STATE OF HARYANA AND ORS. A

v.

BALWAN ETC.

SEPTEMBER 2, 1999

[G.T. NANAVATI AND S.N. PHUKAN JJ.] B

Criminal Procedure Code, 1973—Sections 432 433 and 433A—Life Convict—Pre-Mature release of—Remission does not vest right to be released prematurely—Rule or Scheme made by the Government for early release of life convict to be treated as guidelines for exercising of powers under Article 161 of the Constitution—Government policy or instructions in force at the time of conviction not applicable—Instead the policy decision or instructions which were in force at the time the case came up for consideration will apply—Held, if life convict has already undergone the sentence for a period mentioned in the remission scheme then he has only a right to have his case put up by the prison authorities before the Governor for considering his case under Article 161—Constitution of India—Article 161. C D

Respondent-life convicts filed writ petitions in the High Court for their pre-mature release. The High Court held that for deciding the entitlement for pre-mature release it was relevant to consider the government policy/ instructions in force at the time of conviction of the respondent by Trial Court and the State Government was not right in applying the subsequent policy decisions and instructions that were in force at the time when their case came up for consideration. The High Court directed the State Government to reconsider their applications. Hence these appeals. E F

Allowing these appeals, the Court

HELD : 1.1. By earning remissions a life convict does not acquire a right to be released pre-maturely. But if the Government has framed any rule or made a scheme for early release of such convicts then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution. [214-E] G

1.2 No life convict can validly claim that his case for pre-mature release should be considered according to the Government policy/instructions that were in force on the date on which he came to be convicted as he H

acquired a right to get remissions as declared and to be released accordingly. If according to the Government Policy/instructions in force at the relevant time the life convict has already undergone the sentence for a period mentioned in the policy decision/instructions, then the only right which he can be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. Ordinarily, when an authority is called upon to exercise its powers that will have to be done consistently with the legal position and the Government decision/instructions prevalent at that time. However, in order to see that a life convict does not lose any benefit available under the remission scheme which has to be regarded as the guideline, it would be just and proper to direct the State Government to treat the date on which his case is/was required to be put up before the Governor under Article 161 of the Constitution as the relevant date with reference to which the cases are to be considered. [214-E-H; 215-A]

Gopal Vinayak Godse v. *State of Maharashtra,* **[1961] 3 SCR 440 and** *Maru Ram* **v.** *Union of India,* **[1991] 1 SCC 107, relied on.**

1.3. The State Government is directed to reconsider the applications of the respondents who fall under the purview of the Section 433-A Cr.P.C. in accordance with the above legal position. [215-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 9 of 1998 Etc.

From the Judgment and Order dated 8.5.97 of the Punjab and Haryana High Court in Crl. M. No. 4336 of 1997.

Prem Malhotra, Rishi Malhotra, Jasbir Malik, (P. Parmeswaran, Ms. Kamini Jaiswal, Bhal Singh Malik, Ashok Kumar Singh, Manoj Swarup) (NP), S. Murlidhar, Ms. Neeru Vaid K.K. Mohan, Rao Ranjit and Ms. K. Sarada Devi for the appearing parties.

The Judgment of the Court was delivered by

G.T. NANAVATI, J. These appeals arise out of the judgments of the Punjab and Haryana High Court in writ partitions filed by "life convicts" for their pre-mature release. The High Court held that for deciding their entitlement for pre-mature release what was relevant to consider was the Government policy/instructions in force at the time of their conviction by the Trial Court

and that the State Government was not right in applying the subsequent policy decisions and instructions that were in force at the time when their cases were taken up for consideration. Taking this view the High Court allowed the writ petitions and directed the State Government to reconsider their applications. The view taken by the High Court is challenged in these appeals. As the point raised in these appeals is the same they were heard together and are disposed of by this common judgment

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It is not necessary to refer to the facts of these cases or the Government instructions issued prior to December 18,1978 when section 433-A came to be inserted into the Code of Criminal procedure. As laid down by this Court in *Maru Ram v. Union of India* [1991] 1 SCC 107 the power of the State Government under Sections 432 and 433 Cr. P.C. cannot now extend beyond what is provided by Section 433-A. The pre mature release of those convicted before that date had to be considered on the basis of the relevant Government instructions and the dates of their convictions. As regards those persons who have been convicted after Section 433-A came into force and thus fall within the purview of that section their cases will have to be considered consistently with Section 433-A and if life convicts are to be given a larger benefit it can only be done now under Articles 72 and 161 of the constitution.

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The State of Haryana was earlier considering pre mature release of life convicts in accordance with the rules framed and instructions issued by it in that behalf. To be consistent with the correct legal position emerging after the enactment of Section 433-A and the decision of this Court in *Maru Ram's* case, the State of Haryana modified its policy decision and instructions and declared that though the cases of life convicts for their pre mature release will still be governed by the instructions issued by it, in respect of those convicts who fall within the purview of Section 433-A their cases will be considered on individual basis and such cases will be put up to the Governor through the Minister of Jails and Chief Minister, with full background of the prisoners and recommendation of the State level committee, along with the copy of the judgment etc., for order under Article 161 of the Constitution of India. Neither the record of these cases nor the judgments of the High Court make it clear when the said change in the instructions was made but it appears that it was made either sometime in 1982 or latest on June 27, 1984. Obviously, the cases of the respondents-convicts, who are all life convicts and fall within the purview of Section 433-A were required to be considered in accordance with the modified instructions as they could have been released pre maturely only if an order in that behalf was passed by the state Government

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A in exercise of its power under Article 161 of the Constitution .

As held by this Court in *Gopal Vinayak Godse* v. *State of Maharashtra,* [1961] 3 SCR 440 and in *Maru Ram,* by earning remissions a life convict does not acquire a right to release, but release would follow only upon an order made under the Criminal Procedure Code by the appropriate Government or
B on a clemency order in exercise of power under Article 72 or 161 of the Constitution. This Court observed in *Maru Ram* as under:

> "Even if the remissions earned have totalled up to 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is
C passed , the prisoner cannot claim his liberty. The reason is that life sentence is nothing less than lifelong imprisonment. Moreover, the penalty then and now is this same -life term. And remission vests no right to release when the sentence is life imprisonment .....nor is any vested right to remission cancelled by compulsory 14-years jail
D life once we realise the truism that a life sentence is a sentence for a whole life".

Thus this Court in clear term has laid down that by earning remissions a life convict does not acquire a right to be released pre-maturaly. But if the Government has framed any rule or made a scheme for early release of such
E convicts then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution.

If this is the correct legal position then no life convict can validly contend that his case for pre-mature release should be considered according to the Government policy/instructions that were in force on the date on which
F he came to be convicted as he acquired a right to get remissions as declared and to be released accordingly. If according to the Government policy, instructions in force at the relevant time the life convict has already undergone the sentence for a period mentioned in the policy decision/instructions, then the only right which he can be said to have acquired is the right to have his
G case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. Ordinarily, when an authority is called upon to exercise its powers that will have to be done consistently with the legal position and the Government decision/instructions prevalent at that time. However, in order to see that a life convict does not loose any benefit available under the remission scheme
H which has to be regarded as the guideline, it would be just and proper to

direct the State Government to treat the date on which his case, is was required to be put up before the Governor under Article 161 of the Constitution as the relevant date with reference to which their cases are to be considered. The direction given by the High Court is not consistent with the decision of this Court in *Maru Ram* and the view which we are now taking and, therefore, it has to be set aside.

Accordingly, we allow these appeals, set aside the impugned judgments of the High Court. The State Government to re-consider the applications of the respondents, who fall under the purview of the Section 433-A Cr.P.C., in accordance with the correct legal position pointed out above. The State Government is directed to do so within 15 days from the date of receipt of the order of this Court.

N.J. Appeals allowed.