A RANJIT SINGH

v.

UNION TERRITORY OF CHANDIGARH & ANR.

AUGUST 23, 1991

B [M.N. VENKATACHALIAH, J.S. VERMA AND N.D. OJHA, JJ.]

Code of Criminal Procedure, 1973: Ss. 427, 433A—Life convict —Convicted of another murder—Subsequent sentence of life imprisonment—Whether superimposition to the earlier life sentence—Remissions
C *or commutation in respect of earlier sentence—Whether available ipso facto in respect of second sentence.*

Indian Penal Code, 1960: S. 302—Life convict—Trial for second murder—Conviction—Imposition of Life sentence—Whether both life sentences to run concurrently.

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Constitution of India: Article 32—Offender—Separately sentenced to life imprisonment for two different offences under section 302 IPC—Court's direction that in case of remissions or commutation in respect of earlier sentence, the latter sentenced to run thereafter—Interpretation of—Writ Petition challenging the sentence—Whether
E *maintainable.*

The petitioner who was convicted under section 302 IPC on 6.3.1979 and sentenced to life imprisonment, was also tried for a second murder committed while he was on parole after his conviction and sentence for the first murder, and was convicted under s. 303 IPC.
F **Altering the conviction to one under s. 302 IPC, for the second murder this Court sentenced him to life imprisonment instead of death sentence and by its judgment dated 30.9.1983 directed that in case any remission and commutation in respect of his earlier sentence was granted, the latter sentence should commence thereafter.**

G **The petitioner filed a writ petition under Article 32 of the Constitution praying for his release on the ground that both the life sentences had to run concurrently in accordance with s. 427(2) Cr. P.C., and as he had undergone 14 years sentence of imprisonment with remissions at the time of filing the writ petition on February 19, 1990, he was entitled to be released. It was contended that this Court's direc-**
H **tion dated 30.9.83 was contrary to s. 427(2) of the Code of Criminal**

Procedure, 1973 since it amounted to directing that the two sentences of life imprisonment were to run consecutively and not concurrently. A

On behalf of the respondents it was contended that the direction of this Court, properly construed, was not contrary to s. 427(2) Cr. P.C. and, therefore, the question of issuing any writ or directions as claimed by the petitioners did not arise. B

Disposing of the petition treating it as one for clarification of the judgment dated 30.9.1983 this Court,

HELD: 1.1 A sentence of transportation for life or imprisonment for life must *prima facie* be treated as transportation or imprisonment C for the whole of the remaining period of the convicted person's natural life unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the Court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprisonment for a term or for D life running consecutively which is the general rule laid down in sub-s. (1) of s. 427, Cr. P.C. [747G; 749D-E]

1.2 The earlier sentence of imprisonment for life being understood to mean as sentence to serve the remainder of life in prison E unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life as envisaged by s. 427(2) of the Cr. P.C., can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. [749F-G] F

It cannot be said that a sentence of life imprisonment is to be treated as a sentence of imprisonment for a fixed term. [748B]

Gopal Vinayak Godse v. *The State of Maharashtra & Ors.*, [1961] 3 S.C.R. 440 and *Maru Ram* v. *Union of India & Anr.*, [1981] 1 S.C.R. 1196, followed. G

2.1 The operation of the superimposed subsequent sentence of life imprisonment should not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation was granted by the appropriate authority. [751F-G] H

A 2.2 In the instant case, the last sentence in the direction meant that in case, any remission or commutation was granted in respect of the earlier sentence of life imprisonment alone then the benefit of that remission or commutation would not *ipso facto* be available in respect of the subsequent sentence of life imprisonment which would continue B to be unaffected by the remission or commutation in respect of the earlier sentence alone. The consequence would be that the petitioner would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence was also granted to the petitioner. It was in this manner that the direction was given for the two sentences of life impri- C sonment not to run concurrently. [750E-H; 751A]

The subsequent sentence of imprisonment for life had, therefore, to run concurrently with the earlier sentence of imprisonment for life awarded to the petitioner. [750C-D]

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3. The general rule enunciated in sub-section (1) of s. 427 Cr. P.C. is that without the Court's direction the subsequent sentence will not run concurrently but consecutively. [749G]

The only situation in which no direction of the Court is needed to E make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible controversy based on sub-section (1) if there being no express direction of the Court to that effect. [749G-H; 750A]

Sub-section (2) is in the nature of an exception to the general rule F enacted under sub-section (1) of section 427 Cr. P.C. [750A]

4.1 The mandatory minimum of 14 years' actual imprisonment prescribed by s. 433A Cr. P.C. which has supremacy over the Remission Rules and short-sentencing statutes made by the various States would not operate against those whose cases were decided by the trial G court before the 18th December, 1978 when s. 433A Cr. P.C. came into force but the section would apply to those sentenced by the trial court after 18.12.1978 even though the offence was committed prior to that date. [748D-E]

Maru Ram v. *Union of India & Anr.*, [1981] 1 S.C.R. 1196, H followed.

4.2 In the instant case, s. 433A Cr. P.C. was applicable to petitioner in respect of both sentences of life imprisonment since the conviction by the trial court even for the first murder was after 18.12.1978, the second offence itself being committed after 18.12.1978. The mandatory minimum of 14 years' actual imprisonment as required by s. 433A even for the first sentence of life imprisonment was not served out by the petitioner, and, therefore, irrespective of the points raised in the instant petition on the basis of s. 427(2) Cr. P.C. the petitioner could not claim relief much less a writ under Article 32 of the Constitution in the absence of the remaining sentence being remitted by the Government. [748E-G]

5. The petitioner's incarceration was the result of a valid judicial order and, therefore, there could be no valid claim to the infringement of any fundamental right which alone could be the foundation for a writ under Article 32 of the Constitution. [747E-F]

ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 116 of 1990.

(Under Article 32 of the Constitution of India).

R.K. Garg, N.D. Garg, Rajiv Kr. Garg and P.C. Choudhary for the Petitioner.

U.R. Lalit and Ms. Kamini Jaiswal for the Respondents.

The Judgment of the Court was delivered by

VERMA, J. The short question arising for decision by us is the true meaning of Sub-section (2) of Section 427 of the Code of Criminal Procedure, 1973 and its effect.

For an offence of murder committed on 17.9.1978 the petitioner, Ranjit Singh, was convicted under Section 302 I.P.C. by the Sessions Judge on 6.3.1979 and sentenced to life imprisonment which was confirmed by the High Court of Punjab & Haryana. While the petitioner was on parole after his conviction and sentence for first murder, he was tried for the second murder committed on October 25, 1980 and convicted under Section 303 I.P.C. This conviction was altered to one under Section 302 I.P.C. and for the second murder also the petitioner was sentenced by this Court on 30.9.1983 to life imprisonment instead of death sentence. This Court while disposing of the petitioner's appeal, in this manner, directed as under:

A "We feel that life imprisonment would be the proper sentence that should be imposed upon the appellant. We accordingly reduce the sentence of death imposed upon him and sentence him to suffer rigorous imprisonment for life. However, since the present murder was committed by him within a span of one year of his earlier conviction and
B that too when he was released on parole we are clearly of the view that the instant sentence of imprisonment for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. We therefore, direct that in case any remission or commutation in respect of his earlier sentence is granted to him the present sentence should commence thereafter."
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The petitioner has now filed this Writ Petition under Article 32 of the Constitution for issuance of a suitable writ or direction to correct the above direction given in the order dated September 30, 1983 to bring it in consonance with Section 427(2) Cr. P.C. and consequently for his
D release on the ground that both life sentences had to run concurrently in accordance with Section 427(2) Cr. P.C. and he is entitled to relief because he has undergone fourteen years sentence of imprisonment with remissions at the time of filing the Writ Petition on February 19, 1990. This is how the question of construction of Section 427(2) Cr. P.C. arises in the present case.

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Section 427 of the Code of Criminal Procedure, 1973 is as under:

"427. Sentence on offender already sentenced for another offence—(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent
F 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:

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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 sen-
H tence 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."

Shri R.K. Garg, learned counsel for the petitioner strenuously urged that this Court's above quoted direction in the judgment dated 30.9.1983 passed in Criminal Appeal No. 418 of 1982 while affirming the conviction under Section 302 I.P.C. for the second murder and imposing the punishment of life imprisonment for it also amounts to directing that the two sentences of life imprisonment are to run consecutively and not concurrently which is in direct conflict with Sub-section (2) of Section 427 Cr. P.C. He urged that the life span of a person could be only one and therefore any subsequent life sentence must run concurrently and not consecutively which is the clear mandate of Section 427(2). On this basis, it was urged that this Court's direction in the above manner on the petitioner's conviction for the second offence of murder is contrary to Section 427(2) of the Code of Criminal Procedure, 1973. This is the basis of the reliefs claimed on behalf of the petitioner. In reply, Shri U.R. Lalit, appearing on behalf of respondents, contended that the direction of this Court properly construed is not contrary to Section 427(2) Cr. P.C. and, therefore, the question of issuing any writ or directions claimed by the petitioner does not arise.

We may straightaway mention that the question of grant of relief under Article 32 of the Constitution does not arise on the above facts. The petitioner's incarceration is the result of a valid judicial order and, therefore, there can be no valid claim to the infringement of any fundamental right which alone can be the foundation for a writ under Article 32 of the Constitution. The only question, it appears, therefore, is about the correct construction of the direction given by this Court in its judgment dated 30.9.1983 in Criminal Appeal No. 418 of 1982 in the light of the true meaning of Section 427(2) Cr. P.C.

The meaning of a sentence of imprisonment for life is no longer *res integra*. It was held by a Constitution Bench in *Gopal Vinayak Godse* v. *The State of Maharashtra and Others*, [1961] 3 S.C.R. 440 that a sentence of transportation for life or imprisonment for life must *prima facie* be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. It was further held:

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> "Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison."

B The contention that a sentence of life imprisonment was to be treated as a sentence of imprisonment for a fixed term was expressly rejected. This view was followed and reiterated in *Maru Ram* v. *Union of India & Anr.*, [1981] 1 S.C.R. 1196 while considering the effect of Section 433A introduced in the Code of Criminal Procedure, 1973 with effect from 18.12.1978. The Constitution Bench in Maru Ram summarised one of its conclusions as under:

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> "We follow *Godse's* case (supra) to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by Government."

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Another conclusion in *Maru Ram* was that the mandatory minimum of 14 years' actual imprisonment prescribed by Section 433A which has supremacy over the Remission Rules and short-sentencing statutes made by the various States will not operate against those whose cases were decided by the trial court before the 18th December, 1978 when E Section 433A came into force but Section 433A would apply to those sentenced by the trial court after 18.12.1978 even though the offence was committed prior to that date. From these decisions it is obvious that the mandatory minimum of 14 years' actual imprisonment prescribed by Section 433A is applicable to petitioner in respect of both sentences of life imprisonment since the conviction by the trial court F even for the first murder was after 18.12.1978, the second offence itself being committed after 18.12.1978. There is no dispute that the mandatory minimum of 14 years' actual imprisonment, as required by Section 433A even for the first sentence of life imprisonment, has not been served out by the petitioner and, therefore, irrespective of the points raised in this petition on the basis of Section 427(2) Cr. P.C. the G petitioner cannot claim relief much less a writ under Article 32 of the Constitution in the absence of the remaining sentence being remitted by the Government. This alone is sufficient to refuse any relief under Article 32 of the Constitution.

The question now is of the meaning of Section 472(2) Cr. P.C. H and its effect, in the present case, in view of the above quoted direc-

tion of this Court in its judgment dated 30.9.1983. A

Sub-section (1) of Section 427 Cr. P.C. provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, Sub-section (1) of Section 427 Cr. P.C. deals with an offender who while undergoing sentence for a fixed term is B subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the C first term of imprisonment unless the Court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by Sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who D is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well-settled since the decision of this Court in *Gopal Vinayaka Godse* and reiterated in *Maru Ram* that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the Court on a E subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprionment for a term or for life running consecutively which is the general rule laid down in Sub-section (1) of Section 427. As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life F being understood to mean as sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone G is beyond human might. It is this obvious situation which is stated in Sub-section (2) of Section 427 since the general rule enunciated in Sub-section (1) thereof is that without the Court's direction the subsequent sentence will not run concurrently, but consecutively. The only situation in which no direction of the Court is needed to make the subsequent sentence run concurrently with the previous sentence is H

A provided for in Sub-section (2) which has been enacted to avoid any possible controversy based on Sub-section (1) if there be no express direction of the Court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in Sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the Court directs it to run concurrently. The B meaning and purpose of Sub-sections (1) & (2) of Section 427 and the object of enacting Sub-section (2) is, therefore, clear.

We are not required to say anything regarding the practical effect of remission or commutation of the sentences since that question does not arise in the present case. The limited controversy before us has been indicated. The only question now is of the meaning and effect of C the above quoted direction in this Court's judgment dated 30.9.1983. It is obvious that the direction of this Court must be construed to harmonise with Section 427(2) Cr. P.C. which is the statutory mandate apart from being the obvious truth. The subsequent sentence of imprisonment for life has, therefore, to run concurrently with the earlier D sentence of imprisonment for life awarded to the petitioner. The real exercise is to construe the last sentence in the direction which reads as under:

> "We, therefore, direct that in case any remission or commutation in respect of his earlier sentence is granted to E him the present sentence should commence thereafter."

It is in the background of this ultimate direction that the preceding portion has to be read. This last sentence in the direction means that in case, any remission or commutation is granted in respect of the earlier sentence of life imprisonment alone then the benefit of that remission F or commutation will not *ipso facto* be available in respect of the subsequent sentence of life imprisonment which would continue to be unaffected by the remission or commutation in respect of the earlier sentence alone. In other words, the operation of the superimposed subsequent sentence of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life G imprisonment any remission or commutation has been granted by the appropriate authority. The consequence is that the petitioner would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence is also granted to the petitioner. It is in this H manner that the direction is given for the two sentences of life impri-

sonment not to run concurrently. A

The ultimate direction contained in the last sentence is obviously for this purpose. So construed the direction of this Court in the judgment dated 30.9.1983 in Criminal Appeal No. 418 of 1982 fully harmonises with Section 427(2) Cr. P.C. This is the clarification we make of this Court's judgment dated 30.9.1983 in Criminal Appeal No. 418 of 1982. B

We have already stated that this petition for the issuance of a writ under Article 32 of the Constitution is untenable. We have, therefore, treated it as a petition for clarification of the judgment dated 30.9.1983 in Criminal Appeal No. 418 of 1982. Accordingly, the petition is disposed of with this clarification. C

R.P. Petition disposed of.