

616

Current Tamil Nadu Cases

2002 (3) CTC

established that the father was acting against the welfare of the minor and under the circumstance, the mother, being de facto guardian, has no right whatsoever to enter into any agreement of sale; more so, without any necessity or benefit for the then minor. Both the courts below have committed an error in applying the legal position and the conclusion was arrived at on improper and irrelevant materials. The finding is a perverse one and is liable to be interfered with. However, the respondent has parted with a sum of Rs.78,000 towards the sale consideration and under justice and equity, the appellant has to be directed to deposit the said amount into the Court within a reasonable time.

17. For the reasons stated above, the Second appeal is allowed and the judgment and decree of the courts below are set aside and the suit is decreed, directing the defendant to deliver the suit property to the plaintiff in a period of three months. In other respects, the suit is dismissed. The appellant is also directed to deposit the sum of Rs.78,000 to the credit of the suit in a period of three months, failing which, the respondent will be entitled to claim interest at 9% per annum. However, there will be no order as to costs.

RSN

2002 (3) CTC 616

IN THE HIGH COURT OF MADRAS

M. Karpagavinayagam, J.

Crl.R.C.No.187 of 2001

7.6.2002

N.A.Ravikumar

.....Petitioner

Vs.

S.Suresh Kumar

..... Respondent

Code of Criminal Procedure, 1973, Section 432 — Power to grant remission — Appropriate Government — Power of remission is administrative function of Executive and Court cannot order release of accused on remission — Since accused was on bail pending appeal, benefit of remission can not be granted for period during which accused was on bail — Appropriate Authority to grant remission is Appropriate Government — With regard to offences committed under Central enactment, Central Government is appropriate Government to grant permission — With regard to offences committed under State enactment, State Government is appropriate Government to grant remission — Negotiable Instruments Act is Central enactment with regard to offence under Section 138 of said Act, Central Government is appropriate Government — Remission granted under State Government Order would not apply to offence under Section 138 of

Ravikumar, N.A. v. S. Suresh Kumar
(M. Karpagavinayagam, J.)

617

Negotiable Instruments Act, 1881 — Remission granted to accused by trial court based on State Government Order was set aside — Accused directed to undergo simple imprisonment for six months. (Paras 16,17,28 & 29)

Code of Criminal Procedure, 1973, Section 432 — Remission of Sentence — Period on bail — Not to count for remission — Power of remission is administrative function of Executive and Court cannot order release of accused on remission — Since accused was on bail pending appeal, benefit of remission can not be granted for period during which accused was on bail. (Paras 28 & 29)

Negotiable Instruments Act, 1881, Section 138 — Dishonour of Cheques — Remission of sentence of imprisonment — Whether permissible — Trial Court convicted accused and sentenced him to undergo simple imprisonment for 6 months and to pay fine of Rs 5,000 and compensation of Rs.2,500 to complainant — It was ordered by Trial Court that accused need not undergo sentence of simple Imprisonment for 6 months holding that he is entitled to remission of sentence granted in G.O.Ms.No.1013 dated 14.9.2000 passed by State Government — Order of remission of sentence set aside by High Court in revision — Power of remission is administrative function of Executive and Court cannot order release of accused on remission — Since accused was on bail pending appeal, benefit of remission can not be granted for period during which accused was on bail — Appropriate Authority to grant remission is Appropriate Government — With regard to offences committed under Central enactment, Central Government is appropriate Government to grant permission — With regard to offences committed under State enactment, State Government is appropriate Government to grant remission — Negotiable Instruments Act is Central enactment — With regard to offences under Section 138 of said Act, Central Government is appropriate Government — Remission granted under State Government Order would not apply to offences under Section 138 of Negotiable Instruments Act, 1881 — Remission granted to accused by trial court based on State Government Order was set aside — Accused directed to undergo simple Imprisonment for six months — However fine amount of Rs.5,000 and compensation amount of Rs.2,500 were modified and instead Rs.5,000 was awarded as compensation to complainant — Accused directed to undergo remaining period of sentence — (Paras 10,11,12,16,17,28,29,30,31 & 32)

CASES REFERRED

2002 (1) CTC 55	(14,16)	1997 (1) LW 157	(9)
2000 (1) MWN SC 78	(8)	1996 (2) MWN 195	(10)
2000 (1) MWN 72	(10)	JT 1987 (3) SC 418	(15)
2000 (1) CTC 206	(10)	AIR 1974 SC 31	(29)
JT 2000 (1) SC 629	(14,15)	AIR 1961 SC 600	(9)

Mr.N.Manokaran, Advocate for Petitioner.
Mr.B.Kumarasamy, Advocate for Respondent.
Mr.I.Subramanian, Public Prosecutor for Amicus Curiae.
CRL. R.C. ALLOWED

ORDER

1. In a complaint under Section 138 of the Negotiable Instruments Act filed by the petitioner/complainant, the respondent/accused was convicted and sentenced to undergo simple imprisonment for 6 months and to pay a fine of Rs.5,000/-. While the same was challenged by the accused in the appeal, the appellate Court confirmed the conviction and sentence. However, it would hold that the accused need not undergo the sentence, as he is entitled for remission of sentence of simple imprisonment for 6 months as per G.O.Ms.No.1013 dated 14.9.2000 and set the accused at liberty on remission in pursuance of the said G.O. The said portion of the judgment is challenged in this revision by the complainant, the petitioner herein.

2. I have heard Mr.N.Manokaran, the learned counsel for the petitioner and Mr.B.Kumarasamy, the learned counsel for the respondent.

3. I have appointed Mr.I.Subramanian, the learned Public Prosecutor of the State, as Amicus Curiae to assist the Court to resolve the dispute which arises in this case.

4. On going through the records and the judgments referred to by the learned counsel for the parties as well as the learned Public Prosecutor, I am of the considered opinion that the judgment impugned regarding the remission of sentence rendered by the appellate Court in the appeal is illegal and the same is liable to be set aside.

5. The reasonings for the same could be shown from three angles.

6. The first angle is this. The appellate Court, on hearing the submission made by the Public Prosecutor of the District before the appellate Court that the accused is entitled for remission of sentence of simple imprisonment for 6 months as per G.O.Ms.No.1013 dated 14.9.2000, accepted the same as gospel truth and released the accused on remission as per the above G.O.

7. On going through the relevant records, it is noticed that both the Public Prosecutor of the District and the appellate Court have not applied their mind as to whether the Court has got powers to hold that the remission under a particular G.O. would be applicable to the case on hand and whether such a direction could be given by the Court itself to set him at liberty by invoking the said G.O.

8. The Apex Court, while dealing with the powers of the High Court to grant remission, in a case reported in *State of Tamil Nadu and others v. Padma and others*, 2000(1) M.W.N.(CR.) S.C. 78 would categorically hold that the High Court has no power to grant remission straightaway and at the most, it can direct the Government to consider the request as to whether the G.O. would be applicable to him. The relevant observation is as follows:-

Ravikumar, N.A. v. S. Suresh Kumar
(M. Karpagavinayagam, J.)

619

"After hearing the learned counsel for the parties, in our opinion, it is not for the High Court itself to order the grant of remission. The High Court could only require the Government to consider the cases of the respondents for the grant of remission in accordance with law. Individual facts will have to be investigated and decision taken whether and to what extent the remission can be granted and whether the orders on which reliance was placed are applicable."

9. Earlier, on a similar line in *Gopal Vinayak Godse v. State of Maharashtra*, AIR 1961 S.C. 600 and *State of Punjab v. Kesar Singh*, 1997 (1) L.W.(Crl.) 157, the Supreme Court would hold that the direction should not be given by the High Court for the premature release or remission and set the accused at liberty forthwith and even if the High Court could give such a direction, it could only direct for consideration of the case of premature release by the Government and the same should not be done by the Court itself.

10. Following the above principle, this Court in (1) *Periyalwar and others v. The State of Tamil Nadu and others*, 2000 (1) M.W.N. (Cr.) 72; (2) *Velusami v. Maarachi Reddiar and others*, 1996 (2) M.W.N.(Cr.) 195; and (3) *Ramasamy Gownder v. Inspector of Police*, 2000 (1) C.T.C. 206 would emphatically state that giving the benefit of remission is not the duty of the Court of law but it is the administrative function of the executive and as such, the Court cannot order release of the accused on remission.

11. When such a restriction has been put even on the High Court, this Court is unable to understand as to how the District Court being the appellate Court could usurp the powers of the executive to order remission merely on the improper concession given by the Public Prosecutor of the District, without knowing the law laid down on the subject by the High Court and the Supreme Court.

12. This Court is of the definite view that the impugned portion of the judgment by the appellate Court which has been rendered on the incorrect advice of the Public Prosecutor of the District by invoking the said G.O. and setting the accused at liberty in the Court itself is clearly illegal.

13. The next angle is this. The trial Court convicted the accused for the offence under Section 138 of the Negotiable Instruments Act on 4.7.2000 and sentenced him to undergo simple imprisonment for 6 months and to pay a fine of Rs.5,000/-. The appeal was filed on 12.7.2000 and notice was ordered on 19.7.2000. Admittedly, pending appeal, he was on bail.

14. It is settled law, as laid down by the Apex Court in *Joginder Singh v. State of Punjab and others*, 2002 (1) C.T.C. 55 and *State of Haryana and others v. Mohinder Singh*, J.T. 2000 (1) S.C. 629 that a convict is not entitled to remission of sentence for the period during which he was on bail.

15. The Apex Court in *State of Haryana and others v. Mohinder Singh*, J.T. 2000 (1) S.C. 629, while quoting its judgment in *Jai Prakash and*

others v. State of Haryana and others, J.T. 1987 (3) S.C. 418, would give its extract as follows:-

"In other words, a prisoner is not eligible for remission of sentence during the period he is on bail or his sentence is temporarily suspended. The submission that the petitioners who were temporarily released on bail are entitled to get the remission earned during the period they were on bail, is not at all sustainable".

16. While following the above judgment, the Apex Court would again reiterate in *Joginder Singh v. State of Punjab and others*, 2002 (1) C.T.C. 55 and would observe as follows:-

"With respect, we are unable to agree with the learned counsel for the said respondents. In other words, acceptance of this argument, in our opinion, would reduce the criminal justice system to mockery as has been said by this Court in *Nauratta Singh's Case*, 2000 (3) S.C.C. 514. In the case cited by the appellant, this Court has categorically held that there is substantial difference between the words 'parole' and 'furlough' on one hand and the expression 'bail' on the other hand. These judgments have also held that the persons who are enlarged on bail cannot claim the benefit of the period during which they were on bail for the purpose of counting the period of sentence already undergone to apply the remission given by the Government. In view of this clear enunciation of law, in our opinion, even by the inclusion of the word 'bail' in the notification of the Punjab Government an accused who has always remained on bail or has not served the substantial part of his sentence cannot take advantage of the remission notification."

17. This observation would make it clear that the accused would not be entitled to the benefit of remission given under various G.Os. individually or cumulatively counted against the period during which he was on bail. Hence, the appellate Court ought not to have invoked the G.O. against the principles laid down by the Apex Court especially when the accused was on bail.

18. The last angle is so important. Now the learned State Public Prosecutor appearing before this Court as Amicus Curiae would point out that the G.O.Ms.No.1013 dated 14.9.2000 issued by the State Government would not apply to the accused relating to the offence under Section 138 of the Negotiable Instruments Act on the reason that the Negotiable Instruments Act is a legislation within the exclusive competence of the Union Government and as such, any remission of sentence for an offence under this enactment can be granted only by the Central Government and not by the notification issued by the State Government.

19. Let us now elaborate on this point.

20. The power of remission is traceable to Section 432 Cr.P.C. Section 432(2) Cr.P.C. is reproduced as follows:-

"When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his

Ravikumar, N.A. v. S. Suresh Kumar
(M. Karpagavinayagam, J.)

621

sentence or remit the whole or any part of the punishment to which he has been sentenced."

21. Section 432 sub-Section (7) Cr.P.C. defines the expression "appropriate Government" which reads as under:-

"In this Section and in Section 433, the expression 'appropriate Government' means,--

(a) in cases where the sentence is for an offence against, or the order referred to in sub-Section (6) is passed under any law relating to a matter to which the executive power of the Union extends the Central Government.

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

22. Thus, the above Section gives powers to both the Central Government and the State Government to suspend the execution of the sentence or to remit the whole or any part of the punishment to which a person convicted of an offence has been sentenced.

23. The Governor of a State is empowered to grant remission of punishment or to suspend the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

24. Similarly, Article 72 of the Constitution of India confers the said powers on the President to be executed within the sphere of the executive power of the Union.

25. Now the question has to be considered in the light of the above provisions as to whether the offence under Section 138 of the Negotiable Instruments Act under which the accused was convicted is a law relating to a matter to which the legislative power of the State or the Union extends?

26. It cannot be debated that the legislation relates to the matter within the competence of the Union, the Central Government would be the appropriate Government, and if the legislative enactment would be under the purview of the State, the State Government would be the appropriate Government.

27. It is seen in List-1 of the Seventh Schedule of the Constitution of India that the offence against the laws in relation to the matters in List-1 would be within the exclusive competence of the Union Government. Entry 46 in List-1 of the Seventh Schedule would give the followings:-

"Bills of exchange, cheques, promissory notes and other like instruments."
Under entry 93 in List-I, it is stated that the offence against laws with respect to any of the matter in this list would relate to the Union Government.

28. Admittedly, the offence under Section 138 of the Negotiable Instruments Act is a legislation relating to the cheques as contained in Entry 46 in List-1 of the Seventh Schedule. Therefore, this legislation would

definitely fall under the exclusive competence of the Union Government. Hence, any remission of sentence for an offence under the Negotiable Instruments Act can be granted only by the Central Government, as it would relate to the matters concerned with List-1 of the Seventh Schedule. As such, the G.O. issued by the State Government granting remission to some offences would not apply to the offence under the Negotiable Instruments Act.

29. When a similar question was raised in respect of the offences under Sections 489-A to 489-D, I.P.C., the Apex Court in *Ramanaiah v. Superintendent, Central Jail*, AIR 1974 S.C. 31 would categorically hold that the remission issued by the State Government would not apply to the offences under Section 489-A to 489-D I.P.C., as those Sections would relate to the offences in respect of counterfeit of currency notes and they are coming under Entries 36 and 93 of List-1 and hence, they are the matters which are exclusively within the legislative competence of the Union Government.

30. Applying this ratio of the decision to this case, it is clear that the remission G.O., namely, G.O. Ms.No.1013 dated 14.9.2000, issued by the State Government will not apply to the conviction under Section 138 of the Negotiable Instruments Act as well.

31. For the reasons stated above, the impugned judgment regarding remission rendered by the appellate Court is set aside and the judgment of the trial Court sentencing the accused to undergo simple imprisonment for 6 months and to pay a fine of Rs.5,000/- for the offence under Section 138 of the Negotiable Instruments Act is restored.

32. However, the judgment of the trial Court needs some modification. The trial would hold that out of the fine amount of Rs.5,000, the petitioner/complainant is entitled to compensation of Rs.2,500. Instead of the same, this Court would hold that the petitioner/complainant would be entitled to the entire amount of Rs.5,000 as compensation.

33. With this observation, the Criminal Revision Case is allowed. The trial Court is directed to take steps to secure the custody of the respondent/accused to undergo the remaining period of sentence.

34. This Court records its full appreciation for the effective assistance rendered to this Court by the Amicus Curaie, Mr.I.Subramanian, the Public Prosecutor of the State.

RV
