petitioner is bound to return the contributory provident fund, if any. In view of the aforesaid instructions, the contributory provident fund, if any, made over to the petitioner has to be returned by him. If the same was paid to him, as Mr. Kumar is not sure about the factum of the petitioner having received the same, the same shall be returned by the petitioner. At this stage, Mr. Kumar has drawn my attention to the instructions, which in terms say that such an amount i.e. contributory provident fund, can be adjusted against gratuity. In these circumstances, the respondent-State shall deduct the amount, if any already paid to the petitioner, and make over the balance amount within six weeks from today.

(18) In the peculiar facts and circumstances of the case, the parties are left to bear their own costs.

R.N.R.

Before M.L. Singhal, J.

KRISHAN,—Petitioner

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents

Criminal Misc. No. 16180-M of 1998

7th July, 1999

Indian Penal Code, 1860—Ss. 302/34 & 304—Code of Criminal Procedure, 1973—Ss. 432 & 433-A—Constitution of India, 1950—Arts. 72 & 161—Government instructions dated 28th September, 1988 and 4th February, 1993—Accused convicted & sentenced to imprisonment for life for dowry death—Heinous crime—Govt. rejecting the request of the petitioner for premature release—Accused's case for pre-mature release falls under para 2(a) of the 1993 instructions and not under para 2(c)—Instructions dated 28th September, 1988 do not apply—Accused not entitled to pre-mature release—Petition dismissed.

Held that, instructions dated 4th February, 1993 shall govern the case of the petitioner for premature release because the Court becomes functus officio after it has convicted and sentenced a person and after a person is sentenced, it is the duty of the executive Government to determine how sentence passed upon him is to be executed. Execution of the sentence passed upon him is the function of the executive Govt. Article 161 of the Constitution empowers the Governor of a State to grant pardons/reprieves/respites or remissions of punishment or to suspend, remit or commute the sentence of any

person convicted of any offence against any law relating to a matter to which the executive power of the State extends. The power to grant pardons or remission of any sentence is in essence an executive function to be exercised by the Head of the State after taking into consideration various matters which may not be germane for consideration before a law court inquiring into the offence. Similarly, the power to remit any person of the sentence under Section 432 of the Code of Criminal Procedure read with Article 161 of the Constitution of India is an executive power which may be exercised by the Govt. at any time after conviction and does not constitute any interference with the powers of the court because it does not provide to set aside conviction or the sentence. Since the power to grant remissions falls within the province of the Govt., it is for the Govt. to determine as to show remissions are to be granted. Order of remission affects the execution of the sentence passed by the Court. It follows, therefore, that it is for the Govt. to lay down how sentence is to be executed.

(Para 6)

Further held, that petitioner's case for premature release will be governed by para 2(a) of 1993 instructions which lay down that convict who is imprisoned for committing a heinous crime, his case for premature release will be governed on the condition of 14 years actual sentence including under-trial period and 6 years remissions. Para 2(a) excludes the applicability of para 2(c) of these instructions as the very language of para 2(c) suggests. Para 2(c) says that juvenile life convicts below the age of 18 years at the time of the commission of the offence and whose cases are not covered under para 2(a) above and who have committed crimes which are not considered heinous. It is, thus, clear that petitioner's case for premature release shall mature for consideration in view of para 2(a) of 1993 instructions after completion of 14 years actual sentence including under-trial period and after earning 6 years remissions.

(Para 7)

S.S. Rana, Advocate for the petitioner

D.K. Khanna, AAG, Haryana, for the respondent

JUDGMENT

M.L. Singhal, J.

(1) This is Crl. Misc. No. 16180-M of 1999 filed under section 482 Cr. P.C. read with Articles 226/227 of the Constitution of India whereby Krishan (petitioner herein) has prayed for his premature release in

view of instructions Annexure P1. He has further prayed that the orders Annexure P3 and P4 passed by the government be quashed.

(2) Facts upon which he has founded his claim are as follows :—

(3) Petitioner was convicted and sentenced in case FIR No. 370 dated 21st December, 1988 of P.S. Kalayat, district Jind under section 302/34 and 304-B IPC to imprisonment for life by Sessions Jind on 4th/6th April, 1990. He has been in jail since the day of his arrest. He has undergone sentence before/after conviction to the tune of 9 years 5 months and 8 days. He has earned remissions to the tune of 3 years and 8 months. In this manner, the total sentence undergone by him is to the tune of 13 years 1 month and 8 days. During this period, in jail his conduct has been highly remarkable free from the commission of any jail offence. He has availed parole/furlough on different dates. During the period, he was on parole/furlough, he committed no offence and returned to the jail without any demur. As on 6th April, 1990 i.e. when he was convicted, the government instructions dated 28th September, 1988 issued under Article 161 of the Constitution of India were in force and applicable. His case for premature release has to be considered as per the government instructions as applicable and in force as on the day of conviction. It is further alleged that at the time of commission of the offence, he was a juvenile. As per para 2(b) of the govt. instructions dated 28th September, 1988, a juvenile life convict, if male, was entitled to be considered for premature release after undergoing 6 years actual sentence including under-trial period provided the total of such period of detention including remission is not less than 10 years. Petitioner has already undergone more than 9 years actual sentence and with remissions more than 13 years sentence, the respondents should be directed to release him forthwith. Instructions dated 28th September, 1988 were superseded by the instructions dated 19th November, 1991 and further by instructions dated 4th February, 1993. As per instructions Annexure P1 dated 4th February, 1993, a juvenile life convict is required to undergo 8 years actual sentence including under-trial period and 10 years with remissions. Petitioner fulfils all the conditions of para 2(c) of instructions Annexure P1 dated 4th February, 1993. At the time of the commission of the offence, he was less than 18 years. Learned Sessions Judge recorded his age as less than 18 years in the heading of the judgment. Rejection of his case for premature release by order Annexure P3 and P4 is unwarranted and illegal.

(4) Respondents contested the petitioner's prayer for premature release urging that he cannot claim, as a matter of right, premature release as sentence for life means the sentence for the whole of the

remaining life of the convict unless remitted by the Governor under Article 161 of the Constitution of India or by the President under Article 72 of the Constitution of India. As he was convicted on 6th April, 1990, his case falls within the ambit of section 433-A Cr. P.C. He has to undergo 14 years of actual sentence including under-trial period which he has not undergone so far. It was further urged that the petitioner committed a heinous crime inasmuch as he murdered his wife for dowry. His case falls under para 2(a) of the instructions. He has to undergo 14 years of actual sentence. Besides, he has to earn 6 years remissions in view of para 2(a) of instructions Annexure P1/R1 dated 4th February, 1993. It was further urged that the petitioner's case for premature release can be considered under para 2(a) of the instructions dated 4th February, 1993 and not under 28th September, 1988 instructions. Those instructions will be applicable to the petitioner which were in force when he qualifies for premature release. Those instructions which are in force on the date of conviction will not govern his case for premature release.

(5) I have heard the learned counsel for the petitioner, learned AAG for the State of Haryana and have gone through the record.

(6) Learned counsel for the petitioner submitted that instructions as were in force on 6th April, 1990 will govern his case for premature release. In support of this submission, he has drawn my attention to *Bhupinder Singh* Vs. *State of Punjab* (1). Learned AAG, Haryana, on the other hand submitted that the latest instructions will govern his case for premature release or those instructions will govern his case for premature release which are in force when he qualifies for consideration of premature release. "In my opinion, instructions dated 4th February, 1993 shall govern his case for premature release because the court becomes *functus officio* after it has convicted and sentenced a person and after a person is sentenced, it is the duty of the executive government to determine how sentence passed upon him is to be executed. Execution of the sentence passed upon him is the function of the executive govt. Article 161 of the Constitution of India empowers the Governor of a State to grant pardons/reprieves/respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends. The power to grant pardons or remission of any sentence is in essence an executive function to be exercised by the Head of the State after taking into consideration various matters which may not be germane for consideration before a law court-inquiring into the offence. Similarly, the power to remit any

(1) 1996 (1) R.C.R. 463

person of the sentence under section 432 of the Code of Criminal Procedure read with Article 161 of the Constitution of India is an executive power which may be exercised by the Govt. at any time after conviction and does not constitute any interference with the powers of the court because it does not provide to set aside conviction or the sentence. Since the power to grant remissions falls within the province of the Govt., it is for the govt. to determine as to how remissions are to be granted. Order of remission affects the execution of the sentence passed by the court. It follows therefore that it is for the govt. to lay down how sentence is to be executed.

(7) It was submitted by the learned counsel for the petitioner that the petitioner's case for premature release shall be governed by para 2(c) of 1993 instructions which lay down that a juvenile life convict shall be entitled to release from jail after he has completed actual sentence of 8 years including under-trial period and 10 years total sentence including remissions. Learned AAG. Haryana, on the other hand submitted that petitioner's case for premature release shall be governed by para 2(a) of 1993 instructions as he was convicted for dowry death. His case for premature release shall be considered after he has completed 14 years actual sentence including under-trial period and after earning 6 years remissions. It was further submitted by learned AAG, Haryana, that petitioner is recorded as 18 years as on 4th June, 1990 i.e. when the learned Sessions Judge convicted and sentenced him *vide* order Annexure R2. Dowry death took place on 21st December, 1988. It was submitted that he was thus less than 18 years at the date of commission of the offence. In support of this submission, he drew my attention to school certificate Annexure P2. Petitioner's case for premature release will be governed by para 2(a) of 1998 instructions which lay down that convict who is imprisoned for committing a heinous crime, such as murder with wrongful confinement or murder for extortion, robbery or murder with rape or murder in connection with dowry....., his case for premature release will be governed on the condition of 14 years actual sentence including under-trial period and 6 years remissions. Para 2(a) excludes the applicability of para 2(c) of these instructions as the very language of para 2(c) suggests. Para 2(c) says that juvenile life convicts below the age of 18 years at the time of the commission of the offence and whose cases are not covered under para 2(a) above and who have committed crimes which are not considered heinous as mentioned in para 2(a) and female life convicts shall be considered for premature release after completion of actual sentence of 8 years including under-trial period provided the total period of such sentence including remissions is not less than 10 years. It is thus clear that the petitioner's case for premature release

shall mature for consideration in view of para 2(a) of 1993 instructions after completion of 14 years actual sentence including under-trial period and after earning 6 years remissions.

(8) For the reasons given above, this Crl. Misc. petition fails and dismissed.

J.S.T.

Before M.L. Singhal, J.

FAQUIRIYA,—*Petitioner/Defendant*

versus

NOOR DEEN AND OTHERS,—*Respondents*

C.R. No. 3708 of 1998

3rd Feburary, 2000

Punjab Security of Land Tenures Act, 1953—Haryana Ceiling on Land Holdings Act, 1972, as amended by Haryana Act No. 40 of 1976—Cl. 12(3)—Haryana Utilisation of Surplus and other Area Scheme, 1976—Cls. 5 to 7—Code of Civil Procedure, 1908—0.39 Rls. 1 and 2—Surplus land—Respondents 1 to 3 cultivating the land as tenants and in possession since 1963—Government allotting land to the petitioner after following the procedure of allotment under the 1976 Scheme—Respondents not found eligible for allotment—Their request for allotment rejected—Balance of convenience in favour of the petitioner—Order of Appellate Court granting ad interim injunction to respondents set aside.

Held, that respondents 1 to 3 may have *prima facie* case in their favour. There is, however, no balance of convenience in their favour inasmuch as this land was allotted to the petitioner,—*vide* allotment order dated 20th April, 1979. Land was to be allotted only to the eligible persons. Form US-4 had already been allotted to the petitioner. Possession of land measuring 19 K 11 M out of 39K 11 M has already been given to the petitioner. Before utilisation of the surplus land, there was munadi effected in the village.

(Para 12)

Further held, that balance of convenience is in favour of the petitioner. This revision succeeds and is accepted. Order dated 2nd April, 1998 passed by Addl. District Judge, Jagadhri, is set aside and that of Addl. Civil Judge, Sr. Division Jagadhri, dated 31st January, 1996, is