
(2006) 08 BOM CK 0062
In the Bombay High Court
Case No : Criminal W.P. No. 276 of 2006

Vasanta Rajaram Rathod

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2007) CriLJ 1377 : (2006) 6 MhLj 374

Hon'ble Judges : D.S. Zoting, J;A.H. Joshi, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; J.B. Jaiswal, Additional Public Prosecutor, for the Respondent

Judgement

A.H. Joshi, J.—Rule returnable forthwith. Heard finally by consent of parties.

2. This petition can be conveniently disposed of being governed by settled law as laid down by two Division Bench Judgments of this Court, namely in cases of Ashok Wasudeo Shetye v. State of Maharashtra and Ors. 1988 Mh.L.J. 903 and Kailash Papadas Kuril v. State of Maharashtra Criminal Writ Petition No. 148 of 2002, decided on 2nd September, 2005 on the point of interpretation of the term "absconded."

3. The case proceeds on admitted facts as follows:

(a) The petitioner was convicted for offence punishable u/s 302 of Indian Penal Code.

(b) The story is that the petitioner was involved in the case of murder where it is alleged that his wife had consumed poison.

(c) Petitioner was released on furlough. He had reported late, for which jail offence, he has been punished by deduction of remission.

(d) Petitioner has completed imprisonment for 23 years, 5 months and 8 days as on 30th June, 2006.

(e) The proposal for release of petitioner was submitted by the Jail Authorities, categorizing him in Category 3(a), and it was proposed that he shall be released after completion of imprisonment for 22 years taking into account remissions etc.

(f) The Government categorized the petitioner in 6(a) for considering the duration of length of imprisonment being a convict of Life Imprisonment, and he will be required to undergo 28 years" duration of imprisonment.

4. In this petition, petitioner has challenged this order of the Government communicating categorization of petitioner in said category 6(a).

5. Petition has been opposed by filing two separate affidavits filed by Jailor (Group-II), Central Prison, Amravati.

The State Government, whose order is under challenge, has also filed the affidavit, and has justified its action. According to State, since petitioner has overstayed leave for 596 days, he has been classified in Category No. 6(a).

6. Para 5 of the first affidavit of respondent No. 2 states the reasons for categorization which reads as follows:

5. That the Government of Maharashtra after considering the case of prisoner for premature release under the guidelines of 14 years rule categorized the prisoner in category No. 6(a), those who have escaped from lawful custody while undergoing imprisonment or who absconded while on parole or furlough is entitled for 28 years imprisonment.

(quoted from page 16 of the Writ Petition Paper-book).

7. Learned Advocate for the petitioner has grievance to the effect that the petitioner has already undergone 15 years, 6 months and 17 days of actual imprisonment. His behaviour while in jail has throughout been good and he was not punished on any account, whatsoever, except for cut in remission for late reporting. In the result, he was entitled for further remission on account of good conduct at the rate of 30 days per year, and considering this, he is liable to be deemed to have undergone the imprisonment for the duration of 26 years.

8. The learned Additional Public Prosecutor relies upon the guidelines issued by the State Government, on the basis of which the petitioner is categorized in Category 6(a), copy whereof is annexed to affidavit filed on behalf of the State.

9. This Court has perused the guidelines fixed by the Government annexed to second affidavit which are issued through letter of the Home Department, dated 11th May, 1992 Annexure-R.1 to the affidavit of the respondent No. 1 issued in this regard. It is clearly seen that categorization of the petitioner under Category 6(a) is, on showing by the State, based on the ground of "absconding" which is seen to be improper and wrong, and it is so in the light of two precedents referred to in first para of this Judgment. The State is construing the fact of petitioner"s having reported late for 596 days and punished by cut in remission for 1788 days as "absconding."

10. It is a common ground that at no point of time, petitioner had jumped the arrest, nor had escaped from lawful custody of police or jail. Any factual data to the contrary to these facts is not coming forward.

11. Law as laid down by this Court in the Judgments referred to in Para 2 of this Judgment is absolutely eloquent, and does not need re-statement or any further discussion, nor it admits any other interpretation. The action of Government in categorizing the petitioner in Category 6(a) is, thus, seen to be based on totally erroneous foundation. It is not open to the Government to hold that the person, who overstays the parole leave, is liable to be regarded as "absconder."

12. In the circumstances, this Court is satisfied that the present is a fit case where the petitioner is wrongly classified as "absconder" and he is liable to be released at once and we make the Rule absolute to that extent, and direct that the petitioner be released forthwith.

13. In above circumstances, this Court is of the view that petitioner, who was liable for Rigorous Imprisonment for Life, namely hard labour for life as interpreted by Supreme Court in the case *Mahammed Munna v. Union of India* AIR 2005 SCW 4524, was, in fact, liable to serve for full term. What has been done to him is a premature release in view of the reformatory policy adopted by the State. The continuation in the jail, therefore, would mean non-observance of guidelines, however, confinement beyond the period of imprisonment, which would work out after remissions, by itself would not render said continuation illegal confinement entitling the prisoner for award of compensation. Moreover, fact that the petitioner had overstayed leave of 15 days for 596 days and the cut in remission for 1788 days has been ordered, cannot be lost sight. In the light of this, petitioner's claim for compensation does not merit any indulgence. Moreover, this petition is being heard at admission stage. Petitioner has not impleaded the person who shall be held liable for wrongful confinement, if any.

14. This Court cannot part with this Judgment without recording that it is most unjustifiable apart that it is unfortunate that while this Court has interpreted the word "absconded" way back in 1988, which Judgment is governing the field for last fourteen years and relying thereupon, this Court again delivered a Judgment on 2nd September, 2005, Government is still keeping itself stubborn and unamended on the erroneous construction of the term "absconding". Learned Additional Public Prosecutor is not able to explain how, on the face of this interpretation being laid down by this Court, it is open for the Government to act in gross disregard and disrespect of the precedent operating in the field. We hope and expect that the learned Additional Public Prosecutor would bring this gross inadvertence to the law prevailing at the hands of the official staff of the Ministry of Home Department who puts up and processes the proposals on such wrong foundation and the decision-making authority as well. The Government ought to issue appropriate standing instructions to avoid recurrence of such inadvertence Apart that, such disregard of precedent may be a contempt, at the same time it results in violation of precious and invaluable human rights and

liberty of prisoners who too enjoy constitutional guarantees.

We direct the Government to place on record the steps taken by it to avoid even single act of recurrence of dereliction while certifying the Writ of this Court. The compliance of this direction be reported within 90 days of the date of Judgment of this Court.

With above observations. Rule is made absolute in terms of Para 12 above. Copy of Judgment be supplied to Additional Public Prosecutor for communication for compliance.