
(1995) 06 PAT CK 0018

Patna High Court

Case No: Criminal Writ Jurisdiction Case No. 661 of 1994

Hari Narain Singh and
Others

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: June 29, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 427, 427(2)
- Penal Code, 1860 (IPC) - Section 149, 302, 57

Citation: (1995) 2 PLJR 801

Hon'ble Judges: S.K. Homchaudhuri, J; Narayan Roy, J

Bench: Division Bench

Advocate: Yogesh Chandra Verma, Tej Narain Singh, Satyendra Pd. Singh and Jai Prakash Singh, for the Appellant; Dev Narain Yadav, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Homchaudhuri, J.

In this petition under Articles 226 and 227 of the Constitution of India, the Petitioners have approached this Court for issue of a writ in the nature of mandamus or any other appropriate writ commanding the Respondents to release the Petitioners forthwith holding that these sentences awarded to the Petitioners in Sessions Trial No. 119 of 1977 and Sessions Trial No. 280 of 1985 have to run concurrently and not consecutively.

2. The Petitioners had been convicted u/s 302/149 I.P.C. and other, offences in Sessions Trial No. 119 of 1977 and sentenced to undergo rigorous imprisonment for life. The judgment of conviction and sentences passed against them was confirmed by the High Court in Cr. Appeal No. 308 of 1979 and a SLP (Criminal) No. 684 of 1985 against the judgment and order of this Court before the Supreme Court, was also dismissed. While

serving sentence of R.I. for life, the Petitioners were tried in Sessions Trial No. 280 of 1985 on the charge of committing murder which took place on 25th of August, 1982. By judgment passed in Sessions Trial No. 280 of 1985, the learned Session Judge convicted the Petitioner-Parmanand Singh and Shyam Singh u/s 302 I.P.C. and sentenced them to death. The other four Petitioners were convicted u/s 302/149 I.P.C. and each of them was sentenced to undergo R.I. for life. In Death Reference Case No. 2 of 1985 and other appeals preferred against the judgment of conviction and sentence, this Court affirmed the conviction of the Petitioners but modified the sentence of death passed by the Sessions Judge against the Petitioners-Parmanand Singh and Shyam Singh to life imprisonment. The appeal preferred against the judgment passed by the High Court in a SLP in the Supreme Court was rejected.

3. Heard learned Counsel for the Petitioners and learned Government Advocate.

4. Learned Counsel for the Petitioners has submitted that under the mandatory provision of Sub-section (2) of Section 427 Code of Criminal Procedure, as the Petitioners having already been sentenced to undergo life imprisonment in Sessions Trial No. 119 of 1977 sentences passed subsequently in Sessions Trial No. 280 of 1985 should run concurrently and not consecutively. According to the learned Counsel for the Petitioners the sentence passed in subsequent Sessions Trial No. 280 of 1985 should be treated to have run concurrently with retrospective effect from the date of commencement of the sentence passed in Sessions Trial No. 119 of 1977.

5. Learned Counsel for the Petitioners has further submitted that all the Petitioners had been in jail for a period of more than 12 years and that taking into account the period of remission of sentence granted to them because of their good conduct in Jail, each of them deemed to have served sentence for a period exceeding 14 years and as such the Petitioners are entitled to be released from the Jail. But the Respondents are arbitrarily and illegally refusing to release the Petitioners from Jail after they have completed 14 years of imprisonment. Learned Counsel for the Petitioners has further submitted that the inaction of the Respondents in not releasing the Petitioners from the Jail after they deemed to have served 14 years of imprisonment, is arbitrary and discriminatory in as much as other convicts sentenced to R.I. for life are being released by Respondents on serving sentence for a period of 14 years including the period of remission.

6. I have considered the submission made on behalf of the Petitioners and pursued the materials placed before us. The learned Counsel for the Petitioners is right in submitting that under mandatory provision of Sub-section (2) of Section 427 Code of Criminal Procedure the subsequent sentences to undergo R.I. for life passed in Sessions Trial No. 280 of 1985 while the Petitioners were serving the sentences for life passed in Sessions Trial No. 119 of 1977, are to run concurrently and not consecutively. However, I find it difficult to accept the contention of the learned Counsel for the Petitioners that the subsequent sentence should be treated to have run retrospectively from the date of commencement of the sentence of life imprisonment passed earlier in Sessions Trial No.

119 of 1977. On perusal of the provision of Section 427 Code of Criminal Procedure. I have no hesitation to hold that when a person already undergoing sentence of imprisonment for life is sentenced to subsequent conviction to imprisonment, the subsequent sentence should run concurrently with previous sentence prospectively from the date the subsequent sentence comes into operation after passing thereof. That apart Section 57 I.P.C. provides that in calculating fraction of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

7. For the reasons stated above the petition is without merit and is dismissed.

Narayan Roy, J.

8. I agree.