

2023 SCC OnLine Bom 1877

In the High Court of Bombay at Goa  
(BEFORE M.S. SONAK AND BHARAT P. DESHPANDE, JJ.)

Santana Antonio Eugenio ... Petitioner;

*Versus*

State of Goa through Public Prosecutor ...  
Respondent.

Criminal Writ Petition No. 73 of 2023

Decided on September 4, 2023

Advocates who appeared in this case :

Mr. Sahil Sardessai, Advocate for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for Respondent-State.

JUDGMENT

1. Heard Mr. Sahil Sardessai for the Petitioner and Mr. S. G. Bhobe, learned Public Prosecutor for the State.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The petitioner seeks the following substantive relief in this petition:—

*"That this Hon'ble Court in exercise of its inherent jurisdiction under section 482 of the Code of Criminal Procedure be pleased to grant set off under Section 428 Cr. P.C. for the period of detention undergone as an undertrial prisoner in SC/8/2010."*

4. The petitioner was arrested on 09.11.2009 in connection with an FIR alleging the commission of an offence punishable under Section 302 of the Penal Code, 1860.

5. After spending a period of one year, nine months, and twenty-eight days as an under-trial prisoner, the petitioner was convicted and sentenced to life imprisonment by Judgment and Order dated 04.08.2012 passed by the Additional Sessions Judge, Fast Track Court-I, South Goa at Margao. The Criminal Appeal No. 37/2012 instituted by the petitioner before this Court was dismissed on 18.12.2013.

6. The petitioner, on 09.03.2023, addressed a communication to the Registrar of this Court seeking a set-off under Section 428 of Cr. P.C. for the period spent by the petitioner in custody from the date of his arrest on 09.11.2009 till the date of his conviction by the Sessions Court on 04.08.2012. After the petitioner was informed that he could file a formal petition, the present petition came to be filed seeking the above-quoted substantive relief.

7. The issue raised by the petitioner is covered by the decision of the Constitution Bench in *Bhagirath v. Delhi Administration*, (1985) 2 SCC 580 and the decisions of at least two Division Benches of this Court in *Rajaram Charoskar v. State of Maharashtra*, 2008 SCC OnLine Bom 1391 and *Clint v. State of Maharashtra*, 2019 SCC OnLine Bom 1732.

8. The Constitution Bench in *Bhagirath* (supra) has held that persons undergoing a sentence of life imprisonment are entitled to set off under Section 428 if an order is made under Sections 432 or 433 of Cr. P.C. The Constitution Bench has held that where such orders are made, the expression "*imprisonment for term*" would include life imprisonment.

9. Based upon the above reasoning, the Constitution Bench allowed the appeal and writ petition filed by the appellant/petitioners who were sentenced to life imprisonment and directed that the period of detention undergone by them as under-trial prisoners shall be set off against the sentence of life imprisonment imposed upon them, subject to the provisions contained in Section 433-A and, provided that orders have been passed by the appropriate authority under Sections 432 or 433 of Cr. P.C.

10. Similar directions were issued by the two Division Benches of this Court in writ petitions instituted by the convicts sentenced to undergo life imprisonment.

11. Therefore, by following the above precedents, this petition is allowed, and it is directed that the petitioner should be granted the benefit of Section 428 of Cr. P.C. subject to the provisions contained in Section 433-A and, provided that orders have been passed by the appropriate authority under Sections 432 or 433 of Cr. P.C.

12. This means that the period from the date of the petitioner's arrest till the date of the petitioner's conviction vide Judgment and Order dated 04.08.2012 should be set off against the sentence of life imprisonment imposed upon the petitioner, subject to the provisions contained in Section 433-A and, provided that orders have been passed by the appropriate authority under Sections 432 or 433 of Cr. P.C.

13. The Rule is made absolute in the above terms without any order for costs.

14. All concerned to act on an authenticated copy of this order.