



WEB COPY



WMP No.19531 of 2022
W.P.(MD) No.16658 of 2020

W.M.P.No.19531 of 2022
in
W.P.(MD) No.16658 of 2020

THE HON'BLE CHIEF JUSTICE
and
N.MALA,J.

(Order of the Court was made by
the Hon'ble Chief Justice)

The application has been filed by the State seeking modification of the order dated 17.06.2022 passed in W.P.(MD) No.16658 of 2020.

2. The prayer is to modify paragraphs 10, 12 and 19 of the order to the effect that the State has not endorsed the decision of the Governor to send the matter to the President of India.

3. We have considered the submission aforesaid and finding reason, we substitute paragraphs 10, 12 and 19 of the order as under:

"10. He submits that the petitioner was not convicted only for the offence under Section 302 of the IPC, but also for other offences, as would be clear from the judgment of the Apex Court in the



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case of **Nalini**, supra, which altered the death sentence imposed on the petitioner to imprisonment for life. The judgment of the Apex Court shows that the petitioner is a convict for the offences under different provisions of law, which includes the laws where the executive power extends to the Union of India."

"12. Learned Advocate General clarifying the judgment of the Apex Court in **Maru Ram**, supra, submits that the issue therein was not raised in regard to the powers of the President of India or the Governor, but was on a challenge to the amendment in the Criminal Procedure Code, where Section 433-A was inserted by the Amendment Act of 1978. The legislative competence for bringing the amendment in Code of Criminal Procedure was dealt with therein. A reference of Articles 72 and 161 of the Constitution of India was given to indicate that amended provision is offending it. In view of the above, the judgment of the Apex Court in the case of **Maru Ram**, supra, was not on the issue of the powers of the President or the Governor under Articles 72 and 161 of the



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Constitution of India, but to deal with the constitutional validity of Section 433-A of the Amendment Act. Therein, an observation was made that the President and the Governor are bound by the advice of the Council of Ministers. It was however held that as a matter of constitutional courtesy, the signature of the Governor or that of the President of India for release would be necessary. In the instant case, the decision of the Council of Ministers has not been authorised by the Governor of the State or the President by putting signature and thereby the State Government cannot release the petitioner."

"19. During the pendency of the writ petition, learned Advocate General informed that the Governor of the State has referred the matter to the President of India for the reason that the conviction and sentence imposed on the petitioner was not only for the offence under Section 302 IPC, but also in reference to other offences, indicated above."

4. The order passed above, modifying paragraphs 10, 12 and 19



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to the extent indicated above, be substituted and would be read as
part of the order dated 17.6.2022.

(M.N.B., CJ) (N.M., J.)
08.08.2022

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