



IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P.No.	Orders reserved on	Orders pronounced on
12581 of 2021	10.01.2022	27.01.2022
12583 of 2021		
12664 of 2021		

CORAM :

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.Nos.12581, 12583 and 12664 of 2021

W.P.No.12581 of 2021

K.Devaraj

...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
Central Prison
Coimbatore 600 018

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent No.1 to consider the representation of the petitioner dated 05.12.2018 and release the petitioner immediately under G.O.(Ms) No.64 Home (Prison-IV) Department dated 01.02.2018 for premature release.

W.P.No.12583 of 2021

Ammaniyammal

...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

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 30.08.2018 made by the petitioner for her premature release under the scheme of premature release of life convicts, within a reasonable period.

W.P.No.12664 of 2021

V.Dharmalingam

...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 Prisons
Central Prison
Coimbatore

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to consider the representation of the petitioner dated 26.02.2019 and release the petitioner immediately under G.O.Ms.No.64 Home (Prison-IV) Department dated 01.02.2018 for premature release.



For Petitioner : Mr.M.Radhakrishnan
in WP.12581 & 12583 of 2021 for Mr.P.Pugalenth

For Petitioner : Mr.P.Pugalenth
in WP.12664 of 2021

For Respondents : Mr.Hasan Mohamed Jinnah
in all WPs Public Prosecutor assisted by
Mr.R.Muniyapparaj
Additional Public Prosecutor

C O M M O N O R D E R

R.N.MANJULA, J.

Though the convict prisoners concerned (petitioners herein) in these three writ petitions were not tried together, yet, the foundational facts in these cases are similar and, since the legal conundrum that has been raised by Mr.M.Radhakrishnan and Mr.P.Pugalenth, learned counsel for the petitioners, are common to these three cases, the instant cases are considered and decided by this common order.

2.1. The petitioner in W.P.No.12581 of 2021 is one Devaraj, who is a life convict prisoner (CT No.3824), convicted by the District and Sessions Court, Erode, in S.C.No.91 of 2003 on 10.11.2003 of the offences under Sections 498-A and 302 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo six months simple imprisonment under Section 498-A IPC and imprisonment for life and to pay a fine of Rs.2000/-, in default to undergo one year simple imprisonment under Section 302 IPC. The said sentences were ordered to run concurrently. The said conviction and sentences were confirmed by the High Court as well by the Supreme Court. As per the averments in paragraph 6 of the counter affidavit dated 13.12.2021 filed by the State, Devaraj has undergone 14 years, 4 months and 3 days of actual imprisonment, as on 25.02.2018.

2.2. The petitioner in W.P.No.12583 of 2021 is one Ammaniyammal, who is a convict prisoner (CT No.3378), convicted by the Principal Sessions Court, Ramanathapuram, in S.C.No.28 of 1999 on 05.04.2002 of the offences under Sections 498-A and 302 read with 34 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.2000/-, in default to undergo three months simple imprisonment under Section 498-A IPC and imprisonment for life under Section 302 read with 34 IPC. The said sentences were ordered to run concurrently. The said conviction and sentences were confirmed by the High



Court. As per the averments in paragraph 5 of the counter affidavit dated 13.12.2021 filed by the State, Ammaniyammal has undergone 16 years and 18 days of actual imprisonment, as on 25.02.2018.

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2.3. The petitioner in W.P.No.12664 of 2021 is one Dharmalingam, who is a convict prisoner (CT No.9223), convicted by the Principal Sessions Court, Erode, in S.C.No.68 of 2005 on 31.06.2006 of the offences under Sections 498-A and 302 read with 34 IPC and Section 4 of the Dowry Prohibition Act, 1961 and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo six month rigorous imprisonment under Section 498-A IPC; imprisonment for life and to pay a fine of Rs.2000/-, in default to undergo six months rigorous imprisonment under Section 302 read with 34 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo six months rigorous imprisonment under Section 4 of the Dowry Prohibition Act. The said sentences were ordered to run concurrently. The said conviction and sentences were confirmed by the High Court. As per the averments in paragraph 4 of the counter affidavit dated 30.12.2021 filed by the State, Dharmalingam has undergone 11 years, 3 months and 18 days of actual imprisonment, as on 25.02.2018.

2.4. While so, Devaraj, Ammaniyammal and Dharmalingam are claiming premature release in terms of G.O.(Ms) No.64, Home (Prison-IV) Department dated 01.02.2018 (for brevity "G.O.64") as amended in G.O.(Ms) No.302, Home (Prison-IV) Department dated 03.05.2018, that were issued by the State Government, in commemoration of the Birth Centenary of the former Chief Minister of Tamil Nadu Dr.M.G.Ramachandran.

3. Heard Mr.M.Radhakrishnan, learned counsel representing Mr.P.Pugalenth, learned counsel on record for the petitioners/convict prisoners in W.P.Nos.12581 and 12583 of 2021; Mr.P.Pugalenth, learned counsel for the petitioner/convict prisoner in W.P.No.12664 of 2021 and Mr.Hasan Mohamed Jinnah, learned Public Prosecutor assisted by Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the State.

4. The State has filed individual counter affidavits in each case and has contended that these petitioners are not eligible, in view of the following condition that has been stipulated in G.O.64 :

"5(II)(2) Prisoners convicted for the following offences are ineligible for consideration for premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as



to whether or not they have undergone the sentence in respect of the said offence namely:-

(A) Prisoners convicted for the following offences, namely:-

- i.
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix. Cruelty against women or dowry death
(Section 498-A and 304-B of IPC)
- x.

(emphasis supplied)

5. Mr. Radhakrishnan contended that the trial Court has directed that the sentence of two years rigorous imprisonment imposed for the offence under Section 498-A IPC to run concurrently with the sentence of imprisonment for life imposed for the offence under Section 302 IPC and since the petitioners viz., Devaraj and Ammaniammal have undergone the sentence of two years rigorous imprisonment for the offence under Section 498-A IPC, they would become eligible for premature release, in terms of G.O.64. He further contended that the cut off date for consideration for premature release under G.O.64 is 25.02.2018 and as on that date, both the petitioners viz., Devaraj and Ammaniammal have well-nigh undergone the sentence of two years for the offence under Section 498-A IPC and there is no sentence available for the offence of 498-A IPC to be remitted.

6. Adopting the aforesaid arguments of Mr. Radhakrishnan, Mr. Pugalenth, on facts, submitted that Dharmalingam had undergone the sentence of three years rigorous imprisonment for the offence under Section 498-A IPC and so, he also becomes eligible for premature release, in terms of G.O.64.

7. In support of his submission, Mr. Radhakrishnan placed strong reliance on the following judgments of the Supreme Court:

- i. State of Haryana and Others Vs. Jagdish [(2010) 4 SCC 216] (paragraphs 53 and 54);
- ii. Union of India Vs. V. Sriharan @ Murugan and Others [(2016) 7 SCC 1] (paragraphs 154 & 155); and
- iii. State of Tamil Nadu and Others Vs. P. Veera Bhaarithi [(2019) 18 SCC 71].



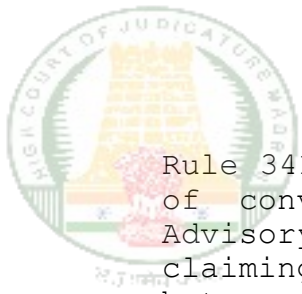
8. Mr.Radhakrishnan further submitted that, denying the benefits of G.O.64 to the petitioners, would offend Article 14 of the Constitution of India, inasmuch as, similarly placed persons should not be discriminated and that the law should be applied equally. He also contended that it is not necessary to challenge the constitutional validity of paragraph 5(II)(2)(A)(x) of G.O.64 (supra), in the light of the law laid down by the Supreme Court in the aforesaid judgments, especially in Veera Bhaarithi (supra). He also submitted that the petitioners, having undergone the sentence for the offence under Section 498-A IPC, there is nothing for the Government to remit the sentence for the said offence and that, what remains is, remission of the sentence under Section 302 IPC.

9. Per contra, Mr.Hasan Mohamed Jinnah contended that no convict prisoner has a vested right to seek premature release and that, the State has the sovereign power to grant premature release to convict prisoners, by either putting in place a general policy or announcing specific schemes. He further contended that in the absence of challenge to the condition in paragraph 5(II)(2)(A)(x) of G.O.64 (supra), the case of the petitioners cannot be considered at all for premature release.

10. We gave our anxious consideration to the aforesaid submissions.

11. On a reading of the aforesaid judgments of the Supreme Court, it is settled beyond cavil that no convict prisoner has a fundamental or constitutional or statutory right to obtain remission and the State has the sole prerogative, either to formulate a general remission policy or announce remission schemes, from time to time.

12. In Jagdish (supra), the Haryana Government had put in place a remission policy dated 04.02.1993. The convict prisoner therein was convicted on 20.05.1999. Subsequently, the said Government put in place a short sentencing policy on 13.08.2008. When the convict prisoner therein claimed remission under the remission policy dated 04.02.1993, it was denied by holding that his case could be considered only under the remission policy dated 13.08.2008 and since he did not satisfy the conditions of the 13.08.2008 remission policy, he would not be entitled to premature release. In that context, the Supreme Court in paragraphs 53 and 54, held that the State should have considered the case of the convict prisoner, in terms of the remission policy dated 04.02.1993, as that was the policy that was in force at the time of the conviction of the prisoner and that the subsequent policy dated 13.08.2008, should not have been applied at all. Coming to the case in hand, in the State of Tamil Nadu, there is no general remission policy as such. However, under



Rule 341 of the Tamil Nadu Prison Rules, 1983, individual cases of convict prisoners for release can be considered by an Advisory Board. The petitioners in these three cases are not claiming relief under Rule 341 of the Tamil Nadu Prison Rules, but, under G.O.64. The State Government had announced premature release under G.O.64 to commemorate the Birth Centenary of Dr.M.G.Ramachandran, former Chief Minister of Tamil Nadu and the said Government Order itself, very clearly stipulates that the conditions of eligibility would be as on 25.02.2018. The basic eligibility condition is that, the convict prisoner should have completed 10 years of actual imprisonment/5 years of actual imprisonment for prisoners who are 60 years old and above as on 25.02.2018, subject to satisfaction of certain conditions therein, one of which is, paragraph 5(II)(2)(A)(x) of G.O.64, which has been extracted above. Therefore, Jagdish (supra) would have no application to the present case.

13. As regards Sriharan (supra), the issue before the Supreme Court was, whether the concurrence of the Central Government was required under Section 435(2) Cr.P.C. for premature release under Section 432 Cr.P.C., as the convict prisoners in that case had already completed the period of sentence imposed upon them by the various Central Acts such as, the Foreigners Act, 1946, the Passports Act, 1967, etc. Drawing analogy therefrom, Mr.Radhakrishnan submitted that, in the instant case, the petitioners have undergone the sentence under Section 498-A IPC and therefore, there cannot be any impediment for their premature release under G.O.64. In our considered opinion, the law laid down in Sriharan (supra) cannot be mechanically applied to the case in hand. While holding so, we draw inspiration from the following words of Lord Halsbury in Quinn Vs. Leathem [1901 AC 495], quoted with approval by the Supreme Court in Rajindra Singh vs. State of U.P. and another [(2007) 7 SCC 378]:

"A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to logically follow from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas, every lawyer must acknowledge that the law is not always logical at all."
(emphasis supplied)

14. Similarly, the issue in Veera Bhaarathi (supra) was the interpretation of Rule 341 of the Tamil Nadu Prison Rules, 1983, under which, the case of a convict prisoner, who has been convicted of the offence under Section 376 IPC, cannot be placed before the Advisory Board, for premature release. While interpreting this provision, a Division Bench of this Court, in P.Veera Bhaarathi Vs. State of Tamil Nadu and Others [2016(6) CTC 522], held that since he had undergone the sentence for the



offence under Section 376 IPC, there cannot be a bar for his case being placed before the Advisory Board. This view has been affirmed by the Supreme Court in Veera Bhaarithi (supra). Be it noted, Rule 341, *ibid.* is not an one time scheme but, it operates in perpetuity. Whereas, G.O.64 is an one time scheme, which clearly mandates that a prisoner convicted of the offence relating to cruelty inflicted on a woman, will be ineligible for consideration for premature release, irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether he had undergone the sentence in respect of the said offence.

15. Paragraph 5(II)(2)(A)(x) of G.O.64, which has been extracted in paragraph 4 above, plays spoilsport for the petitioners herein, in that, it says "Prisoners convicted for the following offences are ineligible for consideration for premature release irrespective of the nature and tenure of the sentence and irrespective of the fact as to whether or not they have undergone the sentence in respect of the said offence". This requires no expatiation, explanation or interpretation. It is in simple English and is straight forward, in that, the State does not want to show any sympathy to a person, who has been convicted under Section 498-A IPC for inflicting cruelty on a woman, irrespective of the fact, as to whether he has undergone the sentence for the said offence or not. Unless the said paragraph in G.O.64 is challenged and held to be unconstitutional, the State is required to adhere to it and cannot consider the case of the petitioners under G.O.64 albeit the fact that they had already undergone the sentence under Section 498-A IPC. The validity of paragraph 5(II)(2)(A)(x) in G.O.64 is not under challenge before us.

16. It may be profitable to refer to the judgment of the Supreme Court in Sanaboina Satyanarayana Vs. Government of A.P. and Others [(2003)10 SCC 78]. In that case, the Government of A.P. issued a remission Government Order in G.O.Ms.No.18 Home (Prisoners-C) Department dated 25.01.2000, under Article 161 of the Constitution of India on the occasion of the 50th anniversary of India becoming a republic. In the said Government Order, it was specifically stated that, "prisoners convicted for crimes against women such as Sections 376 and 354 IPC, while being sentenced to imprisonment for life" will not be entitled to remission. The convict prisoner in that case was not convicted either under Section 376 IPC or under Section 354 IPC, but, was convicted under Sections 302, 498-A IPC and 201 IPC. The convict prisoner contended before the Andhra Pradesh High Court and the Supreme Court that he would be entitled to pre-mature release, as Section 498-A IPC has not been specified in the said remission Government Order. This argument was outrightly rejected by the Supreme Court in the following words in



Sanaboina (supra) :

"8. Clause (iv) of para (3) of the government order dated 25-1-2000 specifically stated that prisoners convicted for "crimes against women such as Sections 376 and 354 IPC while being sentenced to imprisonment for life", will fall outside the scheme for remission granted under the said GO. When the clause noticed above, in the latter portion referred to two of the provisions of IPC, after the words "such as", it was more by way of illustration of the excepted category of offences relating to crimes against women in general and not with an intention to be exhaustive of the same and to merely confine the words "crimes against women" to only those convicts for crime against women under Sections 376 and 354 IPC. Acceptance of any such plea would amount to not only doing violence to the language of the order of the Governor but also rewriting the same and that too in utter disregard of the very intention, a laudable one in larger and greater public interest. When keeping into consideration the societal needs and dictates of the gruesome events happening in large scale all over the State, a conscious decision has been taken by the policy-maker to keep out a class of anti-socials from availing the benefit of the remission; courts cannot by stretching the language confer an undeserved benefit upon the class of convicts, who, in our view also, have not only been designedly but deservingly kept out of the scheme for according the benefit of remission."

17. Before bringing the curtains down, apropos it is to allude to the following observation of the Supreme Court in paragraph 26 of the judgment in Home Secretary (Prison) and Others, State of Tamil Nadu Vs. H.Nilofer Nisha [(2020)14 SCC 161] :

"26. We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations."

(emphasis supplied)

When the condition in paragraph 5(II)(2)(A)(x) of G.O.64 (supra) is so categorical, a mandamus, as prayed for by the petitioners, cannot be issued, ignoring it. It is well settled that a mandamus would lie to support the rule of law and not to subvert it.



In the result, these writ petitions are dismissed as being devoid of merits. No costs.

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Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
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Chennai 600 009
- 2.The Additional Director General of Police and
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MT(CO)
RVM(14/02/2022)