

(2011) 09 P&H CK 0195

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Writ Petition No. 838 of 2011

Kashmiri

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: Sept. 6, 2011**Acts Referred:**

- Constitution of India, 1950 - Article 161, 72
- Criminal Procedure Code, 1973 (CrPC) - Section 427, 427(1), 427(2), 432, 432(1)
- Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 - Section 9
- Penal Code, 1860 (IPC) - Section 116, 119, 129, 302, 397

Citation: (2012) CriLJ 1735**Hon'ble Judges:** Vijender Singh Malik, J; Hemant Gupta, J**Bench:** Division Bench**Advocate:** H.P.S. Ishar, for the Appellant; Pradeep Singh Poonia, Addl. AG, Haryana, Saurabh Mohunta, DAG, Haryana, for the Respondent

Judgement

Hemant Gupta, J.

The present writ petition has been placed before this Bench on the Reference made by the learned single Judge on 7.7.2011, in respect of the interpretation of Section 427(2) of the Code of Criminal Procedure (for short "Code")- A single Bench of this court in the case of Jaswant Singh v. State of Punjab (Crl. Misc. No. M-21695 of 2009 decided on 2.3.2010), has held that where a life convict earns remission in the sentence of life imprisonment, it becomes imprisonment for a term and the case is taken out of the purview of sub-section (2) of Section 427 of the Code. The correctness of the said view is an issue in the present case. On the basis of the arguments raised, we find that the following questions of law arise for consideration:--

1. Whether the release of a convict sentenced to undergo life imprisonment after granting remission of the remaining sentence by the appropriate Government

amounts to an imprisonment for a term?

2. Whether the sentence in the second case imposed upon a convict undergoing life imprisonment, will start from the date of his first offence or from the date he was arrested in respect of such offence?

2. The brief facts to appreciate the questions raised are that the petitioner was convicted for an offence u/s 302 IPC in a case arising out of FIR No. 421 dated 4.9.1994, registered at Police Station Tohana in the State of Haryana (then in the District Hisar). While, the petitioner was undergoing the said sentence and when he was on parole, he was involved in FIR No. 94 dated 9.2.1998, Police Station City Sonapat, for an offence under Sections 455 and 397 IPC. In such case, he has been convicted and sentenced to undergo RI for 10 years for an offence u/s 397 IPC and RI for 7 years u/s 455 IPC. There is no order that such punishment shall run concurrently with the sentence of life imprisonment. Criminal Appeal No. 583-SB of 2001 is pending before this Court against the said conviction and sentence. The petitioner has over stayed parole in the year 2007 and has been sentenced to undergo RI for one year vide order dated 11.3.2008 in FIR No. 515 dated 4.8.2007. Earlier also, the petitioner over stayed parole, but was not imposed any sentence of imprisonment.

3. Learned counsel for the petitioner contends that the remaining sentence of the petitioner has been remitted by the State Government vide Haryana Government Order dated 25.8.2010 and the petitioner released in the case arising out of FIR No. 421 dated 4.9.1994 on 19.10.2010. As per the custody certificate produced by the petitioner, he is in custody in the second case arising out of FIR No. 94 dated 9.2.1998 since 20.10.2010. It is argued that since the petitioner was undergoing a sentence for life imprisonment, therefore, in terms of Section 427(2) of the Code, the sentence of 10 years RI imposed in the second case, has to run concurrently with the sentence of life imprisonment for the previous offence. It is contended that grant of remission does not convert the sentence imposed upon the petitioner as that of a fixed term imprisonment and, therefore, the case does not fall within the scope of Section 427(1) of the Code. It is contended that in terms of Section 432(3) of the Code, even after remission of sentence, the petitioner can be called upon to undergo sentence in the event of the violation of the conditions specified therein. It is argued that the finding recorded in Jaswant Singh's case (supra) that grant of remission to a convict undergoing life imprisonment makes it imprisonment for a fixed term, is not a correct proposition of law. It is contended that commutation of sentence of life imprisonment make it term for a fixed term. But the grant of remission to a convict undergoing life imprisonment does not wipe off the substantive sentence of life.

4. Learned counsel for the petitioner has relied upon [Ranjit Singh Vs. Union Territory of Chandigarh and another](#), wherein the Hon"ble Supreme Court has held that sub-section (2) of Section 427 of the Code is in the nature of exception to the general

rule stipulated in sub-section (1) of Section 427 IPC. It was held that if any remission or commutation is granted in respect of the remaining sentence of life imprisonment, the benefit of that remission or commutation will not ipso-facto be available in respect of the subsequent sentence of life imprisonment. It was held that operation of superimposed subsequent sentence of life imprisonment shall not be wiped off merely because in respect of the corresponding earlier sentence any remission or commutation has been granted by the appropriate authority.

5. It is, thus, contended that the appellant has completed 10 years of imprisonment from the date of his arrest in the second case, therefore, the superimposed sentence of 10 years RI in the second case having been completed, his continued detention is illegal and thus, is liable to be set aside. It is argued that though the appeal of the petitioner is pending against the subsequent conviction, but since the petitioner has completed the sentence in the second case, the pendency of appeal cannot be a ground to detain the petitioner, when he has completed the sentence imposed in the said case.

6. On the other hand, Shri Poonia, learned Additional AG, Haryana, pointed out that in [M.R. Kudva Vs. State of Andhra Pradesh](#), the Supreme Court has held that Section 482 of the Code was not an appropriate remedy to order the sentence to run concurrently. Therefore, this Court in a writ petition cannot order the sentence to run concurrently. It is contended that in [Gopal Vinayak Godse Vs. The State of Maharashtra and Others](#), the Court has held that sentence of life imprisonment without any formal promulgation by the appropriate Government, cannot be treated as one for definite period. Shri Poonia has also made reference to [State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali](#), wherein it was held that the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. It is contended that the second sentence shall run concurrently not from the date of first conviction, but shall from the date the convict is arrested in the second case. It is also argued that the conviction for overstaying parole is to run independent of conviction u/s 427 of the Code, in view of Section 9 of the Haryana Good Conduct Prisoner's (Temporary Release) Act, 1988.

7. In Gopal Vinayak Godse (supra) the argument was inter alia based upon Section 57 IPC which fixes 20 years as the term for the life imprisonment. It was held that the said period of 20 years is not applicable in respect of a convict undergoing life imprisonment. It was held that Section 57 IPC is to calculate fractions of terms of punishment and that the imprisonment of life is imprisonment for one natural life. It was held to the following effect:

5...Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the Section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be

transportation for twenty years for all purposes; nor does the amended Section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all-embracing fiction. 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.

8. Subsequently, in [State of Madhya Pradesh Vs. Ratan Singh and Others](#), Cri LJ 1192, it was held that the question of remission of entire sentence or part of it, lies within the exclusive domain of the appropriate Government and neither Section 57 IPC nor any Rules or Local Acts, can nullify the effect of the sentence of life imprisonment imposed by the Court under the IPC. The Court observed as under:--

4....In other words, this Court has clearly held that a sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life.

In these circumstances, therefore, it is clear that the High Court was in error in thinking that the respondent was entitled to be released as of right on completing the term of 20 years including the remissions. For these reasons, therefore, the first contention raised by the learned Counsel for the appellant is well founded and must prevail.

9. The Constitution Bench in [Maru Ram and Others Vs. Union of India \(UOI\) and Others](#), has held that sentencing is a judicial function, but the execution of the sentence after the Court pronounces the pronouncement is ordinarily the matter with the executive. It was held that once the sentence has been imposed, the only way to terminate it before the stipulated term is by action under Sections 432/433 of the Code or Articles 72/161 of the Constitution. It also held that remissions by way of a reward or otherwise cannot cut down the sentence as such and grant final exit passport for the prisoner except by the Government action u/s 432(1) of the Code to grant remission of the remaining sentence. The Court held to the following effect:--

23...No remission, however long, can set the prisoner free at the instance of the State, before the judicial sentence has run out, save by action under the constitutional power or u/s 432. So read, the inference is inevitable, even if the contrary argument be ingenious, that Section 433A achieves what it wants -- arrest the release of certain classes of "lifers" before a certain period, by blocking Section 432. Arts. 72 and 161 are, of course, excluded from this discussion as being beyond any legislative power to curb or confine.

24.....In the first place, an order of remission does not wipe out the offence; it also does not wipe out the conviction. All that it does is to have an effect on the execution of the sentence; though ordinarily a convicted person would have to serve out the full sentence imposed by a Court, he need not do so with respect to that part

of the sentence which has been ordered to be remitted. An order of remission thus does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the Court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court.

10. The Court concluded as under:-- "72. We conclude by formulating our findings.

(1) and (2) xx xx xx

(3) We uphold all remissions and short-sentencing passed under Articles 72 and 161 of the Constitution, but release will follow, in life sentence cases, only on Government making an order en masse or individually, in that behalf.

(4) We hold that Section 432 and Section 433 are not a manifestation of Articles 72 and 161 of the Constitution but a separate, though similar, power, and Section 433A, by nullifying wholly or partially these prior provisions does not violate or detract from the full operation of the constitutional power to pardon, commute and the like.

(5) xx xx xx

(6) We follow [Gopal Vinayak Godse Vs. The State of Maharashtra and Others](#), to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned the prisoner can claim release only if the remaining sentence is remitted by Government."

11. In a later judgment reported as [Swamy Shraddhananda @ Murali Manohar Mishra Vs. State of Karnataka](#), , while noticing various judgments on the issue, the Court held that the sentence of life imprisonment could not be treated a term of 14 years or 20 years and that a convict undergoing imprisonment for life could not claim remission as a matter of right. It was held to the following effect:

74. At this stage, it will be useful to take a very brief look at the provisions with regard to sentencing and computation, remission etc. of sentences. Section 45 of the Penal Code defines "life" to mean the life of the human being, unless the contrary appears from the context. Section 53 enumerates punishments, the first of which is death and the second, imprisonment for life. Sections 54 and 55 give to the appropriate Government the power of commutation of the sentence of death and the sentence of imprisonment for life respectively. Section 55A defines "appropriate Government". Section 57 provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

75. It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life.

76. It is equally well settled that Section 57 of the Penal Code does not in any way limit the punishment of imprisonment for life to a term of twenty years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. (See: [Gopal Vinayak Godse Vs. The State of Maharashtra and Others](#), and [Ashok Kumar alias Golu Vs. Union of India and others](#), . The object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code.

77. This takes us to the issue of computation and remission etc. of sentences. The provisions in regard to computation, remission, suspension etc. are to be found both in the Constitution and in the statutes. Articles 72 and 161 of the Constitution deal with the powers of the President and the Governors of the State respectively to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. Here it needs to be made absolutely clear that this judgment is not concerned at all with the Constitutional provisions that are in the nature of the State's sovereign power.

What is said hereinafter relates only to provisions of commutation, remission etc. as contained in the Code of Criminal Procedure and the Prisons Acts and the Rules framed by the different States.

12. Relying upon the judgment of the Privy Council in AIR 1945 64 (Privy Council) Cri LJ 626 and Gopal Vinayak's case (supra), the Court commuted the death sentence to life imprisonment and further directed that the convict must not be released from the prison for the rest of his life for specific term as specified in the order.

13. In [Ranjit Singh Vs. Union Territory of Chandigarh and another](#), , the Hon"ble Supreme Court has held as under:

8.....the earlier sentence of imprisonment for life being understood to mean as sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is dated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the Court's direction the subsequent sentence will not run concurrently, but consecutively. The only situation in which no direction of the Court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible

controversy based on sub-section (1) if there can be no express direction of the Court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the Court directs it to run concurrently. The meaning and purpose of sub-Sections (1) & (2) of Section 427 and the object of enacting sub-section (2) is, therefore, clear.

14. In view of the said observation, the court proceeded to hold that any remission or commutation in respect of the earlier sentence granted to a convict is not in respect of the second sentence. It held:

9....any remission or commutation is granted in respect of the earlier sentence of life imprisonment alone then the benefit of that remission or commutation will not ipso facto be available in respect of the subsequent sentence of life imprisonment which would continue to be unaffected by the remission or commutation in respect of the earlier sentence alone. In other words, the operation of the superimposed subsequent sentence, of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority. The consequence is that the petitioner would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence is also granted to the petitioner. It is in this manner that the direction is given for the two sentences of life imprisonment not to run concurrently.

15. I [State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali](#), it was held that the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. It was held to the following effect:

Thus, the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. Even if the sentence in one of those two cases is not imprisonment for life but only a lesser term the convergence will take place and the post-convergence flow would be through the same channel. In all other cases, it is left to the Court to decide whether the sentence in two different convictions should merge into one period or not. If no order is passed by the Court the two sentences would run one after the other. No doubt Section 427 is intended to provide amelioration to the prisoner. When such amelioration is a statutory operation in cases falling under the second sub-section it is a matter of choice for the court when the cases fall within the first subsection. Nonetheless, the entire section is aimed at providing amelioration to a prisoner. Thus, a penumbra of the succeeding section can be glimpsed through the former provision.

16. In Ranjit Singh's case (supra), it has been held that the second conviction and sentence is superimposition over the first sentence, whereas in Najakat Alia Mubarak Ali's case (supra), the Court has used the expression convergence of the first sentence. It may be noticed that the judgment in Ranjit Singh's case was not brought to the notice of the Court in Najakat alias Mubarak Ali's case (supra), but the expression "super-imposition" used in Ranjit Singh's case and "convergence" in Najakat alias Mubarak Ali's case (supra), are not contradictory to each other and leads to same inference in law.

17. In Shamsher Singh v. State of Punjab, 2011(3) RCR (Cri) 119, a Division Bench of this Court modified the judgment in appeal and held that the subsequent sentence of life imprisonment shall run concurrently with the sentence of life imprisonment awarded in the earlier case, from the date the convict was arrested in the later case. The Court observed to the following effect:

4.....It is well settled by now that imprisonment for life is a sentence for the remainder life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority and a person has only one life span. There is no fixed term in a life sentence and superimposing another life sentence on a subsequent conviction will be a futile exercise since the offender has already been sentenced to imprisonment for life. The problem can arise if the earlier sentence of imprisonment for life is commuted or remitted by the appropriate authority as in that eventuality the sentence of life imprisonment awarded subsequently, if both the offences were committed within a short span of time, may also, in a way, practically come to an end.

18. A single Bench of this Court in Baghail Singh v. State of Punjab, 2004 (4) RCR (Cri) 518, held that where the accused was already undergoing imprisonment for life when he was convicted and sentenced to undergo imprisonment for 10 years in the subsequent case, it has been held that after remission, the life imprisonment becomes imprisonment for a term. The Court observed as under:

5. Interpretation of Section 427(2) Cr.P.C. has to be done in such a way that it harmonises with the intention of the Legislature and with the true meaning of the words used therein. When a person is undergoing a sentence of imprisonment for life, it means that his sentence shall continue till his life ends. It is only on the basis of remission of sentence or a commutation of sentence that convicts undergoing imprisonment for life are released without completing their whole life in custody. When courts award imprisonment for life it means just that - imprisonment for life, nothing less. Therefore, the remissions or commutations under Sections 432 to 433 are not judicial verdicts in the true sense. A sentence of imprisonment for life may be reduced to a sentence for a term of 10 years or 14 years as the case may be, by remission or commutation. Nevertheless, imprisonment for life remains an imprisonment for life. It is actually stating the obvious that all subsequent sentences shall run concurrently with a previous imprisonment for life because subsequent

sentences can never be consecutive with a previous imprisonment for life -- there cannot be more than one life, even for cats.

19. In the aforesaid case, the Court held that the moment the first sentence is remitted or commuted, it becomes an imprisonment for a term and the case must be taken out of the purview of sub-section (2) of Section 427 and kept in sub-section (1) of Section 427. The said view finds its echo in the subsequent judgment in Jaswant Singh's case (supra).

20. In [Bhagirath Vs. Delhi Administration](#), a question arose whether a convict is entitled to set off the period of detention undergone as an undertrial prisoner against the sentence of life imprisonment. The Court held that since the life imprisonment is for natural life, therefore, the question of setting off the period of detention will arise only if an order is passed by the appropriate authority u/s 432 or 433 of the Code. In the absence of such order, the imprisonment for life would mean according to Rule in Gopal Vinayak Godse's case, imprisonment for the remainder of the life.

21. In [Ram Deo Chauhan @ Raj Nath Vs. State of Assam](#), the Supreme Court examined sovereign power of remission u/s 432 and held to the following effect:

57....The section confines the power of the Government to the suspension of the execution of the sentence or remission of the whole or any part of the punishment. Section 432 of the Code gives no power to the Government to revise the judgment of the Court. It only provides power of remitting the sentence. Remission of punishment assumes the correctness of the conviction and only reduces punishment in part or whole. The word "remit" as used in Section 432 is not a term of art. Some of the meanings of the word "remit" are "to pardon, to refrain from inflicting, to give up". It is, therefore, no obstacle in the way of the President or Governor, as the case may be in remitting the sentence of death. A remission of sentence does not mean acquittal.

22. The expression remission or commutation of sentences find mention in Sections 432 and 433 of the Code. Such power of remission or commutation is different from the sovereign power conferred by the Constitution and contained in Articles 72/161 of the Constitution. The remission u/s 433 of the Code has to be applied by a convict. Such remission is granted subject to conditions contained in the order granting remission. In the event of violation of any condition, the convict can be called upon to undergo the remaining sentence. Therefore, a convict sentenced to undergo life imprisonment even though released after granting remission is still bound by the conditions granting remission. Therefore, the grant of remission does not make life imprisonment to imprisonment for a term, as has been observed in Baghail Singh's and Jaswant Singh's cases (supra). The said judgments do not lay down correct law.

23. The power to commute the sentence is contained in Section 433 of the Code. Such power to commute the sentence can be exercised without the consent of the

person sentenced. It permits the appropriate Government to commute the sentence of death for any other punishment provided by the IPC; sentence of imprisonment for life to the imprisonment for a term not exceeding 14 years or for fine of sentence; a sentence for rigorous imprisonment to simple imprisonment for any term to which that person might have been sentenced, or for fine; and a sentence of simple imprisonment, for fine. When the appropriate Government commutes sentence of life imprisonment u/s 433 of the Code, it will be a sentence for a fixed term. In view of the Full Bench judgment of this Court in Jang Singh v. State of Punjab, 2008 (1) RCR (Cri) 323 and judgment in [Ranjit Singh Vs. Union Territory of Chandigarh and another,](#), the term of imprisonment for such convict shall be governed by sub-section (1) of Section 427 and not by sub-section (2) of Section 427 of the Code.

24. As per Explanation to Section 9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, punishment imposed u/s 9 is in addition to the punishment awarded to the prisoner for the offences, he was convicted. Therefore, the punishment under the aforesaid Act, would be overriding the period of conviction contemplated u/s 427 of the Code. The successor Act in the State of Haryana has similar provisions. Therefore, the sentence for the offences under the Punjab or Haryana Act would be in addition to the punishments to be undergone by the convict.

25. We may notice an argument raised by learned counsel for the State that the present petition is not maintainable. We do not find any merit in the said argument. The judgment in [M.R. Kudva Vs. State of Andhra Pradesh,](#)) relied upon by the learned counsel, is in a petition filed u/s 482 of the Code. In the aforesaid case, the Courts have not ordered running of the sentences concurrently in the cases falling within scope of Section 427(1) of the Code. It was in these circumstances, the Court held that jurisdiction of the High Court cannot be invoked for annulling the order. The sentencing was within the jurisdiction of Court. In the present case, the question is interpretation of Section 427(2) of the Code, which has the effect on the legality of the detention of the Petitioner. Therefore, the present petition cannot be said to be not maintainable.

26. Keeping in view the above discussion, in respect of the first question, we hold that the sentence of imprisonment for life is imprisonment for whole of the remaining period of the convicted person's natural life but the release of such convict by grating remission of the remaining sentence, u/s 432 of the Code, his remaining sentence is not wiped out. It only effects the execution of the sentence and frees the convicted person from his liability to undergo full term of imprisonment inflicted by the Court. Such remission does not render the life imprisonment into imprisonment of a term.

27. In respect of the second question, we hold that the second sentence is superimposed upon the first sentence as laid down in [Ranjit Singh Vs. Union](#)

[Territory of Chandigarh and another](#), or the second sentence converge into the first sentence as laid down in [State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali](#). The fact of remission of the remaining sentence of the life imprisonment cannot be taken into consideration in respect of the second sentence. In respect of second sentence, the period of sentence cannot be earlier to the date of commission of the second offence. Such period is to be counted from the day, the convict was arrested in the second case. Thus, though the sentence in the second case imposed upon a convict is to run concurrently with the first sentence of life imprisonment, but it will commence from the date of his arrest in the second case. The expression "concurrently" has to be so understood. In view of the finding recorded, the present writ petition is disposed of with direction to the State Government to determine the period of sentence accordingly.