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Crl.MP.Nos.2758& 2759/2020
in HCP.Nos/1390&1345/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 16.12.2022

Pronouncing orders on : 21.12.2022

CORAM :

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND**

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.M.P.Nos.2758 and 2759 of 2020
in HCP.Nos.1390 and 1345 of 2018

- 1.The State of Tamil Nadu
Rep.by its
Principal Secretary to Government
Home (Prison) Department
Tamil Nadu Government Chief Secretariat
Fort Saint George, Chennai-600 009.
- 2.The Additional Director General of Police/
IG of Prisons
CMDA, Tower II, No.1
Gandhi Irvin Road, Egmore
Chennai 600 008.
- 3.The Superintendent
Central Prison, Palayamkottai
Tirunelveli District.

.. Appellants / Petitioners

Vs.



Crl.MP.Nos.2758& 2759/2020
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Mrs.S.Vijaya
Female, aged about 38 years
Wife of Mr.P.Sivaraman
No.3/1, Pillaiyar Koil Street
Parpanpattu, Panayapuram (P.O)
Vikkravandi Taluk
Villupuram District-605 601.

... Respondent/Petitioner

Common Prayer : Criminal Miscellaneous Petitions filed under Section 226 of Constitution of India, to allow these Criminal Miscellaneous Petitions and review the order passed in H.C.P.No.1390 of 2018 dated 02.08.2018 and HCP.No.1345 of 2018 dated 02.08.2018.

For Petitioners : Mr.R.Muniyapparaj
Additional Public Prosecutor

For Respondent : Mrs.R.S.Akila
for Mrs.Sudha Ramalingam

COMMON ORDER

N. ANAND VENKATESH, J.

These petitions have been filed by the State to review the orders passed in both the Habeas Corpus Petitions on 02.08.2018. Since the issue involved is common, they are taken up together, heard and disposed of through this Common

Order



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2. For proper understanding of the background facts in this case, the order passed in H.C.P.No.1390 of 2018, dated 02.08.2018 is extracted hereunder:

“This H.C.P. has been filed by the petitioner, wife of the detenu Sivaraman, S/o Pandurangan, aged about 41 years, seeking relief of set off the pre-trial period of imprisonment undergone from 21.09.2003 till 24.12.2003 in Thirupuvanai Police Station, Pondicherry in Crime No.169 of 2003 and the imprisonment undergone from 12.05.2008 till 10.06.2008 under Section 428 of Cr.P.C.

2. In the supporting affidavit, it is stated that the petitioner's husband is a life convict (LCT No.3142 of 2014) who is serving his sentence in Central Prison, Palayamkottai in connection with Crime No.132 of 2000, Reddy Chavadi Police Station consequent to the trial conducted in S.C.No.230 of 2000 and the Chief Judicial Magistrate, Cuddalore imposed sentence of life imprisonment by the judgment dated 20.12.2002. It is further stated that the detenu was remanded to judicial custody from 21.09.2003 to 24.12.2003 (for a period of 3 months and 3 days) in Thirupuvanai Police Station in connection with the murder of one Murali in Crime No.169 of 2003, and he was acquitted in the said case by the learned II Additional Sessions Judge, Pondicherry in S.C.No.16 of 2006.

3. The detenu was again arrested as the sole accused in Hosur Police Station in Crime No.400 of 2008 and was remanded to judicial custody to Central Prison, Salem on 12.05.2008, where he was detained for a period of 29 days till 10.06.2008 and was subsequently transferred to Central Prison, Palayamkottai. Thereafter, he has been serving his sentence for life imprisonment in connection to the conviction and sentence imposed in S.C.No.230 of 2000. It is the grievance of the petitioner that this period has not been included in the detention period.



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4. We have heard the learned Additional Public Prosecutor representing respondents 1 to 3 and the learned Additional Public Prosecutor (Pondicherry) on behalf of the fourth respondent. Both of them have submitted that the period of pre trial detention period as stated by the detenu is correct. Section 428 Cr.P.C., permits consideration of this period in the period of detention undergone by the prisoner.

5. Considering the facts and circumstances of the case on hand, we feel that the pre-trial period of detention as discussed above, shall be included in the period of imprisonment already undergone by the detenu. With these directions, the H.C.P. is disposed of.”

3. The order passed in H.C.P.No.1345 of 2018, is more in the nature of a consequential order by taking note of the order passed in H.C.P.No.1390 of 2018. The petitioners, who were the respondents in the Habeas Corpus Petition, were directed to consider the representation dated 02.05.2018 in the light of G.O.M.S.No.64, dated 01.02.2018, seeking for premature release in line with the order passed in H.C.P.No.1390 of 2018.

4. The State has filed these Review Petitions mainly on the ground that the order passed in H.C.P.No.1390 of 2018, is not in conformity with Section 428 of Cr.P.C. The order passed in H.C.P.No.1390 of 2018, directed the inclusion of the incarceration undergone by the detenu in the pending cases in Crime No.169 of 2003 and Crime No.400 of 2008 along with the period undergone pursuant to the



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conviction and sentence of Life Imprisonment in S.C.No.230 of 2000. The review petitioners contend that the direction given by this Court, is an error apparent on the face of the order since it goes against the purport of Section 428 of Cr.P.C., and the settled position of law, wherein, it has been held that set off of the period of detention already undergone during the investigation, enquiry or trial must pertain to the same case and the detention undergone in other cases cannot be included while considering the set off under Section 428 of Cr.P.C.

5. The learned counsel for the petitioner in the Habeas Corpus Petitions submitted that the State filed these petitions with an inordinate delay only to get over the Contempt Petition filed by the petitioner in the Habeas Corpus Petition for non-compliance of the directions issued by this Court. By virtue of filing these petitions, a relief that was given to the detenu which touches upon his liberty under Article 21 of the Constitution of India is attempted to be taken away. Hence, these petitions are liable to be dismissed on the ground of laches. To substantiate this submission, the learned counsel relied upon the judgment of the Full Bench of the Madurai Bench of this Court in ***R. Sivakumari& others v. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam and others*** reported in ***2007-4-L.W. 963***.



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6. It was further contended that G.O.M.S.No.64, dated 01.02.2018, will apply only to those convicts who have completed 10 years of actual imprisonment as on 25.02.2018 and this requirement will stand satisfied only if the detention undergone by the detenu in the other two cases in Crime No.169 of 2003 and Crime No.400 of 2008, are taken into consideration. It was also brought to the notice of this Court that the detenu has already been acquitted from all charges insofar as the criminal case in Crime No.169 of 2003 is concerned.

7. We have carefully considered the submissions made on either side and the materials available on record.

8. The review jurisdiction exercised by this Court under Article 226 of the Constitution of India is on the very same grounds mentioned under Order XLVII Rule 1 of C.P.C. In view of the same, the test to be applied for reviewing an order is that there must be an error apparent on the face of the order. We have to apply this test to the earlier order passed in the Habeas Corpus Petitions and come to a conclusion as to whether it suffers from an error apparent on the face of the order.



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9.The petitions were filed with a delay and the delay has been condoned by this Court by an order dated 27.02.2020. Hence, we cannot throw out these petitions on the ground of delay at this stage and we have to necessarily apply the test stated supra and decide these petitions.

10. The short issue that arises for consideration in these petitions is as to whether the detenu will be entitled for a set off for the period of detention undergone by him in Crime No.169 of 2003 (S.C.No.16 of 2006) and Crime No.400 of 2008 and the same can be added to the period of detention undergone by the detenu in S.C.No.230 of 2000.

11.A plain reading of Section 428 of Cr.P.C., makes it abundantly clear that the period of set off contemplated is case specific. The law on this issue has been settled by the Apex Court in *Atul Manubhai Parekh v. CBI* reported in (2010) 1 SCC 603. The only exception that has been carved out can be deduced from the judgment of the Apex Court in *State of Maharashtra and Another v. Najakat Alia Mubarak Ali* reported in (2001) 6 SCC 311, wherein, it was held that if a convict, who is undergoing a sentence in a particular case, is also convicted in another case and starts undergoing the sentence in the second case, the sentence undergone by him merges with the same period during which he is undergoing the



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sentence in the first case. This will be the effect of a combined reading of Sections 427 and 428 of Cr.P.C.

12. The pre-trial detention in every case will apply only to that case for the purpose of set off and that period can never be used towards set off in any other case. Useful reference can also be made to the judgment of this Court in ***Kaviyarasan Vs. Superintendent of Prison, Central Prison and Ors.*** reported in ***2021(1)MLJ (Crl) 528.***

13. In view of the settled position of law, the direction issued by this Court in H.C.P.No.1390 of 2018, to include the detention in Crime No.169 of 2003 (S.C.No.16 of 2006 in which the detenu was acquitted) and Crime No.400 of 2008, while calculating the total period of imprisonment in S.C.No.230 of 2000, is an apparent error which goes against the settled law. Hence, the direction issued by this Court in H.C.P.No.1390 of 2018 and the consequential direction issued in H.C.P.No.1345 of 2018, are liable to be reviewed and set aside. Accordingly, both the petitions stand allowed.

14. It is brought to the notice of this Court that a subsequent Government

Order has been issued in G.O.M.S.No.488 dated 15.11.2021, for considering



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premature release of Life convicts. In view of the same, it is left open to the detenu, to make a fresh representation seeking for premature release in line with G.O.M.S.No.488 dated 15.11.2021 and the same shall be considered by the concerned authorities strictly in accordance with the requirements provided in the said Government Order and take a decision as expeditiously as possible.

(P.N.P.,J.) (N.A.V.,J.)
21.12.2022

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Internet : Yes/No
Index : Yes/No
Speaking order /Non-Speaking order
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To

The Public Prosecutor,
High Court, Madras.



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