

(2002) 11 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 36647-M of 2000

Surjit Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 32A

Citation : (2003) CriLJ 2628 : (2003) 3 RCR(Criminal) 814

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : S.S. Rana, for the Appellant; G.S. Gill, Sr. Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—By means of this Crl. Misc. No. 28784-M of 2001 and Crl. Misc. No. 36647-M of 2000, shall be disposed of as the same question of law and fact is involved in them.

2. Mohinder Singh and others (73 in number) who are convicts u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and are undergoing sentence in Central Jail, Ludhiana, have prayed for a direction to the State of Punjab to allow them remissions, which are granted to every other convict by the Governor of Punjab under Article 161 of the Constitution of India.

3. It is alleged that the petitioners were convicted and sentenced to undergo either ten years rigorous imprisonment or more by various Courts in the State of Punjab. They are serving the sentence. They are entitled to remissions granted by the Governor of Punjab under Article 161 of the Constitution of India.

4. Respondent-State of Punjab, has refused to grant them remissions presumably because of the impression that there is bar created by Section 32A of the Narcotic Drugs and Psychotropic Substances Act, 1985, so far as the grant

of remissions to the convicts of offences falling within the mischief of this Act is concerned. It is stated that barring these convicts from the grant of remissions is violative of Articles 14, 19 and 21 of the Constitution of India.

5. Respondent-State of Punjab contested this petition, urging that the petitioners are not covered by the instructions under which remissions have been granted. Petitioners have been convicted under Central Act (other than the Code of Criminal Procedure), the benefit of remission granted by the State Government is not applicable to them. Petitioners are convicts under Narcotic Drugs and Psychotropic Substances Act, 1985 and are undergoing sentence thereunder, they are not entitled to the grant of remissions. u/s 432 of the Code of Criminal Procedure, 1973, only the "appropriate Government" is competent to suspend the execution of the sentence or remit it and Sub-section (7) of Section 432 of the Code of Criminal Procedure, says that (a) in cases. where sentence is for an offence against or the order referred to in the Sub-section (6) is passed under any law relating to a matter to which the executive power of the Union extends, the Central Government. (b) In other case, the Government of the State within which offender is sentenced or the said order is passed. It is alleged that in this case, the appropriate Government is "Central Government" and not the "State Government" so far as the grant of remission is concerned as the sentence has been passed under the Narcotic Drugs and Psychotropic Substances Act, 1985, which is a Central Act. It is alleged that the respondent-State has exercised power under Article 161 of the Constitution of India read with Section 432, Cr.P.C. correctly. Under Article 161 of the Constitution of India, the Government has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute sentence of any person convicted of any offence against any law relating to matters to which the executive power of the State extends. Under Article 161 the executive power of the State extends to matters with respect to which the Legislature of the State has power to make laws. In this case, it is the "Union Government" which has the power to grant remission etc. because it is the "Union Parliament" which has enacted the Narcotic Drugs and Psychotropic Substances Act, 1985. Legislative power of the State does not extend to the Narcotic Drugs and Psychotropic Substances Act, 1985.

6. Heard the learned counsel and the learned Senior D.A.G. for the State of Punjab.

7. While granting remission under Article 161 of the Constitution of India read with Section 432, Cr.P.C., 1973 to commemorate the tercentenary celebrations of the Birth of Khalsa on 14-4-1999, the Governor of Punjab specifically provided that this remission shall not be admissible to certain prisoners, namely those who have been sentenced for the murder of a child aged below 14 years.

8. It is laid down that the benefit of special remission shall not be available to convicts of offences which have been investigated by the Delhi Special Police Establishment or by any other Agency empowered to make investigation under

any Central Act other than the Code of Criminal Procedure. It was submitted by the learned counsel for the petitioners that in the order granting special remission by the Government of Punjab, it is not specifically mentioned that the benefit of special remission shall not be available to those prisoners who have been sentenced under the Narcotic Drugs and Psychotropic Substances Act, 1985. It was further submitted that Indian Penal Code, is also a "Central Act" and if the benefit of special remission is available to the convicts of offences under the Indian Penal Code, how can this benefit be refused to the convicts, who are convicts under the Narcotic Drugs and Psychotropic Substances Act, 1985, which is also a "Central Act".

9. Learned Senior Deputy Advocate General for the State of Punjab, on the other hand, submitted that Indian Penal Code, though a Central Act, stands on a different footing vis-a-vis the Narcotic Drugs and Psychotropic Substances Act, 1985. Offences defined in Indian Penal Code are investigated in accordance with the procedure laid down in the Code of Criminal Procedure, whereas the offences defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 are peculiar offences. Stringent sentences have been provided for these offences as a matter of policy by the Union Parliament. Those who indulge into the commission of offences defined in this Act, have been viewed as enemies of the society. Inasmuch as, by indulging into sale of poppy husk, opium etc., they are playing with the health of the entire younger generation and are converting them into a class of opium eaters etc. Society is interested in the health of the younger generation. If the younger generation turns out to be a generation of drug addicts, how will they guard the country against external on slaughters. How will they cater to the uplift of the society ? Section 32A of the Narcotic Drugs and Psychotropic Substances Act, 1985 as follows :--

["32-A. No suspension, remission or commutation in any sentence awarded under this Act.--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended, or remitted or computed".]

10. A perusal of the Section nowhere indicates that it deals with three different matters namely suspension, remission and commutation of the sentences. Prohibition contained in the Section is referable to Sections 389, 432, 433, Cr.P.C. Section 432 of the Code provides that when any person has been sentenced to punishment for an offence, the appropriate Government may at any time without condition or upon conditions either the person sentenced accept the sentence suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced in the manner and according to the procedure prescribed therein.

11. Learned counsel for the petitioners submitted that in *Dadu @ Tulsidas Vs. State of Maharashtra*, the Hon"ble Supreme Court has held that Section 32A of Narcotic Drugs and Psychotropic Substances Act, 1985, is constitutional. It has

not taken away the power of the President or the Governor to grant remissions. It has taken away the power of the executive under Sections 432 and 433, Cr.P.C. to suspend, remit or commute the sentence. Section 32A is constitutionally valid so far as it curtails the powers of the executive. This Section is unconstitutional insofar as it curtails the power of the Appellate Court to suspend the sentence during the pendency of appeal.

12. In my opinion, the refusal to grant remission to the convicts under the Narcotic Drugs and Psychotropic Substances Act, 1985 is quite justified as it would be in furtherance of the intention of the Union Parliament that no remission be granted to a convict under this Act.

13. For the reasons given above, I am of the opinion that these criminal misc. applications fail and are, accordingly, dismissed.