
Pradeep Kashyap Vs State of C.G.

Criminal Misc. Petition No. 750 of 2012

Court: Chhattisgarh High Court

Date of Decision: Oct. 5, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 28, 4, 428, 482, 5#Juvenile Justice (Care and Protection of Children) Act, 2000 â€” Section 15(1)(g), 16#Juvenile Justice Act, 1986 â€” Section 15, 15(1), 15(1)(g), 16#Penal Code, 1860 (IPC) â€” Section 302, 307, 34#Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3(1)(x)

Citation: (2013) 1 CG.L.R.W. 101 : (2012) 4 CGBCLJ 528

Hon'ble Judges: T.P. Sharma, J

Bench: Division Bench

Advocate: Indira Tripathi, for the Appellant; Qamrul Aziz, Panel Lawyer for the State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.P. Sharma, J.

By this petition u/s 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), the petitioner has challenged

legality and propriety of the order dated 30-8-2012 passed by the Juvenile Justice Board, Bilaspur in an unregistered criminal case, whereby the

Juvenile Justice Board has denied the claim of set-off of detention of juvenile during the pendency of enquiry of the offence. I have heard learned

counsel for the parties, perused the order impugned, copy of the judgment dated 21-3-2012 passed by the Juvenile Justice Board, Bilaspur in

Criminal Case No. 338/2009, copy of the judgment dated 12-6-2012 passed by the 2nd Additional Sessions Judge, Bilaspur in Criminal Appeal

No. 123/2011 affirming the judgment passed by the Juvenile Justice Board, and copy of the order dated 9-7-2012 passed by this Court in

Criminal Revision No. 416/2012.

2. As per the judgment dated 21-3-2012 passed by the Juvenile Justice Board, Bilaspur in Criminal Case No. 338/2009 and the judgment dated

12-6-2012 passed by the 2nd Additional Sessions Judge, Bilaspur in Criminal Appeal No. 123/2011, offence punishable under Sections 302 read

with Section 34, 307 read with Section 34 and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has

been enquired against the petitioner. As per para 42 of the judgment of the Juvenile Justice Board, the petitioner has been convicted u/s 302 read

with Section 34 of the IPC and directed to be detained in special home for three years u/s 15(1)(g) of the Juvenile Justice (Care and Protection of

Children) Act, 2000 (for short "the Act"), same has been affirmed by the appellate Court. The petitioner was arrested and detained on 16-9-2009

and is in continuous detention in special home.

3. Learned counsel for the petitioner submits that the petitioner is in custody since 16-9-2009, therefore, he has completed his period of detention

of three years on 15-9-2012. The petitioner is required to be released on 15-9-2012. The petitioner has filed application for set-off and release

before the Juvenile Justice Board, but same has been dismissed vide order dated 30-8-2012. Learned counsel further submits that the petitioner

has been convicted and directed for detention in special home for three years u/s 15(1)(g) of the Act. As per the proviso to subsection (2) of

Section 16 of the Act, his period of detention should not exceed in any case the maximum period provided u/s 15(1)(g) of the Act. The petitioner

has already completed the maximum period of detention of three years. Therefore, he is entitled for release with immediate effect. Learned counsel

also submits that the petitioner is entitled for set-off for the period of detention in accordance with Section 428 of the Code.

4. On the other hand, learned State counsel opposes the petition.

5. Undisputedly, the Juvenile Justice Board has enquired the commission of offence by the petitioner and has passed order for his detention in

special home u/s 15(1)(g) of the Act. Section 15(1) of the Act reads as follows: -

15. Order that may be passed regarding juvenile.--(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then,

notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit,

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling to the parent or the guardian and

the juvenile;

(b) direct the juvenile to participate in group counseling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation good conduct and placed under the care of any parent, guardian or other fit person, on such

parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of

the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-

being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to

do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

6. As per the proviso to sub-section (2) of Section 16 of the Act, the period of detention of the juvenile so ordered should not exceed the

maximum period provided u/s 15 of the Act. Section 16 of the Act reads thus,

16. Order that may not be passed against juvenile.--

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be

sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or

in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence

committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other

juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the

Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for

the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it

deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period provided u/s 15 of this Act.

7. In the present case, the petitioner is in custody since 16-9-2009. The Juvenile Justice Board has held that the petitioner has committed the

offence. Vide para 42 of the judgment dated 21-3-2012, the Juvenile Justice Board has convicted the petitioner u/s 302 read with Section 34 of

the IPC. Relevant part reads as follows: -

Vide para 43 of the said judgment, the Juvenile Justice Board has directed for his detention for three years. Relevant part reads thus,

8. Although the Juvenile Justice Board or the appellate Court has not passed any order for set-off of the period of detention of the petitioner.

Section 428 of the Code provides set-off for the period of detention which reads thus,

428. Period of detention undergone by the accused to be set-off against the sentence of imprisonment.-- Where an accused person has, on

conviction, been sentenced to imprisonment, for a term not being imprisonment in default of payment of fine, the period of detention, if any,

undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set-off against the term

of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted

to the remainder, if any, of the term of imprisonment imposed on him.

9. While dealing with the question of the purpose of Section 428 of the Code and requirement of set-off of the period of pre-detention, the

Supreme Court in the matter of State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali, has observed in paras 14 and 15 as follows: -

14. The purpose of Section 428 of the Code is also for advancing amelioration to the prisoner. We may point out that the section does not contain

any indication that if the prisoner was in jail as an under-trial prisoner in a second case the benefit envisaged in the section would be denied to him

in respect of the second case. However, learned counsel for the appellant contended that the words ""of the same case"" in the section would afford

sufficient indication that the benefit is intended to cover only for one case and not more than that. It must be remembered that the ideology

enshrined in Section 428 was introduced for the first time only in the Code of Criminal Procedure, 1973. For understanding the contours of the

legislative measure involved in that section, it is advantageous to have a look at the Objects and Reasons for bringing the above legislative

provision. We therefore extract the same here:

The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as under-trial prisoners

and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as under-trial prisoner. Indeed, there

may even be cases where such a person is acquitted. No doubt, sometimes Courts do take into account the period of detention undergone as

under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is

not always the case so that in many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence

or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today

are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs. The new clause provides for the setting off of the

period of detention as an under-trial prisoner against the sentence of imprisonment imposed on him. The Committee trusts that the provision

contained in the new clause would go a long way to mitigate the evil.

(Emphasis supplied)

15. The purpose is therefore clear that the convicted person is given the right to reckon the period of his sentence of imprisonment from the date he

was in jail as an under-trial prisoner. In other words, the period of his being in jail as an under-trial prisoner would be added as a part of the period

of imprisonment to which he is sentenced. We may now decipher the two requisites postulated in Section 428 of the Code.

(1) During the stage of investigation, enquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.

(2) He should have been sentenced to a term of imprisonment in that case.

(Emphasis supplied)

10. The very purpose and the ideology for introducing Section 428 of the Code first time in the Code of Criminal Procedure by the legislature was

to adjust the period of detention of the accused during the course of inquiry or trial.

11. The Juvenile Justice Board has enquired into the matter i.e. commission of offence by the petitioner and after finding of the commission of

offence by the petitioner/juvenile, the order of detention has been passed by the Juvenile Justice Board. No contra provision has been made in the

Juvenile Justice (Care and Protection of Children) Act, 2000, relating to application or non-application of the Code in case of inquiry or trial of

juvenile.

12. Section 4 of the Code provides the procedure of investigation, inquiry and trial of the offence punishable under the Indian Penal Code and

other Acts. Section 4 of the Code reads thus,

4. Trial of offences under the Indian Penal Code and other laws.--

(1) All offences under the Indian Penal Code 1860 (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to

the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise, dealt with according to the same provisions but

subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with

such offences.

13. Section 5 of the Code provides the area of effect of the Code. Section 5 reads thus,

5. Saving.--Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time

being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in

force.

14. The Juvenile Justice (Care and Protection of Children) Act, 2000 does not provide any provision for set-off of the period already spent by the

juvenile, but it also does not provide contrary provisions for drawing inference of non-application of the provisions of Section 428 of the Code.

Inter alia, in absence of contra provisions, the provisions of Section 428 of the Code in accordance with sub-section (2) of Section 4 and Section

5 of the Code would be applicable, in case of juvenile.

15. While dealing with the question of applicability of Section 428 of the Code, the Delhi High Court in the matter of Sunil Ojha Vs. The State of

Nct of Delhi, has held that Section 428 of the Code will apply in case of juvenile offender.

16. The Juvenile Justice Board has directed to send the juvenile to special home for three years. The petitioner has completed the period of three

years on 15-9-2012.

17. In the light of aforesaid discussion, the provisions of Section ""\$ 28 of the Code relating to set-off will also apply to a juvenile who has been

directed to be sent to special home u/s 15(1)(g) of the Act. While passing the order of detention u/s 15(1)(g) of the Act, the Juvenile Justice

Boards are required to pass appropriate order relating to such set-off. While denying set-off to the petitioner, the Juvenile Justice Board has

committed illegality. Consequently, the petition deserves to be allowed and is hereby allowed. The order impugned dated 30-8-2012 passed by

the Juvenile Justice Board, Bilaspur is hereby quashed. The petitioner is entitled for set-off for the period of detention. The petitioner is in detention

since 16-9-2009 and has completed his period of detention of three years on 15-9-2012. He be set at liberty at once and be released if not

required in any other case.