

**Joginder Singh v. State of Haryana and another
(S. S. Sandhawalia, C.J.)**

family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of his Guru are regarded as his brothers, while the co-disciples of his Guru are looked upon as uncles and in this way a spiritual family is established on the analogy of a natural family."

The contention raised is patently devoid of merit. The expression "son" has not been assigned any special meaning under the Act and has, therefore, to be understood in its ordinary usual sense of meaning, the male child of a parent. The Chela as the "spiritual son" of the Mahant does not thereby become the child and the Mahant its parent, according to the meaning of "son" as is commonly understood. It would be putting a construction quite contrary of its true meaning, if for the purpose of this Act, a Chela is said to be the child and the Mahant its parent. The description of a Chela as the "spiritual son" of the Mahant cannot be taken to bring him within the ambit of the word "son" so as to entitle him to a separate unit of permissible area under the Act.

(4) The impugned order thus warrants no interference in writ proceedings and this writ petition is accordingly hereby dismissed. In the circumstances of the case, however, there will be no order as to costs.

H. S. B.

Before S. S. Sandhawalia, C.J. & A. S. Bains, J.

JOGINDER SINGH,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Criminal Writ Petition No. 33 of 1982.

April 28, 1983.

Code of Criminal Procedure (II of 1974)—Section 428—Persons sentenced to imprisonment for life—Whether entitled to set off their under trial period of detention against their sentence—Such under trial period—Whether to be included for the purpose of determining pre-mature release.

Held, that the benefit of the set off contemplated by section 428 of the Code of Criminal Procedure, 1973 would not be available to life convicts. As such, the under trial period of persons sentenced to imprisonment for life cannot be set off against their total sentence and such period cannot be included for the purposes of determining the pre-mature release.

(Paras 3 and 4)

Ragbir Singh vs. The State of Haryana, Cr. W.P. No. 212 of 1981, decided on 20th January, 1982.

OVERRULED.

Petition under Articles 226/227 of the Constitution of India praying that the entire record concerning the case of the detenu be summoned and after perusal of the same, this Hon'ble High Court may be pleased to issue:—

- (i) *a writ of Habeas Corpus holding that further detention of the detenu Mohinder Singh, son of Bishan Singh, Life Convict, confined in District Jail, Nabha, without consideration of his pre-mature release case is illegal, as he has undergone the mandatory minimum sentence under para 516-B of the Punjab Jail Manual;*
- (ii) *direct the respondent No. 1 to consider the detenu's case for pre-mature release in the light of the judgment of the Hon'ble Supreme Court of India in Maru Ram's case (AIR 1980 S.C. 2147);*

It is further prayed:—

- (a) *that the detenu be released on bail during the pendency of his case with the Government for pre-mature release as has been done by this Hon'ble High Court in Criminal Writ Petition No. 157 of 1975 and by the Hon'ble Supreme Court of India in Criminal Writ Petition No. 3140—3157 of 1981;*
- (b) *any other relief which in the circumstances of this case this Hon'ble Court deems fit and proper be also granted;*
- (c) *issuance of advance notices of the present writ petition to the respondents at this stage be dispensed with.*

V. K. Jindal, Advocate, for the Petitioner.

K. D. Singh, Advocate, for the State.

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JUDGMENT

S. S. Sandhawalia, C.J.

1. The meaningful common question in this set of eight connected criminal writ petitions which necessitated this reference is—whether persons sentenced to imprisonment for life are entitled to set off their undertrial period of detention against their sentence under section 428 of the Code of Criminal Procedure for the purpose of their pre-mature release.

2. Within this jurisdiction, there exists some conflict of judicial opinion on the point. In *Darshan Singh v. The State of Haryana* (1), the learned Single Judge took the view that section 428 of the Code of Criminal Procedure was applicable only to the cases of persons sentenced to imprisonment for a term and, therefore, had no application in the context of life convicts. Consequently it was held that an accused person sentenced to imprisonment for life could not claim to set off the period of his detention as an under-trial prisoner for the purposes of his premature release. However, in *Raghubir Singh v. The State of Haryana* (2), the learned Single Judge took a contrary view by holding that the life convict was entitled to set off the period of detention as an under-trial as well for consideration of his premature release by the Government. The earlier view in *Darshan Singh's case* apparently was not brought to the notice of the learned Single Judge.

3. It seems unnecessary to advert individually to the reasoning in the aforesaid two conflicting judgments. This is so because the identical question now stands authoritatively settled by their Lordships in *Kartar Singh and others v. State of Haryana* (3). Tulzapurkar, J., speaking for the Bench after consideration of principle and precedent has held therein that the benefit of the set off contemplated by section 428, Criminal Procedure Code would not be available to life convicts. Following the ratio therein it has necessarily to be held that *Raghubir Singh's case* (supra) was not correctly decided and is hereby overruled. The view in *Darshan Singh's case* (supra) is hereby affirmed.

(1) Cr. W. 52 of 1980 decided on 28th May, 1981.

(2) Cr. W. 212 of 1981 decided on 20th January, 1982.

(3) AIR 1982 S.C. 1439.

4. In the light of the aforesaid legal position the briefest reference to the facts in Criminal Writ No. 33 of 1982—*Joginder Singh v. State of Haryana* suffices. Therein the petitioner, whose death sentence had been commuted to that of imprisonment for life had claimed a set off for one year and eight days spent by him as an under-trial prisoner for the purposes of his premature release. Plainly enough in the wake of *Kartar Singh's case* (supra) this stand is no longer sustainable. Indeed learned counsel for the writ petitioner was fair enough to concede that he had little or nothing to urge now in view of the aforesaid authoritative pronouncement. The writ petition has consequently to be dismissed.

5. It is common ground that the position in the other connected cases is identical. These also must accordingly fail and are hereby dismissed.

H. S. B.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain & M. R. Sharma, JJ.

COMMISSIONER OF INCOME-TAX, JULLUNDUR,—Appellant.

versus

M/S. AMRIT SPORTS INDUSTRIES, JULLUNDUR,—Respondent.

Income Tax Appeal No. 12 of 1980

May 30, 1983

Income-tax Act (XLIII of 1961)—Section 269-A to R—Proceedings initiated for acquisition of immovable property—Personal service effected on transferee-assessee—Tenants on (persons interested) such property not served—Proceedings for initiation—Whether can be said to be complete with the publication of the notification in the official gazette as provided by section 269-D(1)—Procedural defect in publication of such notification—Whether vitiates all subsequent proceedings—Assessee served with notice personally under section 269-D(2) (a)—Such assessee—Whether can challenge the acquisition proceedings on the basis of non-service of notice on the other persons interested in the property.