

(1992) 11 KL CK 0033

High Court Of Kerala

Case No: O.P. No. 10269 of 1992 V

S. Sudha and Others

APPELLANT

Vs

The Superintendent, Open
Prison and Others

RESPONDENT

Date of Decision: Nov. 5, 1992

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 428, 432, 433, 433A
- Kerala Prisons Rules, 1958 - Rule 543, 544, 545, 545A
- Penal Code, 1860 (IPC) - Section 57

Citation: (1993) CriLJ 2630

Hon'ble Judges: K.T. Thomas, J

Bench: Single Bench

Advocate: Ashok M. Cherian, for the Appellant; C.K. Abdul Rahim, Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.T. Thomas, J.

Petitioners are the kith and kin of some of those who are languishing inside the prison walls for over a decade now. Their thirst for freedom has reached the brim, but they think that the jail authorities are unhelpful. Petitioners have taken up their cause.

2. According to the petitioners, the prisoners, whose cause they espouse, have already undergone incarceration for more than 14 years including "earned jail remissions" as well as the "set off" of the remand period against the sentence. Petitioners, therefore, plea that it is high time that the Jail Advisory Board (for short "the Board) should be apprised of the cases relating to those prisoners so that the

Board can consider the question of their release. A writ of mandamus is also prayed for the direct Government of Kerala to pass orders on the recommendation of the Board.

3. All the prisoners involved in the Original petition are convicts of the offence punishable with death or imprisonment for life, but were sentenced to imprisonment for life. They are confined in open prison. Under Rules 543 and 544 of the Kerala Prisons Rules, 1958 (for short "the Rules") such of those convicts who have completed 2/3 portion of their sentence (including set off and remission) are entitled to have their cases considered by the Board. The Superintendent of the Open Prison, in his report, submitted that with the introduction of Section 433A of the Code of Criminal Procedure (for short "the Code") such prisoners are not entitled to release before the expiry of the period of fourteen years of imprisonment excluding remission and set off.

4. A table has been supplied by the Superintendent of the Open Prison showing the period of set off, remission and actual imprisonment in respect of all the seven prisoners. The table shows further that the seven prisoners have undergone imprisonment for a period less than 14 years, if the periods of remission and set off are excluded. If such periods are included, all the seven prisoners have completed more than 14 years.

5. One of the functions of the Board as enjoined by Rule 545 of the Rules is that in the case of "lifers" (i.e., sentenced to life imprisonment) the Board should submit recommendations with a view to their release, without injury to the community, if the prisoner has served 2/3 of his sentence including remission, provided such period is not less than 2 1/2 years including remission. Rule 545-A provides that the cases of life convicts and other prisoners whose aggregate sentence is more than 20 years shall be submitted before Government to enable the Government to pass special orders for their premature release or for release on completion of 14 years of sentence including remission in each case.

6. There can be no possible dispute now with the pronouncement of the decision rendered by a Constitution Bench of the Supreme Court in [Bhagirath Vs. Delhi Administration](#), that a lifer is entitled to the benefit of set off envisaged in Section 428 of the Code. Hence in calculating the period of 14 years mentioned in Section 433A of the Code every prisoner who was in detention during the remission period as well as pre-trial period is entitled to have such period included in the fourteen years" term. If so, the only question which falls for consideration now is whether the periods of remissions are also liable to be included in computing the 14 years as envisaged in Section 433A of the Code. The provision reads thus:

433-A. Restriction on powers of remission of communication 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 law, or where a sentence of death imposed on a person has been committed u/s 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.

The said provision was introduced in the Code by the Code of Criminal Procedure (Amendment) Act, 1978. A reading of the objects and reasons for introducing the section would unmistakably reveal that the Joint Committee on Indian Penal Code Amendment Bill, 1972 had suggested in favour of insertion of a proviso to Section 57 of the Indian Penal Code, to the effect that a person who has been sentenced to death and whose death sentence has been commuted into that of life imprisonment and also a person who has been sentenced to life imprisonment for a capital offence, should undergo actual imprisonment of 14 years in jail. Parliament in its wisdom thought it more appropriate to insert the same rule in the Code of Criminal Procedure. Thus the suggestion made by the Joint Committee has been inserted into the Code through Section 433A.

7. Constitutional validity of the new Section was challenged by "a procession of life convicts -- well over 2000 strong" before the Supreme Court. The Constitution Bench of the Supreme Court in [Maru Ram and Others Vs. Union of India \(UOI\) and Others](#), upheld its validity. The Bench pointed out that Section 433A is only prospective and hence its embargo would apply only to those who have been convicted and sentenced after 18-12-1978. The Bench declared the law thus:

This embargo directs that commutation in such cases shall not reduce the actual duration of imprisonment below 14 years. Whether that Section suffers from any fatal constitutional infirmity is another matter but it does declare emphatically an imperative intent to keep imprisoned for at least 14 years those who fall within the sinister categories spelt out in the operative part of Section 433A.

The said interpretation has not been dissented from by the Supreme Court. In a recent decision [Ashok Kumar alias Golu Vs. Union of India and others](#), a bench of three Judges of the Supreme Court reiterated the ratio laid down in Maru Ram's case. The bench further observed thus : "The language of Section 433A is clear and unambiguous and does not call for extrinsic aid for its interpretation. Reading down or interpreting Section 433A of the Code with the aid of the changes proposed by the Penal Code (Amendment) Bill would tantamount to treating the provisions of the said Bill as forming part of the Penal Code which is clearly impermissible. To put such an interpretation with the aid of such extrinsic material would result in violence to the plain language of Section 433A.

8. Thus the position stands settled that in counting the period of fourteen years (envisaged in Section 433A of the Code) the prisoner is not entitled to have the remitted period included therein.

9. Be that as it may, respondents 1 and 2 have to place cases of those "lifers", who have completed 14 years including the period of set off provided in Section 428 of the Code, before the Board. It is made clear that if none of the prisoners has completed such term, in the manner indicated above, it is not necessary for the respondents to consider the question of their release until they complete the said period.

10. Original Petition is disposed of with the above observations.