CASE NO.:
Appeal (crl.) 1227 of 2002

PETITIONER:
SANABOINA SATYANARAYANA

RESPONDENT:
GOVERNMENT OF ANDHRA PRADESH AND ORS.

DATE OF JUDGMENT: 29/07/2003

BENCH:
DORAISWAMY RAJU & H.K. SEMA

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 874

The Judgment of the Court was delivered by

DORAISWAMY RAJU, J. The above appeal has been filed against the judgment and order dated 11.7.2000 in Writ Petition No. 444 I of 2000 by a Division Bench of the High Court of Andhra Pradesh dismissing the writ petition along with some other writ petition also which came to be disposed of by a common judgment. The claim of the petitioner Sanabolina Nelabala Chandrudu in the writ petition filled before the High Court was that the convict, by name, Sri Sanaboina Satyanarayana, (the appellant now before this Court) the brother of the writ petitioner therein, was tried by the learned Additional Sessions Judge, West Godavari Division at Eluru along with four others for the offence punishable under section 302, 498-A and 201 IPC in Sessions Case No. 4 of 1990, that after completion of the trial the learned Additional Sessions Judge convicted the brother of the writ petitioner who stood charged as accused No. 1 under Section 302 IPC and sentenced him, to undergo imprisonment for life. He was also said to have been convicted under Section 498-A IPC and sentenced to undergo three years' rigorous imprisonment, in addition to the payment of Rs. 1,000 as line in default of which to suffer a further six months' rigorous imprisonment conviction under Section 201 IPC was also made for which he has been sentenced to undergo four years' rigorous imprisonment in addition to the payment of Rs. 1,000 as fine and in default to suffer six months' rigorous imprisonment. At appeal filed before the High Court, being Criminal Appeal No. 200 of 1992 was also dismissed on 04.05.1993. The convict was said to have been taken into custody on 25.02.1992 and is under going imprisonment.

While so, it appears that the Governor of the first respondent - State has passed GOMs. No. 18 HOME, (PRISONERS-C DEPARTMENT) dated 25.01.2000 in exercise of the powers conferred under Article 161 of the Constitution of India remitting the un-expired residue of sentence as on 26.01.2000, of the various categories of prisoners in the State who have been convicted by Civil Court of Criminal Jurisdiction for offences against laws relating to a matter to which the Executive Power of the State extends, subject to the conditions specified in paras (2) and (3) of the said Government order. The said order came to be passed on the occasion of the 50th Anniversary of the India becoming a Republic. The relevant part of the Government order which needs reference for appreciating the grievance of the appellant is as hereunder: -

"(a) All convicted prisoners sentenced to imprisonment for life who have undergone an actual sentence of 7 years and a total sentence of 10 years (including remission) as on 26.01.2000.

[(b) and (c) omitted as not relevant for the purpose of the case].

2. (Omitted as not relevant for the present case).

3. The remission of sentence ordered in para 1 above shall not apply to the following categories of prisoners, namely:-

(i) Prisoners convicted and sentenced by Courts situated outside the State of A.P.

(ii) Prisoners convicted of offences against laws relating to a matter to which the Executive Power of the Union extends.

(iii) Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act, the Scheduled Castes and Scheduled Tribes (Prevention of the atrocities) Act, Explosive Substances Act, Indian Explosive Substances Act, Indian Explosive Act and Indian Arms Act, while being sentenced to imprisonment for life.

(iv) Prisoners convicted for crimes against women such as Section 376 and 354 IPC, while being sentenced to imprisonment for life.

(v) Prisoners convicted for the offences of theft, robbery, dacoity and receiving stolen property (i.e. Section 379 to 411 IPC) while being sentenced to imprisonment for life.

(vi) Prisoners who have overstayed on Parole furlough for cumulative periods in excess of 10 years and,

(vii) Prisoners who have escaped while undergoing the sentence. 4. ....."

As indicated earlier, it makes explicit that the remission order is subject to the conditions specified in paras (2) and (3) above, and therefore subject to the stipulation contained in item (iv) of Para-3.

The grievance espoused before the High Court was that the appellant - convict was entitled to the benefit of the said Government order and as long as his conviction was not for a crime against women under"section 376 and 354 IPC, the benefit of the Government orders could not he denied to the convict. It appears to have been also urged before the High Court that the discrimination made in this regard against convicts for crimes against woman suffers the wise of Article 14 of the Constitution of India and, therefore, the Government order has to be read de-hors the said restriction so as to extend the benefit of the remission granted there under to the appellant also. The High Court rejected such a plea urged on behalf of the appellant as well as the others observing that the power under Article 161 being purely a discretionary one it is for the Governor to grant remission confined to certain categories of offenders/ convicts only and that there was no discrimination involved in the same. As far the other issue relating to the construction of category (iv) of para-3, it was observed, all offences crimes against women are disabled from claiming the benefit of remission under the orders in question and not merely those convicted under section 376 and 354 IPC

When the matter came up before the Court on 24.07 2003 Mr. S. Muralidhar, learned counsel appeared and made detailed submissions on behalf of the appellant reiterating the same grounds as were urged before the High Court. As the matter was about to be concluded, it was brought to our notice that the Government seem to have also passed a subsequent order and that if any benefit is given under the said Government order, it may ensure to the advantage of the claim made in this appeal. At that stage, the matter was adjourned to enable the learned counsel appearing for the respondent-State to produce the subsequent orders said to have been passed by the Government. A copy of GOMs. No. 17 HOME (PRISONS-B -2 DE PARTMENT dated 17.01.2003 has been made available and it is seen from the said Government order that the same was not in exercise of powers under Article 161 but under Section 433 Cr. P.C. and Section 55 1PC and that several provisions

of the IPC other than those which were already illustrated in the earlier order of the Governor relating to crimes against women including the conviction under the Dowry Prohibition Act have been specified to be the class of convicts who cannot avail of the benefit of remission. The learned counsel appearing for the appellant today would contend that the G.O. is of a subsequent date and may not stand in the way of the benefits which are claimed to have accrued to the appellant who has been convicted and undergoing imprisonment, in terms of the earlier order of the Governor dated 25.01.2000. As on the earlier date of hearing as well as today, the learned counsel for the appellant tried to contend that there is no rhyme or reason in making a further classification among the entire class of convicts forming a larger group, based on offences or crime against women and those falling under the other category, apart from contending that stipulation contained in para 3- (iv) of the earlier order, noticed supra, does not, by its very terms deny or disentitle a convict under section 498-A IPC, to the benefits of remission granted under the earlier Government order.

The learned counsel appearing for the respondent-state, while adopting the reasoning of the High Court contended that the exception carved out denying the benefit of remission in respect of convicts of crime against women is a valid one, well merited and justifiable in public interest and the same is not justiciable. It was also urged that the remission itself is a benefit and concession sought to be granted to a few class of persons and being a matter of policy, the State cannot be compelled to accord remission to all category of convicts, even against the evolved policy of the State and no discrimination which suffer the vice of Article 14 to the Constitution of India, could be said to be involved in such classification and the High Court was right in rejecting the claim on behalf of the appellant.

We have carefully considered the submission of the learned counsel appearing on either side. In our view, the rejection of the plea on behalf of the appellant by the High Court was well merited and supported by sound reasons. As pointed out earlier, the remission to be granted was in respect of only a specified class of convicts and that too "subject to the conditions" specified in the very Government order. Consequently, the claim for remission cannot be made or countenanced de-hors the specific conditions subject to which only it has been accorded and in as much as the grant as well as the conditions formed a compendious single common pattern or scheme of concession by way of remission, pregnated with a policy designed in public interest and the safety and interests of the society, either the remission could be availed of only subject to the conditions stipulated or the entirety of the scheme fails as whole, and there is no scope for judicial moditication or modulating the same so as to extend the concession in excess of the very objective of the maker of the order which seems to have been guided by considerations of State policy. In such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself.

Clause (iv) of paragraph 3 of the Government order dated 25.01.2000 specifically stated that prisoners convicted for "Crimes against women such as section 376 and 354 IPC while being sentenced to impisonment for life" will fall outside scheme for remission granted under the said G.O. When the clause noticed above, in the later portion referred to two of the provisions of the 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 come against women under Section 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 distegard 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 conscions 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 were kept out of the scheme for according the benefit of remission.

The plea of discrimination needs mention only to be rejected. The remission proposed in commemoration of the 50 years of Indian Republic itself is a boon an concession to which no one had any vested right. As to what classes of persons or category of offenders to whom the remission has to be extended is a matter of policy particularly when it is also a constituent power conferred upon the constitutional functionary and Head of the State Government, larger area of latitude is to be conceded in favour of such authority to decide upon the frame and limits of its exercise under Article 161 itself. The Constitution of India itself has chosen to countenance the claims of women for favourable treatment and acknowledge the fact that sex is a sound classification. The issue in question being one pertaining purely to the area policy and political philosophy of the State, the Courts except in the rarest of rare cases, cannot be called upon to adjudicate on the desirability or wisdom of such decisions. It is no exaggeration to place on record that instances of violence against women and children particularly female, such as rape, dowry deaths, domestic violence, bride burning, molestation, brazen, ill treatment of horror, vulgarity and indecency are not only rampant but on phenomenal increase casting a shadow of shame on the society, the culture and Governance in this country and it seems that cruelty to women problems of battered wives have become ironically almost a world wide phenomenon. Such a situation deserves a special treatment in the hands of the State. Consequently, the classification in this regard to keep/away convicts for crimes against women from the benefits of remission under the order dated 25.01.2000 cannot be said to violate any reasonable principle or concepts of law so as to call for its condemnation in exercise of the powers of judicial review. The classification therefore sound just, reasonable, proper and necessitated in the larger interest of society and greater public interest and consequently cannot by any stretch of imagination be branded to be invidious to attract the vice of Article 14 of the Constitution of India. A careful scrutiny of the various excepted class of convicts only show that the real object is to ensure that those who prey on the community and violate fundamental values of mankind, society and national interest should not get undeserved benefit.

Consequently, we see no merit whatsoever in the appeal and the same, therefore, fails and shall stand dismissed..