

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.2025 of 2018

1.R.Kamalananda
2.S.Balendran
3.S.Sathishkumar
4.S.Nandakumar

Appellants

-vs-

1. The Secretary,
Home (Prison) Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2. The Additional Director General of Police /
Inspector General of Prisons,
No.6, Whannels Road, Egmore,
Chennai-600 008.

3. The Superintendent,
Central Prison-I,
Puzhal, Chennai-600 066.

Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.SR.No.29918 of 2018 dated 26.06.2018.

W.P.SR.No.29918 of 2018:-

Writ Petition has been filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, declaring the following observations made by the learned Principal Sessions Judge, Pudukkottai in S.C.No.7 of 1996 on 29.08.1997 as follows:

"Any remission of sentence or amnesty on any special occasions to be announced either by the State Government or Central Government in future will not apply to the sentence of imprisonment imposed on all the accused in this case as they are convicted for grave offence against women" (para 644).

and confirmed by the Hon'ble Supreme Court of India in C.A.Nos.611-612 of 2003 on 05.04.2005 as follows:

"..... The order of the trial Court that any remission of sentence or amnesty on any special occasions announced or to be announced be either by the Central or the State Government shall not apply to the sentence and imprisonment imposed on all the accused is also maintained."

are ultra vires, illegal and unconstitutional and such observations are against the principles laid down under Articles 72 and 161 of the Constitution of India which are purely the rights vested with both the Central and State Governments respectively and consequently, delete / recall the above observations from the judgments dated 20.08.1997 and 05.04.2005.

For Appellants :: Mr.S.Kasirajan for
Mr.S.B.Viswanathan

For Respondents :: Mr.P.S.Sivashanmugasundaram

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellants herein filed a writ petition before this Court seeking to declare the following observations made by the learned Principal Sessions Judge, Pudukottai in S.C.No.7 of 1996 dated 20.08.1997, which has been confirmed by the Hon'ble Supreme Court in C.A.Nos.611-612 of 2003 on 05.04.2005, as ultra vires, illegal and unconstitutional and such observations are against the principles laid down under Articles 72 and 161 of the Constitution of India which are purely the rights vested with both the Central and State Governments respectively and also to consequently delete / recall the said observations from the judgments dated 20.08.1997 and 05.04.2005:

"Any remission of sentence or amnesty on any special occasions to be announced either by the State Government or Central Government in future will not apply to the sentence of imprisonment imposed on all the accused in this case as they are convicted for grave offence against women"

2.The learned single Judge, by order dated 26.06.2018, dismissed the writ petition in the SR stage itself in W.P.SR.No.29918 of 2018, observing that a Writ of Certiorari cannot be invoked to expunge the observation made in the

judgment of the Trial Court, especially when the same has been confirmed by the Hon'ble Supreme Court by specifically stating that the said order of the Trial Court is also maintained. Observing so, the learned single Judge dismissed the writ petition as not maintainable. Challenging the order passed in the writ petition, the present appeal has been filed by the appellants.

3.Heard Mr.S.Kasirajan, the learned counsel for the appellant and perused the materials available on record.

4.We are not inclined to interfere with the impugned order passed by the learned single Judge, as the Hon'ble Supreme Court in its judgment made in C.A.Nos.611-612 of 2003 dated 05.04.2005, has specifically observed that 'the order of the Trial Court that any remission of sentence or amnesty on any special occasions announced or to be announced be either by the Central or the State Government shall not apply to the sentence and imprisonment imposed on all the accused, is also maintained.'

5.The writ appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

KM
To

1. The Secretary to Government,
Government of Tamil Nadu,
Home (Prison) Department,
Fort St.George, Chennai-600 009.
2. The Additional Director General of Police /
Inspector General of Prisons,
No.6, Whannels Road, Egmore,
Chennai-600 008.
3. The Superintendent,
Central Prison-I,
Puzhal, Chennai-600 066.

+1cc to Government Pleader in sr.no.69175
+2cc to Mr.S.B.Viswanathan, Advocate sr.no.68910

W.A.No.2025 of 2018

jp(co)
CS/12/11/2018