

(2017) 07 BOM CK 0052
In the Bombay High Court
Case No : 97 of 2004

Taranjitshingh alias Ranjitsingh S/o Preetamshingh Gill

APPELLANT

Vs

The State of Maharashtra through the Chief Secretary,
Government of Maharashtra, & Ors.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 433](#), [Section 433A](#) - Power to commute sentence -
Restriction on powers of remission or commutation in certain cases
[Indian Penal C](#)

Citation : (2017) 07 BOM CK 0052

Hon'ble Judges : T.V. Nalawade, Sunil K. Kotwal

Bench : DIVISION BENCH

Advocate : S.T. Shelke, P.G. Borade

Judgement

1. The petition is filed for giving direction to respondents, Government to pay compensation of Rs.25,00,000/- (Rupees Twenty Five lakh) to the petitioner on account of illegal detention of petitioner, for kipping him behind bars for more period than permissible in law.

2. Heard both the sides.

3. The petitioner was arrested on 30.08.1975 in connection with the crime punishable under section 302 of Indian Penal Code ("IPC" for short). In the said crime, charge-sheet was filed against him and he was tried for the offence of murder. In the year 1977, Sessions Court acquitted him of the charge of murder. This decision was challenged by the State by filing Criminal Appeal No. 498 of 1978 in the High Court. On 16.10.1981 the appeal came to be allowed and the petitioner came to be convicted for offence of murder and he came to be sentenced to suffer imprisonment for life. He came to be arrested on 01.12.1981. He was granted bail in appeal, but ultimately his appeal was dismissed by the Supreme Court and he was taken in custody for undergoing

sentence on 05.02.1993.

4. It is the case of the petitioner that, as per the provision of Section 433 of Cr.P.C. he could not have been kept behind bars for the period of more than 14 years and this period was inclusive of remission period. It is contended that as such decision was not taken by the State and the Authority he was required to file Criminal Writ Petition No.209 of 2000 in this Court for direction. It is contended that, the direction was given by this court to the respondent to take decision on representation made by the petitioner in which contention of aforesaid nature was made. This petition came to be disposed of with direction of such nature to the respondent. On 01.11.2000 the respondent informed to the petitioner that, his case was covered by amended provision like section 433-A of Cr.P.C. and so, the remission period cannot be considered, and he needs to be kept in jail, as per the new provision. It is contended that, he then filed Criminal Writ Petition No.460 of 2001 to challenge the aforesaid decision of respondent. It is contended that, this Court allowed the Writ Petition and held that, provision of Section 433 of Cr.P.C., which was not amended was applicable in this case. It is contended that, due to wrong decision of the respondent/ state, he was kept behind bars, for period of 3 years 9 months and 12 days, and this period was more than the period for which he could have been kept behind bars under section 433 of Cr.P.C. It is contended that, due to illegal detention for such period, he is entitled to get the aforesaid compensation.

5. The learned APP submitted that, in view of the circumstance that the petitioner was convicted in the year 1981, i.e. after coming into force of the provision of section 433-A of Cr.P.C., new provision needs to be used in his case. On this point learned counsel for the petitioner placed reliance on the case reported as AIR 1980 SC 2147 (Maru Ram Vs. Union of India). This case was considered by this Court in Criminal Writ Petition No.460 of 2001 and this Court gave direction on 27.02.2002 to release the petitioner from jail by holding that the provision of Section 433 of Cr.P.C., is applicable in this case. The case cited supra show that date of the decision of case is relevant and the decision may come out of conviction or acquittal. In the present case, the case against the present petitioner was decided on 30.08.1975 and provision of Section 433-A came in to force on 18.12.1978. In Criminal Writ Petition No. 460 of 2001, decided by this Court on 27.02.2002 following observations in para Nos.8 & 9, were made by this Court by referring aforesaid case of Supreme Court.

8. In the above said judgment, the Supreme Court has in clear terms held that, the amended provision of Section 433-A is applicable prospectively and not retrospectively. It is further held that, the amended provision would not be applicable to a case where the convict was acquitted by the trial court before the amended provision came into force but convicted in appeal against acquittal by the High Court after the amendment came into effect. The observations of the Supreme Court in Para 56 of the above judgment deserve to be quoted.

"56. We are mindful of one anomaly and must provide for its alimination. If the

trial court acquit and the higher Court convicts and it so happens that the acquittal is before Section 433-A came into force and the conviction after it, could it be that the convicted person would be denied the benefit of prospectively and consequential non-application of Section 433-A merely because he had the bad luck to be initially acquitted ? We think not. When a person is convicted in appeal, it follows that the appellate court has exercised its power in the place of the original court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of the judgment of the trial court. The appellate conviction must relate back to the date of the trial court's verdict, and substitute it. In this view even if the appellate court reverses an earlier acquitted rendered before Section 433-A came into force, such persons will also be entitled to the benefit of remission system prevailing prior to Section 433-A on the basis we have explained. *Boucher pierre and Andre V. Supdt., Central jail, Tihar* (1971) 1 SCR 192 at P 195 (AIR 1975 SC 164). An appeal is a continuation of an appellate judgment as a replacement of the original judgment."

The above dictum of the Supreme Court does not leave any doubt that amended provision of Section 433-A of Criminal Procedure Code is not applicable to the case of the petitioner who was acquitted by the trial court in November, 1997, before the amended provision of Section 433-A of Criminal Procedure Code came into force and, therefore, the subsequent conviction by the High Court in appeal against acquittal on 16.10.1981 related back to the date of order of the Trial Court acquitting the petitioner convict in November, 1997. If the case of the petitioner is governed by Section 433 of Criminal Procedure code and is covered by the Government Circular dated 16.11.1978, going by the reply affidavit filed on behalf of the respondent- State, the petitioner has undergone his life imprisonment long ago and, therefore, is entitled to be released forthwith.

9. The petitioner has been in custody for a period of 17 years 9 months 12 days including remissions as against the period of 14 years of imprisonment, he was liable to undergo under law. The petitioner has suffered this imprisonment for longer period than he was liable to be in custody due to the obvious error on the part of the State. The petitioner had to knock the doors of this Court in Writ Jurisdiction twice for the same reason. Smt. Gaikwad, learned counsel for the petitioner submits that compensation should be paid to the petitioner for keeping him in custody for long period then due under law. The opportunity has to be afforded to the other side for being heard on that point as in the petition no express claim was made in that behalf. The petitioner may claim the compensation by adopting separate proceedings in that respect if it is open to him. The petitioner is under law, however, entitled to be awarded costs, for this laxity on the part of the State as there was clear violation of the right of the prisoner and was illegally kept under detention for longer period than permitted by law inspite of his previous petition.

6. The decision given by this court in Criminal Writ Petition No. 460 of 2001 is not challenged by respondent. In view of the aforesaid decision given by this

Court in favour of the petitioner, in the present proceeding, it needs to be presumed that the petitioner was kept behind bars illegally for the period mentioned in the Criminal Writ Petition by him, and so he is entitled to get compensation. On the date of present petition, the petitioner was aged about 50 years and it can be said that he lost more than 3 years of his active life due to the illegal detention. When a person is kept behind bars his entire family suffers as in our society the male member is generally the earning member of the family. It can be said that by giving direction to the respondents in Criminal Writ Petition No. 209 of 2000, this Court had given an opportunity to respondents to consider the law devolved on the point and take proper decision. Even when there was such direction, correct decision was not taken by the respondents. In view of this circumstance also, this Court holds that compensation needs to be paid to the petitioner. In view of the facts of the present matter, this Court holds that respondents need to be made to pay atleast Rs.2,00,000/- (Rupees Two lakh) to the petitioner as compensation.

7. In the result, the petition is allowed. The respondent Government is directed to pay compensation of Rs.2,00,000/- (Rupees Two lakh) to the petitioner. The amount is to be deposited within 45 days from today. If the amount is not deposited within 45 days, the same shall carry interest @ 12% p.a. Rule is made absolute in aforesaid terms.