A MR. VINAY PRAKASH SINGH

v.

SAMEER GEHLAUT & ORS.

IN THE MATTER OF:-

B SHIVINDER MOHAN SINGH

(Miscellaneous Application No.1902 of 2022)

With

(I.A. No.157792/2022)

C In

(Contempt Petition (Civil) No.2120 of 2018)

In

(Special Leave Petition (Civil) No.20417 of 2017)

D NOVEMBER 14, 2022

[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

Code of Criminal Procedure, 1973 – s.428 – Period of detention undergone to be set off against the sentence or E *imprisonment – When – Applicant was found guilty of contempt by order dtd.15.11.19, was sentenced for 6 months imprisonment by order dtd.22.09.22 – Present application seeks clarification w.r.t the date of commencement of the term of imprisonment, which as per the applicant should be from 03.02.20 instead of 22.09.22, as he has been in custody since then though in another case – Held:* F *Applicant stood convicted by order dtd.15.11.19 – The Court before sentencing had to cause the production of the applicant – Applicant was already undergoing pre-trial custody in connection with another case – Therefore, he had to be produced from the custody which he was undergoing in that case – He was produced– Merely because* G *Supreme Court after convicting the applicant by order dtd.15.11.19 caused the production of the applicant before it for the imposition of an appropriate sentence, it cannot be said that the applicant would be in custody – An indispensable requirement to invoke s.428 is that there must be a conviction followed by a sentence of imprisonment for a term and it should not be imprisonment in default* H

of payment of fine – Detention undergone by the convict during investigation, enquiry or trial must be in the 'same case' – In the present case, the applicant has not undergone any detention in connection with the contempt case – Custody undergone by the applicant admittedly in connection with another case cannot be understood as custody undergone in the contempt of Court case – No clarification as sought, can be issued.

Judgments/Orders – Interpretation of – Held: A judgment of a Court is not to be read shorn of the facts and the context in which the law has been declared.

Dismissing the application, the Court

HELD: 1.1 Section 428 of Cr.P.C. on which the applicant lays considerable store by, actually contemplates the presence of two circumstances. During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period. The second requisite is that he should have been sentenced to a term of imprisonment in that case. In the facts of this case, the applicant was in custody admittedly in connection with another case on 15.11.2019 as also on 03.02.2020 and also on 16.03.2020. For the mere reason that this Court after convicting the applicant by order dated 15.11.2019 caused the production of the applicant before this Court for the purpose of considering the imposition of an appropriate sentence, it cannot be said that the applicant would be in custody. In this regard it is noticed that in the order dated 15.11.2019, the Court contemplated a chance being afforded to the applicant to purge himself of the contempt. [Para 9][666-G-H; 667-A-C]

State of Maharashtra and Another versus Najakat Alia Mubarak Ali **(2001) 6 SCC 311 : [2001] 3 SCR 600 – referred to.**

1.2 A judgment of a Court is not to be read as the Euclid's Theorem shorn of the facts and the context in which the law has been declared. [Para 11][668-F-G]

Niranjan Singh and Another Versus Prabhakar Rajaram Kharote and Others **(1980) 2 SCC 559: [1980] 3 SCR 15 – distinguished.**

1.3 An indispensable requirement to invoke Section 428 of Cr.P.C. is that there must be a conviction. The conviction must be followed by a sentence of imprisonment. It must be for a term and it should not be imprisonment in default of payment of fine. If these requirements exist, then the occasion opens up for applying the beneficial provisions of Section 428 of Cr.P.C. However, for it to be invoked the existence of detention undergone by the convict during investigation, enquiry or trial in the 'same case' is indispensable. If these requirements are satisfied, the convict would be entitled to the set off for the period of detention which he has undergone. In this case, the applicant has not undergone any detention in connection with the contempt case. A perusal of the order passed by this Court would reveal that the applicant stood convicted by order dated 15.11.2019. The Court before sentencing the applicant had to cause the production of the applicant. It so happened that the applicant was already undergoing pre-trial custody in connection with another case. Therefore, he had to be produced from the custody which he was undergoing in that case. He was produced. An affidavit was filed by him, wherein he sought to purge himself of the contempt. The Court was not satisfied with the case made out by the applicant for purging. But the Court was also inclined to give an opportunity to the applicant to attempt to purge himself for the contempt. Since he was produced from custody, he necessarily had to go back to custody in connection with another case. In the facts of this case the custody undergone by the applicant in connection with another case admittedly and which had its origin and continuance all through out with reference to the said case cannot be understood as custody undergone in the contempt of Court case. [Paras 12-14][669-A-H]

Case Law Reference

[2001] 3 SCR 600	**referred to**	**Para 7**
[1980] 3 SCR 15	**distinguished**	**Para 7**

CIVIL APPELLATE JURISDICTION : Miscellaneous Application No.1902 of 2022

With

Intelocutory Application No.157792 of 2022. In Contempt Petiton (Civil) No.2120 of 2018. In Special Leave Petiton (Civil) No.20417 Of 2017

From the Judgment and Order dated 22.09.2022 of this Hon'ble Court in the Contempt Petition No.2120 of 2018 in SLP (C) No.20417 of 2017.

Ms. Meenakshi Arora, Sr. Adv., Aditya Dewan, Abhinav Agrawal, Rohan Thawani, Advs. for the Petitioner.

Rajiv Dutta, Sr. Adv., Amit Mishra, Ms. Devna Arora, Ms. Samridhi Hota, Varad Choudhary, Ms. Astha Ahuja, Ms. Gauri Goburdhan, Kunal Chatterji, Advs. for the Non-Applicant.

Mahesh Agarwal, Ankur Saigal, Himanshu Satija, Nishant Rao, Ms. Mansi Taneja, E. C. Agrawala, Ms. B. Vijayalakshmi Menon, Vivek Jain, M/s. Karanjawala & Co., Hardeep Singh Anand, Faisal Sherwani, Advs. for the Respondents.

The Judgment of the Court was delivered by

K. M. JOSEPH, J.

1. This Miscellaneous application No.1902 of 2022 is filed in Contempt Petition (Civil) No.2120/2018 in SLP (Civil) No.20417/2017. The applicant in this application is contemnor No.10 *(Dr. Shivinder Mohan Singh).* The contempt petition culminated in an order dated 15th November, 2019. We need only refer to the record of proceedings dated 15th November, 2019 which indicates how the matter was dealt with by the Court.

> "ii) Malvinder Mohan Singh, Director of Oscar Investments Limited and Diretor of RHC Holding Private Limited (Contemnor Nos.9 and 12) and Shivinder Mohan Singh, Director of Oscar Investments Limited and Director of RHC Holding Private Limited (Contemnor Nos.10 and 13) have knowingly and willfully violated the orders of this Court dated 11.08.2017, 31.08.2017 and 15.02.2018 as continued on 23.02.2018. Therefore, we hold both of them guilty of committing Contempt of this Court. We give one chance to them to purge themselves of the contempt. We, direct that in case each of the contemnors deposits a sum of Rs.1170.95 crores in this Court within eight weeks from today then we may consider dealing with them in a lenient manner, while imposing sentence."

2. Thereafter, we may notice direction No.2, from the order dated 03.02.2020, which is as follows:-

"Direction No.2:

Both contemnors Malvinder Mohan Singh and Shivinder Mohan Singh are present in Court and they have been brought from judicial custody as they are in jail in respect of some other case. On the oral request made by learned Counsel for Malvinder Mohan Singh and Shivinder Mohan Singh, we direct Naresh Kumar, ASI who has brought them to this Court to ensure that both the detenus are permitted to meet their family members till 2.00 P.M., within the Supreme Court premises.

Shivinder Mohan Singh has filed an affidavit. We are not fully satisfied with the same. Ms. Meenakshi Arora, learned Senior Counsel, prays for some time to file a more detailed affidavit. Malvinder Mohan Singh and Shivinder Mohan Singh are directed to file fresh proposals as to how they want to purge themselves of the contempt. They may file an appropriate application as to how they would like to discharge their liability which is the subject-matter of the contempt petition, positively by 05.03.2020 with advance copies to all the parties and the matter be listed before the Court on 16.03.2020.

We also direct the jail authorities to ensure that Malvinder Mohan Singh can meet Ms. Vijaylakshmi Menon, Adv. and Ms. Anuradha Dutt, Adv. (DMD Advocates) 30, Nizamuddin East, New Delhi-110013 and Shivinder Mohan Singh, be permitted to meet Mr. Vivek Jain, Adv. 606-B, Adiswar Apartments, 34, Ferozshah Road, New Delhi – 110 001 for four hours on two occasions between this period and they will escort them to the offices of the counsel."

3. Thereafter the matter came to be finally disposed of by order dated 22.09.2022. We need only notice the following part:-

"30. In the premises, we pass the following directions:

(a) Contemnor Nos. 9 and 10 are sentenced to suffer six months imprisonment and pay fine in the sum of Rs.5,000/- each within four weeks from today. In case of default of payment of fine, the contemnors shall undergo further imprisonment of two months."

4. The present application has been filed on the following basis. It is, *inter alia,* stated that the applicant was already in the custody of this Court in the Contempt Petition (Civil) No.2120 of 2018 from 03.02.2020 itself when he was brought from Jail No.7, Tihar Jail, New Delhi to this Court. It is further stated that the applicant had never applied for bail after 03.02.2020 and he thus has been in continuous custody of this Court. Thereafter the cause for moving the present application has been set out which is as follows:

> "That the Applicant is now constrained to move the present application for clarification as Paragraph 30 (a) of the Order dated 22.09.2022 does not specify the date of commencement of the term of imprisonment of 6 (six) months. Pertinently, the authorities in the Tihar Jails, New Delhi have taken a position that the Applicant's term of imprisonment of 6 (six) months shall commence from the date of the Order dated 22.09.2022, given that the Order dated 22.09.2022 is silent regarding the date of commencement of the term of imprisonment.

5. We may now notice the relief sought in the prayer which is, *inter alia*, as follows:-

> "a. Allow the present application and issue necessary clarification in respect of Paragraph 30(a) of the Order dated 22.09.2022 in Contempt Petition No.2120 of 2018 to the effect that the term of imprisonment of 6 (Six) months shall be deemed to have commenced from 03.02.2020 instead of 22.09.2022."

6. We heard Ms. Meenakshi Arora, learned senior counsel appearing on behalf of the applicant and Mr. Rajiv Dutta, learned senior counsel appearing on behalf of the non-applicant/*Ms. Daiichi Sankyo Company Limited.* Ms. Meenakshi Arora, learned senior counsel appearing on behalf of the applicant would point out that it is evident from the narration of facts which we have already made that the applicant must be treated as being in custody from 03.02.2020. The applicant stood sentenced finally for a period of six months. The applicant has already spent more than 30 months in custody if the beginning of the period is determined as 03.02.2020. It is also contended that the applicant was produced again on 16.03.2020. It is further contended that the applicant was not released on bail. Therefore, the applicant must be treated as being in custody. In this connection, she bolsters her contentions

with reference to Section 428 of the Code of Criminal Procedure, 1973. Section 428 of the Cr.P.C. reads as follows:-

> "428. Period of detention undergone by the accused to be set off against the sentence or imprisonment.- Where an accused person has, on conviction, been sentenced to imprisonment for a term [not being imprisonment in default of payment of fine], the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him."

7. She has also relied upon the judgment of this Court reported in *(2001) 6 SCC 311*, State of *Maharashtra and Another versus Najakat Alia Mubarak Ali.* Still further, she would contend that this Court has taken the view that a person can be said to be in custody when he surrenders before the Court. [See in (1980) 2 SCC 559, *Niranjan Singh and Another Versus Prabhakar Rajaram Kharote and Others*. She would therefore conclude by contending that in the interest of justice also this is a case which requires that this Court clarifies that the period of custody as undergone from 03.02.2020 should be reckoned and therefore in view of the period of imprisonment actually imposed on 22.09.2022, no further custody is required in connection with the case.

8. *Per contra*, Mr. Rajiv Dutta, learned senior counsel for the non-applicant would point out that when the applicant was produced before this Court pursuant to the orders dated 15.11.2019 on 03.02.2020, it was only for the purpose of affording an opportunity to the applicant to purge himself of the contempt which is self evident from the perusal of the proceedings.

9. We find no merit in the contentions of the applicant. The following are the reasons. Section 428 of Cr.P.C. on which the applicant lays considerable store by, actually contemplates the presence of two circumstances. They have been highlighted in the very judgment which the applicant relies on, namely (2001) 6 SCC 311, *State of Maharashtra and Another versus Najakat Alia Mubarak Ali.* During the stage of investigation, inquiry or trial of a particular case the prisoner should have

been in jail at least for a certain period. The second requisite is that he should have been sentenced to a term of imprisonment in that case. In the facts of this case, the applicant was in custody admittedly in connection with another case on 15.11.2019 as also on 03.02.2020 and also on 16.03.2020. For the mere reason that this Court after convicting the applicant by order dated 15.11.2019 caused the production of the applicant before this Court for the purpose of considering the imposition of an appropriate sentence, it cannot be said that the applicant would be in custody. In this regard we notice that in the order dated 15.11.2019, the Court contemplated a chance being afforded to the applicant to purge himself of the contempt.

10. At this juncture, it may be apposite that we deal with the argument based on the judgment of this Court in (1980) 2 SCC 559, *Niranjan Singh and Another Versus Prabhakar Rajaram Kharote and Others.* Therein we may notice the following statements which read as follows:-

> "7. When is a person in *custody*, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in *custody* for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.
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> 8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control

A or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he B surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and C maybe, enabled the accused persons to circumvent the principle of Section 439 CrPC. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail D application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the E custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to overselves we might not have granted bail but, sitting under Article 136, do not feel that we should interfere with a discretion exercised by the two courts below.

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11. We must bear in mind as has been laid down by this Court in an unbroken catena of decisions that a judgment of a Court is not to be read as the *Euclid's Theorem* shorn of the facts and the context in which the law has been declared. We must immediately notice that the view was proclaimed in *Niranjan Singh (supra)* in the context of the G question as to whether the Court had jurisdiction to entertain an application under Section 439 of Cr.P.C. which provides for power with the High Court to grant bail. The fact that the Court had this in mind has been lucidly expressed also as we have noticed. In other words, this Court was not considering a case which involved the application of Section H 428 of Cr.P.C.

12. As far as Section 428 of Cr.P.C. is concerned, an indispensable requirement to invoke Section 428 of Cr.P.C. is that there must be a conviction. The conviction must be followed by a sentence of imprisonment. It must be for a term and it should not be imprisonment in default of payment of fine. If these requirements exist, then the occasion opens up for applying the beneficial provisions of Section 428 of Cr.P.C. However, for it to be invoked the existence of detention undergone by the convict during investigation, enquiry or trial in the 'same case' is indispensable. If these requirements are satisfied, the convict would be entitled to the set off for the period of detention which he has undergone.

13. In this case, the applicant has not undergone any detention in connection with the contempt case. A perusal of the order passed by this Court would reveal that the applicant's stood convicted by order dated 15.11.2019. The Court before sentencing the applicant had to cause the production of the applicant. It so happened that the applicant was already undergoing pre-trial custody in connection with another case. Therefore, he had to be produced from the custody which he was undergoing in that case. He was produced. An affidavit was filed by him, wherein he sought to purge himself of the contempt. The Court was not satisfied with the case made out by the applicant for purging. But the Court was also inclined to give an opportunity to the applicant to attempt to purge himself for the contempt. Since he was produced from custody, he necessarily had to go back to custody in connection with another case.

14. Ms. Meenakshi Arora, learned senior counsel pointed out that at that stage what should have been done had it been a case where he was not being sent back to custody in another case was to enlarge him on bail in the contempt of Court case and this circumstance should therefore signify that he was indeed in custody from 03.02.2020. We are of the view that this circumstance, if it is indeed correct, should not be available to the applicant to convert what was custody which he was undergoing in connection with another case to custody in the contempt of Court case. In other words, we cannot understand in the facts of this case that the custody undergone by the applicant in connection with another case admittedly and which had its origin and continuance all through out with reference to the said case as custody undergone in the contempt of Court case.

A 15. We cannot, therefore, agree with the applicant that a clarification must be issued by this Court that the commencement of period of imprisonment should be treated as from 03.02.2020 instead of 22.09.2022.

The miscellaneous application will stand dismissed.

B

Pending application(s), if any, stands disposed of.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Miscellaneous application dismissed.