

JAGDISH

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v.

STATE OF MADHYA PRADESH

(Review Petition (Crl.) No.591 of 2014)

in

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(Criminal Appeal No.338 of 2007)

with

(Writ Petition (Crl.) No. 197 of 2014)

C

FEBRUARY 21, 2019

**[N. V. RAMANA, DEEPAK GUPTA AND
INDIRA BANERJEE, JJ.]**

Sentence/Sentencing – Commutation of death sentence to life imprisonment – Petitioner was convicted and sentenced to death for the murder of his wife and five children by both Trial Court and High Court – Petitioner's appeal dismissed by Supreme Court and the death sentence was confirmed vide order dated 18.09.2009 – Petitioner filed mercy petition addressed to the President of India through the jail authorities on 13.10.2009 – Petition forwarded by the authorities on 15.10.2013 – President of India rejected the petition on 16.07.2014 – Writ petition filed by the petitioner challenging the rejection of his mercy petition – Review Petition also filed seeking review of the judgment of Supreme Court dated 18.09.2009 – Held: Review Petition not entertained on the merits of the case – Three courts have come to concurrent finding of fact that it was the petitioner who murdered his wife and five children – No reason to take a view different from the one taken earlier – However, in the present case there was an inordinate and un-explained delay of more than 4 years on the part of the State in forwarding the mercy petition leading to delay of almost 5 years in deciding the mercy petition – State also did not file any counter affidavit in the Writ Petition even though notice was issued 4 years back on 18.11.2014 and service was effected within a month of issuance of notice – Petitioner has been behind bars for almost about 14 years – Death sentence is the exception and has to be

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- A *awarded in the rarest of rare cases – Keeping in view all the circumstances of the case, regardless of the brutal nature of crime, the present is not a fit case where death sentence should be executed – Death sentence commuted to life imprisonment – However, keeping in view the nature of crime and the fact that 6 innocent lives were lost, life imprisonment in this case shall mean the entire remaining life of the petitioner and he shall not be released till his death.*
- B **Partly allowing the review petition as well as the writ petition, the Court**

HELD: 1.1 As far as the Government of India or the

- C **Secretariat of the President of India is concerned, there is no delay in dealing with the mercy petition and the same has been dealt with expeditiously. However, the State of Madhya Pradesh has given no explanation for the delay of more than 4 years in forwarding the mercy petition.[Para 8] [820-D-E]**
- D **1.2 Not only was there a long, inordinate and un-explained delay on the part of the State of Madhya Pradesh but to make matters worse, the State of Madhya Pradesh did not even care to file any counter affidavit in the Writ Petition even though notice was issued 4 years back on 18.11.2014 and service was effected within a month of issuance of notice. The delay in forwarding the petition is totally un-explained and this Court cannot countenance an un-explained delay of more than 4 years. The mercy petition is the last hope of a person on death row. In cases where death sentence has to be executed the same should be done as early as possible. [Paras 9, 10] [820-E-H; 821-A]**
- F **1.3 Death sentence is the exception and has to be awarded in the rarest of rare cases. Keeping in view all the circumstances of the case, including the un-explained delay of 4 years in forwarding the mercy petition by the State of Madhya Pradesh leading to delay of almost 5 years in deciding the mercy petition and the fact that the petitioner has been incarcerated for almost 14 years, regardless of the brutal nature of crime this is not a fit case where death sentence should be executed and we, accordingly commute the death sentence to that of life. However, keeping in view the nature of crime and the fact that 6 innocent**
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lives were lost, it is directed that life imprisonment in this case shall mean the entire remaining life of the petitioner and he shall not be released till his death. [Para 12] [821-B-D] A

V. Sriharan alias Murugan v. Union of India and Others
 (2014) 4 SCC 242 : [2014] 1 SCR 1093; *Ajay Kumar Pal v. Union of India and Another* (2015) 2 SCC 478 : [2014] 12 SCR 441 – relied on. B

Case Law Reference

[2014] 1 SCR 1093	relied on	Para 5	
[2014] 12 SCR 441	relied on	Para 6	C

CRIMINAL APPELLATE/ORIGINAL JURISDICTION :
 Review Petition (Criminal) No. 591 of 2014 in Criminal Appeal No. 338 of 2007. D

From the Judgment and Order dated 27.06.2006 of the High Court of Madhya Pradesh, Bench at Indore in Death Reference Case No.1 of 2006 and Criminal Appeal No. 530 of 2006

With

Writ Petition (Criminal) No.197 of 2014. E

V. Shekhar, Sr. Adv., Aldanish Rein, Chander Shekhar Ashri, Shashank Shekhar, Prithviraj Singh, Shakti Pandey, Ms. Sheetal Rajput, Arjun Garg, Ms. Binu Tamta, Harish Pandey, Ms. Rekha Pandey, B. V. Balaram Das, Mrs. Swarupama Chaturvedi, B. N. Dubey, Mukesh Kumar, Ms. Indira Bhakar, Ms. Aparna Trivedi, Santanu Singh, Advs. F for the appearing parties.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J. 1. Petitioner Jagdish was tried for the murder of his wife and five children. He was convicted by the trial court vide judgment dated 24.04.2006 and sentenced to death. He filed an appeal which was dismissed by the High Court on 27.06.2006 and the death sentence was confirmed. Thereafter, he filed Criminal Appeal in this Court which was dismissed and again death sentence was confirmed vide judgment dated 18.09.2009. G

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- A 2. The petitioner filed mercy petition before the jail authorities on 13.10.2009, which came to be rejected by the President of India on 16.07.2014. The petitioner has filed Writ petition (Crl.) No.197 of 2014 challenging the rejection of his mercy petition and the main ground is that there is a delay of almost 5 years in deciding the mercy petition and this itself is a ground to commute the death sentence to life imprisonment.
- B Thereafter, the petitioner also filed Review Petition No. 591 of 2014 in which review of the judgment of this Court dated 18.09.2009 is sought both on merits and the question of sentence in Criminal Appeal No. 338 of 2007. Hence this matter is before this Bench.
- C 3. At the outset we may note that we are not inclined to entertain the Review Petition on the merits of the case. Three courts have come to a concurrent finding of fact that it was the petitioner who murdered his wife and five children. We have gone through the written submissions filed by the learned counsel appearing on behalf of the petitioner and find no reason to take a view different from the one taken earlier.
- D 4. We are only dealing with the issue whether the sentence of death should be upheld or not? In the Writ Petition it has been urged that delay in deciding the mercy petition and the delay in legal proceedings is sufficient to recall the sentence of death. In the Review Petition some other arguments have been raised. It has been urged that this case does
- E not fall in the category of the rarest of rare cases; this is a case based on circumstantial evidence; that the petitioner Jagdish was suffering from mental illness; the petitioner has been incarcerated for almost 14 years and execution of the death sentence at this stage would virtually mean imposing two sentences upon him – a sentence of life imprisonment and then a sentence of death.
- F 5. **Delay in dealing with mercy petition:**

- This Court in *V. Sriharan alias Murugan vs. Union of India and Others*¹ held that one of the circumstances recognized by this Court for commutation of death sentence into life imprisonment is the undue, inordinate and unreasonable delay in the execution of death sentence.
- G The Court, however, held that whether the delay is unreasonable or not, it has to be appreciated in the facts of each case. In *Sriharan's* case, there was a delay of 5 years and one month in disposing of the mercy petition and this Court held as follows :-

H ¹(2014) 4 SCC 242

“17. Exorbitant delay in disposal of mercy petition renders the process of execution of death sentence arbitrary, whimsical and capricious and, therefore, inexecutable. Furthermore, such imprisonment, occasioned by inordinate delay in disposal of mercy petitions, is beyond the sentence accorded by the court and to that extent is extra-legal and excessive. Therefore, the apex constitutional authorities must exercise the power under Articles 72/161 within the bounds of constitutional discipline and should dispose of the mercy petitions filed before them in an expeditious manner.

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19. Before we advert to respond the aforesaid contention, it is relevant to comprehend the primary ground on the basis of which the relief was granted in cases of delayed disposal of the mercy petition and that is, such delay violates the requirement of a fair, just and reasonable procedure. Regardless and independent of the suffering it causes, delay makes the process of execution of death sentence unfair, unreasonable, arbitrary and capricious and thereby, violates procedural due process guaranteed under Article 21 of the Constitution and the dehumanising effect is presumed in such cases. It is in this context, this Court, in the past, has recognised that incarceration, in addition to the reasonable time necessary for adjudication of mercy petitions and preparation for execution, flouts the due process guaranteed to the convict under Article 21 which inheres in every prisoner till his last breath.”

Consequently, the Court commuted the death sentence to life.

6. In *Ajay Kumar Pal vs. Union of India and Another*² this Court was dealing with a case where there was a delay of 3 years and 10 months in dealing with the mercy petition. In this case it was also admitted that the petitioner had been kept in solitary confinement after the death sentence was confirmed by this Court. This Court held that the combined effect of the inordinate delay in disposal of the mercy petition and solitary confinement for such a long period caused deprivation of the cherished right to liberty of the petitioner and, therefore, the death sentence was converted to life imprisonment.

²(2015) 2 SCC 478

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- A 7. As far as the present case is concerned the occurrence took place on the intervening night of 19/20.08.2005. The trial court completed the trial swiftly and delivered its judgment on 24.04.2006. The High Court confirmed the sentence within 2 months on 27.06.2006, and this Court dismissed the appeal on 18.09.2009. The petitioner filed a mercy petition addressed to the President of India and the Governor of Madhya Pradesh through the jail authorities on 13.10.2009. This application was forwarded by the Madhya Pradesh authorities to the Ministry of Home Affairs after more than 4 years on 15.10.2013. Thereafter, the Ministry of Home Affairs called for some records from the State of Madhya Pradesh on 20.11.2013. These documents were supplied by the State of Madhya Pradesh on 12.12.2013. The file was forwarded to the President of India on 02.04.2014. The file was returned to the Ministry of Home Affairs for reconsideration. It was re-submitted to the President of India on 07.07.2014 and finally the mercy petition was rejected on 16.07.2014.
- D 8. As far as the Government of India or the Secretariat of the President of India is concerned, there is no delay in dealing with the mercy petition and the same has been dealt with expeditiously. However, the State of Madhya Pradesh has given no explanation for the delay of more than 4 years in forwarding the mercy petition.
- E 9. We are constrained to observe that not only was there a long, inordinate and un-explained delay on the part of the State of Madhya Pradesh but to make matters worse, the State of Madhya Pradesh has not even cared to file any counter affidavit in the Writ Petition even though notice was issued 4 years back on 18.11.2014 and service was effected within a month of issuance of notice.
- F 10. The delay in forwarding the petition is totally un-explained and this Court cannot countenance an un-explained delay of more than 4 years. We are dealing here with the case of a person who has been sentenced to death. The mercy petition is the last hope of a person on death row. Every dawn will give rise to a new hope that his mercy petition may be accepted. By night fall this hope also dies. Inordinate and unexplained delay in deciding the mercy petition and the consequent delay in execution of death sentence for years on end is another form of punishment which was awarded by the Court. This Court has repeatedly held that in cases where death sentence has to be executed the same
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should be done as early as possible and if mercy petitions are not forwarded for 4 years and no explanation is submitted we cannot but hold that the delay is inordinate and un-explained. A

11. We are not only dealing with the issue of delay in disposal of the mercy petition. The petitioner has now been behind bars for almost about 14 years. This is also a factor which will have to be taken into B consideration.

12. Death sentence is the exception and has to be awarded in the rarest of rare cases. Keeping in view all the circumstances of the case, including the un-explained delay of 4 years in forwarding the mercy petition by the State of Madhya Pradesh leading to delay of almost 5 years in deciding the mercy petition and the fact that the petitioner has been incarcerated for almost 14 years, we are of view that regardless of the brutal nature of crime this is not a fit case where death sentence should be executed and we, accordingly commute the death sentence to that of life. However, keeping in view the nature of crime and the fact that 6 innocent lives were lost, we direct that life imprisonment in this case shall mean the entire remaining life of the petitioner and he shall not be released till his death. The Review Petition as well as the Writ Petition are partly allowed in the aforesaid terms and, accordingly, disposed of. Pending application(s) if any shall stand disposed of. C

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Divya Pandey

Review and Writ Petition partly allowed.