State Government even before he has completed 14 years if in his opinion the case is fit for commuting the sentence.

4. Paragraph 631 is indisputably a statutory one as it is black lined. But the black

lined portion of the paragraph merely defines certain expressions including the expression 'life convicts' which means a person whose sentence amounts to 20 years imprisonment. Then appears the Note which reads as follows:

Note: The case of all life-convicts and of all prisoners sentenced to more than 14 years imprisonment or to transportation and imprisonment for terms exceeding in the aggregate 14 years shall, when the term of imprisonment undergone, together with any remission earned under the rules amounts to 10 or 14 years, as the case may be, submitted for the orders of the Local Government in accordance with the instructions contained in the Home Department Resolution No. 159-167 (Jails), dated the 6th September, 1905.

(See para 516B)

It will be seen that the note merely reproduces the gist of paragraph 516-B. Even the right side marginal note says 'see para 516-B' and is based on the same Resolution of 6th September, 1905 on which paragraph 516-B is based. The note is not black lined as in the case of the Note below paragraph 633. It was, therefore, urged that when paragraph 516-B is not black lined, this note below paragraph 631, which too is not black lined, can not be construed to be statutory in character merely because paragraph 631 incorporates a statutory rule.

5. Since the source of paragraph 516-B and the Note at the foot of paragraph 631 is the same, namely, the Resolution of 6th September, 1905, counsel for the State of Punjab submitted that the learned Judge in the High Court was not right in concluding that the Note being an integral part of the statutory rule incorporated in paragraph 631 must receive the same character and if there is a conflict between the two, the note which is statutory in character must prevail. The difficulty arises because the State Government has issued instructions in 1971 which has the effect of modifying the executive instructions in paragraph 516-B, in that, it is now provided that a convict must have undergone 8-1/2 years of substantive sentence before his case for premature release can be submitted to the State Government for consideration. A further change was made by an executive instruction issued in 1976 whereby it was provided that cases of convicts who were sentenced to death and whose sentences were subsequently commuted to life imprisonment will not be submitted to the State Government for consideration unless the convict has undergone at least 14 years of substantive imprisonment. The High Court has taken the view that while paragraph 516-B would stand amended or modified by the subsequent executive instructions, the statutory rule contained in the Note below paragraph 631 cannot: be touched by mere executive instructions and hence it still holds the field and the Superintendent for the jail is bound to submit the case to the State Government ignoring the change brought about by the executive instructions of 1971 and 1976. In other words, according to the High Court the executive instructions of 1971 and 1976 being in conflict with the statutory Note must give way to the latter.

6. Before we deal with the above question it may be advantageous to refer to Sections 432, 433 and 433A of the Criminal Procedure Code which have a bearing on the question of premature release. Section 432 confers on the appropriate Government the power to suspend the execution of the sentence or remit the whole or part of the sentence with or without conditions. Section 433 confers power on the appropriate Government to commute (a) a sentence of death for any other punishment provided under the Penal Code, (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding 14 years or fine (c) a sentence of rigorous imprisonment, for simple imprisonment or fine or (d) a sentence of simple imprisonment for fine. Section 433A provides that where an offender is visited with a sentence of imprisonment for life for an offence for which death is one of the punishments or where a sentence of death is commuted u/s 433 into one of punishment for life, such persons shall not be released from prison unless he has served at least 14 years of imprisonment. It will thus be seen that Section 432 and 433 confer powers of suspension, remission and commutation of sentences on the appropriate Government, an expression defined in Sub-section (7) of Section 432 of the Code.

7. In *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, , this Court held that a sentence of transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convict's normal life, unless the said sentence is commuted or remitted by the appropriate Government. Dealing with the Rules framed under the Prisons Act, 1894, this Court held that even though they were statutory in character they did not confer an indefeasible right on a prisoner sentenced to transportation for life an unconditional release on the expiry of a particular term including remissions. It held that the rules framed under the Prisons Act enabled a prisoner to earn remissions-ordinary, special and State-the said remissions were to be given credit towards his term of imprisonment and for the purpose of working out the remissions the sentence of transportation for life was equated with a definite period, but it is only for the particular purpose and not for any other purpose. Lastly it observed that the question of remission was exclusively within the province of the appropriate Government.

8. In *Maru Ram and Others Vs. Union of India (UOI) and Others*, this Court repelled the challenge to Section 433A both on the question of competence of Parliament to enact the provision and its constitutional validity. While interpreting Sections 432, 433 and 433A of the Code, this Court pointed out that wide powers of remission and commutation of sentences were conferred on the appropriate government but an exception was carved out for the extreme category of convicts who were sentenced to death but whose sentence had been commuted u/s 433 into one of imprisonment for life. Such a prisoner is not to be released unless he has served at least 14 years of imprisonment. The Court refused to read down Section 433A to give overriding effect to the Remission Rules of the State. It categorically ruled that Remission Rules and like provisions stand excluded so far as 'lifers' punished for capital offences are concerned. Remissions

by way of reward or otherwise cannot cut down the sentence awarded by the Court except u/s 432 of the Code or in exercise of constitutional power under Article 72/161 of the Constitution. Remission cannot detract from the quantum and quality of the Judicial sentence except to the extent permitted by Section 432 of the Code, subject of course to Section 433A, or where the clemency power under the Constitution is invoked. But while exercising the Constitutional power under Article 72/161, the President or the Governor, as the case may be, must act on the advice of the Council of Ministers. The power under Article 72 and 161 of the Constitution is absolute and cannot be fettered by any statutory provision such as Sections 432, 433 and 433A of the Code. This power cannot be altered, modified or interfered with in any manner whatsoever by any statutory provisions or Prison Rules.

9. Now, paragraph 516-B requires that the case of every convict sentenced to imprisonment for life or imprisonment aggregating to more than 14 years and who has undergone a period of detention in jail amounting, together with remission, to 14 years, shall be submitted to the State Government for orders. The State Government's instruction issued in 1971 provides that the convict must have undergone 8-1/2 years of substantive sentence before his case could be submitted to the Government. The other instruction issued in 1976 provides that the case of a convict who was sentenced to death and whose sentence was subsequently commuted to life imprisonment will not be submitted unless he has undergone at least 14 years of substantive imprisonment. Remission schemes are introduced to ensure prison discipline and good behaviour and not to upset sentences; if the sentence is of imprisonment for life, ordinarily the convict has to pass the remainder of his life in prison but remissions and commutations are granted in exercise of power under Sections 432 and 433 carving out an exception in the category of those convicts who have already enjoyed the generosity of executive power on the commutation of death sentence to one of life imprisonment. Even in such cases Section 433A of the Code or the executive instruction of 1976 does not insist that the convict pass the remainder of his life in prison but merely insists that he shall have served time for at least 14 years. In the case of other 'lifers' the insistence under the 1971 amendment is that he should have a period of at least 8 1/2 years of incarceration before release. The 1976 amendment was possibly introduced to make the remission scheme consistent with Section 433A of the Code. Since Section 433A is prospective, so also would be the 1971 and 1976 amendments.

10. But the High Court has come to the conclusion that Paragraph 516-B, as amended by the executive instructions of 1971 and 1976, cannot override the statutory rule contained in Paragraph 631 read with the note appended thereto. Counsel for the State argued that the Note at the foot of Paragraph 631 merely reproduces Paragraph 516-B; the marginal note thereto says to in no uncertain terms and, therefore, the Note cannot be ascribed a statutory character. We think there is considerable force in this submission. In the first place it must be realised that according to the preface only those paragraphs which are black

lined have statutory character. The Note in question is not so black lined. Where the note is intended to be given statutory character it is black lined, see the note at the foot of Paragraph 633. Secondly the source of paragraph 516-B and the Note is the very same Resolution No. 159-167 of the Government of India dated 6th September, 1905. It is difficult to believe that the same resolution was intended to be a mere executive instruction in one part of the Manual and was intended to be conferred a statutory character in another part of the same Manual. Thirdly the marginal note to the Note in question in terms refers to Paragraph 516-B which means it was merely a reproduction of the latter paragraph. In the circumstances if the Note was intended to be conferred a statutory character, it would have been black lined in keeping with the scheme of the Manual. These are clear indicators which support the submission of the learned Counsel for the State. Lastly Paragraph 631 classifies prisoners and fixes the duration of their sentences e.g. 20 years for life convicts and class 3 prisoners and 25 years for class 1 and 2 prisoners. The Note at the foot of the paragraph is by way of a reminder that notwithstanding the duration fixed under the said rule, Paragraph 516-B requires that cases of such prisoners should be submitted on the expiry of the duration fixed under Paragraph 516-B. It, therefore, seems clear to us that the Note is neither an integral part of Paragraph 631 nor does it have statutory flavour as held by the High Court.

11. We, therefore, find it difficult to uphold the view taken by the High Court in this behalf. We may make it clear that Paragraph 516B insofar as it stands amended or modified by the 1971 and 1976 executive orders is prospective in character. We allow these appeals and set aside the judgment and Order of the High Court in each of these appeals.