

(2005) 12 CAL CK 0003

Calcutta High Court

Case No: C.R.R. 1933 of 2005

Sohorab Molla

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Dec. 9, 2005

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 28, 389(4), 407, 418, 419
- Penal Code, 1860 (IPC) - Section 302, 304

Citation: (2006) 1 ILR (Cal) 123

Hon'ble Judges: P.N. Sinha, J

Bench: Single Bench

Advocate: Subrata Talukdar, Koushik Banerjee and Rituparna De, for the Appellant;
Swapan Kumar Mallick, for the Respondent

Judgement

P.N. Sinha, J.

This revisional application has been filed by the Petitioners praying for direction of set off the period spent by them in custody as under trial prisoner from the period of sentence imposed on them by the learned Additional Sessions Judge, 6th Court, Alipore in ST. No. 4 (1) 1983 by judgment and order of conviction dated 3.8.83 and also praying for transfer of records of G. R. case No. 1277 of 1982 from Barasat to the Court of the learned Additional Sessions Judge, 6th court at Alipore.

2. Mr. Talukdar, learned advocate for the Petitioners submitted that the Petitioners were convicted and sentenced to suffer imprisonment for life by the learned Additional Sessions Judge, 6th Court, Alipore in Sessions Case No. 14 (12) 1982 which was renumbered as Sessions Trial No. S. T. No. 4 (1) 1983 (G. R. Case No. 1277 of 1982). They preferred appeal against conviction and sentence but the appeal was dismissed by this Court and finally the conviction and sentence was upheld by the Hon'ble supreme Court. Though the Petitioners were convicted and sentenced to

suffer imprisonment for life they are now being produced as under trial before the learned Additional Sessions Judge, 4th Court, Barasat. Section 418 of the Code of Criminal Procedure (in short Code) deals with execution of sentence of imprisonment. It is the duty of the Court while passing order of sentence to forward an warrant to the jail in order to enable the convict accused to undergo his period of sentence. The learned Additional Sessions Judge, 6th Court, Alipore failed to carry out his duty in terms of Section 418 of the Code. It appears that there was lack of communication between the Court convicting the accused Petitioners and the detaining authorities as evidenced by the fact that till date the Petitioners are being produced as under trials.

3. Mr. Talukdar further submitted that it is trite position of law that the sentence of imprisonment must commence from the time it is passed. It terms of Sections 418, 419 and 420 of the Code Pursuant to a sentence of imprisonment, the mode of execution of the said sentence of imprisonment is clearly specified and an onus is cast upon the Court to ensure that the sentence is correctly executed in terms of the provisions of the Code. Section 28 of the Code prescribes that where an accused has on conviction been sentenced to imprisonment for a term, not being imprisonment in default of fine, the period of detention, if any, undergone by him during investigation, inquiry or trial of the said case and before date of conviction shall be set off against terms of imprisonment imposed on him and he shall undergo imprisonment subject to the reminder of the term of imprisonment, if any.

4. Mr. Talukdar also submitted that prayer (a) and (b) at pages 15 and 16 of the revisional application are mutually exclusive. Vide prayer (a) the revisional Court by exercise of its jurisdiction is competent to correct the errors made by subordinate Court. Vide prayer (b) of the revisional application this Court is competent to direct the learned Court below to pass appropriate order in terms of the guidelines laid down by the revisional Court. u/s 389(4) of the Code the sentence of imprisonment passed by the learned Sessions Court which is ultimately contested in the appeal shall be reckoned with to compute the term for which the accused Appellant is sentenced by excluding the time during which the accused Appellant may have been released pending herein the appeal.

5. Mr. Talukdar also submitted that continued custody of the records in the Court of the learned Additional Sessions Judge, 4th Court, Barasat will cause serious miscarriage of justice to the Petitioners and they are unable to file proper application before the learned Additional Sessions Judge, 6th Court, Alipore for communication of their respective period of detention as under trial. If the Petitioners are still continued to be treated as under trials in spite of their conviction and sentence of life imprisonment, they will suffer greater length of judicial custody in the post sentencing period than what is warranted by law. Accordingly, in exercise of jurisdiction of this Court u/s 407 of the Code read with power under Article 227 of the Constitution and inherent power u/s 482 of the Code, this Court should transfer

records of G. R. Case No. 1277/82 and records of S.T. case No. 3 (12) 2000 from the Court of the learned Additional Sessions Judge, 4th Court, Barasat to the Court of the learned Additional Sessions Judge, 6th Court, Alipore so that the Petitioners can apply before the said Court to commute their period of detention as under trial prisoner from their total period of life imprisonment. More so, this Court is competent to pass necessary direction upon the learned Additional Sessions Judge, 6th Court, Alipore to send proper jail warrant indicating period of set off applicable to the Petitioners while they were in custody before conviction as under trial prisoner against the terms of imprisonment imposed on them after conviction. In support of his contention Mr. Talukdar cited the decisions in Hardev Singh and Another Vs. The State of Punjab, and Chella Vs. The State of Rajasthan,

6. Mr. S. K. Mallick, learned advocate appearing for the State submitted that this is not a proper application to exercise inherent power of this Court u/s 482 of the Code. Relating to period of set off or commutation of the period of sentence imposed on the Petitioners this Court should not pass any order. It is unthinkable that the learned Additional Sessions Judge who imposed sentence of life imprisonment on the Petitioners did not pass order of set off. Relating to communication, only the State Government u/s 43 of the Code can pass necessary order and this Court cannot pass any order relating to commutation of sentence. The Government is the authority which has the power to suspend or remit sentence. There is no merit in the revisional application and it should be dismissed. However, for ends of justice the records of the G. R. Case No. 1277/82 may be sent to the Court of the learned Additional Sessions Judge, 6th Court, Alipore for consideration whether at the time of sending jail warrant to the concerned jail authorities direction for set off was made nor not. In support of his contention Mr. Mallick cited a decision in Suresh Chandra v. State of U.P. 2005 S.C.C. (Cri.) 1364.

7. After perusing the contents of the revisional application and annexures made thereto and considering the submissions of the learned advocates for the parties it appears to me that the point involved in this revisional application is, whether there was direction by the learned trial Court for set off the period of detention undergone by the present Petitioners as under trial prisoners. The present Petitioners were convicted by the learned Additional Sessions Judge, 6th Court, Alipore in Sessions Case No. 14 (12) 1982 (Sessions Trial No. 4 (1) 1983) u/s 302 of I.P.C. and they were sentenced to suffer imprisonment for life. The order of conviction and sentence was affirmed in appeal by this Court and subsequently by the Hon'ble Supreme Court. The Petitioners have now raised the question that, though they were convicted and sentenced to imprisonment for life they are being produced regularly before the learned Additional sessions Judge, 4th Court, Barasat. Their main contention is that the learned trial Court who convicted them and sentenced them to suffer imprisonment for life did not pass any order for set off u/s 428 of the Code.

8. There were divergent views as to whether a person who has been sentenced to suffer imprisonment for life is entitled to set off. Old view was that Section 428 of the Code prescribes set off against imprisonment for a "term", and "imprisonment for life" cannot be regarded as imprisonment for "term", and so, set off is not available to an accused who has been sentenced to suffer imprisonment for life. The decisions in *Hardev Sing v. State of Punjab* (Supra) and *Chella v. State of Rajasthan* (Supra) cited by the learned advocate for the Petitioners are not at all applicable in the present matter. The decision in *Chella*² was not at all concerning sentence for imprisonment for life u/s 302 of I.P.C. and accordingly this decision does not help the Petitioners. In *Hardev Sing*(,) there was conviction by the learned was charge u/s 302 of I.P.C. In appeal the High Court convicted the Appellant u/s 302 of I.P.C. In the appeal preferred by the Appellant before the Hon"ble Apex Court the conviction was modified and the Appellant was sentenced to suffer imprisonment for seven years u/s 304 Part-1 of I.P.C. There was direction by the Hon"ble Supreme Court for set of but, the principle of law relating to availability of set off to an accused convicted u/s 302 of I.P.C. and sentenced to suffer imprisonment for life was not properly laid down.

9. Over this point of law finally a Constitution Bench of the Hon"ble Apex Court in *Bhagirath Vs. Delhi Administration*, laid down the principles of law relating to set off to a person sentenced to imprisonment for life. In that decision the Supreme Court laid down that, a convict who is sentenced to imprisonment for life is entitled to set off period of detention undergone as under trial prisoner subject to provisions of Section 433A of the Code and provided competent authority passes order under Sections 432 or 433 of the Code. In view of the principle of law laid down by the Supreme Court persons sentenced to imprisonment for life is entitled to set off the period of detention undergone as under trial prisoner subject to the provisions of Section 433A and that depends, upon the order passed by the competent authority under Sections 432 or 433 of the Code.

10. Recently, the Hon~~ble~~ Supreme Court in *Mr. Munna v. Union of India* AIR 2005 S.C. W. 4524 clearly observed that "imprisonment for life" is not equivalent to imprisonment for 14 or 20 years. "Imprisonment for life" is to be treated as "rigorous imprisonment for life". In the instant application the Petitioners have actually prayed for commutation of sentence and this Court lacks jurisdiction to pass any order of commutation of sentence in respect of accused sentenced to suffer imprisonment for life. In view of the above decision in *Mr. Munna* "imprisonment for life" means "rigorous imprisonment for life". Only the government or the competent authority can pass necessary direction for commutation/remission of sentence.

11. In another decision the Hon"ble Apex Court in *Suresh Chandra v. State of U.P.* AIR 2005 S.C. W. 4524 observed that in respect of commutation/remission of sentence u/s 432/433 of the Code the Court has no power to reduce sentence of life imprisonment. Only the State Government/governor of the concerned State can

pass necessary direction for commutation/remission of sentence. In *Bhagirath v. Delhi Administration* (Supra) where the Supreme Court for the first time indicated that a person sentenced to imprisonment for life is entitled to set off but, in that decision also, the Supreme Court gave a rider that the said period of set off is available subject to the provisions of Section 433A of the Code and where competent authority passes order under Sections 432 or 433 of the Code.

12. In view of the discussion made above this Court cannot pass any direction relating to commutation/ remission of sentence. In *Bhagirath v. Delhi Administration* where the Supreme Court for the first time indicated that a person sentenced to imprisonment for life is entitled to set off but, in that decision also, the Supreme Court gave a rider that the said period of set off is available subject to the provisions of Section 433A of the Code and where competent authority passes order under Sections 432 or 433 of the Code.

12.1 In view of the discussion made above this Court cannot pass any direction relating to commutation/ remission of sentence of the Petitioners who were sentenced to suffer imprisonment for life. Set off for the period undergone as under trial prisoners is available to them subject to the provisions of Section 433A and in view of the order of competent authority under Sections 432 or 433 of the Code. The jail authorities are definitely aware of the provisions of commutation and relaxation in sentence on the basis of the conduct of convicted prisoners and other considerations subject to provisions of West Bengal Jail Manual. But the final authority is the government and the Governor who can pass order for commutation/remission of sentence. A Court has no power to pass any order under Sections 432/433A of the Code. The prayers made by the Petitioners for direction to set off the period already undergone by them during trial may be considered by the concerned jail authorities in consultation with government. The Petitioners are at liberty to approach the concerned government/Governor for remission/commutation of sentence. There cannot be any direction by this Court as prayed for by the Petitioners and the prayers made by Petitioners in this revisional application are not tenable and stand rejected.

13. This Court only directs that the learned Additional Sessions Judge, 6th, Alipore will go through the records and see what order was passed when the Petitioners were sentenced to imprisonment for life in the aforesaid sessions trial. The learned Additional Sessions Judge, 4th Court, Barasat will check the record of the case and pass necessary order in this respect because an accused who has already been convicted and sentenced to (sic) imprisonment for life, cannot be produced in Court regularly with other accused persons who are facing the trial unless the life convict is wanted in any other case. If for passing any direction the record is required, the learned Additional Sessions Judge, 6th Court, Alipore will call for the record from learned Additional Sessions Judge. 4th Court, Barasat in view of this direction of this Court, Barasat from Court of the learned Additional Sessions Judge, 6th Court,

Alipore he would comply the same in view of the direction of this Court in this revisional application. After checking the record both the learned Courts below named above would pass necessary order and would see that a life convict is not unnecessarily produced in Court unless wanted in any other case. Learned Additional Sessions Judge, 6th, Alipore would also check the date of conviction of the Petitioners as in this revisional application date of conviction has been shown as 3.8.82 in the body of application and 3.8.83 in the cause title whereas S. T. No. has been mentioned as 4 (1) 1983. If the S. T. No. is of the year 1983 how can there be conviction on 3.8.82? There must be some mistake made by the Petitioners relating to dates in this application which requires clarification and the learned Judge would make the position clear and may send necessary instruction to concerned Correctional Home. With the aforesaid observations the revisional application having no merit fails and is disposed of in the light of the order made above.

14. Send a copy of this order to the learned Additional Sessions Judge, 6th Court, Alipore and learned Additional Sessions Judge, 4th Court, Barasat for information and necessary action.

S.C. Application disposed of with direction

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Urgent Xerox certified copy be given to the parties, If applied for, expeditiously.