

CASE NO.:
Appeal (crl.) 661 of 2002

PETITIONER:
State of Haryana & Anr.

RESPONDENT:
Jai Singh

DATE OF JUDGMENT: 17/02/2003

BENCH:
N Santosh Hegde & B P Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

In this appeal the State of Haryana is challenging the judgment of the High Court of Punjab & Haryana at Chandigarh rendered in Crl. Misc. No.2176-M/2000 dated 26.4.2001.

Brief facts necessary for disposal of this appeal are that while the respondent was serving a sentence of 7 years' RI for having committed an offence of rape punishable under Section 376 IPC, the Government of Haryana, on the eve of the Independence Day, issued a notification dated 14.8.1995 in exercise of its power vested under Section 432 of the Code, granting remission of prison sentence to all convicts except those excluded in the said notification. The said notification excluded such convicts who had been convicted for the offences of rape, dowry death, abduction and murder of a child below 14 years, unnatural offences, robbery, persons sentenced under the Narcotic Drugs and Psychotropic Substances Act (NDPS), TADA, the Foreigners' Act, Passport Act, the persons detained under the detention laws, the persons sentenced under Sections 2 and 3 of the Criminal Laws Amendment Act, the persons convicted under Sections 121 and 130 of the IPC, and the convicts found guilty of violation of Jail Manual.

Because of the above exclusion of certain offences from the benefit of remission under the notification, the respondent became ineligible for such remission, therefore, he questioned the classification of offences for the purpose of denying remission in a petition filed before the High Court alleging that the said classification amounts to discrimination, thus, being violative of Article 14 of the Constitution of India. The High Court accepting the said argument and following an earlier judgment of the same court made in Crl. Misc. No.21746-M of 1998 - Suresh Kumar v. State of Haryana - came to the conclusion that it is not open to the State Government while granting general remission to carve out special exceptions in cases which, according to it, could be termed as heinous offences and deny the benefit of remission to such class of convicts, therefore, while allowing the petition, it directed the State Government to grant the benefit of remission to the respondent also.

It is necessary to note herein that the High Court in the

previous petition, namely, that of Suresh Kumar v. State of Haryana (supra) following a Division Bench judgment of the Andhra Pradesh High Court in the case of Jagaram & Ors. v. State of Andhra Pradesh & Ors. (1986 CrL.J. 1424) had come to the conclusion that the State had no power to place a restriction on the grant of remission because such power of restriction has already been exercised by the Parliament while amending Section 433A of the Code. It also held that the classification of convicts based on the nature of offences committed by them for the purpose of granting remission is impermissible and violative of Article 14 of the Constitution. Though the State of Haryana had preferred an appeal to this Court as against the said judgment of the High Court in Suresh Kumar (supra), the said appeal [CrL. A. No.726 of 2000] came to be dismissed by this Court on a concession made by the learned counsel for the parties, without going into the question of classification.

In this appeal, learned counsel appearing for the State contended that the High Court was in error in coming to the conclusion that the classification of convicts based solely on their criminal acts is violative of Article 14 of the Constitution. He contended that for the purpose of granting remission, such classification would be a reasonable classification while Mr. Anil Hooda, learned counsel appearing for the respondent as an amicus curiae, contended that Section 432 of the Code being an enabling provision, the State Government while exercising the said power, cannot create a classification so as to deny a class of convicts the benefit of such remission while the said benefit was made available to another class of convicts. He also contended that if the gravity of offence is the sole criteria then by the impugned notification, the State had extended the benefit to many convicts who had been held guilty of offences involving more serious charges than those excluded from the benefit of remission. He further contended that as had been held by the High Court in the case of Suresh Kumar (supra), apart from the ground of arbitrary classification, the notification is also bad for want of statutory authority to create a restriction on the right of some convicts to get the benefit of remission. In this regard, learned counsel points out that the Parliament having exercised the power of imposing restriction in granting remission under Section 433A, the State Government as a delegatee, does not have the power to further impose any restriction beyond what has been restricted under Section 433A of the Code.

We will first take up for consideration the argument accepted by the High Court in the impugned judgment that the impugned classification is arbitrary, unreasonable and violative of Article 14 of the Constitution. While considering the challenge based on Article 14 as to the arbitrariness in the impugned classification, the court has to examine whether the impugned classification satisfies certain constitutional mandates or not. They are (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; (ii) that the differentia must have a rational relationship with the objects sought to be achieved by the Act. (See *Kathi Raning Rawat v. The State of Saurashtra* [1952 SCR 435]).

In the instant case, the State Government under the impugned notification granted the benefit of remission to all convicts except those excluded in the said notification. Though the notification in question does not give any specific reason for exclusion of such convicts, from the pleadings of the State

Government, it is clear that this exclusion was done based on the nature of offence committed by the said convicts and taking into consideration the effect of such offence on the society as also the integrity of the State. The question then is whether such classification of convicts based on the nature of offence committed by them, would be an arbitrary classification having no nexus with the object of the Code.

The answer to the said question, in our opinion, should be in the negative. This Court in a catena of decisions has recognised that the gravity of an offence and the quantum of sentence prescribed in the Code could be a reasonable basis for a classification. This Court in *State of Haryana & Ors. v. Mohinder Singh etc.* (2000 (3) SCC 394) held : "Prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued thereunder. That special remission shall not apply to a prisoner convicted of a particular offence can certainly be a relevant consideration for the State Government not to exercise power of remission in that case." (emphasis supplied)

In *Maru Ram etc. etc. v. Union of India & Anr.* (1981 (1) SCR 1196), this Court while repelling an argument of discrimination in regard to the sentence to be imposed in murder cases, held :

"The logic is lucid although its wisdom, in the light of penological thought, is open to doubt. We have earlier stated the parameters of judicial restraint and, as at present advised, we are not satisfied that the classification is based on an irrational differentia unrelated to the punitive end of social defence. Suffice it to say here, the classification, if due respect to Parliament's choice is given, cannot be castigated as a capricious enough to attract the lethal consequence of Art. 13 read with Art. 14."

In *Sunil Batra v. Delhi Administration & Ors.* (AIR 1978 SC 1675), this Court upheld the validity of a classification based on the gravity of the offence.

From the above observations of this Court, it is clear that the gravity of the offence can form the basis of a valid classification if the object of such classification is to grant or not to grant remission.

Having come to the conclusion that the gravity of the offence can be the basis for a valid classification, we will now consider whether the offences excluded from the impugned notification can be said to be such offences which have been wrongly excluded from the benefit of remission. We notice that the convicts who have been excluded from the benefit of said notification, are those convicts who have been sentenced for offences of rape, dowry death, abduction and murder of a child below 14 years, offences coming under Sections 121 to 130 IPC, dacoity, robbery, etc. These are the offences for which the

Code has prescribed the sentence of rigorous imprisonment extending up to life, therefore, from the very nature of the sentence which the offence entails, the said offences can be categorised as grave offences, therefore, they can be aptly classified as grave offences, which classification will be a valid classification for the purpose of deciding whether the persons who have committed such offences should be granted remission or not. On this basis, we are of the opinion that the State Government having decided not to grant remission to these offenders/offences which carry life imprisonment, should not be granted remission, is justified in doing so.

Similarly, the offences under the NDPS and the TADA Acts, apart from carrying heavy penal sentences are offences which could be termed as offences having serious adverse effect on the society, cognisance of which is required to be taken by the State while granting remission, therefore, they can also be classified as offences which should be kept out of the purview of remission.

The offences enumerated in Sections 121 to 130 IPC are the offences against the State, though some of them may not be punishable with life imprisonment, still taking into consideration the nature of offence which undermines the security of the State, in our opinion, can be classified for exclusion from the benefit of remission.

Again the offences under the Foreigners Act, Passport Act, Official Secrets Act also being offences against the State, they can be classified as offences which will not be entitled to the benefit of remission. The persons who have indulged in the breach of mandate of the Jail Manual can also be classified as the offenders who should not be granted the incentive of remission because of their conduct during the period of their conviction. Therefore, we are of the opinion that the offences excluded from the benefit of remission under the impugned notification have been properly classified which classification, in our opinion, is a valid classification for the purpose of making them ineligible for the grant of remission.

Learned counsel for the respondent, as stated above, relying on the judgment of the High Court in Suresh Kumar's case (supra), has argued that the State Government did not have the power to create a further restriction than what is provided in Section 433A of the Code in view of the Parliamentary enactment of the said Section in the Code. We notice that the legislature by enacting Section 432 in the Code has given wide powers of suspension, remission and commutation to appropriate Government which can utilise the said power at any time with or without condition. Such power can be exercised by the appropriate Government either with reference to a single convict or with reference to a class of convicts so long as such classification is a valid classification. However, by enacting Section 433A in the Code, the Parliament has only restricted the power of the appropriate Government to grant remission to the convicts mentioned in that Section. It does not do anything more. To grant or not to grant is the power vested in the appropriate Government under Section 432 which the said Government can exercise either by granting remission to all convicts except those mentioned in Section 433A or by restricting the remission to a class of convicts provided such classification is valid. The High Court in the case of Suresh Kumar (supra) erred in holding that the Andhra Pradesh High Court in Jagaram's case (supra) has held that the power of the

appropriate Government to restrict the remission to any class of convicts stands excluded by virtue of the introduction of Section 433A of the Code. This understanding of the judgment in Jagaram's case (supra) by the Punjab & Haryana High Court is wholly erroneous. A reading of the judgment of A.P.High Court in Jagaram's case (supra) at para 7 clearly shows an argument addressed in that case as to the curtailment of the power of the appropriate Government by virtue of the introduction of Section 433A of the Code was specifically rejected which the Punjab & Haryana High Court in Suresh Kumar's case (supra) misread as having upheld the said argument. Be that as it may, we are of the opinion that by introduction of Section 433A of the Code, the Parliament has not excluded or denuded the power of the appropriate Government to restrict the grant of remission to a class of prisoners only or exclude a class of prisoners from such benefit of remission.

Before we conclude, we must note that the notification in question was valid only for the year 1995 and the respondent herein having been given the benefit of remission by the High Court as far back as on 20.10.2001, we do not think the interest of justice requires us to interfere with that benefit given to the respondent. We, however, as stated above, uphold the classification made by the State Government in the impugned notification.

We place on record our appreciation for the services rendered by Mr. Anil Hooda, learned counsel, as an amicus curiae in this case.

For the reasons stated above, this appeal succeeds to the extent indicated hereinabove, and is thus disposed of.