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BUDH SINGH

v.

STATE OF HARYANA AND ANR.
(Writ Petition (Criminal) No. 15 of 2012)

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MARCH 11, 2013

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985:

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s. 32-A (as introduced w.e.f. 29.5.1989) – Sentences awarded under the Act not to be suspended, remitted or commuted – Effect of – Accused convicted u/s 15 on 27.7.1990 for offence committed on 13.12.1988 – Held: There is no vice of unconstitutionality in the section insofar as it takes away the powers of the executive conferred upon it u/ss 432 and 433 CrPC to suspend, remit or commute the sentence of a convict under the Act – Exclusion of benefit of remission cannot be understood to have the effect of enlarging the period of incarceration of an accused convicted under the Act – Nor can s. 32-A have the effect of making a convict undergo a longer period of sentence than what the Act had contemplated at the time of commission of the offence.

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The petitioner, who was convicted u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on 27.7.1990, filed the instant writ petition challenging the constitutional validity of 32-A of the Act on the ground that the exclusion of benefit of remission by introduction of s.32-A would have the effect of making the petitioner undergo a longer period of incarceration than what was visualized by the Act as prevailing on the date of alleged commission of the crime by him i.e. 13.12.1988. The question for consideration before the Court was: "whether the remission(s) earned by a convict operates as a reduction of the sentence."

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Dismissing the writ petition, the Court

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HELD: 1.1 Insofar as the challenge to s. 32-A of the NDPS Act founded on violation of Arts. 14 and 21 of the Constitution of India, 1950 is concerned, in *Dadu alias Tulsidas** this Court has held that there is no vice of unconstitutionality in the section insofar as it takes away the powers of the executive conferred upon it u/ss 432 and 433 CrPC to suspend, remit or commute the sentence of a convict under the Act. [para 2] [275-B-C, G; 276-A]

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**Dadu alias Tulsidas vs. State of Maharashtra (2000) 8 SCC 437* - relied on.

1.2 With regard to challenge founded on alleged violation of Art. 20(1) of the Constitution, s.32-A of NDPS Act ex facie has nothing to do with the punishment or penalty imposed under the Act. In fact, no change or alteration in the severity of the penalty under the NDPS Act has been brought about by the introduction of s. 32A with effect from 29.05.1989. What s. 32A has done is to obliterate the benefit of remission(s) that a convict under the NDPS Act would have normally earned. The correct legal position, as has been held by this Court in *Sarat Chandra Rabha's* case is that the remission(s) do not in any way touch or affect the penalty/sentence imposed by a court. In view of this settled position of law, the exclusion of benefit of remission cannot be understood to have the effect of enlarging the period of incarceration of an accused convicted under the NDPS Act. Nor can s. 32A have the effect of making a convict undergo a longer period of sentence than what the Act had contemplated at the time of commission of the offence. [para 9] [279-B-E]

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Sarat Chandra Rabha and Others vs. Khagendranath Nath and Others 1961 SCR 133 = AIR 1961 Supreme Court

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A **334**; *Maru Ram vs. Union of India and Others (1981) 1 SCC 107*- relied on

Case Law Reference:

B (2000) 8 SCC 437 relied on para 2
1961 SCR 133 relied on para 5
(1981) 1 SCC 107 relied on para 9

C CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.)
No. 15 of 2012.

Under Article 32 of the Constitution of India.

K.G. Bhagat, Divya Shukla, Dattatray Vyas, Vineet Bhagat
for the Petitioner.

D Nupur Choudhary, Kamal Mohan Gupta for the
Respondents.

The Judgment of the Court was delivered by

E **RANJAN GOGOI, J.** 1. The petitioner has been convicted
under Section 15 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (hereinafter for short "the NDPS Act")
by an order of the learned Sessions Judge, Sirsa, Haryana
dated 27.7.1990. He has been sentenced to undergo RI for a
F period of 10 years and also to pay a fine of Rs. 1,00,000/- (One
lakh only), in default, to suffer further RI for a period of 3 years.
The said order has been confirmed in appeal. The petitioner,
on the date of the filing of the present writ petition, had
undergone custody for a period of more than 7 years. He
G contends that taking into account the remissions which would
have been due to him under different Government Notifications/
Orders issued from time to time he would have been entitled
to be released from prison. However, by virtue of the
provisions of Section 32A of the NDPS Act, the benefit of such
H remissions have been denied to him resulting in his continued

custody. Consequently, by means of this writ petition under Article 32 of the Constitution, he has challenged the constitutional validity of Section 32A of the NDPS Act, inter alia, on the ground that the said provision violates the fundamental rights of the petitioner under Articles 14, 20(1) and 21 of the Constitution.

2. Insofar as the challenge founded on violation of Articles 14 and 21 is concerned, the issue stands squarely covered by the decision of this Court in *Dadu alias Tulsidas vs. State of Maharashtra*¹. The following extract from para 15 from the decision in *Dadu* (supra) which deals with the contentions advanced on the basis of Articles 14 and 21 and the views of this Court on the said contentions amply sums up the situation.

"The distinction of the convicts under the Act and under other statutes, insofar as it relates to the exercise of executive powers under Sections 432 and 433 of the Code is concerned, cannot be termed to be either arbitrary or discriminatory being violative of Article 14 of the Constitution. Such deprivation of the executive can also not be stretched to hold that the right to life of a person has been taken away except, according to the procedure established by law. It is not contended on behalf of the petitioners that the procedure prescribed under the Act for holding the trial is not reasonable, fair and just. The offending section, insofar as it relates to the executive in the matter of suspension, remission and commutation of sentence, after conviction, does not, in any way, encroach upon the personal liberty of the convict tried fairly and sentenced under the Act. The procedure prescribed for holding the trial under the Act cannot be termed to be arbitrary, whimsical or fanciful. There is, therefore, no vice of unconstitutionality in the section insofar as it takes away the powers of the executive conferred upon it under

1. (2000) 8 SCC 437.

A Sections 432 and 433 of the Code, to suspend, remit or commute the sentence of a convict under the Act."

B 3. It is to the challenge founded on alleged violation of Article 20(1) that the attention of the Court will have to be primarily focused in the present case. Article 20(1) is in the following terms :

C **"20. Protection in respect of conviction for offences.-**
(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

D 4. It has been argued on behalf of the petitioner that though the petitioner has been sentenced to undergo RI for a period of 10 years on being found guilty under Section 15 of the NDPS Act, the said period of imprisonment must be understood to be subject to such remissions to which the petitioner would have been entitled to in the normal course. However, Section 32A
E of the NDPS Act by denying the benefit of remissions has, in fact, enlarged the period of incarceration. According to the petitioner, he is alleged to have committed the offence under the NDPS Act on 13.12.1988 and was convicted of the said
F offence by the learned Trial Court and sentenced accordingly on 27.7.1990. Section 32A of the NDPS Act was brought into the statute book by an amendment to the Act with effect from
• 29.5.1989. Therefore, according to the petitioner, the benefit of remissions of sentences under the Act being permissible on the date when he is alleged to have committed the offence, i.e.,
G 13.12.1988, the exclusion of the said benefit by the introduction of Section 32A with effect from 29.5.1989 has the effect of making the petitioner undergo a longer period of incarceration than what was visualized by the Act as prevailing on the date of the alleged commission of the crime by the petitioner.

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5. The answer to the above issue raised by the petitioner would depend on the true and correct meaning of the effect of the period/periods of remissions earned by a convict under Section 432 of the Code of Criminal Procedure on the sentence or penalty that may have been imposed by a court of competent jurisdiction. Specifically, the question that arises is whether the remission(s) earned by a convict operates as a reduction of the sentence. The issue arising, is no longer *res integra* having been dealt with by a decision of this Court of somewhat old vintage in *Sarat Chandra Rabha and Others vs. Khagendranath Nath and Others*².

6. The facts in *Sarat Chandra Rabha* (supra) will be required to be noticed to appreciate the relevance of the view expressed therein to the context of the present case. In *Sarat Chandra Rabha* (supra) the nomination paper of the appellant Aniram Basumatari for election to the Assam Legislative Assembly was rejected by the Returning Officer on the ground that the said person was disqualified under Section 7(b) of the Representation of the People Act, 1951 (hereinafter for short "the RP Act"). Under Section 7(b) of the RP Act a person stood disqualified from being chosen as a Member of the Legislative Assembly if he is convicted by a Court in India of any offence and sentenced to imprisonment for not less than two years unless a period of five years or such lesser period as may be allowed by the Election Commission, has elapsed since his release. The appellant in *Sarat Chandra Rabha* (supra) was convicted of the offence under Section 4(b) of the Explosive Substances Act, 1908 and sentenced to three years RI on 10.7.1953. On the date of filing of the nomination paper by the appellant, i.e. on 19th January, 1957, admittedly, the period of five years since his release had not elapsed. However, the sentence of three years imposed on the appellant on 10.7.1953 was remitted by the Government of Assam on 8.11.1954 under Section 401 of the Code of Criminal Procedure, 1898 (Section 432 of the present Code of Criminal Procedure) and the

2. AIR 1961 Supreme Court 334.

A appellant was released on 14.11.1954. In the above facts, it was contended before the Election Tribunal that in view of the remission granted, the sentence imposed on the appellant was reduced to a period of less than 2 years and therefore the appellant had not incurred the disqualification under Section B 7(b) of the RP Act. The issue raised was answered in favour of the appellant by the Election Tribunal, which view was, however, reversed in the appeal filed before the High Court by the returned candidate. In doing so the High Court was of the opinion, "that a remission of sentence did not have the same C effect as a free pardon and did not have the effect of reducing the sentence passed on the appellant from three years to less than two years, even though the appellant might have remained in jail for less than two years because of the order of remission."

D 7. The matter having reached this Court on the basis of a certificate granted by the High Court, the question that had arisen was formulated in the following terms:-

E "The main question therefore that falls for consideration is whether the order of remission has the effect of reducing the sentence in the same way in which an order of an appellate or revisional criminal court has the effect of reducing the sentence passed by the trial court to the extent indicated in the order of the appellate or revisional F court."

G 8. On a detailed examination and scrutiny of the various dimensions of the question that had arisen, this Court upheld the view taken by the High Court and answered the question formulated by it by holding that "...the effect of an order of H remission is to wipe out that part of the sentence of imprisonment which has not been served out and thus in practice to reduce the sentence to the period already undergone, in law the order of remission merely means that the rest of the sentence need not be undergone, leaving the order

of conviction by the court and the sentence passed by it untouched." A

9. In *Maru Ram vs. Union of India and Others*³ (para 27), this Court had observed that Article 20(1) of the constitution engrafts the rule that there can be no ex post facto infliction of a penalty heavier than what had prevailed at the time of commission of the offence. Section 32A ex facie has nothing to do with the punishment or penalty imposed under the Act. In fact, no change or alteration in the severity of the penalty under the NDPS Act has been brought about by the introduction of Section 32A with effect from 29.05.1989. What Section 32A has done is to obliterate the benefit of remission(s) that a convict under the NDPS Act would have normally earned. But, if the correct legal position is that the remission(s) do not in any way touch or affect the penalty/sentence imposed by a Court, we do not see how the exclusion of benefit of remission can be understood to have the effect of enlarging the period of incarceration of an accused convicted under the NDPS Act or as to how the said provision, i.e., Section 32A, can have the effect of making a convict undergo a longer period of sentence than what the Act had contemplated at the time of commission of the offence. B
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10. For the aforesaid reasons, we find no substance in the challenge to the provisions of Section 32A of the NDPS Act. This writ petition, therefore, has to fail and is accordingly dismissed. F

R.P.

Writ Petition dismissed.