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January 12.

GOPAL VINAYAK GODSE

v.

THE STATE OF MAHARASHTRA AND OTHERS.

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO, K. N. WANCHOO and J. R. MUDHOLKAR, JJ.)

Habeas Corpus—Sentence—Transportation for life—Imprisonment for life, if equivalent to any fixed term—Remissions, right to—When can be taken into consideration—Indian Penal Code, 1860 (XLV of 1860), s. 53A—Code of Criminal Procedure, 1898 (V of 1898), s. 401.

The petitioner was convicted in 1949 and sentenced to transportation for life. He earned remission of 2963 days and adding this to the term of imprisonment actually served by the petitioner the aggregate exceeded 20 years. The petitioner contended that his further detention in jail was illegal and prayed for being set at liberty:

Held, that the petitioner had not yet acquired any right to be released. A sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. Section 53A of the Indian Penal Code, introduced by the Code of Criminal Procedure (Amendment) Act, 1955, provided that any person sentenced to transportation for life before the Amendment Act would be treated as sentenced to rigorous imprisonment for life. A prisoner sentenced to life imprisonment was bound to serve the remainder of his life in prison unless the sentence was commuted or remitted by the appropriate authority. Such a sentence could not be equated with any fixed term. The rules framed under the Prisons Act entitled such a prisoner to earn remissions but such remissions were to be taken into account only towards the end of the term. The question of remissions was exclusively within the province of the appropriate Government. In the present case though the Government had made certain remissions under s. 401 of the Code of Criminal Procedure, it had not remitted the entire sentence.

Pandit Kishori Lal v. *King-Emperor*, (1944) L.R. 72 I.A. 1, referred to.

ORIGINAL JURISDICTION: Petition No. 305/1960.

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

Petitioner in person.

H. N. Sanyal, Additional Solicitor-General of India and *R. H. Dhebar*, for the respondents.

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1961. January 12. The Judgment of the Court was delivered by

SUBBA RAO, J.—This is a petition under Art. 32 of the Constitution for an order in the nature of *habeas corpus* claiming that the petitioner has justly served his sentence and should, therefore, be released.

On February 10, 1949, the Judge, Special Court, Red Fort, Delhi, convicted the petitioner for offences under s. 3, read with s. 6, of the Explosive Substances Act, under s. 4(b) and s. 5 thereof, and for murder under s. 302, read with s. 109, of the Indian Penal Code; for the first two offences he was sentenced to seven years' rigorous imprisonment and five years' rigorous imprisonment respectively and for the third offence to transportation for life and all the sentences were directed to run concurrently. After conviction he was imprisoned in jails in the State of Punjab till May 19, 1950, and thereafter he was transferred to Nasik Road Central Prison in the State of Bombay (now Maharashtra). According to the petitioner, he has earned the following remissions up to September 30, 1960:

(a) Ordinary remission	...	836 days
(b) Special remission	...	206 days
(c) Physical training remission	...	113 days
(d) Literary remission	...	108 days
(e) Annual good conduct remission	...	250 days
(f) State remission	...	1380 days

The total of the remissions earned is 2,893 days; but the State in its counter-affidavit state that the petitioner has earned up to the said date remission of 2,963 days. The figure given by the State may be accepted as correct for the purpose of this petition. If the amount of remissions thus earned was added to the term of imprisonment the petitioner has actually served, the aggregate would exceed 20 years, and even if only the State remission was added to it, it would exceed 15 years. The petitioner, claiming that under the relevant provisions governing his imprisonment his further detention in jail would be illegal, prays that he might be set at liberty forthwith. The State, while conceding that he had earned remissions

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amounting to 2,963 days, alleged in the counter-affidavit that the remissions earned did not entitle him to be released and that under the rules the question of his release would be considered only after he completed 15 years' actual imprisonment.

The petitioner argued his case in person. He rejected the help of an advocate as *amicus curiae* to assist him. In the circumstances, his argument was based more on emotional plane than on legal basis. But as the liberty of a citizen is involved, we have gone through the relevant provisions and considered the possible contentions that may be raised on the basis of the said provisions.

The first question that falls to be decided is whether, under the relevant statutory provisions, an accused who was sentenced to transportation for life, could legally be imprisoned in one of the jails in India; and if so, what was the term for which he could be so imprisoned. We shall briefly notice the relevant provisions of the Indian Penal Code before it was amended by the Code of Criminal Procedure (Amendment) Act XXVI of 1955. Section 53 of the Indian Penal Code set out six different punishments to which offenders were liable. The second of those punishments was transportation and the fourth was imprisonment which was of two descriptions, namely, rigorous and simple. The word "transportation" was not defined in the Indian Penal Code, but it was for life with two exceptions. Under s. 55 of the Indian Penal Code, "In every case in which sentence of transportation for life shall have been passed, the Provincial Government of the Province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years." Under s. 58 thereof, in every case in which a sentence of transportation was passed, the offender, until he was transported, should be dealt with in the same manner as if sentenced to rigorous imprisonment and should be held to have been undergoing his sentence of transportation during the term of his imprisonment. It was averred on behalf of the

State that the petitioner's sentence had not been commuted under s. 55 of the Indian Penal Code or under s. 402 (1) of the Code of Criminal Procedure to one of rigorous imprisonment. We have no reason for not accepting this statement. On that basis, a question arises whether the petitioner, who was sentenced to transportation, could be dealt with legally as if he were a person sentenced to rigorous imprisonment. This question was raised before the Judicial Committee of the Privy Council in *Pandit Kishori Lal* v. *King-Emperor* (1). After considering the history of the sentence of transportation, the relevant provisions of the Indian Penal Code, the Code of Criminal Procedure and the Prisons Act, the Privy Council came to the conclusion that the said provisions made it plain that when a sentence of transportation had been passed it was no longer necessarily a sentence of transportation beyond the seas. It was observed at p. 9 thus:

> "But at the present day transportation is in truth but a name given in India to a sentence for life and, in a few special cases, for a lesser period, just as in England the term imprisonment is applied to all sentences which do not exceed two years and penal servitude to those of three years and upwards..... ..... So, in India, a prisoner sentenced to transportation may be sent to the Andamans or may be kept in one of the jails in India appointed for transportation prisoners, where he will be dealt with in the same manner as a prisoner sentenced to rigorous imprisonment."

In view of this weighty authority with which we agree, it is not necessary to consider the relevant provisions, particularly in view of s. 53A of the Indian Penal Code which has been added by Act XXVI of 1955. Section 53A of the said Code reads:

> "(1).....
>
> (2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1954, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term."

(1) (1944) L.R. 72 I.A. 1.

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Whatever justification there might have been for the contention that a person sentenced to transportation could not be legally made to undergo rigorous imprisonment in a jail in India except temporarily till he was so transported, subsequent to the said amendment there is none. Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act. Though the Government of India stated before the Judicial Committee in the case cited supra that, having regard to s. 57 of the Indian Penal Code, 20 years' imprisonment was equivalent to a sentence of transportation for life, the Judicial Committee did not express its final opinion on that question. The Judicial Committee observed in that case thus at p. 10:

> "Assuming that the sentence is to be regarded as one of twenty years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application, and it was therefore rightly dismissed, but in saying this, their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than twenty years, or that the convict is necessarily entitled to remission."

Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all-embracing fiction. A sentence of transportation for life or

imprisonment for life must *prima facie* be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.

It is said that the Bombay rules governing the remission system substituted a definite period for life imprisonment and, therefore, if the aggregate of the term actually served exceeds the said period, the person would be entitled to be released. To appreciate this contention the relevant Bombay rules may be read.

Release. Rule 934. "In all cases of premature releases, orders under Section 401, Criminal Procedure Code, will have to be issued by Government before the prisoners can actually be released from Jail."

Rule 937. (c) "When a life convict or a prisoner in whose case the State Government has passed an order forbidding his release without reference to it, has earned such remission as would entitle him to release but for the provisions of this rule, the Superintendent shall report accordingly to the State Government through the Inspector-General in order that his case may be considered with reference to Section 401 of the Code of Criminal Procedure, 1898."

The Remission System: Rule 1419. (c) "A sentence of transportation for life shall ordinarily be taken as 15 years' actual imprisonment."

Review of Sentences: Rule 1447. (2) "Notwithstanding anything contained in rule 1419 no prisoner who has been sentenced to transportation for life or more than 14 years, imprisonment or to transportation and imprisonment or to transportation and imprisonment for terms exceeding in the aggregate 14 years shall be released on completion of his term of transportation or imprisonment or both, as the case may be, including all remissions unless a report with respect to such prisoner has been made under sub-rule (1) and orders of Government have been received thereon with regard to the date of his final release."

It is common case that the said rules were made under the Prisons Act, 1894, and that they have

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statutory force. But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, *inter alia*, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act. The rules, *inter alia*, provide for three types of remissions by way of rewards for good conduct, namely, (i) ordinary, (ii) special and (iii) State. For the working out of the said remissions under rule 1419(c), transportation for life is ordinarily to be taken as 15 years' actual imprisonment. The rule cannot be construed as a statutory equation of 15 years' actual imprisonment for transportation for life. The equation is only for a particular purpose, namely, for the purpose of "remission system" and not for all purposes. The word "ordinarily" in the rule also supports the said construction. The *non obstante* clause in sub-rule (2) of rule 1447 reiterates that notwithstanding anything contained in rule 1419 no prisoner who has been sentenced to transportation for life shall be released on completion of his term unless orders of Government have been received on a report submitted to it. This also indicates that the period of 15 years' actual imprisonment specified in the rule is only for the purpose of calculating the remission and that the completion of the term on that basis does not *ipso facto* confer any right upon the prisoner to release. The order of Government contemplated in rule 1447 in the case of a prisoner sentenced to transportation for life can only be an order under s. 401 of the Code of Criminal Procedure, for in the case of a sentence of transportation for life the release of the prisoner can legally be effected only by remitting the entire balance of the sentence. Rules 934 and 937(c) provide for that contingency. Under the said rules the orders of an appropriate Government under s. 401, Criminal Procedure Code, are a prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a

prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

Briefly stated the legal position is this: Before Act XXVI of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the said Act, such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions—ordinary, special and State—and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under s. 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under s. 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.

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The petitioner made an impassioned appeal to us that if such a construction be accepted, he would be at the mercy of the appropriate Government and that the said Government, out of spite, might not remit the balance of his sentence, with the result that he would be deprived of the fruits of remissions earned by him for sustained good conduct, useful service and even donation of blood. The Constitution as well as the Code of Criminal Procedure confer the power to remit a sentence on the executive Government and it is in its exclusive province. We cannot assume that the appropriate Government will not exercise its jurisdiction in a reasonable manner.

For the foregoing reasons we hold that the petitioner is under legal detention and the petition for *habeas corpus* is not maintainable. The petition is dismissed.

Petition dismissed.

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January 12.

RABIA BAI
v.
THE CUSTODIAN-GENERAL OF EVACUEE PROPERTY.

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO, K. N. WANCHOO and J. R. MUDHOLKAR, JJ.)

Evacuee Property—Sale before enactment of evacuee laws—Confirmation of sale—Vendor intending to defeat apprehended evacuee laws—Good faith, if lacking—Administration of Evacuee Property Act, 1950 (XXXI of 1950), s. 40(4)(a).

M who had gone to Pakistan in 1947, sold his property in the State of Madras to the appellant on August 11, 1949. At that time there was no legislation with respect to evacuee property in Madras. On August 23, 1949, the Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance, 1949 (XII of 1949), was extended to Madras. The appellant made an application for the confirmation of the sale. Subsequently, M was declared an evacuee and the property as evacuee property. It was found that M had entered into the transaction with the object of evading the evacuee law which it was apprehended, would be extended to Madras. Consequently, confirmation of the sale was refused under s. 40(4)(a) of the Administration of Evacuee