

CASE NO.:
Review Petition (crl.) 1105 of 2000

PETITIONER:
RAM DEO CHAUHAN @ RAJ NATH CHAUHAN

Vs.

RESPONDENT:
STATE OF ASSAM

.RESPONDENT

DATE OF JUDGMENT: 10/05/2001

BENCH:
S.N. Phukan

JUDGMENT:

Phukan, J
L...I...T.....T.....T.....T.....T.....T.....T..J

After reading draft judgments by my learned Brothers, I record my separate views on the sentence to be imposed on the accused-petitioner in this Review Petition.

Review as the expression itself shows is a fresh view of matters already examined. As my learned Brothers have elaborately delineated the scope of review, it is unnecessary to traverse the path again. Suffice it would be to say that power of review is a restricted power which authorises the Court which passed the order sought to be reviewed, to look over and go through the order, not in order to substitute a fresh or a second order; but in order to correct it or improve it because some materials which it ought to have considered has escaped its consideration. As my learned Brothers have agreed on the scope of review, the sentence of death imposed cannot be reopened. With respect, I agree with my learned Brother Mr. Justice R.P. Sethi.

But, a question that remains to be considered further is the effect of conclusion arrived at by my learned Brother Mr. Justice Thomas. Is the accused remediless; that remains to be seen. Few provisions in the Code of Criminal Procedure (for short the Code) and other in the Constitution deal with such situation. Sections 432, 433 and 433A of the Code and Articles 72 and 161 of the Constitution deal with pardon. Article 72 of the Constitution confers upon the President power to grant of pardons, reprieves, respites or remission of punishment or to suspend, remit or commute sentence of any person of any offence. The power so conferred is without prejudice to the similar power conferred on the Governor of the State. Article 161 of the Constitution confers upon the Governor of a State similar powers in respect of any offence against any law relating to a matter to which the executive power of the State extends. The power under Article 72 and Article 161 of the Constitution is absolute and cannot be fattered by any statutory provision such as Sections 432, 433 and 433A of the Code or by any Prison Rules.

Section 432 of the Code empowers the appropriate Government to suspend or remit sentences. The expression appropriate Government means the Central Government in cases where the sentences or order relates to the matter to which the executive power of the Union extends, and the State Government in other cases. The release of the prisoners condemn to death in exercise of the powers conferred under Section 432 and Article 161 of the Constitution does not amount to interference with due and proper course of justice, as the power of the Court to pronounce upon the validity, propriety and correctness of the conviction and sentence remains unaffected. Similar power as those contain in Section 432 of the Code or Article 161 of the Constitution can be exercised before, during or after trial. The power exercised under Section 432 of the Code is largely an executive power vested in the appropriate Government and by reducing the sentence, the authority concerned thereby modify the judicial sentence. The Section confines the power of the Government to the suspension of the execution of the sentence or remission of the whole or any part of the punishment. Section 432 of the Code gives no power to the Government to revise the judgment of the court. It only provides power of remitting the sentence. Remission of punishment assumes the correctness of the conviction and only reduces punishment in part or whole. The word remit as used in Section 432 is not a term of art. Some of the meanings of the word remit are to pardon, to refrain from inflicting to give up. It is therefore no obstacle in the way of the President or Governor, as the case may be in remitting the sentence of death. A remission of sentence does not mean acquittal.

The power to commute a sentence of death is independent of Section 433A. The restriction under Section 433A of the Code comes into operation only after power under Section 433 is exercised. Section 433A is applicable to two categories of convicts : (a) those who could have been punished with sentence of death and (b) those whose sentence have been converted into imprisonment for life under Section 433. It was observed in Mura Ram vs. Union of India [1981 (1) SCC 106] that Section 433A does not violate Article 20(1) of the Constitution.

In the circumstances, if any motion is made in terms of Sections 432, 433 and 433A of the Code and/or Article 72 or Article 161 of the Constitution as the case be, the same may be appropriately dealt with. It goes without saying that at the relevant stage, the factors which have weighed with my learned Brother Mr. Justice Thomas can be duly taken note of in the context of Section 432(2) of the Code.