

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.16 OF 2022

RAGHUVIR @ RAGHU SHARMA,
SON OF MATACHARAN SHARMA
AGED 45 YEARS, SECURITY GUARD,
R/O. NACHINOLA, BARDEZ, GOA.
N/O. VILLAGE KARAH, SHIVPURI,
MADHYA PRADESH, POLICE
STATION KARERA.
PRESENTLY LODGED IN THE
JUDICIAL CUSTODY OF COLVALE
AT COLVALE, GOA.

...PETITIONER

Versus

1. STATE,
(THROUGH PSI, SHRI VIJAY RANE,
MAPUSA POLICE STATION,
MAPUSA, BARDEZ-GOA.

2. PUBLIC PROSECUTOR
HIGH COURT OF BOMBAY AT GOA,
ALTINHO, PANAJI GOA.

...RESPONDENTS

Mr. Pavithran A.V., *Advocate under Legal Aid Scheme for the
Petitioner.*

Mr. D. Pangam, *Advocate General* with Mr. S.G. Bhobe, *Public
Prosecutor for the Respondents.*

**CORAM: M. S. SONAK &
R.N. LADDHA, JJ.**

DATED: 2nd MARCH 2022

ORAL JUDGMENT :

1. The petitioner Mr. Raghuvir Sharma, presently suffering incarceration at the Colvale jail has addressed a letter dated 28.01.2022 to this Court requesting that suitable orders be made in terms of Section 428 of the Criminal Procedure Code to set off the period of incarceration suffered by the petitioner as an under-trial from out of the substantive sentence of rigorous imprisonment for a term of 14 years.

2. The aforesaid letter was forwarded by the Superintendent of Central Jail, Colvale, Goa, vide covering letter dated 03.02.2022.

3. We thought it appropriate to treat the aforesaid letter as a Writ Petition and requested Mr. Pavithran A.V., learned Advocate, to appear on behalf of the petitioner in this matter. The Registry to appropriately number this petition, if not already numbered.

4. We, accordingly, issue rule in this petition and make the rule returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

5. In this case, the petitioner had been convicted under Section 377 IPC read with Section 8(2) of the Goa Children's Act 2003 by the Children's Court in Special Case No.5 of 2010 and was sentenced to undergo life imprisonment, pay a fine of ₹1.00 lakh and in default to undergo simple imprisonment for one year.

6. Since the petitioner was sentenced to undergo life imprisonment, the Children's Court did not make any direction in terms of Section 428 of CrPC.

7. The petitioner appealed against the judgment and order dated 06.01.2014 made by the Children's Court and such appeal was registered as Criminal Appeal No.24 of 2021.

8. By judgment and order dated 13.10.2021, Criminal Appeal No.24 of 2021 was partly allowed. The petitioner's conviction was maintained but the sentence was reduced from life imprisonment to rigorous imprisonment for a term of 14 years. In addition, the petitioner was fined ₹2.00 lakhs and it was made clear that the petitioner will have to suffer in default simple imprisonment for one year on failure to pay this fine amount. However, at that time, no specific direction was made in terms of Section 428 of CrPC though the appeal had set aside the sentence of life imprisonment and substituted the same with rigorous imprisonment for a term of 14 years.

9. Section 428 of CrPC reads as follows :

“428. Period of detention undergone by the accused to be set off against the sentence of imprisonment. - Where an accused person has, on conviction, been sentenced to imprisonment for a term [not being imprisonment in default of payment of fine], the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall

be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him:

[Provided that in cases referred to in Section 433-A, such period of detention shall be set off against the period of fourteen years referred to in that section.]”

10. We have heard Mr. Pavithran A.V., learned Advocate for the petitioner, and the learned Advocate General on behalf of the State.

11. Mr. Pavithran relied upon the decision of the Division Bench of this Court in ***Clint V/s. State of Maharashtra***¹ to submit that a direction in terms of Section 428 CrPC can be made in such proceedings. The learned Advocate General also submits that there can be no objection to the making of such a direction since now the petitioner has been sentenced to undergo rigorous imprisonment for a term. This view is also in accord with the decision in ***Shyam Gawas V/s. State of Goa***². In the said case as well following the ruling in ***Clint*** (supra), similar relief was granted to the petitioner therein.

12. Accordingly, we direct that the petitioner will be entitled to the benefit of set-off in terms of Section 428 of CrPC. The details about such a set-off will have to be computed by the concerned authority at the appropriate stage.

1 2019 SCC OnLine Bom 1732

2 2021 SCC OnLine Bom 914

13. The rule is made absolute in the aforesaid terms. There shall be no order for costs.

14. We thank and appreciate the efforts put in by Mr. Pavithran A.V., who appeared on behalf of the petitioner under the legal aid scheme as also the learned Advocate General for his fair approach in a matter concerning the liberty of a citizen.

R.N. LADDHA, J.

M. S. SONAK, J.