

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1619 of 2016

S.Nalini ...Appellant/Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Additional Director General of Police
and Inspector General of Prisons
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Superintendent of Prison
Special Prison for Women
Vellore.

...Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.39328 of 2015 dated 20.07.2016.

PRAYER IN WP.39328 OF 2015:

Writ Petition filed Under Article 226 of constitution of India Praying for issuance for a Writ of Mandamus directing the 1st Respondent State of Tamil Nadu to consider the decide the petition's representation dated 22.02.2014 seeking her release from prison under Article 161 of the constitution.

For Appellant : Mr.M.Radhakrishnan

For Respondents: Mr.Vijaynarayan
Advocate General
Assisted by
Mr.V.Anandhamoorthy
Addl.Govt.Pleader

J U D G M E N T

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

Introductory:-

Whether the power of the Governor of a State under Article 161 of the Constitution of India to grant pardons, reprieves, respites, remissions of punishment or to suspend, remit or commute the sentence of any person convicted would extend to the matters with respect to which the Parliament alone has power to make laws and more particularly for the offence under the Explosive Substance Act, 1908, The Arms Act, 1959, The Passport Act, 1967, The Foreigners Act, 1946 and The Wireless Telegraphy Act, 1933, is the core issue that arises for consideration in this intra court appeal filed by Mrs.Nalini, who was convicted in the Rajiv Gandhi assassination case.

2. The other substantial issue relates to the jurisdiction of the High Court to take up the writ petition to direct the Governor to exercise the power under Article 161 of the Constitution of India, when a similar writ petition challenging the decision taken by the State to grant remission under Section 432 of the Code of Criminal Procedure is pending before the Hon'ble Supreme Court, to determine the question as to whether it would be permissible to grant such remission without the concurrence of the Central Government in the light of the law laid down by the Constitution Bench in Union of India v. V.Sriharan alias Murugan and others [(2016) 7 SCC 1].

Conspectus of Facts

3. The appellant was charge sheeted along with others by the Central Bureau of Investigation (CBI) alleging involvement in the assassination of Sri Raji Gandhi, then Prime Minister of India. The Designated Court No.1, Poonamallee, convicted the appellant for the offences under Section 302 and other provisions of the Indian Penal Code, Explosive Substance Act, Arms Act, Passport Act, Foreigners Act and Wireless Telegraphy Act. The death sentence was later commuted by the Hon'ble Supreme Court.

4. The Government of Tamil Nadu, through its letter dated 19 February 2014 informed the Central Government its proposal to remit the sentence of life imprisonment and release the appellant and six others, who were convicted in the Rajiv Gandhi assassination case.

5. The Union of India challenged the proposal to remit the sentence in W.P.(Crl) No.48 of 2014 before the Hon'ble Supreme Court.

6. The Supreme Court framed seven questions for consideration and referred it to the Constitution Bench (Union of India v. V.Sriharan alias Murugan and others [2014 (11) SCC 1]).

7. The Constitution Bench answered the reference by order dated 2 December 2015. The writ petition in W.P.(Crl) No.48 of 2014 is now pending before the Supreme Court to take a decision in the light of the law declared by the Constitution Bench in Union of India v. V.Sriharan alias Murugan and others [(2016) 7 SCC 1].

8. The appellant after answering the reference by the Supreme Court filed a writ petition in W.P.No.39328 of 2015 before this Court to consider her representation for premature release in accordance with the Scheme referred to in the letter dated 10 November 1994 sent by the Home Department, Government of Tamil Nadu to the Inspector General of Prison.

9. The writ petition was opposed by the State on the ground that it would not be possible to consider the request in view of the pendency of a similar writ petition before the Hon'ble Supreme Court.

10. The learned single Judge by order dated 20 July 2016 disposed of the writ petition with an observation that the State is at liberty to consider the representation in accordance with law subject to the outcome of W.P(Crl) No.48 of 2014. However, in Paragraph 15 of the order, the learned Judge made it clear that the prayer sought for by the appellant herein cannot be granted unless and until W.P.(Crl) No.48 of 2014 reaches finality.

11. The order is under challenge primarily on the ground that the issue in W.P.(Crl) No.48 of 2014 is confined to the power of the State to give remission under Section 432 of Cr.P.C vis-a-vis Section 435(A) and it has nothing to do with the exercise of power by the Governor under Article 161 of the Constitution of India.

12. The Home Department filed a counter affidavit in this appeal, contending that after the reference order dated 2 December 2015, the Government of Tamil Nadu addressed a letter dated 2 March 2016 to the Government of India for obtaining its views in the matter of release of the life convicts in the Rajiv Gandhi assassination case. The Government of India opined that it would not be appropriate to act upon the proposal in view of the pendency of the matter before the Supreme Court and the interim order of status quo.

Submissions

13. The learned counsel for the appellant by placing reliance on the Constitution Bench judgment in *Maru Ram v. Union of India* [Air 1980 SC 2147] contended that power under Article 161 is high prerogative vested by the Constitution in the highest functionary of the State and it has nothing to do with the power conferred on the State under Section 432 of Cr.P.C. The learned counsel contended that the writ petition pending before the Supreme Court relates to the proposal made by the State to remit the sentence invoking Section 432 Cr.P.C. without the concurrence of the Government of India. The pendency of the writ petition before the Supreme Court would not prevent the Governor from exercising the constitutional power. Similarly, it would not stand in the way of the High Court issuing a Mandamus to consider the premature release of the appellant like so many other convicts, who were released by exercising the power under Article 161 of the Constitution of India.

14. The learned Advocate General by placing reliance on the interim order passed by the Supreme Court dated 23 July 2015 in WP (Crl) No.48 of 2014 contended that it would not be possible for the State to take a call on the representation given by the appellant till the larger issue is decided by the Supreme Court. The learned Advocate General contended that the concurrence of the Central Government in the subject case is mandatory even for exercise of the power under Article 161 of the Constitution of India, in view of the sentence awarded to the appellant for the offences relating to Central Acts. The learned Advocate General submitted that in view of the stand taken by the Government of India that the proposal must await the order in W.P.(Crl) 48 of 2014, the State Government is helpless. The learned Advocate General submitted that it is for the appellant to move the Hon'ble Supreme Court for an early disposal of the writ petition, instead of prosecuting the intra court appeal.

सत्यमेव जयते

Discussion

15. The Government of Tamil Nadu earlier took a decision to remit the sentence of life imprisonment awarded to the appellant and six others and addressed a letter dated 19 February 2014 to the Government of India. The letter dated 19 February 2014 was challenged by the Union of India before the Supreme Court in W.P.(Crl) No.48 of 2014.

16. The Supreme Court while dealing with the writ petition framed seven questions and referred it to the Constitution Bench.

17. The Constitution Bench in its interim order dated 23 July 2015 clarified the earlier interim order, by observing that the pendency of the reference would not prevent the constitutional functionaries from exercising the power under Article 72 or 161 of the Constitution of India. (2016 (7) SCC 192).

The order reads thus:

"Order dated 23-7-2015

(Before H.L. Dattu, C.J. and F.M. Ibrahim Kalifulla, Pinaki Chandra Ghose, Abhay Manohar Sapre and Uday U. Lalit, JJ.)

Writ Petitions (Crl.) No. 48 of 2014 with Nos. 185, 150, 66 of 2014 and 1215 of 2011

4. Vide the order dated 9-7-2014 [Union of India v. V. Sriharan, (2016) 7 SCC 1, 50 (footnote 5)] , we had restrained the State Governments from exercising their powers of remission and commutation of sentence under Sections 432 and 433 of the Code of Criminal Procedure, 1973 to life convicts. The relevant paragraph of the order passed by this Court reads as under:

"In the meanwhile, the State Governments are restrained from exercising their power of remission to life convicts."

We had issued notice to all the State Governments through their Standing Counsel.

5. After hearing the arguments advanced by the learned counsel for the respective State Governments for some time, we are of the considered view that our order dated 9-7-2014 [Union of India v. V. Sriharan, (2016) 7 SCC 1, 50 (footnote 5)] requires to be modified. Accordingly, we modify our order dated 9-7-2014 [Union of India v. V. Sriharan, (2016) 7 SCC 1, 50 (footnote 5)] , whereby we had restrained the State Governments from exercising their power of remission or commutation to life convicts. The said order dated 9-7-2014 [Union of India v. V. Sriharan, (2016) 7 SCC 1, 50 (footnote 5)] shall only apply to cases:

(i) where life sentence has been awarded specifying that:

(a) the convict shall undergo life sentence till the end of his life without

remission or commutation;

(b) the convict shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or the like;

(ii) where no application for remission or commutation was preferred, or considered suo motu by the State Governments/authorities concerned;

(iii) where the investigation was not conducted by any central investigating agency like the Central Bureau of Investigation;

(iv) where the life sentence is under any Central law or under Section 376 of the Penal Code, 1860 or any other similar offence.

6. However, we clarify that the President of India in exercise of his powers under Article 72 of the Constitution of India and the Governors of the States in exercise of their powers under Article 161 of the Constitution of India are not prevented from exercising their power(s), insofar as the cases referred to in para 2 above are concerned.

7. We further make it clear that this order shall not be applicable to the respondents in Writ Petition (Crl.) No. 48 of 2014.

8. It is also clarified that this order is subject to the final orders that may be passed by us while answering the referral order [Union of India v. V. Sriharan, (2014) 11 SCC 1 : (2014) 3 SCC (Cri) 1] .

9. The order passed by us today shall be communicated by the Registry of this Court to all the State Governments and Union Territories.

10. Accordingly, Criminal Miscellaneous Petitions Nos. 21421 of 2014, 7510 and 11179 of 2015 are disposed of."

18. The Supreme Court vide order dated 2 December 1995 answered the reference as below : (2016 (7) SCC 1)

Question 52.1: Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and

whether as per the principles enunciated in paras 91 to 93 of *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767, a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?

Answer

177. Imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for the rest of the life of the convict. The right to claim remission, commutation, reprieve, etc. as provided under Article 72 or Article 161 of the Constitution will always be available being constitutional remedies untouchable by the Court.

178. We hold that the ratio laid down in *Swamy Shraddananda* (supra) that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well-founded and we answer the said question in the affirmative.

Question No.52.2: Whether the "Appropriate Government" is permitted to exercise the power of remission under Sections 432/433 of the Code after the parallel power has been exercised by the President under Article 72 or the Governor under Article 161 or by this Court in its Constitutional power under Article 32 as in this case?

Answer

179. The exercise of power under Sections 432 and 433 of the Criminal Procedure Code will be available to the Appropriate Government even if such consideration was made earlier and exercised under Article 72 by the President or under Article 161 by the Governor. As far as the application of Article 32 of the Constitution by this Court is concerned, it is held that the powers under Sections 432 and 433 are to be exercised by the Appropriate Government statutorily and it is not for this

Court to exercise the said power and it is always left to be decided by the Appropriate Government.

Questions 52.3, 52.4 and 52.5:

52.3 Whether Section 432(7) of the Code clearly gives primacy to the Executive Power of the Union and excludes the Executive Power of the State where the power of the Union is coextensive?

52.4 Whether the Union or the State has primacy over the subject-matter enlisted in List III of the Seventh Schedule to the Constitution of India for exercise of power of remission?

52.5 Whether there can be two Appropriate Governments in a given case under Section 432(7) of the Code?

Answer

180. The status of Appropriate Government whether the Union Government or the State Government will depend upon the order of sentence passed by the Criminal Court as has been stipulated in Section 432(6) and in the event of specific Executive Power conferred on the Centre under a law made by the Parliament or under the Constitution itself then in the event of the conviction and sentence covered by the said law of the Parliament or the provisions of the Constitution even if the Legislature of the State is also empowered to make a law on the same subject and coextensive, the Appropriate Government will be the Union Government having regard to the prescription contained in the proviso to Article 73(1)(a) of the Constitution. The principle stated in the decision in G.V. Ramanaiah should be applied. In other words, cases which fall within the four corners of Section 432(7)(a) by virtue of specific Executive Power conferred on the Centre, the same will clothe the Union Government the primacy with the status of Appropriate Government. Barring cases falling under Section 432(7)(a), in all other cases where the offender is sentenced or the sentence order is passed within the territorial jurisdiction of the State concerned, the State Government would be the Appropriate Government.

Question 52.6 Whether suo motu exercise of power

of remission under Section 432(1) is permissible in the scheme of the section, if yes, whether the procedure prescribed in sub-section (2) of the same section is mandatory or not?

Answer

181. No suo motu power of remission is exercisable under Section 432(1) of the Criminal Procedure Code. It can only be initiated based on an application of the person convicted as provided under Section 432 (2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the Court concerned.

Question No.52.7: Whether the term "Consultation" stipulated in Section 435(1) of the Code implies "Concurrence"?

Answer

182. Having regard to the principles culled out in paragraph 173.1 to 173.14., it is imperative that it is always safe and appropriate to hold that in those situations covered by clauses (a) to (c) of Section 435(1) falling within the jurisdiction of the Central Government it will assume primacy and consequently, the process of "Consultation" in reality be held as the requirement of "Concurrence".

19. The writ petition in W.P.(Crl) No.48 of 2014 is now pending before the Supreme Court for adjudication in the light of the law declared by the Supreme Court in Union of India v. V.Sriharan alias Murugan and others [(2016) 7 SCC 1].

20. The appellant submitted a representation dated 22 February 2014 for her premature release to the Government of Tamil Nadu. It is worth mentioning here that even before her representation, the State Government addressed a letter dated 19 February 2014 to the Government of India proposing to remit her sentence, which made the Union of India to file a writ petition before the Supreme Court.

21. The learned counsel for the appellant contended that it is only for exercising the power under Section 432 Cr.P.C. in respect of an offence covered by Section 435(1) of Cr.P.C., the concurrence of the Central Government is necessary and not for the exercise of constitutional power under Article 161 of the constitution of India.

22. We have time and again pointed out to the learned counsel that it would not be appropriate to deal with the issues, in view of the pendency of the writ petition before the Supreme Court. However, the learned counsel contended that the order dated 23 July 2015 is only an interim order subject to the final orders in the reference, which is made clear by the observation in paragraph 8 of the order. According to the learned counsel, while answering the reference, the Supreme Court has not stated that the appellant is not eligible for release under Article 161 of the Constitution. The learned counsel contended that the learned Advocate General is not correct in his contention that in view of the pendency of the writ petition before the Supreme Court, the State would not be in a position to take a decision independently. In view of this contention, we are constrained to examine the merits of the submissions for the limited purpose of deciding this intra court appeal.

23 a). The learned Advocate General submitted that the appellant was punished for various offences including offences under several Central enactments. According to the learned Advocate General, those statutes would not come under the legislative power of the State, meaning thereby, the power of the State would extend only to the matters with respect to which the legislature of the State has power to make laws.

23b) The counter affidavit filed by the Deputy Secretary to the Government, Home Department, dated October 2017 contains the details of the offences in respect of which the appellant was punished. It reads thus:

Sl. No.	Sections of Conviction	Punishment
1	under Section 120 (B) read with 302, 326, 324, 201, 212 and 216 of Indian Penal Code, 1860; Sections 3, 4 and 5 of Explosive Substance Act, 1908; Section 25 of Arms Act, 1959; Section 12 of Passport Act, 1967; Section 14 of Foreigners Act, 1946; Section 6(1-A) of Wireless Telegraph Act, 1933 and Sections 3, 4 and 5 of TADA Act, 1987.	Death Sentence

Sl. No.	Sections of Conviction	Punishment
2	under Section 302 (read with 34 of Indian Penal Code, 1860 (16 counts)	Sentenced to death and she be hanged by the neck till she is dead subject to confirmation by the Hon'ble Supreme Court of India
3	under Section 326 read with 34 Indian Penal Code, 1860 (13 counts)	RI for 3 years
4	under Section 324 read with 34 Indian Penal Code, 1860 (6 counts)	RI for 1 year
5	under Section 3(2)(1) of Terrorist and Disruptive Activities (Prevention) Act (16 counts) read with 34 Indian Penal Code	Death sentence
6	under Section 3(2)(ii) of Terrorist and Disruptive Activities (Prevention) Act (19 counts) read with 34 Indian Penal Code, 1860	Life Imprisonment
7	under Section 3(3) of Terrorist and Disruptive Activities (Prevention) Act	Life Imprisonment
8	Under Section 4(3) of Terrorist and Disruptive Activities (Prevention) Act read with 34 Indian Penal Code, 1860	Life Imprisonment

23(c) The Supreme Court commuted the death sentence and set aside her punishment in respect of TADA [1999 (5) SCC 253].

Constitutional Prescription of the power under Article 72 & 161:-

24. The Constitution of India conferred all-pervasive power with the President and Governor to grant pardons, reprieves etc., and to remit or commute the sentence of any person convicted of any offence. While Article 72 of the Constitution gives power to the President to exercise this power in all cases where the punishment is by a court martial or sentence is for an

offence against any law relating to a matter to which the executive power of the Union extends or the sentence is a sentence of death, Article 161 gives power to the Governor of a State, the power to grant pardon, remission etc., in respect of a sentence of a person convicted of any offence against any law relating to a matter to which the executive power of the State extends. Article 162 prescribes the extent of executive power of the State. This provision viz., Article 162, therefore assumes significance while exercising the power under Article 161.

25. The power exercised by the Governor under Article 161 of the Constitution is independent of the power conferred on the appropriate Government under Section 432 Cr.P.C.

26. The Supreme Court in Maru Ram (cited supra) observed that statutory power under Section 432 and constitutional power under Article 161 are co-extensive.

The Supreme Court said:

"59. It is apparent that superficially viewed, the two powers, one constitutional and the other statutory, are coextensive. But two things may be similar but not the same. That is precisely the difference. We cannot agree that the power which is the creature of the Code can be equated with a high prerogative vested by the Constitution in the highest functionaries of the Union and the States. The source is different, the substance is different, the strength is different, although the stream may be flowing along the same bed. We see the two powers as far from being identical, and, obviously, the constitutional power is "untouchable" and "unapproachable" and cannot suffer the vicissitudes of simple legislative processes. Therefore, Section 433-A cannot be invalidated as indirectly violative of Articles 72 and 161. What the Code gives, it can take, and so, an embargo on Sections 432 and 433(a) is within the legislative power of Parliament.

60. Even so, we must remember the constitutional status of Articles 72 and 161 and it is common ground that Section 433-A does not and cannot affect even a wee bit the pardon power of the Governor or the President. The necessary sequel to this logic is that notwithstanding Section 433-A the President and the Governor continue to exercise the power of commutation and release under the aforesaid articles. "

27. The contention taken by the appellant with regard to the nature and extent of the power of the Governor under Article 161 of the Constitution has already been answered by the Constitutional Bench in V.Sriharan (cited supra). The Supreme Court made it clear that the power of the Governor under Article 161 is regulated by the Executive Power of the State as has been stipulated in Article 162 of the Constitution of India.

28. The following observation in V.Sriharan (cited supra) would make the position clear that in case the sentence is for an offence in relation to a Central Statute, the Governor has no jurisdiction to exercise his power under Article 161 of the Constitution:-

18. Before examining the questions referred for consideration, it will be necessary to make a detailed analysis of the constitutional and statutory provisions that would be required to be applied. When we refer to Article 161, that is, the power of the Governor to grant pardon, etc. as well as to suspend, remit, etc. the last set of expressions contained in the said Article, namely, "to a matter to which the Executive Power of the State extends", makes it clear that the exercise of such power by the Governor of State is restricted to the sentence of any person convicted of any offence against any law relating to a matter to which the Executive Power of the State is extended. In other words, such power of the Governor is regulated by the Executive Power of the State as has been stipulated in Article 162. In turn, we have to analyse the extent, to which the Executive Power of the Union as provided under Article 73(1)(a) regulated by the proviso to the said clause (1), which stipulates that the overall Executive Power of the Union is regulated to the extent to which the Legislature of State has also got the power to make laws subject, however, to the express provisions in the Constitution or in any law made by Parliament. The proviso to Article 162 only re-emphasises the said extent of coextensive legislative power of the State to make any laws on a par with Parliament which again will be subject to, as well as, limited by the express provision providing for Executive Power with the Centre in the Constitution or in any law made by Parliament upon the Union or its authorities. In respect of the punishments or convictions of any offence against any law relating to a matter to which the Executive Power of the State extends,

the power of pardon, etc. or power to suspend or remit or commute, etc. available to the Governor of a State under Article 161 would be available as has been stipulated therein.

22. Therefore, the resultant position would be that the Executive Power of the Union and its authorities in relation to grant of remission, commutation, etc. are available and can be exercised by virtue of the implication of Article 73(1)(a) read along with its proviso and the exercise of such power by the State would be controlled and limited as stipulated in the proviso to Article 162 to the extent to which such control and limitations are prescribed in the Criminal Procedure Code.

23.1. The President is vested with the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the Executive Power of the Union extends as has been provided under Article 73(1)(a) subject, however, to the stipulations contained in the proviso therein.

23.2. Insofar as cases where the sentence is sentence of death such power to suspend, remit or commute the sentence provided under Article 72(1) would be available even to the Governor of a State wherever such sentence of death came to be made under any law for the time being in force.

23.3. The Executive Power of the Union as provided under Article 73(1)(a) will also extend to a State if such Executive Power is expressly provided in the Constitution or in any law made by Parliament even with respect to matters with respect to which the Legislature of a State has also got the power to make laws.

23.4. The power of the Governor of any State to grant pardon, etc. or to suspend, remit or commute sentence, etc. would be available in respect of sentence of any person convicted of any offence against any law relating to a matter to which the Executive Power of the State extends and not beyond.

23.5. The extent of Executive Power of the State which extend to all matters with respect to which the Legislature of the State has power to make laws is, however, subject to and limited by the

Executive Power expressly conferred under the Constitution or by any law made by Parliament upon the Union or the authorities of the Union."

29. The Hon'ble Supreme Court in Paragraph 49 of the judgment in V.Sriharan (supra) referred to the decision taken by the Government of Tamil Nadu conveying its consent under Section 6 of the Delhi Special Police Establishment Act, 1946 for the extension of powers and jurisdiction of the CBI to investigate the Rajiv Gandhi assassination case.

30. The investigation by the CBI was not only in respect of the offences under Indian Penal Code but also under various statutes enacted by the Parliament. The appellant was punished for various offences under the Central Acts.

31. Therefore, there is a basic question as to whether it would be possible for the Governor to exercise the power under Article 161 of the Constitution, in view of Article 162 restricting the power to matters with respect to which the legislature of the State has power to make laws. The learned Advocate General therefore is justified in his contention that larger issues of constitutional importance is involved in this matter and it is not so simple as projected by the appellant.

32. The Supreme Court has already held that the word consultation used in Section 435(1) is nothing but concurrence. Similarly, it was held that in the event of a specific power conferred on the Central Government under a law made by Parliament or under the Constitution itself, then in the event of the conviction and sentence covered by the Central law, the appropriate Government will be the Central Government, even if the State legislature is also empowered to make laws on the same subject, in view of Article 73(1)(a) of the Constitution.

33. In view of the stand taken by the State Government that the conviction of the appellant was also for the offences under various Central enactments, and not only in respect of laws with reference to which the legislature of the State has power to make laws and in view of the pendency of the substantial Writ Petition before the Hon'ble Supreme Court, we are not in a position to direct the Governor to consider the representation by exercising the power under Article 161 of the Constitution.

34. The larger issues relating to the premature release of the appellant, is pending before the Hon'ble Supreme Court. The appellant cannot be heard to say that the Supreme Court would take up only the issue relating to the power exercised by the State Government under Section 432 Cr.P.C. without the

concurrence of the Central Government. The appellant moved this Court to decide her representation for release under Article 161 of the Constitution during the pendency of a larger issue involving her release before the Supreme Court. The judicial discipline warrants the High Court not to decide a matter involving the very same parties and very same issue, which is pending before the Hon'ble Supreme Court.

35. The learned single Judge having found that the issue regarding premature release is pending before the Supreme Court, observed that the appellant must await the outcome of the writ petition. We are in full agreement with the views expressed by the learned single Judge in Paragraph 15 of the order under appeal.

36. For the reasons aforesaid, we dismiss the intra court appeal. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Secretary to Government,
The State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Additional Director General of Police
and Inspector General of Prisons
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Superintendent of Prison
Special Prison for Women
Vellore.

+1cc to Mr.M.RADHAKRISHNAN, Advocate, S.R.No.32221

W.A.No.1619 of 2016

VG II(CO)
TR(16/05/2018)