
(1980) 06 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No's. 11563 and 16468 to 16475 of 1979

Thimma and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-06-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432, 433 A
Penal Code, 1860 (IPC) — Section 57

Citation : (1981) CriLJ 244 : (1980) ILR (Kar) 1367 : (1980) 2 KarLJ 492

Hon'ble Judges : M.N. Venkatachalaiah, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : B. Thilak Hegde, for the Appellant; U.L. Narayana Rao, Sr. Central Govt. Standing Counsel and V.C. Brahmarayappa 1st Addl. Govt. Advocate, for the Respondent

Judgement

Shetty, J.—The petitioners herein are prisoners undergoing life imprisonment. They were convicted of a capital offence, that is, an offence for which death is one of the punishments prescribed by law. Their common case is that they have suffered imprisonment exceeding fourteen years including the remissions earned by them and are, therefore, entitled to be considered for release if not set at liberty in the normal course. They complain that the State Government has refused to consider their cases on the ground that Section 433A of the Code of Criminal Procedure, 1973 ("the Code") is a bar for such consideration. They have asked for a declaration that Section 433A is inapplicable to their cases.

2. The petitions are resisted by the respondents on the sole ground that the petitioners have not yet served fourteen years of imprisonment as required by Section 433A of the Code.

3. The decision on these petitions therefore, turns on the true scope of Section 433A and for immediate reference the same is set out below :

"433A. Restriction on powers of remission or commutation in certain cases :-

Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted u/s 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

This new section was introduced in the Code on the recommendation of the Joint Committee of Parliament reporting on the Indian Penal Code (Amendment) Bill, 1972. The Joint Committee on the Indian Penal Code (Amendment) Bill, 1972 had suggested the insertion of a proviso to Section 57 of the Indian Penal Code to the effect that a person who has been sentenced to death and whose death sentence has been commuted to that of life imprisonment and a person who has been sentenced to life imprisonment for a capital offence should not be released from prison unless he has served at least fourteen years of imprisonment. That amendment, however, was not incorporated in the Indian Penal Code since that particular matter relates more appropriately to the Criminal Procedure Code. Section 433A was accordingly inserted by the Code of Criminal Procedure (Amendment) Act, 1978 (Central Act 45 of 1978) to cover the proviso inserted by the Joint Committee. It came into force with effect from 24th February, 1979.

4. A perusal of Section 433A shows that it has only a limited operation. It does not apply to all life convicts. It applies only to those cases in which the prisoner convicted of a capital offence is undergoing a life sentence. It provides that such person shall not be released from prison unless he has served at least fourteen years of imprisonment. It has in other words, imposed a constraint on the unconditional power of the appropriate Government to release such convicts by granting remissions u/s 432 of the Code.

5. Mr. Thilaka Hegde, learned counsel for the petitioners, however, made two submissions. First, he submitted that the period of fourteen years prescribed u/s 433A includes the period of remission earned by the petitioners; the second, that the section has no retrospective operation and so should not be applied to persons convicted prior to its introduction. In support of the first contention, he referred to us the 1974 Rules made under the Karnataka Prisons Act, 1963 and in particular to the rules under Chapter VI therein. Those rules provide procedure for giving remissions, that is, regulating award of marks to prisoners and consequentially shortening of their sentence. It may not be necessary to refer to those rules in detail. They are nothing more than guidelines to the appropriate authorities to grant ordinary or special remissions to prisoners under certain circumstances. We may take it that the petitioners too have earned such remissions. Whether those remissions would be relevant u/s 433A is the question herein. Before we examine this question it will be useful to understand the meaning of the "sentence of imprisonment for life." In *State of Madhya Pradesh Vs. Ratan Singh and Others*, the Supreme Court observed :

"That a sentence of imprisonment for life does not automatically expire at the

end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence u/s 401 of the Code of Criminal Procedure."

It is clear from the above enunciation that an imprisonment for life awarded to a convict does not automatically expire at the end of any specified period. It is not limited to fourteen years or twenty years as it was once understood. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government remits either the whole or a part of it under statutory provisions.

6. Now Section 433-A states that notwithstanding anything contained in Section 432. Such convicts shall not be released from prison unless they had served at least fourteen years of imprisonment. The latter part of the section is very significant. It emphasizes that such person "shall not be released from prison unless he had served at least fourteen years of imprisonment." In other words, it provides that persons convicted of capital offences ought not be released from prison before they had undergone at least fourteen years of imprisonment. When the section requires the prisoner to serve at least fourteen years of imprisonment, it would be idle to contend that the remissions earned by him should be given set-off against the said period of fourteen years. The reason is simple. If a portion of the sentence is remitted whether u/s 432 or by other statutory provisions, the remitted sentence would not be available for being served by the prisoner. The effect of an order of remission is that the prisoner is not required to undergo incarceration in the jail for that period. His term of sentence would be wiped off to that extent. Similar was the observation made by Vivian Bose, J. (as he then was) in AIR 1938 513 (Nagpur) at p. 520 (FB).

He has observed :

"The effect of an order of remission is to wipe out the remitted portion of the sentence altogether and not merely to suspend its operation; suspension is separately provided for". There is, therefore, no scope for giving the benefit of remission for prisoners who are required to serve the sentence at least for fourteen years prescribed u/s 433A.

It must be borne in mind that the section has no general application. It is addressed to specific class of persons who have committed the most serious crimes. It was perhaps intended to break the ugly legacies of the past where some State Governments released prematurely such privileged prisoners. The section has an unequivocal thrust with the meaning precise stating that such prisoners shall not be released before serving or undergoing fourteen years of imprisonment. The Court must accept the meaning apparent on the face of the section. If the section is construed otherwise, it will have the effect of subverting

the legislative message, and is therefore not acceptable to us.

7. The second submission made by the learned counsel was the Section 433A has no retrospective operation and the persons who have been convicted prior to the coming into force of the said section are entitled to have their cases considered for release if the relevant rules under the Prisons Act or in the Jail Manual provide for it. It seems to us that this contention also has no substance. As stated earlier, Section 433A is applicable only to those who have been convicted for capital offences. The section has to be called into aid by the appropriate Government at the time of considering the case of such prisoners or at the time of granting remissions to them. Such prisoners have to normally undergo the imprisonment till their death, unless their sentence is wiped out by way of remissions. That power of remissions has only been curtailed by the provisions of Section 433A and so it cannot be said that the section has been given retrospective operation. In the words of Craies on Statute Law : Craies on Statute Law, Seventh Edition, page 387.

"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to the passing." Section 433A creates no new obligation, or imposes no new duty nor it impairs any vested right acquired by such life convicts. It is just a constraint on the unconditional and unlimited power of remission conferred by Section 432 on the State. It cannot be said to have any retrospective operation.

8. In the result, the rule is discharged; and the petitions are dismissed.

Mr. Thilaka Hegde, learned counsel for the petitioners, submitted that the petitioners be granted certificate for appeal to the Supreme Court since the matter is coming for the first time regarding the interpretation of Section 433A of the Code. In our opinion, this case does not involve any substantial question of law of general importance needing to be decided by the Supreme Court. The certificate prayed for is therefore, refused.

9. Petitions dismissed.