2022 INSC 535

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 937 OF 2022
(Arising out of SLP(Crl.)No.2426 OF 2022)

Bhola Kumhar … **Appellant**

VERSUS

State Of Chhattisgarh … **Respondents**

J U D G M E N T

C.T.RAVIKUMAR, J.

This Special Leave Petition is filed assailing the judgment and order dated 19.7.2018 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 110/2015 whereby and whereunder the conviction of the petitioner under Section 376 of the Indian Penal Code (for short 'IPC') was confirmed, but the sentence therefor, was reduced from 12 years to 7 years of rigorous imprisonment. Notice was issued on 04.03.2022. However, the said order and the subsequent order dated 21.03.2022 would reveal that it was, in troth, a limited one.

Leave Granted, accordingly.

A short prelude may be profitable for a proper consideration of the limited question (which we intend to go into) viz., whether the appellant is entitled to compensation for being kept in prison beyond the period of sentence and thereby sustained deprival of personal liberty.

1. While parting with the decision in **Rudul Sah's case**[1], this Court made a fervent hope -

> "This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Sahs in Bihar or elsewhere."
>
> (Emphasis added)

That was a case where Rudul Sah, despite being acquitted by the Court of Sessions, Muzaffarpur, Bihar,

1 Rudul Sah vs. State of Bihar & Anr. (1983) 4 SCC 141

on 03.06.1968 was released from the jail only on 16.10.1982, *idest*, more than 14 years since his acquittal. A Habeas Corpus petition was then filed before this Court seeking his release on the ground that his detention in the jail is unlawful. Ancillary reliefs were also sought for. When the said writ petition was taken up on 22.11.1982, the learned counsel for the State of Bihar informed this Court that the appellant was released from the jail. Though the prayer for release from the jail had become infructuous, this Court went on to consider the writ petition in regard to the other reliefs sought for and held that his detention after his acquittal was wholly unjustified. Thereupon, this Court held: "Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers." It is thereafter that the

said writ petition was disposed of in the aforesaid manner and with the fervent hope extracted above.

2. True that the appellant cannot be said to be another Rudul Sah inasmuch as his case never ended in his acquittal, but only in confirmation of conviction with reduction in period of imprisonment. Nonetheless, his case, to be unravelled hereinbelow, would reveal continuance of contumacious act on the part of a State Government (of course, its officials) in keeping a convict in incarceration beyond the period of sentence of imprisonment, unmindful of the final verdict of the Court. Such an act is injudicious and indefensible when his/her continued confinement is uncalled for in connection with any other case. This kind of levity cannot be viewed with laxity and it is time to consider it on the legit. Freedom of movement can be curtailed or taken

away by imprisonment or detention ordained after due process of law and in accordance with law. Imprisonment or detention *sans* sanction of law would violate Article 19(d) as well as the right under Article 21, of the Constitution of India.

3. In the case on hand the appellant Bhola Kumhar was made to stand the trial for the offence punishable under Section 376 of the Indian Penal Code (for short, “IPC”) and Sections 3(ii)(v) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He was convicted and sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.10,000/- for the conviction for offence punishable under Section 376 IPC. He took up the matter in appeal and in Criminal Appeal No.110/2015 the High Court of Chhattisgarh at Bilaspur confirmed

the conviction, but reduced his sentence of 12 years rigorous imprisonment to 7 years imprisonment. Further, it was ordered to compensate the victim in terms of the provisions under Section 357 of the Code of Criminal Procedure, 1973, by paying Rs.15,000/- within a period of six months. The sentence to pay fine of Rs.10,000/- and in default, to undergo imprisonment for one more year was ordered to remain as it is. The orders dated 4.3.2022 and 21.3.2022 passed in the SLP are reflective on the disinclination to interfere with the conviction and the sentence imposed therefor, but indicative of inclination to make a probe on the question as to why the appellant was detained in custody exceeding the period of judicial custody in terms of the judgment of the High Court dated 19.07.2018.

4. When the matter came up for consideration on

04.03.2022, this Court condoned the delay in filing the Special Leave Petition and took note of the submission made by the learned senior counsel appearing for the appellant (in fact, Amicus Curiae) that despite suffering the full sentence in terms of the judgment impugned, the appellant was not released. This Court passed the following order:-

> "Learned senior counsel for the petitioner submits that the petitioner was convicted for offence punishable under Section 376 IPC and sentence for 7 years R.I. by the High Court under the impugned judgment dated 19.07.2018 and despite the petitioner has undergone the full sentence in terms of the judgment impugned, still he has not been released and it appears that the Superintendent Central Jail, Ambikapur, Surguja (C.G.) has not updated their jail records as it reveals from the certificate placed on record.
>
> Issue notice, returnable on 14.03.2022.
>
> Copy of the petition be served additionally to the Standing Counsel for the State of Chhattisgarh."

5. On 21.03.2022 this Court passed the following order:-

> "The records indicate that the petitioner had undergone 10 years 03 months and 16 days of custody as revealed from the custody certificate dated 09th November, 2021 and the High Court while upholding conviction, reduced the sentence to 07 years rigorous imprisonment(RI).
>
> The submission of the counsel for the petitioner was recorded by this Court on 4th March, 2022 that despite the petitioner has undergone full sentence of 7 years RI in terms of the judgment impugned by the High Court, still he has not been released and after

> the notice of the present petition came to be served, the concerned authorities have released the petitioner on 16th March, 2022. This may not be the end of the matter. What is being reflected to this Court needs a further probe.
>
> Let the counsel for the State file an affidavit and tender an explanation as to why the petitioner was detained in custody exceeding the period of judicial custody in terms of the judgment impugned of the High Court dated 19th July, 2018. At the same time, the State may also collect the data from all over the State and furnish a report to this Court of such of the incident of which reference has been made in the present petition.
>
> Copy of this order may also be sent to the Secretary, State Legal Services Authority, Chhattisgarh for taking appropriate steps and compliance report."
>
> (Emphasis added)

6. In compliance with the said order dated 21.03.2022, an affidavit was filed by the Superintendent of Central Jail, Ambikapur, purportedly to explain the reason for detaining the appellant in custody exceeding the period of judicial custody. We find no reason to accept so-called justification and we will explain the *raison d'etre* for our disinclination and also for our inclination to grant compensation.

7. The order dated 21.03.2022 itself would reveal

that on behalf of the appellant it was contended that he was made to undergo rigorous imprisonment for 10 years 03 months and 16 days with remission. Now, in resistance the respondent would contend that the total sentence undergone by the appellant (excluding the remission period) was only 8 years 01 month and 29 days. It is stated in the affidavit that since the appellant had failed to pay the compensation of Rs.15,000/- to the victim, as directed under the impugned judgment, he was to undergo imprisonment by one year over and above the period of 7 years.

8. The counsel for the appellant, in the afore-stated circumstances contended that the appellant was detained illegally beyond the legally permissible period of imprisonment. To be precise, the contention is that the appellant had suffered imprisonment for a period of 10 years 03 months and 16 days with

remission, as is revealed from the custody certificate dated 09.11.2021. In this context it is relevant to refer to the certificate of custody in detail issued by the very deponent, viz., the Superintendent of Central Jail, Ambikapur. The entries therein against serial numbers 7 to 12 are relevant for the purpose of the case and they read thus:-

"7] Sentence	-	12 years
8] Court's Name	-	Hon'ble Special Judge, (Scheduled Caste and Scheduled Tribe Prevention Of Atrocities Act), Jashpur (C.G.)
9] Under trial period	-	Year- 00, Month- 10, Day- 10
10] Conviction period	-	Year- 06, Month- 11, Day- 10
11] Jail Remission	-	Year- 02, Month- 05, Day- 26
12] Total Conviction period as on 09-11-2021"	-	Year- 10, Month- 03, Day- 16

9. The above extract would reveal that the total conviction period as on 09.11.2021 was 10 years 03 months and 16 days. It would also reveal that the

appellant is entitled to remission and further that 02 years 05 months and 26 days was the jail remission period as on that date. Bearing in mind afore aspects, the statements made in paragraphs 16 and 17 of the affidavit have to be looked into. They read thus:-

> "16. That the Hon'ble High Court vide the Impugned Order had reduced the sentence of the Petitioner to seven (7) years rigorous imprisonment and a fine of Rs.10,000/- (Rupees Ten Thousand Only) or to undergo one (1) year imprisonment in default of the same and to pay Rs.15,000/- (Rupees Fifteen Thousand Only) as compensation to the victim to undergo one (1) year imprisonment in default. It is submitted that the actual sentence undergone by the Petitioner (excluding the remission period) is as under:
>
> a. Under trial period : 10 months and 10 days
> b. Conviction period (from 29th November 2014 to 16th March 2022) : 7 years 3 months and 19 days.
>
> 17. That therefore the total sentence undergone by the Petitioner (excluding the remission period) is 8 years 1 month and 29 days. It is submitted that the Petitioner had not paid the compensation of Rs. 15,000/- to the victim as directed by the Hon'ble High Court therefore he had to further undergo an imprisonment of one (1) year, over and above the period of seven (7) years held by the Hon'ble High Court."

10. Going by afore-extracted statements in the affidavit filed by the respondent in compliance with the order dated 21.03.2022 excluding the remission period the appellant was under actual imprisonment

for a period of 08 years 01 month and 29 days. It is stated therein that by virtue of the default on the part of the appellant to pay a compensation to the victim, in terms of the impugned judgment, he was to undergo imprisonment for 01 year more in addition to the term of imprisonment which he had to suffer by virtue of the impugned judgment. The tenor of the affidavit revealed from the aforesaid paragraphs would go to show the stand of the respondent that over and above the period of 7 years the appellant was to undergo an additional one year of imprisonment on account of his default in payment of the amount of fine. It is in the aforesaid manner that the respondent is attempting to justify the detention of the appellant beyond the period of imprisonment awarded by the High Court in substitution of the sentence imposed by the Sessions Court. We will deal

with this issue further.

11. For a proper consideration of this issue it is apposite to refer to the following aspects:-

As per Adaptation of Laws Order, 2001 issued as per Notification No. F-2/13/Jail/2001 dated the 14th June, 2001, in exercise of the powers conferred under Section 79 of the Madhya Pradesh Reorganisation Act, 2000 (28 of 2000) the State Government passed an order called “Adaptation of Laws Order, 2001”, which came into force in the whole State of Chhattisgarh on the 1st day of November, 2000. The schedule thereunder would reveal that the Madhya Pradesh Jail Manual, 1968 was adopted by the State of Chhattisgarh. It is still in force. Rule 1 of Part-I of Madhya Pradesh Jail Manual, 1968 reveals the name of the Rules as ‘Madhya Pradesh Prison Rules, 1968.’ Rule 2 (g)

thereof defines ‘sentence’ as hereunder:

> “2(g). “Sentence” means a sentence as finally fixed on appeal, revision or otherwise, and includes an aggregate of more sentences than one and committal to or detention in prison in default of furnishing security to keep the peace or good behaviour.”

12. Thus, it is evident that in the State of Chhattisgarh, the Madhya Pradesh Prison Rules, 1968 is in force and thereunder the term ‘sentence’ takes the meaning sentence as finally fixed on appeal, revision or otherwise and it includes an aggregate of more sentences than one and committal to or detention in prison in default of furnishing security to keep the peace or good behaviour. As stated hereinbefore, in the instant case the Court of Special Judge the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Jashpur, which tried the appellant convicted him for the offence punishable under Section 376 IPC and sentenced him to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.

10,000/- and in default of its payment to undergo additional one year rigorous imprisonment. In the appeal, while confirming the conviction, the High Court reduced the sentence to rigorous imprisonment for 07 years under Section 376 IPC and retained the order of payment of fine of Rs.10,000/- as it is. Additionally, it was ordered that the appellant should compensate the victim in terms of the provisions of Section 357 Cr.P.C. by paying Rs.15,000/-. In the aforesaid circumstances, the indisputable position is that the sentence finally fixed on the appellant was 7 years of rigorous imprisonment. It is true that he was also to suffer one more year of imprisonment in default of payment of fine. But, what is disturbing us is the purposeful omission to make any mention about the period of remission to which the appellant was

entitled to in the affidavit dated 24.4.2022. This requires to be taken seriously not solely due to the applicability of the afore-mentioned Prison Rules but on account of certain other aspects as well. Whatever be the actual period of remission to which the appellant was entitled to, the factum is that his entitlement to remission is indisputable in the circumstances mentioned above. Going by the custody certificate the period of jail remission as on 9.11.2021 was 2 years, 5 months and 26 days. It is pertinent to note that the deponent of the affidavit dated 24.04.2022 who himself issued the Custody Certificate, did not dispute the entitlement of the appellant for remission. What exactly was the period of imprisonment undergone by the appellant with remission was not mentioned at all in the said affidavit though in the order dated 21.03.2022 this

Court recorded that going by the records the appellant had suffered, 10 years, 3 months and 16 days of custody as per the Custody Certificate dated 9th November, 2021. Add to it, even going by the affidavit dated 24.04.2022 the appellant had suffered imprisonment in excess of what was he was to suffer legally. In paragraph 17 of the said affidavit what is stated :

> "That the total sentence undergone by the petitioner (excluding the remission period) is 8 years 1 month and 29 days."
>
> (Emphasis added)

13. We will, now, consider another serious aspect. A scanning of the affidavit dated 24.04.2022 would reveal that the respondent is feigning ignorance about the judgment of the High Court dated 19.07.2018. According to the respondent though the High Court had communicated the judgment to the District and Sessions Judge, Jashpur on 30.07.2018,

the same was not communicated to jail authorities and on being communicated the order dated 4th March, 2022 passed by this Court on 10th March, 2022 immediate action was taken. We have no hesitation to hold that the very statement made in the said affidavit dated 24.04.2022 and the documents annexed therewithal would reveal the hollowness of the said contentions. How can the respondent feign ignorance about the judgment of the High Court dated 19.7.2018, reducing the sentence imposed on the appellant.

14. In Annexure-A1, which is the letter dated 20.01.2020 of the Superintendent of Central Jail, Ambikapur, to Secretary of the High Court Legal Service Committee, a reference was made as follows:

> "Ref : Letter No.F.No.2477 / CGSLSA / CONVICT PRISNOERS / 2018 / BILASPUR DATE 28-092018 ad letter No. L/24/2018 – Petitioner / dated 27.09.2018 of the petitioner received through email."

Even after making such a reference, purposefully or otherwise, the respondent has not chosen to pro-

duce those letters along with the affidavit dated 24.04.2022. Annexure A-1 dated 20.01.2020 produced along with the affidavit dated 24.04.2022 reads thus:-

OFFICE OF THE JAIL SUPERINTENDENT, CENTRAL JAIL, AMBIKAPUR, SARGUJA (C.G)

Letter No. – 590/Kalyan/2020, Ambikapur,

Dated: 20.01.2020

To

The Secretary,
High Court Legal Service Committee,
High Court Compound, Bodri, Bilaspur(C.G)

Sub: Filing Special Leave to Appeal (Crl.) of the Convicted Prisoner Bhola Kumar, son of Barju Ram Kumhar in the Hon'ble Supreme Court- reg.

Ref: Letter No. F.No. 2477/CGSLSA/CONVICT PRISONERS/2018/BILASPUR DATE 28-092018 and Letter NO. L/24/2018-Petitioner/dated 27.09.2018 of the petitioner received through email.

Sir,

It is submitted with regard to the above cited subject and reference that the convicted prisoner Bhola Kumar son of Barju Ram Kumhar, resident of Village Tamamunda Farsabahar, Police Station Farsabahar, District Jashpur (C.G) being convicted in Sessions Trial No. 04/2014 under Section 376 IPC by the Court of Ld. Special Judge, District Jashpur (C.G) on 29.11.2014 with an award of Life Imprisonment and on dismissal of his Criminal Appeal No. 110/2015 by the Hon'ble High Court of Chhattisgarh at Bilaspur on 19.07.2018, he is undergoing the sentence in this jail. The convicted prisoner wants to prefer his Special Leave to Appeal (Crl) in the Hon'ble Supreme Court through the Legal Aid.

Therefore, by forwarding the related documents (01) Vakalatnama, (02) Affidavit for S.L.P., (03) Jail Detention Certificate, (04) Affidavit for Legal Aid, (05) Application for condonation of delay, (06) F.I.R.,

> Copy of the Judgment Passed by the Ld. Trial Court and copies of other deposition documents, (07) Application for Legal Service, toward you, it is most respectfully submitted that by supplying all the rest documents (01) Judgment of the Hon'ble High Court (02) Paper Book of the Hon'ble High Court and (03) English Translation, please file the Special Leave to Appeal (Crl) in the Hon'ble Supreme Court.
>
> Sd/- Illegible
> Jail Superintendent
> Central Jail Ambikapur
> Sarguja Chhattisgarh
>
> Endorsement No. 590-A/Welfare/2020, Ambikapur,
>
> Date: 20.01.2020
>
> Copy forwarded to the Secretary, District Legal Aid Service Committee, District Sarguja, Ambikapur (C.G.) for respectful information.
>
> Sd/-Illegible
> Jail Superintendent
> Central Jail Ambikapur
> Sarguja Chhattisgarh
>
> (Emphasis added)

15. After having written such a letter on 20.01.2020 and specifically making a request to the High Court Legal Services Committee to file Special Leave Petition before the Supreme Court against judgment of dismissal by the High Court of Chhattisgarh in Criminal Appeal No.110/2015 the Superintendent of Central Jail, Ambikapur could not have feigned ignorance about the action to be initiated in the absence of

further interference with the judgment dated 19.7.2018 in Criminal Appeal No.110 of 2015 and at any rate, on the expiry of the permissible period of the imprisonment on the strength of the said judgment. There is no justification for not complying with the judgment dated 19.07.2018. If on receipt of the order of this Court dated 4th March, 2022 action could be taken swiftly, as has been explained in paragraphs 11 to 13 of the affidavit dated 24.4.2022, why such a recourse was not done immediately before or, at least immediately after the expiry of permissible period of imprisonment. If he was to get 2 years remission, as stated in the custody certificate, of course in terms of the relevant Prison Rules on expiry of the period of sentence less the period of remission thus earned and the additional period of imprisonment of one year on account of default in

payment of fine he should have been released much before the actual incarceration period of 8 years, 1 month and 29 days.

16. There is no case for the respondent that it or the victim had challenged the judgment of the High Court of Chhattisgarh dated 19/07/2018 successfully. In the said circumstances, it can only be taken that the deponent was unscrupulously telling untruth. There was absolutely no justifiable reason, in the said circumstances, for the lapse in taking appropriate action to comply with the said judgment and to release the appellant on expiry of the legally permissible period of sentence. There is absolutely no case for the respondent that the appellant herein was not entitled to remission. In the light of the Certificate of Custody issued by the Superintendent of Central Jail, Ambikapur, as also in the light of the

provisions in the Prison Rules, referred hereinbefore, applicable in the State of Chhattisgarh the entitlement of the appellant for remission is indisputable and in fact, it is not at all disputed by the respondent. Rule 715 of the afore-mentioned Prison Rules, 1968 provides that the total remission awarded to a prisoner under the said rules shall not, without the special sanction of the State Government, exceed one third of his sentence. In other words, that is the maximum remission normally awardable.

17. We are not oblivious of the fact that the appellant herein was held guilty in a grave offence. But then, when a competent court, upon conviction, sentenced an accused and in appeal, the sentence was modified upon confirmation of the conviction and then the appellate judgment had become final, the convict can be detained only up to the period to which he can

be legally detained on the basis of the said appellate judgment. When such a convict is detained beyond the actual release date it would be imprisonment or detention *sans* sanction of law and would thus, violate not only Article 19(d)but also Article 21 of the Constitution of India. This is what was suffered by the appellant for a very long period. Considering the fact that the appellant is a youth, this long and illegal imprisonment beyond the period of sentence, taking into account the long and illegal deprivation of the right to move freely and thereby, the violation of right under Article 19 (d) of the Constitution of India, the violation of right to life and personal liberty under Article 21 of the Constitution of India and the mental agony and pain caused due to such extra, illegal detention, we are of the view

that the appellant is entitled to be compensated in terms of money.

18. We are aware that the present proceeding is not one under Article 32 of the Constitution of India. It is one under Article 136 of the Constitution. We are of the view that reference to Section 386 of the Code of Criminal Procedure (for short 'Cr.P.C.') would be apposite. Clause (a) thereof, deals with appellate powers available in an appeal from an order of acquittal whereas clause (b) deals with appellate power in an appeal from conviction. Clause (c) deals with the appellate power in appeal for enhancement of sentence and clause (d) deals with the appellate power in an appeal from any other order.

Now, clause (e), unlike clause (a) to (d), does not say as to what particular nature of appeal that the power to make any amendment or any consequential

or incidental order that may be just or proper may be passed in invocation of the power thereunder. The conclusion that can be reached in the absence of such specific mention is that the power specified under clause (e) would be available, of course in appropriate cases falling under any of the four categories of appeals mentioned under clauses (a) to (d). Our view is fortified by the fact that the twin provisos under clause (d) carry restrictions in the matter of exercise of power under clause (e), with respect to enhancement of sentence and infliction of punishment. According to us, the power thereunder can be exercised only in rare cases. In this case, we found that the appellant was kept illegally in prison far in excess of the legally permissible period of incarceration despite coming to know about the appellate judgment of the High Court dated 19.07.2018. As

noted above, he was released only on 16.03.2022, which is much beyond the permissible period of sentence in terms of the said judgment dated 19.07.2018. In other words, he served out the period of permissible period of imprisonment on the basis of the judgment dated 19.07.2018. The appellant is a youth and he suffered long and illegal deprivation of fundamental rights besides the mental agony and pain on account of such extra, illegal detention. Is it not a case inviting a consequential or incidental order that may be just or proper. In the decision of ***Ambica Quarry Works Vs. State of Gujarat (AIR 1987 SC 1073)***, this court held that 'all interpretations must subserve and help implementation of the intention of the Act'. This possession is applicable while interpreting any provision in any statute especially when the

power under that provision is conferred to pass orders that may be just or proper.

19. It is also apposite to refer to the decision of this court in ***A.R. Antulay V. R.S. Nayak [(1988) 2 SCC 602]*** in the context of this case. Going by the same this Court can grant appropriate relief when there is some manifest illegality or where some palpable injustice is shown to have resulted. Such a power, going by the decision, can be traced either to Article 142 of the Constitution of India or powers inherent as guardian of the Constitution.

Without making any observation as to his civil remedy, we think it only just and proper to pass an order granting compensation to the tune of Rs.7.5 Lakhs (Rupees Seven Lakhs and Fifty Thousand) to be paid by the State holding that it is vicariously liable for the act/omission committed by its officers

in the course of employment. We also make it clear that while holding the State vicariously liable as above the State must have recourse against the erred officer(s).

The appeal is disposed of in the above terms.

Pending applications, if any, stand disposed of.

.....,J.
(AJAY RASTOGI)

.....,J.
(C.T. RAVIKUMAR)

NEW DELHI;
9th May, 2022.