Supreme Court of India
Kartar Singh And Others vs State Of Haryana Through ... on 26 August, 1982
Equivalent citations: 1982 AIR 1439, 1983 SCR (1) 445
Author: V Tulzapurkar
Bench: Tulzapurkar, V.D.

PETITIONER:
KARTAR SINGH AND OTHERS

Vs.

RESPONDENT:
STATE OF HARYANA THROUGH INSPECTOR .GENERAL OF PRISON, CHAND

DATE OF JUDGMENT26/08/1982

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
ISLAM, BAHARUL (J)
MISRA, R.B. (J)

CITATION:
1982 AIR 1439 1983 SCR (1) 445
1982 SCC (3) 1 1982 SCALE (1)671
CITATOR INFO :
R 1983 SC 855 (2)
R 1984 SC 739 (5)
O 1985 SC1050 (2,12,13,TO,16)
RF 1990 SC1336 (7)

ACT:
Criminal Proccdure Code-s. 428-Applicability to persons sentenced to imprisonment for life- construction of.

HEADNOTE:
Under s. 428, Cr. P.C., an accused person sentenced to imprisonment for a term is entitled to set off his under-trial period of detention against the sentence imposed upon him.

The petitioners were life-convicts undergoing sentence in different Jails in Haryana. Under para 516-B of the Punjab Haryana Jail Manual they were entitled to be considered for premature release on their completing 8-112 years of substantive imprisoment and 14 years of imprisonment including remissions. According to the petitioners, if the period of their under-trial detention was added f - to their total period of imprisonment including remissions, the total detention would exceed 14

years and their continued detention would be illegal. In Maru Ram v. Union of India and Anr., [1981] 1 S.C.R. 1196 it had been held that the mandatory minimum of 14 years' actual imprisonment specified in s. 433-A, Cr.P.C., would not operate against those 'lifers' whose conviction by the court of first instance had been entered prior to 18th December, 1978, and that they would not be entitled to consideration by Government for premature release on the strength of the remissions earned under the relevant rules. The Government of Haryana had by its order dated 2nd February, 1981, decided that the benefit of the period of under-trial detention should not be given to life-convicts who had been convicted before 18th December, 1978. The petitioners submitted that the said order was invalid for the reason that it wrongfully denied to them the benefit of the set off contemplated under s. 428, Cr. P.C.

Counsel for the petitioners contended that cases of life-convicts would fall within the terms of s. 428 as:

(i) persons sentenced to imprisonment for life could be said to have been sentenced to their life-term which under the provisions of the Penal Code and Jail Manual was regarded as equivalent to 20 years or 14 year

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(ii) when remissions are actually granted to life-convicts their sentences become imprisonments for a term:

(iii) when convicts other than life convicts were entitled to the benefit of the set off contemplated under the section there was no reason why life-convicts should be denied that advantage. ..

Dismissing the petition,

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HELD: on a plain reading of s. 428, Cr. P.C., it is clear that the cases of the petitioners, who have been sentenced to imprisonment for life, would not fall within the section, for, the section applies to an accused person who has on conviction been sentenced to imprisonment for a term. [450 H; 451 A]

(b) A perusal of several sections of the Indian Penal Code as well as Criminal Procedure Code would show that both the Codes make and maintain a clear distinction between "imprisonment for life" and "imprisonment for a term"; in fact, the two expressions "imprisonment for life" and "imprisonment for a term" have been used in contradistinction with each other in one and the same section, where the former must mean imprisonment for the remainder of the natural life of the convict and latter must mean imprisonment for a definite or fixed period. Having regard to such distinction which is being maintained in both the Codes, it will be difficult to slur over the distinction on the basis that life-convicts should be regarded as having

been sentenced to a life term or to say that the two could be understood as interchangeable expressions because, basically, the life-term of any accused is uncertain. Section 57, I.P.C. or the Remission Rules contained in Jail Manuals are irrelevant in this context. It is well settled that a sentence for imprisonment for life must be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. [451 F-H; 452 D-E; 452 G; 453 A]

Kishori Lal v. Emperor, A.l.R. [1945] P.C. 64; Gopal Vinayak Godse v. The State of Maharashtra [1961] 3 S.C.R. 440; Maru Ram v. The Union of India and Anr. [1981] I S.C.R. 1196; and StatE of Madhya Pradesh v. Ratan Singh & Ors., [1976] Supp. S.C.R. 552, referred to.

(c) An order of remission passed by the State Government or by the Jail Authorities does not interfere with either the conviction or sentence recorded by tho court which remains intact; it merely affects the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment and it is for this reason that an accused person has f every right to press his appeal against the conviction and sentence imposed upon him, full remission - notwithstanding. Moreover, S. 428, opens with the words "where an accused person has, on conviction, been sentenced to imprisonment for a term" and as such the section will come into play in cases where "imprisonment for a term" is awarded on conviction by a court and not where the convict's sentence becomes a sentence for a term on remission being granted by the t Executive. [453 C-F]

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Puttawwa v. The State of Mysore, A.I.R. 1959 Mysore 116, approved. A

(d) The question is not whether the beneficent provision should be extended to life-convicts on a priori reasoning or equitable consideration but whether on true construction the section comprises life-convicts within its purview and on construction it is not possible to hold that it does. The objects and reasons for introducing s. 428 anew in the Code , as set out by the Joint Committee in its Report, clearly show that cases of life-convicts were never intended to be covered by the provision. [453-G; 454-A-B]

Kalidas Vanmalibhai v. State of Gujarat & Anr., [1980] 21 Guj. Law Reporter, 7, overruled.

Kanthalot Karunan & others v. State of Kerola,(1975) K L.T. 147: Rajahusein Gulamhusein Lakhani v. The State of Maharashtra (1976) Crl. L.J. 1294; Rafiq Abdul Rehman v. 'The State of Maharashtra, (1978) Crl. L.J. 214 and Bhimsen v. The State of Rajasthan 1977 Crl. L.J. 696, approved.

JUDGMENT:

ORlGlNAL JURISDlCcTlON: Writ Petition (Crl.) No. 3226 of 1981. - D (Under Article 32 of the Constitution of India) R.C. Kohli for the Petitioners.

K .G. Bhagat and R.N. Poddar for the Respondent. The Judgment of the Court was delivered by TULZAPURKAR, J. This writ petition raises the question whether persons sentenced to imprisonment for life are entitled to set off their under-trial period of detention against their sentence under sec. 428 of the Criminal Procedure Code ?

The facts giving rise to the aforesaid question may be stated.

The three petitioners (Kartar Singh, Mukhtiar Singh and Baljit Singh) on conviction under sec. 30?, Indian Penal Code were sentenced to imprisonment for life, the first two on 20th February, 1973 and the last on 17th September, 1975 and each one of then is at present undergoing his sentence in one or the other jails at Hissar in the State of Haryana. The petitioners have pointed out that in Maru Ram v. Union of India & Anr.(l) this Court while upholding the constitutional validity of sec. 433-A of Criminal Procedure Code has held the section to be prospective in effect, that is to say, the mandatory minimum of 14 years' actual imprisonment specified therein will not operate against those whose cases were decided by the trial court before 18th December, 1978 when the section came into force and that all 'lifers' whose conviction by the court of the first instance was entered prior to that date would be entitled to consideration by Government for pre-mature release on the strength of the remissions earned under the relevant rules and according to them under Para 516-B of the Punjab Haryana Jail Manual life convicts below the age of 20 at the date of their conviction are entitled to be considered for pre-mature release on their completing 6 years of substantive imprisonment and 10 years of imprisonment including remissions while life convicts above the age of 20 at the date of their convictions are entitled to be considered for premature release on their completing 8 1/2 years of substantive imprisonment and 14 years of imprisonment including remissions. The petitioners say that their case falls in the second category and according to them they are entitled to be considered for premature release if to their total period of imprisonment inclusive of remissions is added the period of their under-trial detention (which in the case of the first two petitioners is 612 days and in the case of the third petitioner is 2 years I month and 14 days) as on such reckoning the total detention exceeds 14 years and their continued detention is illegal; but the Respondent State has issued an order No. 1953/591GI/G 3/r-19 (11) dated 2nd February, 1981 to all Jail Superintendents in the State whereunder instructions have been issued- that for the purpose of considering cases of pre-mature release while calculating 8-1/2 years substantive sentence and 14 years imprisonment including remissions the benefit of under-trial period is not to be given to life convicts who have been convicted before 18th December, 1978. The petitioners have challenged the legality and/or validity of the said order as being contrary to law and violative of Arts. 14 and 21 of the Constitution. In substance the petitioners have contended that the said order illegally and wrongfully denies to life convicts the benefit of a set-off contemplated under sec. 421 Cr. P.C. and therefore the petitioners have sought a mandamus directing the Respondent State to consider their cases for release under Para 516-B of the Punjab/Haryana Jail Manual after giving them the benefit of said set-off against their sentences.

In the counter-affidavit filed on behalf of the Respondent State the legal position obtaining as . a result of this Court's decision in Maru Ram's case (supra) has been accepted; similarly the effect of Para 516-B of the Punjab/Haryana Jail Manual as set out by the petitioners is also accepted. It is however, denied that the order No. 1953/59/G1/G.3/T-19(11) dated 2nd February, 1981 is illegal or invalid for any reason or is contrary to sec. 428, Cr. P.C. It has been contended that the benefit of a set-off contemplated by sec. 428 Cr. P.C. is not available to life convicts but is available to those convicts who have been sentenced to imprisonment for a term and therefore far from being contrary to any law the impugned order is in accord with the provisions of sec. 428 Cr. P.C. and since the periods of their under-trial detention are not to be reckoned or set off against their sentences the petitioners' cases could not be said to have become ripe for consideration for pre-mature release. Even otherwise, according to the Respondent-State the petitioners' cases, have not become ripe for such consideration because the periods of substantive or actual imprisoment, the remissions earned and the periods of under- trial detention as set out by the petitioners are not correct. According to the Respondent-State in the case of Kartar Singh the net period of substantive or actual imprisonment is 6 years 9 months and 11 days, the remissions earned by him amount to 4 years S months and 24 days, to which even if the period of undertrial detention, which is 1 year 8 months and 4 days, is added the total comes to 12 years, 11 months and 9 days and not 14 years as required by Para 516-B of the Punjab/Haryana Jail Manual; in the case of Mukhtiar Singh the net period of substantive or actual imprisoment is 7 years, zero month and six days, the remissions earned by him amount to 4 years, 7 months and 10 days, to which even if the period of under-trial detention which is 1 year, 8 months and 4 days is added the total comes to 13 years, 3 months and 20 days and not 14 years as required by the said Para 516-B; in the case of Baljit Singh the net substantive or actual imprisonment under gone by him is 4 years, 9 months and 10 days, the remissions earned by him amount to 3 years, 8 months, 11 days, to which even if the period of uodertrial detention which is 2 years, I month and 13 days is added the total comes to 10 years, 7 months and 4 days and not 14 years as required by the said Para 516-B. In any event, therefore, none of the petitioners is entitled to have his case considered for pre-mature release and therefore the petition is liable to be dismissed.

Since the legal question touching the proper construction of sec. 428 Cr. PC. was argued at length by counsel on either side at the Bar we have decided to address ourselves to that question without getting lost in the factual dispute as to whether even after reckoning the periods of their under- trial detention the petitioners are or are . P not entitled to have their cases considered by the State Government for pre-mature release under Para 516-B of the Punjab/Haryana Jail Manual. In other words for the purpose of deciding the question we shall proceed on the assumption that factually if the periods of their under-trial detention are taken into account the petitioners would be entitled to have their cases considered for premature release. the question is whether even on such assumed factual basis the petitioners are in law entitled to get a set off of the said periods against their sentences under sec. 428 of the Cr. P.C. and if so, whether the impugned order dated 2nd February, 1981 issued by the Respondent-State is illegal or invalid.

At the outset it may be stated that the impugned order dated 2nd February, 1981 is challenged as contravening sec. 428 but the constitutional validity of sec. 428 itself has not been challenged. Admittedly all the three petitioners have been convicted under sec.302, IPC and have been

sentenced to imprisonment for life and the question is whether sec. 428 Cr. P.C. is applicable to them. Sec. 428 runs thus

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment:

Where an accused person has, on conviction, been sentenced to imprisonment for a term, 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 of against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprison - ment on such conviction shall be restricted to the remainder, if any of the term of imprisonment imposed on him.

on a plain reading of the aforesaid provision it will be clear that the cases of the petitioners, who have been sentenced to imprisonment for life, would not fall within the section, for, the section applies to an accused person who has on conviction, been sentenced to imprison.

citizens of this ancient land having a feeling of belonging to the civilised community governed by the liberty oriented consitution. Personal liberty makes for the worth of human being and is a cherished and prized right. Deprivation thereof must be preceded by an inquiry ensuring fair, just and reasonable procedure and trial by a judge of unquestioned inte-

ment for a Term and it is only in cases of such persons who have been sentenced to imprisonment for a term that the period of their under trial detention has to be set off against the term of the imprisonment imposed upon them and the liability of such persons to undergo imprisonment has to be restricted to the remainder, if any, imposed upon them. Counsel for the petitioners, however, raised a two fold contention. In the first place, he contended that persons sentenced to imprisonment for life could be said to have been sentenced to their life term which under the provisions of the Penal Code (section 57) and Jail Manuals (Para 716-B) are regarded as equivalent to 20 years or 14 years and as such cases of life convicts would fall within the terms of sec. 428. Secondly, in any event when remissions are actually granted by the State Government under sec. 432 Cr. P.C. Or by the Jail Authorities under the relevant remission rules contained in Jail Manuals to life convicts their cases should be treated as falling within the purview of sec. 428, inasmuch as on the grant of remissions their sentences become imprisonments for a term and since in the instant case each one of the petitioners has been granted remissions each is entitled to have the benefit of the set off mentioned in sec. 428 of the Cr. P.C; and consequently the impugned order of 2nd February,. 1981 issued by the Respondent State would be illegal or invalid as contravening the section. To support his contention Counsel relied upon a decision of the Gujarat High Court in the case of Kalidas Vanmalibhai v. State of Gujarat and Anr.(l) where that Court has taken the view that a beneficent provision like the one contained in sec. 428 Cr. P.C. should be made available to convicts sentenced to life imprisonment. It is not possible to accept the submissions of Counsel for the reasons which we shall presently indicate.

In the first place a perusal of several sections of the Indian Penal Code as well as Criminal Procedure Code will show that both the Codes make and maintain a clear distinction between imprisonment

for life and imprisonment for a term; in fact, the two expressions 'imprisonment for life' and 'imprisonment for a term' have been used in contra-distinction with each other in one and the same section, where the former must mean imprisonment for the remainder of the natural life of the convict (vide: definition of 'life' in s. 45 I.P.C.) and the latter must mean imprisonment for a definite or fixed period. For instance sec. 304 I.P.C. provides that punishment for culpable homicide not amounting to murder shall be imprisonment for life or imprisonment of either description for a term which may extend to ten years'; section 305 provides that punishment for abetment of a suicide of a child or insane person shall be 'death or imprisonment for life or imprisonment for a term not exceeding ten years'; section 307 provides that punishment for an attempt to commit murder accompanied by actual hurt shall be imprisonment for life or imprisonment of either description which may extend to ten years; so also, voluntarily causing hurt in committing robbery is punishable under sec. 394 with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years. Sec. SS I.P.C. uses the two expressions in contra-distinction with each other and says that an appropriate Government may in every case in which sentence of imprisonment for life shall have been passed commute the punishment for imprisonment of either description for a term not exceeding fourteen years; similarly, section 433(b) Cr. P.C. uses the two expressions in contra-distinction with one another. Having regard to such distinction which is being maintained in both the Codes it will be difficult to slur over the distinction on the basis that life convicts should be regarded as having been sentenced to life-term or to say that the two could be understood as interchangeable expressions because basically the life term of any accused is uncertain. Further, sec. 57 I.P.C. Or the Remission Rules contained in Jail Manuals (e.g. Para 516-B of Punjab/Haryana Jail Manual) are irrelevant in this context. section 57 I.P.C. provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years for the specific purpose mentioned therein, namely, for the purpose of calculating fractions of terms of punishment and not for all purposes; similarly Remissions Rules contained in Jail Manuals cannot override statutory provisions contained in the Penal Code and the sentence of imprisonment for life will have to be regarded as a sentence for the remainder of the natural life of the convict. The Privy Council in Pandit Kishori Lal's(1) case and this Court in Gopal Godse's(2) case have settled this position once and for all by taking the view that a sentence for transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. This view A has been confirmed and followed by this Court in two subsequent decisions-in Ratan Singh's(l) case and Maru Ram's case (supra). In this view of the matter life convicts would not fall within the purview of sec. 428, Cr. P.C.

The next submission that at least cases of life convicts who n have been actually granted remissions either by the State Government under sec. 432 Cr. P.C. Or by Jail Authorities under the relevant Remission Rules should be treated as falling within the purview of sec. 428 because on the grant of remissions, their sentences become sentences of imprisonment for a term is also without any substance. The argument is fallacious for two reasons. In the first place, an order of remission passed by the State Government or by the Jail Authorities does not interfere with either the conviction or sentence recorded by the Court which remains intact; it merely affects the execution of the sentence passed by the Court and frees the convicted person from his liability to undergo the full term of imprisonment and it is for this reason that an accused person has every right to press his appeal against the conviction and sentence imposed upon him, full remission notwithstanding.

(Vide: Puttawwa v. The State of Mysore(2) secondly, sec. 428 opens with the words: "Where an accused person has, on conviction, been sentenced to imprisonment for a term" and as such the section will come into play in cases where 'imprisonment for a term' is awarded on conviction by a court and not where the convict's sentence becomes a sentence for a term on remission being granted by the Executive. In the latter case the section on its own terms would be inapplicable.

The last submission has been that if convicts other than life- convicts are entitled to the benefit of the set off under sec. 428, there is no reason why life convicts should be denied the advantage of this beneficial provision and in this behalf it was pointed out that such an argument has found favour with the Gujarat High Court in Kalidas Vanmalibhai's case (supra). In our view the question is not whether the beneficient provision should be extended to life- convicts on a priori reasoning or equitable consideration but whether on true construction the section comprises life convicts within its purview and on construction it is not possible to hold that they do. Moreover, if the objects and reasons for introducing sec. 428 anew in the Code, as set out by the Joint Committee in its Report are taken into account, it will appear clear that cases of life convicts were never intended to be covered by the provision. The Joint Committee has stated the objects and reasons for introducing this provision in the Code thus:

> "The Committee has noted the distressing fact that in many cases accused persons are kept in prison for a very long period as under-trial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in Jail as under- trial prisoner. Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in many cases, the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs."

It is obvious that the mischief sought to be remedied has no relevance where gravity of offence requires the imposition of imprisonment for life Having regard to the above discussion, it is clear that the benefit of the set off contemplated by sec. 428 Cr. P.C. would not be available to life convicts. In our view, the decision of the Gujarat High Court in the case of Kalidas Vanmalibhai is erroneous and the contrary view taken by Kerala High Court in Kanthalot Karunan & others v. State of Kerala(1) by Bombay High Court in Rajahusein Gulamhusein Lakhani v. The State of Maharashtra,(Z) Rafiq Abdul Rehman v. The State of Maharashtra(l) and by Rajasthan- High Court in Bhimsen v. The State of Rajasthan(2) is correct. In this view of the matter, the impugned order dated 2nd February, 1982 passed by the Respondent-State, being in conformity with sec. 428 Cr. P.C., is perfectly legal and valid.

In the result, the writ petition is dismissed.

H.L.C. Petitions dismissed.