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STATE OF MADHYA PRADESH

v.

MOHAN SINGH

SEPTEMBER 20, 1995

B

[S.P. BHARUCHA AND B.N. KIRPAL, JJ.]

*Criminal Law :*

*Code of Criminal Procedure, 1973 :*

C

*S.432(1)—Grant of special remission by State Government—Restricted only to SC/ST and female prisoners—Held, not valid since all prisoners are equal and is not a measure for advancement of SC/ST—Hence not covered under Art. 15(4) of the Constitution of India—High Court could have quashed the special remission—Not to have granted a general remission where the State intended that to be restricted—However, person who obtained the benefit of High Court's order permitted to retain it—Constitution of India—Art. 15(4).*

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On the occasion of Republic Day, 1978, under the provisions of Section 432(1) Cr.P.C., the State of Madhya Pradesh granted special remission to Scheduled Castes/Scheduled Tribes and female prisoners.

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Respondents filed writ petitions before the High Court claiming that such remission should be granted to them also, as otherwise, it violated their right to equality. State contended that SC/ST prisoners constituted a class and special remission could validly be given to them. The High Court held that the benefit of Article 15(4) relied upon by the State was not a valid defence in as much as the provision for special remission could not be said to have been made for the advancement of SC/ST.

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Declaring it to be discriminatory, the High Court directed the State to give the benefit of special remission to the writ petitioners. Hence this appeal by the State of Madhya Pradesh.

Allowing the appeal, this Court

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**HELD :** 1. There was no justification in law for giving special remission to prisoners belonging to the Scheduled Castes and Scheduled

Tribes. In so far as these prisoners had broken the law and were being punished for doing so, they stood on the same footing as all other prisoners. The invocation of Article 15(4) was wholly unjustified ; the grant of remission to convicted prisoners belonging to the Scheduled Castes and Scheduled Tribes can hardly be said to be a measure for the "advancement" of the Scheduled Castes and Scheduled Tribes. [845-E]

2. Having come to the conclusion that the grant of special remission to Scheduled Caste and Scheduled Tribe prisoners was unlawful, the proper course to adopt should have been to strike it down. It was beyond the High Court's power to expand the reach of the remission so as to give the benefit of it to the writ petitioner, who did not belong to the Scheduled Castes or Scheduled Tribes. The power to grant the remission lay with the State. If the power was improperly exercised, the High Court could quash the exercise; but it could not grant a general remission where the State had intended it to be restricted. [845-G-H]

3. However, those who have obtained the benefit of the High Court's order must be permitted to retain it and they cannot now be required to serve out the terms in respect of which they got such benefit. [846-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2289 of 1986.

From the Judgment and Order 7.8.80 of the Madhya Pradesh High Court in Misc. Petition No. 175 of 1980.

WITH

Civil Appeal Nos. 2278-79/86, 523/87 and 1035 of 1987.

From the Judgment and Order dated 18.11.80, 21.11.80 & 31.10.80 of the Madhya Pradesh High Court in Misc. P. Nos. 649/80, 652/80, 608, and 524 of 1980.

Sakesh Kumar, T.C. Sharma and S.K. Agnihotri for the Appellant.

Sushil Kr. Jain and R.C. Kaushik for the Respondent.

The following Order of the Court was delivered :

A These appeals by special leave impugn the judgments and orders of Division Benches of the High Court of Madhya Pradesh. The High Court allowed several writ petitions and directed the respondent State to give to the writ petitioners the benefit of a special remission which the State had restricted to prisoners belonging to the Scheduled Castes and Scheduled Tribes and to female prisoners.

B The remission was granted on the occasion of Republic Day, 1978, under the provisions of Section 432(1) of the Code of Criminal Procedure, In clause (i) certain general remissions were granted, with which we are not concerned. Clauses (ii) dealt with the special remission and read thus:

C *"Special Remissions :*

D In addition to the aforesaid remission all female prisoners and those prisoners as belonging to the Scheduled Castes and Scheduled Tribes notified under Articles 341 and 342 of Constitution, shall be given by way of Special Remission, further remission equal to general remission granted to them under paragraph 1(a), (b), (c) and (d) of this order.

E (b) The female prisoners and the prisoners belonging to Scheduled Castes and Scheduled Tribes who have undergone sentences of fourteen years or more inclusive of remissions, shall be released.

(Note : Such prisoners shall not be dealt with in accordance with paragraph 1(c) of this order but shall be dealt with only in accordance with paragraph 2(b) thereof.)"

F The principal judgment is in the first appeal. It was followed in the other appeals.

G The writ petitioners contended that the special remission granted to prisoners belonging to the Scheduled Castes and Scheduled Tribes and denied to other prisoners, such as the writ petitioner, violated their right to equality. He prayed that the State should be directed to allow the special remission to him. The contention of the State in its return was that prisoners belonging to the Scheduled Castes and Scheduled Tribes constituted a class and the special remission could validly be given to them.

H The High Court came to the conclusion that the benefit of Article 15(4),

which the State relied upon, was unavailable as a defence inasmuch as the provision for special remission could not be said to have been made for the advancement of the Scheduled Castes and Scheduled Tribes. The grant of special remission to prisoners belonging to the Scheduled Castes and Scheduled Tribes and denial of the same to other prisoners amounted to discrimination. The High Court upheld the argument of the writ petitioner thus :

"You have granted special remission to the prisoners of the Scheduled Castes and Scheduled Tribes on the basis of caste and race only which is not covered by Article 15(4), therefore, treat me and other prisoners equally and give us the same remissions which have been allowed to the prisoners of the Scheduled Castes and the Scheduled Tribes. "

The State was directed to give to the writ petitioner the benefit of the special remission.

We are in agreement with the view of the High Court that there was no justification in law for giving special remission to prisoners belonging to the Scheduled Castes and Scheduled Tribes. In so far as these prisoners had broken the law and were being punished for doing so, they stood on the same footing as all other prisoners. The invocation of Article 15(4) was wholly unjustified; the grant of remission to convicted prisoners belonging to the Scheduled Castes and Scheduled Tribes can hardly be said to be a measure for the "advancement" of the Scheduled Castes and Scheduled Tribes.

Here we part company with the High Court. Having come to the conclusion that the grant of special remission to Scheduled Caste and Scheduled Tribe prisoners was unlawful, the proper course to adopt should have been to strike it down. It was beyond the High Court's power to expand the reach of the remission so as to give the benefit of it to the writ petitioner, who did not belong to the Scheduled Castes or Scheduled Tribes. The power to grant the remission lay with the State. If the power was improperly exercised, the High Court could quash the exercise. The High Court could not, in effect, grant a general remission where the State had intended it to be restricted.

**A** This Court had made it clear that in the event that special leave was granted, the respondents would not be asked to go back to jail. We think that those who have obtained the benefit of the High Court's order must be permitted to retain it and they cannot now be required to serve out the terms in respect of which they got such benefit.

**B** The appeals are allowed. The judgments and orders under appeal are set aside but the respondents shall not be required to forgo the benefits they have obtained by reason thereof. There shall be no order as to costs.

G.N.

Appeals allowed.