PETITIONER:
RAGHBIR SINGH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT13/09/1984

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1984 AIR 1796 1985 SCR (1) 724
1984 SCC (4) 348 1984 SCALE (2)365

ACT:
Code of Criminal Procedure e 1973 (Act II of 1974) Section 428 read with Punjab & Haryana High Court Instruction No. 29442 Rules VI. V. 38 dt 19.11. 1945 Scope of-Set off against the term of imprisonment of period of detention undergone by an accused, explained-Whether it is open to a person who is undergoing imprisonment on being convicted of an offence committed by him to claim that the period occupied by the investigation or inquiry carried on and the trial held while he was undergoing imprisonment in respect of another offence alleged to have been committed by him should be set off against the term of imprisonment imposed on him on being convicted of the latter offence.

HEADNOTE:
The petitioner was convicted for an offence under Section 307 and Section 459 of the Indian Penal Code and sentenced on February 1, 1980 to a term of rigorous imprisonment. During the pendency of the trial the petitioner was in judicial custody with effect from January 11, 1980 in another case F.I.R. 315/78 under Sections 457/380/411 of the Indian Penal Code which also ended in his conviction on February 16, 1981 and was sentenced for a term of rigorous imprisonment. In the latter case it was ordered that the petitioner was entitled to the set off as provided by Section 428 of the Code. The petitioner claimed that in spite of his conviction in the earlier case from February 1, 1980 he was entitled for set off from 11.1.1980 to 16.2.81. The question in the present Writ Petition is whether such a claim is in order.

Dismissing the Writ Petition, the Court
^

HELD: 1. The petitioner is not entitled to claim that the period between February 1, 1980 on which date he was convicted in the Sessions Case and February 16, 1981 on which date he was convicted by the Metropolitan Magistrate, Delhi in another case when he was undergoing imprisonment imposed on him in the Sessions Case should be set off against the term of imprisonment imposed by the Metropolitan Magistrate, Delhi. That period should be counted as part of the imprisonment undergone by the petitioner as directed in the Sessions Case. [728G-H]

2: 1. Section 428 of the Code of Criminal Procedure 1973 was introduced with the object of remedying the unsatisfactory state of affairs that was prevail-
725
ing when the former Code of 1898 was in force. It was then found that many persons were being detained in prison at the pre-conviction stage for unduly long periods, many times for periods longer than the actual sentence of imprisonment that could be imposed on them on conviction. [727F-G]

2: 2. In order to secure the benefit of Section 428 of the Code, the prisoner should show that he had been detained in prison for the purpose of investigation inquiry or trial of the case in which he is later on convicted and sentenced. It follows that if a person is undergoing the sentence of imprisonment imposed by a court of law on being convicted of an offence in one case during the period of investigation, inquiry or trial of some other case, he cannot claim that the period occupied by such investigation, inquiry or trial should be set off against the sentence of imprisonment to be imposed in the latter case even though he had been detained during such period. In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. It is not the period of detention undergone by him during the investigation, inquiry or trial of the same case in which he is later on convicted and sentenced to undergo imprisonment. He cannot claim a double benefit under Section 428 of the Code that is the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well. The instruction issued by the High Court of Punjab & Haryana No. 29442 Rules VI. V. 38 dated 29th November, 1975 is unexceptionable. [727G-H]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 941 of 1984.

(Under article 32 of the Constitution of India)

S.L. Chibber for the Petitioner.

Ashwani Kumar and R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The short question which arises for decision in this petition under Article 32 of the Constitution is whether it is open to a person who is undergoing imprisonment on being convicted of an offence committed by him to claim that the period occupied by the investigation or inquiry carried on and the trial held while he was undergoing imprisonment in respect of another offence alleged to have been committed by him should be set off against the term of imprisonment imposed on him on being convicted of the latter offence, under section 428 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code').
726

The facts relevant for the purpose of this case are these: The petitioner was convicted of an offence punishable under section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 100/- in a Sessions Case on February 1, 1980 by the Addl. Sessions Judge, Karnal. In the same case, he was also convicted of an offence punishable under section 459 of the Indian Penal Code and sentenced to undergo rigorous

imprisonment for five years and to pay a fine of Rs. 100/-. Both the sentences of imprisonment were directed to run concurrently. The petitioner was in judicial custody with effect from January 11, 1980 in another case F.I.R. No. 315/78 under sections 457/380/411 of the Indian Penal Code before a Metropolitan Magistrate at Delhi. That case ended in his conviction on February 16, 1981 for an offence punishable under section 457 of the Indian Penal Code and he was sentenced to undergo imprisonment for one year and to pay a fine of Rs. 200/-. In the same case he was convicted of an offence punishable under section 380 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four months and to pay fine. The two sentences of imprisonment imposed in this case were directed to run concurrently. In this case it was further ordered that the petitioner was entitled to the set off as provided by section 428 of the Code. It is not necessary to refer to the other case or cases in which he has also been convicted in order to decide the issue involved in this case.

The petitioner is undergoing rigorous imprisonment for seven years as directed by the Addl. Sessions Judge, Karnal in the Sessions case from February 1, 1980 at the District Jail at Rohtak. The sentences of imprisonment imposed by the Metropolitan Magistrate, Delhi will commence to run at the expiration of the imprisonment imposed by the Addl. Sessions Judge, Karnal as prescribed by section 427 of the Code since the court has not directed that the subsequent sentence shall run concurrently with the previous sentence. The petitioner, however, contends that since he was in judicial custody from January 11, 1980 in connection with the investigation and trial of the case which ended in his conviction by the Metropolitan Magistrate on February 16, 1981, the whole of the period between January 11, 1980 and February 16, 1981 should be set off against the sentence of imprisonment imposed by the Metropolitan Magistrate, Delhi. This claim of the petitioner is contested by the State Government of Haryana. It is urged on behalf of the State Government that while the petitioner is entitled
727
to set off under section 428 of the Code, the period between January 11, 1980 and February 1, 1980 on which date he was sentenced to imprisonment for seven years by the Addl. Sessions Judge, Karnal against the sentence of imprisonment imposed by the Metropolitan Magistrate, Delhi, the period between February 1, 1980 and February 16, 1981 on which date the petitioner was convicted by the Metropolitan Magistrate, Delhi cannot be set off since during that period the petitioner was actually undergoing imprisonment imposed on him in the Sessions case. The State Government has relied in support of its contention on the instruction issued by the High Court of Punjab and Haryana in No. 29442 Rules VI.V.38 dated November 29, 1975, the relevant part of which reads thus:

> "The period of detention undergone by a convict in execution of sentence of imprisonment imposed on him by a court of law while facing inquiry or trial in some other case(s) should not be set off against the term of imprisonment imposed on him on conviction in such other case(s)."

We are concerned in the present case with the correctness of the above instruction.

Section 428 of the Code reads thus:

> "428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.-Where an accused person has: on conviction, been sentenced to

imprisonment for a term not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him."

There was no provision corresponding to section 428 of the Code in the Code of Criminal Procedure, 1898 which was repealed and replaced by the present Code. It was introduced with the object of remedying the unsatisfactory state of affairs that was prevailing when the former Code was in force. It was then found that many persons were being detained in prison at the pre-conviction stage for unduly long periods, many times for periods longer than the actual sentence
728
of imprisonment that could be imposed on them on conviction. In order to remedy the above situation, section 428 of the Code was enacted. It provides for the setting off of the period of detention as an under trial prisoner against the sentence of imprisonment imposed on him. Hence in order to secure the benefit of section 428 of the Code, the prisoner should show that he had been detained in prison for the purpose of investigation, inquiry or trial of the case in which he is later on convicted and sentenced. It follows that if a person is undergoing the sentence of imprisonment imposed by a court of law on being convicted of an offence in one case during the period of investigation, inquiry or trial of some other case, he cannot claim that the period occupied by such investigation, inquiry or trial should be set off against the sentence of imprisonment to be imposed in the latter case even though he was under detention during such period. In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. It is not the period of detention undergone by him during the investigation, inquiry or trial of the same case in which he is later on convicted and sentenced to undergo imprisonment. He cannot claim a double benefit under section 428 of the Code i.e. the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well. The instruction issued by the High Court in this regard is unexceptionable. The stand of the State Government has, therefore, to be upheld.

The petitioner is not, therefore, entitled to claim that the period between February 1, 1980 on which date he was convicted in the Sessions case and February 16, 1981 on which date he was convicted by the Metropolitan Magistrate, Delhi when he was undergoing imprisonment imposed on him in the Sessions case should be set off against the term of imprisonment imposed by the Metropolitan Magistrate, Delhi. That period should be counted as part of the imprisonment undergone by the petitioner as directed in the Sessions case.

No other contention is urged.

In the result the petition is dismissed.

S.R. Petition dismissed.
729

JUDIS