

2023 LiveLaw (SC) 647

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
V. RAMASUBRAMANIAN; J., PANKAJ MITHAL; J.**

APRIL 28, 2023

CRIMINAL APPEAL NO. /2023 (@ SLP (Crl.) No. 2820/2023)

THE STATE OF ANDHRA PRADESH & ANR. versus VIJAYANAGARAM CHINNA REDDAPPA

Code of Criminal Procedure, 1973; Sections 426 and 427 - If escaped convict already serving life term is subsequently convicted, subsequent sentence will run concurrently with previous life sentence.

Code of Criminal Procedure, 1973; Section 426(2)(b) - Insofar as a life convict is concerned, in law, no part of the sentence remains unexpired. The remission granted by the Government to a life convict, cannot be taken to mean that there is some portion of the life sentence that remains unexpired in the same sense as in the case of other convicts. A life sentence is a sentence for life. What remains unexpired of such a sentence is known only to God (if you believe) and to the Government, if there is a policy of remission. Therefore, Section 426(2)(b) cannot be taken to have included within its fold, the case of a life convict, since in the case of life convict no portion of the sentence remains unexpired, in the technical sense.

(Arising out of impugned final judgment and order dated 08-12-2022 in WP No. 36742/2022 passed by the High Court Of Andhra Pradesh At Amravati)

For Petitioner(s) Mr. Mahfooz Ahsan Nazki, AOR Mr. K V Girish Chowdary, Adv. Mr. T Vijaya Bhaskar Reddy, Adv. Ms. Rajeswari Mukherjee, Adv. Ms. Niti Richhariya, Adv.

For Respondent(s) Mr. Dama Seshadri Naidu, Sr. Adv. Mr. Pai Amit, AOR Ms. Pankhuri Bhardwaj, Adv. Ms. Bhavana Duhoon, Adv. Mr. Abhiyudaya Vats, Adv. Ms. Nandita K. Nair, Adv. Ms. Pratishtha C.b., Adv.

ORDER

Leave granted.

The State of Andhra Pradesh has come up with the above appeal, challenging an order of the Division Bench of the High Court of Andhra Pradesh issuing a writ of Habeas Corpus directing the Superintendent of the Central Prison, Kadapa to set at liberty, a convict by name P. Reddy Bhaskar (Convict No.5357).

We have heard the learned Standing Counsel for the State of Andhra Pradesh and Mr. Seshadri Naidu, the learned senior counsel for the respondent.

The detenu was prosecuted in Sessions Case No.139/2006 for an offence under Section 302 Indian Penal Code, 1860 (for short "IPC") relating to a murder that took place on 27.05.2001. By a judgment dated 19.12.2006, the detenu was convicted and sentenced to life imprisonment. The conviction and punishment were confirmed by the High Court on appeal and the same has attained finality.

It appears that the detenu escaped from custody twice during his incarceration, but was apprehended later. It is the case of the State that the detenu enjoyed self-attained freedom for about two years pursuant to the first escape and for about three months pursuant to the second escape.

It appears that immediately following the conviction for the offence under Section 302 IPC, the detenu was also convicted in another case in Case No.260/2006 for an offence of kidnapping under Section 365 IPC. In this case, the detenu was convicted and imposed simple imprisonment for one year.

By G.O.Ms. No.121 dated 14.08.2022, the Government of Andhra Pradesh granted special remission to 175 life convicts on the occasion of the Independence Day. Without giving him any opportunity for a third escape, the Government set him at liberty under the said Government order on 15.08.2022.

Even after the issue of the Government order, the detenu was not released from jail on the ground that the sentence of imprisonment awarded in Case No.260/2006 should start running from the date of grant of remission in the first case. The detenu's brother-in-law therefore approached the High Court by way of a writ of Habeas Corpus contending that the continued detention of the detenu after the grant of remission was illegal. The High Court accepted the contention and allowed the writ petition. It is against the said order that State has come up with the above appeal.

What is in question in this appeal is an interplay between Sections 426 and 427 Cr.P.C. These sections read as follows:

"426. Sentence on escaped convict when to take effect.-(1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict,-

(a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment.

427. Sentence on offender already sentenced for another offence.-(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

At the outset, we must remember that we are dealing with the case of an escaped convict. Therefore, the case of the detenu would obviously be covered by Section 426(2)(b), which deals with case of an escaped convict, already serving a sentence severer in kind, but imposed with a less severe sentence in respect of a subsequent conviction. Section 426(2)(b) Cr.P.C. states that insofar as an escaped convict is concerned, the sentence imposed in the second or subsequent conviction shall take effect only after the escaped convict has suffered imprisonment for a further period equal to that which at the time of escape remained unexpired of his former sentence.

But insofar as a life convict is concerned, in law, no part of the sentence remains unexpired. The remission granted by the Government to a life convict, cannot be taken to mean that there is some portion of the life sentence that remains unexpired in the same sense as in the case of other convicts. A life sentence is a sentence for life. What remains unexpired of such a sentence is known only to God (if you believe) and to the Government, if there is a policy of remission. Therefore, Section 426(2)(b) cannot be taken to have included within its fold, the case of a life convict, since in the case of life convict no portion of the sentence remains unexpired, in the technical sense.

If Section 426(2)(b) Cr.P.C. is out of the picture, then what remains is Section 427(2) Cr.P.C. Under Section 427(2) Cr.P.C., the subsequent sentence should run concurrently along with a previous sentence, if a person already undergoing a sentence of imprisonment for life, is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life.

Therefore, while Section 426 covers the case of an escaped convict, clause (b) of sub-section (2) thereof creates a conundrum in respect of life convicts. But Section 427, though does not deal with the case of an escaped convict, provides enough room for finding out how a sentence imposed on a subsequent conviction, in respect of a life convict, should be handled.

Therefore, the application of Section 427(2) Cr.P.C. by the High Court to the case on hand, is perfectly in order and the appeal deserves to be dismissed.

Accordingly, the appeal is dismissed. The detenu shall be set at liberty forthwith.

Pending application(s), if any, shall stand disposed of.

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