
(1994) 01 SC CK 0114
In the Supreme Court Of India
Case No : Criminal Appeal No. 163 Of 1983

State of U.P.

APPELLANT

Vs

Sadhu Saran Shukla

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 396

Citation : (1995) 2 SCC 385

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : State of Madhya Pradesh and Another Vs. Bhola @ Bhairon Prasad Raghuvanshi, AIR 2003 SC 1191 : (2003) 1 JT 594 : (2003) 1 SCALE 689 : (2003) 3 SCC 1 : (2003) 1 SCR 906 : (2003) 2 UJ 828 : (2003) AIRSCW 752 : (2003) 1 Supreme 882

1. In this appeal by the State of U.P. the respondent was convicted for an offence under Section 396 Indian Penal Code. He, however, invoked Section 2 of the Uttar Pradesh Prisoners' Release on Probation Act, 1938 seeking release from custody on probation on the ground that his conduct in jail has been such that he should be entitled to release as per the terms of the said section. Since Rule 3 totally prohibits the release of a person convicted under Section 396 Indian Penal Code, the respondent filed a writ petition before the High court challenging the vires of the rule on the ground that it is ultra vires and beyond the power conferred under Section 9 on the government to make rules. The High court allowed the writ petition to a limited extent holding that Rule 3 debarring a person convicted of an offence under Section 396 Indian Penal Code from being considered for release on probation under Section 2 of the Act is ultra vires, illegal and void and gave a further direction to the government to consider the petitioner's case (Sadhu Saran Shukla) for release under Section 2 of the Act. It may be mentioned here pending appeal in this court stay of the operation of the

order of the High court had been in force.

2. Section 2 of the Act was enacted with a view to encourage people in prison to lead a peaceable life and to give them the opportunity of hospitality and return to the mainstream of the society. The same is clear from the objects and reasons of the enactment. Section 2 of the U.P. Prisoners' Release on Probation Act lays down as under :

"2. Power of government to release by licence on conditions imposed by it. Notwithstanding anything contained in Section 401 of the Code of Criminal Procedure, 1898 (Act V of 1898, where a person is confined in prison under a sentence of imprisonment, and it appears to the State government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison, the State government may by licence permit him to be released on condition that he be placed under the supervision or authority of a government Officer or of a person professing the same religion as the prisoner, or such secular institution or such society belonging to the same religion as the prisoner as may be recognized by the State government for the purpose, provided such other person, institution or society is willing to take charge of him. Explanation. The expression "sentence of imprisonment" in this section shall include imprisonment in default of payment of fine and imprisonment for failure to furnish security under Ch. VIII of the Code of Criminal Procedure, 1898 (Act V of 1898.)"

3. Then we have Section 9 of the Act which gives the powers to the State government to make rules and it reads as under :

"9. Power to make rules. The State government may make rules consistent with this Act (1) for the form and conditions of licences on which prisoners may be released; (2) for the appointment of government officers, the recognition of institutions and societies referred to in Section 2; (3) for defining the powers and duties of government officers, institutions or persons, under whose authority or supervision, conditionally released prisoners may be kept; (4) for defining the classes of offenders who may be conditionally released, add the periods of imprisonment after which they may be so released; (5) for prescribing the manner in which an order of revocation of a licence shall be served on the person whose licence is revoked; (6) generally for carrying into effect all the purposes of this Act."

4. Exercising the power under Section 9 of the Act the State government has framed rules. Rule 3(a) of the Uttar Pradesh Prisoners' Release on Probation Rules reads as under :

"INELIGIBILITY for release. The following classes of prisoners shall not be released under the Act : (a) Those convicted of offences under the following provisions of the Indian Penal Code: Ch. V-A, VI AND VII S. 216-A, 224 and 225 (if it is a case of escape from a jail) 231, 232, 303, 311, 328, 364, 376, 382, 386 to 389, 392 to 402, 413, 459, 460, 489-A and Section 511 read with any of the

aforesaid sections;"

It can be seen that Rule 3(a) in effect precludes the government from considering the release of the prisoners though they satisfy the requirements of Section 2 of the Uttar Pradesh Prisoners' Release on Probation Act, 1938. It is also rightly contended that this rule is beyond the power conferred under Section 9 of the Act and if the rule is given effect to, it defeats the object of Section 2.

5. We have carefully perused the reasoning of the High court and we are in agreement with the High court to this extent namely that Section 9 of the Act has to be held as complementary and supplementary provision to Section 2 and Rule 3 cannot frustrate the very purpose by negating the rights of those prisoners to claim the benefit of Section 2 of the Act.

6. Mr Pramod Swarup, learned counsel for the State of U.P. submitted that by virtue of this judgment the entire Rule 3 stands struck down. We do not think that the High court has gone that far. What all the High court has held ultimately is that to the extent the rule debars a person convicted of an offence under Section 396 Indian Penal Code from being considered for release under Section 2 is ultra vires and to that limited extent again the High court gave a direction to the State government to consider the petitioner's case (Sadhu Saran Shukla).

7. However, we are of the view that if the U.P. government thinks that in respect of serious offences like Section 396 Indian Penal Code etc. the prisoners should not be released it is better if they bring about some suitable amendments in the Act, then frame necessary rules.

8. This is very old matter and the respondent is an advocate who sought release under Section 2 of the Act on the ground that his conduct and antecedents in the prison have been found to be good. Even on merits we see no grounds to interfere.

9. The appeal is dismissed accordingly.