

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.2641 of 2014

ORDER:

1) Heard learned counsel for the petitioner and learned Government Pleader for respondent.

2) The petitioner herein who was arrayed as A-6 in S.C.No.42 of 1989 was tried along with 7 others for the offences punishable under Sections 148 and 302 IPC. The allegations in the charge sheet and evidence adduced show that A-1 was working as a President of T.D.P., of Pedda Charlapally Mandal and A-2 to A-8 were his close associates. The deceased and P.Ws.1 to 3 were residents of Marella village. There were two groups in the village, one led by A-1 and another by the deceased. There were number of criminal cases pending between both the groups. The deceased was elected as a President of single window society of Pedda Charlapally Mandal. On 26.02.1988 at about 6.30 p.m., while the deceased was in the office room of P.W.4, A-1 to A-8 formed themselves into an unlawful assembly, armed with deadly weapons, entered the room of P.W.4 and killed the deceased. A-1 is said to have beat the deceased with an axe on the neck, while A-2 beat on the right fore-arm and head with an axe. Thereafter all the accused hacked the deceased indiscriminately and left the place. In support of its case, the prosecution examined P.Ws.1 and 2 as eyewitnesses to the incident. However, the trial court disbelieved

their presence and accordingly acquitted the accused for all the offences. Challenging the same, the prosecution preferred an appeal vide CrI.A.No.256 of 1991. By its judgment dated 31.12.1992, the appellate court reversed the findings and found all the accused guilty for the offences u/ss.148 and 302 IPC. It is said that the petitioner is said to be in prison since 06.02.1993.

3) The learned counsel for the petitioner mainly submits that the Govt. issued G.O.Ms.No.220 (Home)Parole 28.09.2013 granting special remission to the life convicts on the occasion of Gandhi Jayanthi. A committee headed by the first respondent, along with other members prepared a list of eligible persons to be released. The list contains the names of the prisoners who have completed 7 to 10 years but strangely the name of the petitioner does not find place though he has completed more than 10 years of imprisonment. Since the case of the petitioner falls within the guidelines laid down in G.O.Ms.No.220 dated 28.09.2013, the petitioner seeks remission in sentence. According to him, the reason for not extending the benefit was due to overstaying outside, when he was released on parole. It is further urged by the learned counsel for the petitioner that the over stay of the petitioner was due to some unforeseen reasons for which he was suitably punished after surrender.

4) A counter came to be filed by the second respondent disputing the allegations made in the affidavit filed in support of the writ

petition. A reading of the counter would show that the reason for not extending the benefit to the petitioner was not on the ground of overstay but in view of para No.4 (xv) of the G.O., which prescribes that no benefit can be given to the prisoners who are convicted for "murder of public servants on duty". Since the deceased in this case was elected as President of single window society of Peesipalli Mandal and as he was killed while he was in the office room of the M.R.O., the authorities rejected the request of the petitioner. Referring to Section 2(c)(9) of the Prevention of Corruption Act, 1988, it is urged that since the President of Single Window society is a public servant, no benefit can be extended to the petitioner.

5) An additional counter came to be filed by the second respondent reiterating the averments in the counter filed earlier and also referring to section 21 of the I.P.C.

6) In order to appreciate the rival arguments, it would be useful to refer to clause 4 (xv) of G.O., which is as under:

"4. The remission of sentence in para (3) above shall apply to prisoners, who have been convicted by Courts situated within the State of Andhra Pradesh and are undergoing sentence in other States, but shall not apply to the following categories of prisoners, namely:-

i. to xiv: xxxxxxxxxxxxxxxxxxxx

(xv) Prisoners convicted of murder of public servants on duty."

7) From the averments made in the counter it is clear that the petitioner served more than 10 years of actual sentence. The only ground on which the request was rejected was that he along with others killed a public servant while he was on duty. A perusal of the counter would indicate that the petitioner along with others were involved in incident wherein the deceased, who was the Elected President of single window society of Peesipalli Mandal was killed on 26.02.1988 at 6.30 p.m., while he was in the office room of P.W.4, who was the M.R.O. Though the trial court disbelieved the version and acquitted the accused but the appellate court reversed the same and believed the version of P.W.4. It would be appropriate to refer to the findings with regard to the evidence of P.W.4; the presence of the deceased in his chambers and also the purpose for which he was present. In page 28 of the said judgment the appellate court observed as under:

" The evidence of P.W.4 show that initially at about 5.00 p.m., A-1 came to his office and went away at about 6.00 p.m. The deceased and P.Ws.1 to 3 came and while they were sitting in the office of P.W.4, A-1 came at about 6.30 p.m., with a request to P.W.4 to visit Pothavaram village to conduct an enquiry regarding inclusion of 40% as voters and there was a protest on the deceased stating that P.W.4 cannot leave the place

without completing his work. As such A-1 went away saying that he will come in half an hour; that P.Ws.1 to 3 and deceased were waiting in the room of P.W.4 and within thereafter the deceased was attacked. Thus, according to P.W.4 the offence took place at about 6.45 p.m., in view of this evidence of P.Ws.1 to 4, it can be safely taken basing particularly on the evidence of P.W.1 to 4 that the offence took place at 6.45 p.m."

8) Further, the Division Bench of the court, in page 22 observed as under:

"P.W.4 stated further that A-1 came to his office to obtain caste certificates and voters lists at about 5.00 p.m. A-1 requested him to furnish caste certificate and voters list for his people, he informed A-1 that voters lists will be furnished on payment of challan and after the village assistant certifies and the Revenue Inspector countersigns the verifications, and that in view of paucity of time he agreed to give the voters lists on payment of cash instead of payment of the amounts under challans. This evidence shows that P.Ws.1 to 3 and the deceased were also waiting for the caste certificates and voters list. This evidence properly explained as to why P.Ws.1 to 3 and the deceased came to his office, P.W.4 who was an official witness also lends credence to such evidence in addition to what P.Ws.1 to 3 stated in their evidence."

9) From the findings given by the appellate court, it is clear that the incident took place on 26.02.1988 at 6.45 p.m., in the office room of P.W.4. Even assuming for the sake of argument that the deceased

was a public servant, his purpose of visit to the office of M.R.O., on the date of incident was to obtain caste certificates and voters list enabling his supporters to file nominations in the panchayat elections to be held on the next day i.e., 27.02.1988. Remission under G.O.Ms.No.220, as per the counter, was not extended since the petitioner was responsible for killing a public servant while he was on duty. It is not the duty of the President of Single Window society to go to the office of the M.R.O. and collect the voters list and caste certificates of his supporters for the purpose of filing nominations in the panchayat elections on the next day. In fact there is neither a necessity nor the law contemplates that it is the duty of the deceased to collect the caste certificates and voters list of his supporters from the office of M.R.O., so as to enable his supporters to file nominations in the panchayat elections which was to be held on the next day.

10) Therefore, the reason given by the authorities for rejecting the request of the petitioner in granting remission in terms of G.O.Ms.No.220 cannot be accepted and accordingly the Writ Petition is allowed.

11) There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:25.07.2017
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