INDIA / JUDGMENT

STATE OF RAJASTHAN AND OTHERS versus MUKESH SHARMA

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STATE OF RAJASTHAN AND OTHERS

v.

MUKESH SHARMA

(Civil Appeal No. 3086 of 2016 etc.)

APRIL 22, 2019

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Sentence/Sentencing:

Remission of sentence – Writ petition challenging constitutional validity of r. 8(2)(i) of Rajasthan Prisons (Shortening of Sentences) Rules, 2006 (framed u/s. 59(1) (2) and (5) Prisons Act, 1894) – By appellants/convicts undergoing life sentence – High Court allowed the petition holding that the Rules not having been placed before the State legislature as required by s. 59(2) of Prisons Act,

did not acquire statutory force and that the Rules were contrary to s. 433A of Cr.P.C. – On appeal, held: It is not mandatory to place the Rules before the legislature prior to its promulgation – Under Penal Code imprisonment for life means convict's natural life and under Rajasthan Prison Rules, 1951 it means imprisonment for 20 years – Section 433A Cr.P.C. fixes the minimum period i.e. 14 years of imprisonment before which remission cannot be considered – Remission is not a matter of right – As a matter of policy nothing prevents the State from imposing restrictions in the manner done by

r. 8(2)(i) to consider claims of remission – Rajasthan Prisons (Shortening of Sentence) Rules, 2006 – r. 8(2)(i) and 2(e) – Prisons Act, 1894 – ss. 59(1) and (2) – Rajasthan Prison Rules, 1951 – r. 1(e) – Code of Criminal Procedure, 1973 – ss. 432, 433(b) and 433A – Penal Code, 1860.

Allowing the appeals, the Court

HELD : 1. The plain language of Section 59(2) of Prisons Act, 1894 makes it manifest that there is no requirement for laying of the Rules before the legislature prior to promulgation of the Act. No time limit for laying has been provided. The use of words "as soon as" coupled with the absence of any consequence for not laying makes the provision directory and not mandatory. [Para 7][199-D-E]

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M/s. Atlas Cycle Industries Ltd. & ors. v. the State of Haryana (1979) 2 SCC 196 : [1979] 1 SCR 1070 – relied on.

2. Rajasthan Prison Rules, 1951, under the heading Remission System, in Rule 1(e) provides that the sentence for imprisonment for life or transportation of life shall be deemed to mean imprisonment for 20 years. Sentence for imprisonment for life or transportation of life under the Penal Code shall mean the convict's natural life. Rule 2(e) of the Rajasthan Prisons (Shortcoming of Sentences) Rules 2006, defines shortening of sentence to mean the reduction of that period of sentence of a prisoner which he has to serve in the prison upon a judicially pronounced sentence as a matter of grace on the part of the State and as a recognition of his good behaviour in the prison. [Paras 8, 9 and 10][201-D-F]

Gopal Vinayak Godse v. State of Maharashtra (1961) 3 SCR 440 – relied on.

3. Section 432 Cr.P.C. provides for the power to suspend or remit sentences and also to refuse the same. Section 433(b) Cr.P.C. provides for commuting a sentence of imprisonment for life to 14 years. Section 433-A Cr.P.C. provides that remission or commutation shall not enable release of the convict from prison unless the person had served at least 14 years of imprisonment. It, therefore, fixes a minimum period before which remission could not be considered. Any rule that may provide to consider remission before 14 years would obviously be bad in view of the statutory provision contained in the Code. [Para 11][200-G-H;

201-A-B]

Union of India vs. V. Sriharan (2016) 7 SCC 1 : [2015] 14 SCR 613 – relied on.

4. Manifestly remission not being a matter of right, much less upon completion of 14 years of custody, but subject to rules framed in that regard, including complete denial of the same in specified circumstances, as a matter of State policy, nothing prevents the State from imposing restrictions in the manner done by Rule 8(2)(i) of Rajasthan Prisons (Shortening of Sentence) Rules, 2006 to consider claims for remission.[Para 12][201-F-G]

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Maru Ram v. Union of India 1981 (1) SCC 107 – relied on.

Mohd. Munna v. Union of India & ors. (2005) 7 SCC 417 : [2005] 3 Suppl. SCR 233 – referred to.

Case Law Reference

(1981) 1 SCC 107

[1979] 1 SCR 1070

relied on

relied on

[2005] 3 Suppl. SCR 233

referred to

[1961] 3 SCR 440

[2015] 14 SCR 613

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relied on

Para 2

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Para 5

Para 10

Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3086

of 2016.

From the Judgment and Order dated 23.01.2008 of the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in D.B. Civil Writ Petition No.2421 of 2007.

With

Civil Appeal Nos. 3092, 3087, 3088, 3089, 3091, 3090, 3093, 3094

and 3095 of 2016.

Dr. Manish Singhvi, Sr. Adv., Sandeep Jha, Milind Kumar, Advs.

for the Appellantss.

Soutik Banerjee, Gaurav Agrawal, Mrs. K. Sarada Devi, Advs.

for the Respondent.

The Judgment of the Court was delivered by

NAVIN SINHA, J.

1. A common question of law arises for consideration in this batch of appeals. The individual facts are therefore not relevant for adjudication. Suffice it to observe that each of the respondents in the respective appeals was convicted under Section 302 and other provisions of the Indian Penal Code in different Sessions trials arising from separate unconnected incidents and sentenced to imprisonment for life. They filed individual writ petitions contending that they had served more than 14 years in custody but their cases were not placed by the Jail Authorities before

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the State Advisory Boards for shortening of their sentences and premature release. The constitutional validity of Rule 8(2)(i) of the Rajasthan Prisons (Shortening of Sentences) Rules, 2006, (hereinafter referred to as "the Rules, 2006") was challenged, putting a fetter on consideration of their cases till they earned a minimum of four years of remission after completing 14 years of actual imprisonment excluding remission, as being contrary to Section 433-A Cr.P.C. No other issue was urged.

2. The Rules, 2006 were framed by the State Government in exercise of powers under Clause (2) & (5) of Section 59 (1) of the Prisons Act, 1894 (hereinafter referred to as 'the Act'). The High Court held that the Rules not having been placed before the Legislature of the State as required by Section 59(2) of the Act did not acquire statutory force. Furthermore, the Rules could not have been framed contrary to Section 433-A of the Code of Criminal Procedure, 1973, relying on the Constitution Bench decision in Maru Ram vs. Union of India, 1981 (1) SCC 107.

3. In view of the question of law involved, it will be proper to set

out the statutory provisions arising for consideration.

"Section 59. Power to make rules.-

(1) The State Government may by notification in the Official Gazette make rules consistent with this Act-

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(2) determining the classification of prison-offences into serious and minor offences;

xxx

(5) for the award of marks and the shortening of sentences;

xxx

(2) Every Rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature."

"Rule 8(2) Notwithstanding anything contained in sub-rule (i)

(i) a prisoner who has been sentenced to imprisonment for life for any offence for which death penalty is one of the punishment

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provided by law or who has been sentenced to death but this sentence has been commuted under Section 433 of Code of Criminal Procedure, 1973, into one of imprisonment for life, shall be considered only after he has served 14 years of actual imprisonment excluding remission but including the period of detention spent during enquiry, investigation or trial, on the condition that such a prisoner shall also have to earn minimum of 4 years of remission in order to be eligible for consideration."

"Section 433-A. Restriction on powers of remission and 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 laws, or where a sentence of death imposed on a person has been commuted under section 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."

4. Learned Senior Counsel Dr. Manish Singhvi, for the appellants, submitted that the High Court erred in striking down the latter part of Rule 8(2)(i) requiring a minimum of four years remission after completion of 14 years in custody on both counts. Adverting to the striking down of the Rule for not laying it before the Legislature, it was submitted that the Rules did not contemplate laying before the Legislature prior to promulgation, as a pre-condition. The use of the words "as soon as" does not give any definite time period before which it is to be laid before the State Legislature. No consequences were provided for not laying the Rules before the Legislature, and in absence of which it could not come into force. The provision was therefore directory and not mandatory. Any omission, therefore, in laying the Rules before the Legislature does not render the Rules invalid. In any event, the Rules had subsequently been laid before the Legislature. Dr. Singhvi relied on M/s. Atlas Cycle Industries Ltd. & ors. vs. the State of Haryana, (1979) 2 SCC 196.

5. It was next submitted that remission after completion of 14 years in custody was not a matter of right, but was dependent on a host of considerations. Maru Ram (supra) has not been correctly appreciated. Life imprisonment normally means an imprisonment for life. Section 433- A, Cr.P.C. stipulates that where sentence for imprisonment for life is imposed for an offence for which death is one of the punishments such

person shall not be released from prison unless he had served at least fourteen years of imprisonment. Thus, the State in its wisdom could easily provide that life imprisonment shall not be subject to any remission or provide limitations on the same. Remission, in the present case, being a matter of State policy as incorporated in statutory rules falling within the domain of the State, could not be claimed as a matter of fundamental right. Reliance was placed on Mohd. Munna vs. Union of India & ors., (2005) 7 SCC 417. The State Government could, therefore, always insist on a minimum number of years before premature release of a convict serving life sentence.

6. Learned counsel for the respondents submitted that the remission policy of the State Government was ultra vires Article 14 of the Constitution of India as it would take approximately 18 years of imprisonment for a model prisoner to earn 4 years of remission, making it virtually impossible to be considered for shortening of sentence in terms of Section 433-A. Rule 8(2)(i) was clearly contrary to Section 433-A Cr.P.C. in view of Maru Ram (supra) to the extent that it restricts consideration for remission after 14 years.

7. We have considered the respective submissions. The plain language of Section 59(2) makes it manifest that there is no requirement for laying of the Rules before the Legislature prior to promulgation. No time limit for laying has been provided. As rightly urged, the use of words "as soon as" coupled with the absence of any consequence for not laying makes the provision directory and not mandatory. In Atlas Cycle (supra) it was observed:

"22. ...In the instant case, it would be noticed that sub- section

(6) of Section 3 of the Act merely provides that every order made under Section 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made under Section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it

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provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (6) of Section 3 of the Act falls within the first category i.e. "simple laying" and is directory not mandatory."

In conclusion, it was held that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub- section (6) of Section 3 of the Act should render the order void.

8. Part-3 of the Rajasthan Prison Rules, 1951, under the heading Remission System, in Rule 1(e) provides that the sentence for imprisonment for life or transportation of life shall be deemed to mean imprisonment for 20 years.

9. Rule 2(e) of the Rules 2006, defines shortening of sentence to mean the reduction of that period of sentence of a prisoner which he has to serve in the prison upon a judicially pronounced sentence as a matter of grace on the part of the State and as a recognition of his good behaviour in the prison.

10. That sentence for imprisonment for life or transportation of life under the Penal Code shall mean the convict's natural life needs no further elaboration in view of Gopal Vinayak Godse vs. State of Maharashtra (1961) 3 SCR 440 followed in para 72(4) of Maru Ram (supra) as follows:

"5..... A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

11. Section 432 Cr.P.C. provides for the power to suspend or remit sentences and also to refuse the same. Section 433 (b) Cr.P.C. provides for commuting a sentence of imprisonment for life to 14 years. Section 433-A Cr.P.C. provides that remission or commutation shall not

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enable release of the convict from prison unless the person had served at least 14 years of imprisonment. It, therefore, fixes a minimum period before which remission could not be considered. Any rule that may provide to consider remission before 14 years would obviously be bad in view of the statutory provision contained in the Code. In Union of India vs. V. Sriharan, (2016) 7 SCC 1, it was observed:

> *"79. In this context, the submission of the learned Solicitor General on the interpretation of Section 433-A CrPC assumes significance. His contention was that under Section 433-A CrPC what is prescribed is only the minimum and, therefore, there is no restriction to fix it at any period beyond 14 years and up to the end of one's lifespan. We find substance in the said submission. When we refer to Section 433-A, we find that the expression used in the said section for the purpose of grant of remission relating to a person convicted and directed to undergo life imprisonment, it stipulates that "such person shall not be released from prison unless he had served at least fourteen years of imprisonment" (emphasis supplied). Therefore, when the minimum imprisonment is prescribed under the statute, there will be every justification for the court which considers the nature of offence for which conviction is imposed on the offender for which offence the extent of punishment either death or life imprisonment is provided for, it should be held that there will be every justification and authority for the court to ensure in the interest of the public at large and the society, that such person should undergo imprisonment for a specified period even beyond 14 years without any scope for remission. In fact, going by the caption of the said Section 433-A, it imposes a restriction on powers of remission or commutation in certain cases...."*

12. Manifestly remission not being a matter of right, much less upon completion of 14 years of custody, but subject to rules framed in that regard, including complete denial of the same in specified circumstances, as a matter of State policy, nothing prevents the State from imposing restrictions in the manner done by Rule 8(2)(i) to consider claims for remission. In Maru Ram (supra) this Court held:

> *"30. A possible confusion creeps into this discussion by equating life imprisonment with 20 years' imprisonment. Reliance is placed for this purpose on Section 55 IPC and on definitions in various*

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Remission Schemes. All that we need say, as clearly pointed out in Godse, is that these equivalents are meant for the limited objective of computation to help the State exercise its wide powers of total remissions. Even if the remissions earned have totalled up to 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoner cannot claim his liberty. The reason is that life sentence is nothing less than lifelong imprisonment. Moreover, the penalty then and now is the same — life term. And remission vests no right to release when the sentence is life imprisonment. No greater punishment is inflicted by Section 433-A than the law annexed originally to the crime. Nor is any vested right to remission cancelled by compulsory 14- year jail life once we realise the truism that a life sentence is a sentence for a whole life."

13. It is, therefore, held that the High Court erred in striking down Rule 8(2)(i) of the Rules, 2006 on both counts. The Rule is held to be valid and consistent with the law. The impugned orders of the High Court are set aside and the appeals are allowed.

Kalpana K. Tripathy

Appeals allowed.

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