

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9540 OF 2013

SIYA RAM . . . APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ANR . . . RESPONDENT(S)

O R D E R

1. By means of this appeal, the appellant has challenged the decision of the High Court of Madhya Pradesh, dated 30.10.2012 passed in WA No. 915/2011, whereby the High Court has rejected the plea of the appellant to be released on probation in terms of the M.P. Prisoners' Release on Probation Rules, 1964 (for short, "the Rules"), as they stood prior to their amendment on 24.03.2008.

2. The appellant along with 10 others was convicted by the Trial Court for having committed various offences, including, an

offence punishable under Section 302, IPC and sentenced to undergo life imprisonment. On appeal being filed by 11 convicted persons, two persons were acquitted by the High Court and the conviction of the appellant and 8 others was upheld. The case of the appellant is that he applied for grant of probation under the Rules, as they stood prior to the amendment. At the relevant time, the relevant Rule read as under:

"4. Eligibility for release: Save the prisoners specified in Rule 3 any other prisoner who has served one-third of his sentence of imprisonment or a total period of five years [without remission], whichever is less, may be released by the Government on licence [:]"

3. This Rule provided that any person who had served one-third of his sentence or a total period of 5 years without remission, whichever, is less may be released by the

Government on licence.

4. A proviso was added on 24.03.2008, which reads as under :

"[Provided that in case of such prisoners who have been sentenced for life imprisonment, under Sections 302 and 305 of the Indian Penal Code, 1860 (No. 45 of 1860) or under the provisions of other penal laws in which death sentence is also one of the punishments subject to the conditions that such prisoners are not barred for such consideration under the provisions of such laws, will be considered for premature release from the prison. The eligibility for release shall be after undergoing the sentence of 14 years of actual imprisonment without remission of his sentence:

Provided further that all other prisoners, undergoing the sentence of life imprisonment, will be considered for premature release only after they have undergone at least 10 years of imprisonment with remission and after the completion of 7 years of

actual imprisonment without remission in sentence:

Provided also that nothing in the above provisions shall apply to the prisoners whose cases are being sent to the Hon'ble Governor for consideration under Article 161 of the Constitution of India, on special reasons of humanitarian grounds]."

5. The first proviso clearly lays down that in case of persons convicted under Section 302 IPC and sentenced to undergo life imprisonment their case for release can only be considered after they have undergone 14 years of actual imprisonment without remission. The High Court held that on the date when the application was considered, the proviso had come into force and, therefore, rejected the claim of the appellant to be released in terms of the unamended Rules, as he had not undergone 14 years of imprisonment.

6. The learned counsel for the appellant submits that the proviso has not been made retrospective and according to him, his application should have been considered as per the law as it stood prior to its amendment at the time when he made application for his release on probation. It is also submitted that other co-accused were granted probation as per the unamended Rules and, therefore there is discrimination so far as the appellant is concerned.

7. We are unable to accept the contentions raised by the appellant. His application for release on probation had to be considered as per the law as it stood on the date when the application was decided. Merely because the application was made earlier and the application was decided later, does not mean that retrospective effect has been given to the provision. The provision is being given

effect to as it stood on the date when the application was decided and that does not make it retrospective operation.

8. We may also refer to Sections 433 and 433A of the Code of Criminal Procedure which read as under :

"433. Power to commute sentence. The appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for any other punishment provided by the Indian Penal Code;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

433A. Restriction on powers of remission or Commutation in certain cases. Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

9. Section 433 permits commutation of sentence under certain circumstances and Section 433 A makes it clear that a sentence of imprisonment for life cannot be commuted for a period of sentence less than 14 years. This provision existed in the Code of Criminal Procedure right from the very beginning.

10. Section 433A had come into force with effect from 18.12.1978 by Act No. 45 of 1978. It specifically provides that where a sentence of imprisonment for life is imposed for an offence which is punishable by death sentence, such person shall not be released from prison unless he has served 14 years of imprisonment. These are central amendments and there cannot be State Rules in total contradiction to the Central enactment. The proviso has obviously been inserted to make the State Rules consistent with the Central Act.

11. In this case, the appellant who was convicted in the year 1981 has merely suffered 7 years of actual imprisonment and has been out on bail on one ground or the other. This is a travesty of justice. We find no merit in this appeal, which is accordingly, dismissed.

12. The appellant is directed to surrender

before the appropriate authorities within two weeks.

.....J.
[DEEPAK GUPTA]

.....J.
[SURYA KANT]

NEW DELHI,
JUNE 20, 2019

ITEM NO.106

COURT NO.4

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 9540/2013

SIYA RAM

Appellant(s)

VERSUS

STATE OF MADHYA PRADESH & ANR.

Respondent(s)

(IA No. 1/2014 - STAY APPLICATION)

Date : 20-06-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE SURYA KANT
(VACATION BENCH)

For Appellant(s)

Mr. Raj Kishor Choudhary, Adv.
Mr. Anupam Bhati, Adv.
Mr. Nakul Chaudhary, adv.
Ms. Richa Pandey, Adv.
Mr. H.S. Mann Singh, Adv.
Ms. Manju Jetley, AOR

For Respondent(s) Mr. R.K. Rathore, Adv.
 Mr. Harsh Parashar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed.

The appellant is directed to surrender before
the appropriate authorities within two weeks.

Pending application stands disposed of.

[CHARANJEET KAUR]
A.R.-CUM-P.S.

[SAROJ KUMARI GAUR]
COURT MASTER

[Signed order is placed on the file]