A LIFE CONVICT BENGAL @ KHOKA @ PRASANTA SEN

v.

B.K. SRIVASTAVA & ORS.

CONTEMPT PETITION (C) NO. 363 OF 2011

IN

B (Writ Petition (Crl.) No. 279 of 2004)

FEBRUARY 13, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

C *Penal Code, 1860 - s.57 - Life imprisonment - Meaning and effect of -Remission - Entitlement to - Held: Once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life - S.57*

D *IPC does not, in any way, limit the punishment of imprisonment for life to a term of 20 years - In absence of subsequent order of remission by the competent Government either based on s.57 IPC or any other provision of CrPC, the life convict cannot be released - Neither s.57 IPC nor*

E *Explanation to s.61 of the W.B. Act lays down that a life imprisonment prisoner has to be released after completion of 20 years - 20 years mentioned in Explanation to s.61 of the W.B. Act is only for the purpose of ordering remission - On facts, if the State Government taking into consideration*

F *various aspects refused to grant remission of the whole period then the petitioner cannot take advantage of the above Explanation and even s.57 IPC and seek for pre-mature release -Further the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government u/s.401 CrPC and neither s.57 IPC*

G *nor any rules or local Acts (in the case on hand W.B. Act) can stultify the effect of the sentence of life imprisonment given by the Court under the IPC - West Bengal Correctional Services Act, 1992 - ss. 2(c) and 61, Explanation - Code of Criminal Procedure, 1973 - s.432.*

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Contempt of Court - Life convict filed writ of Habeas Corpus for his immediate release stating that he had already undergone full sentence of 20 years with remission - Supreme Court directed the respondents- State of West Bengal to consider the claim and proceed to conclude the sentence for the purpose of consideration of remission - Contempt petition filed by the life convict contending that inspite of the said order of the Supreme Court and the W.B. Act, the respondents had not granted remission and had not released him - Held: In West Bengal, there is a duly constituted Sentence Review Board for consideration of applications for premature release made by life convicts - On facts, the State Sentence Review Board, after careful consideration of all the aspects, had declined to recommend the petitioner-life convict for his premature release - State Government accepted the recommendation of the State Sentence Review Board and communicated its decision to the petitioner - There was no violation of the order passed by the Supreme Court - No merit in the contempt petition - West Bengal Correctional Services Act, 1992 - Code of Criminal Procedure, 1973 - s.432.

The petitioner - a life convict was convicted under Section 302/34 IPC. He filed a writ of Habeas Corpus for his immediate release stating that he had already undergone full sentence of 20 years with remission. The Supreme Court disposed of the writ petition directing the respondents- State of West Bengal to consider the claim of the petitioner and proceed to conclude the sentence for the purpose of consideration of remission as per the applicable Statute/Policy.

The petitioner filed the instant contempt petition contending that inspite of the said order of the Supreme Court and the West Bengal Correctional Services Act, 1992, the respondents had not granted remission and had not released him. He contended that the respondents - the State of West Bengal and its officers had disobeyed

A the order passed by the Supreme Court by not complying with the same. The petitioner contended that as per order of the Supreme Court, the respondents ought to have released the petitioner on completion of a period of 20 years.

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Per contra, the respondents- State Government highlighted that on going into the period of custody, other particulars and the provisions of the West Bengal Act, it had rejected the prayer of the petitioner for his premature release, hence, there was no violation of the order passed C by the Supreme Court. The respondents contended that it cannot be construed that the period of imprisonment for life is equivalent to imprisonment for 20 years and that in absence of remission order for the whole period by the State Government, the petitioner could not be released.

D

Dismissing the contempt petition, the Court

HELD: 1.1. In the absence of subsequent order of remission by the competent Government either based on Section 57 of IPC or any other provision of the Criminal E Procedure Code, 1973, the life convict cannot be released. Neither Section 57 IPC nor Explanation to Section 61 of the W.B. Act lays down that a life imprisonment prisoner has to be released after completion of 20 years. 20 years mentioned in Explanation to Section 61 of the W.B. Act F is only for the purpose of ordering remission. If the State Government taking into consideration various aspects refused to grant remission of the whole period then the petitioner cannot take advantage of the above Explanation and even Section 57 IPC and seek for pre- G mature release. Further the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 and neither Section 57 of the IPC nor any rules or local Acts (in the

H

case on hand W.B. Act) can stultify the effect of the sentence of life imprisonment given by the Court under the IPC. To put it clear, once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life. Section 57 IPC does not, in any way, limit the punishment of imprisonment for life to a term of 20 years. [Para 16] [412-F-H; 413-A-B]

1.2. In the case on hand, it is highlighted by the counsel for the respondents that in West Bengal there is a duly constituted Review Board for consideration of applications for premature release made by life convicts. On receipt of the application for premature release except under Article 161 of the Constitution, the Review Board would go into all the details and place it before the Government. Ultimately on approval of the Hon'ble Chief Minister, the convict is prematurely released under Section 432 of the Criminal Procedure Code, 1973. Insofar as application under Article 161 is concerned, it was explained that the procedure followed remains the same but the file is finally placed before His Excellency the Governor of the State through the Hon'ble Chief Minister. In the instant case, it is seen that after careful consideration of all the aspects, the State Sentence Review Board in its meeting held on 27.01.2011 did not recommend the petitioner for his premature release. The recommendation of the Review Board was placed before the State Government and the State Government accepted the recommendation of the State Sentence Review Board. The decision of the State Government was communicated to the petitioner. In view of the decision of the State Sentence Review Board, approval by the State Government and the principles enunciated in various decisions of this Court including the decision of the Constitution Bench in Gopal Vinayak Godse's

case, there is no merit in the contempt petition. [Paras 17, 18 and 19] [413-C, G-H; 414-A; 415-A-C]

Gopal Vinayak Godse vs. The State of Maharashtra & Ors. **AIR 1961 SC 600: 1961 SCR 440 - followed.**

State of Madhya Pradesh vs. Ratan Singh & Ors. **(1976) 3 SCC 470: 1976 (0) Suppl. SCR 552;** *Kartar Singh & Ors. vs. State of Haryana* **(1982) 3 SCC 1: 1983 (1) SCR 445;** *Laxman Naskar vs. Union of India & Ors.* **(2000) 2 SCC 595: 2000 (1) SCR 796;** *Mohd. Munna vs. Union of India & Ors. etc.* **(2005) 7 SCC 417: 2005 (3) Suppl. SCR 233 - relied on.**

Pandit Kishori Lal vs. King Emperor **AIR 1945 PC 64 - referred to.**

Case Law Reference:

1961 SCR 440	**followed**	**Paras 11,12, 13,19**
1976 (0) Suppl. SCR 552	**relied on**	**Para 12**
1983 (1) SCR 445	**relied on**	**Para 13**
AIR 1945 PC 64	**referred to**	**Para 13, 15**
2000 (1) SCR 796	**relied on**	**Para 14**
2005 (3) Suppl. SCR 233	**relied on**	**Para 14**

CRIMINAL ORIGINAL JURISDICTION : Contempt Petition (Civil) No. 363 of 2011.

IN

Writ Petition (Criminal) No. 279 of 2004.

Under Article 32 of the Constitution of India.

B.S. Malik, Naveen Sherawat, Chander Shekhar Ashri for the Petitioner.

Avijit Bhattacharjee, Bikas Kargupta, Sarbani Kar for the Respondents. A

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. The petitioner - a life convict has filed this contempt petition against the respondents - the State of West Bengal and its officers for disobeying the order dated 24.11.2010 passed by this Court by not complying with the same within the prescribed period of eight weeks and failure to release him in accordance with the statute. B C

2. **Brief facts:**

(a) Prior to the above contempt petition, the petitioner filed a writ of Habeas Corpus being W.P. (Crl.) No. 279 of 2004 - for his immediate release in which it was stated that as per his calculation, he has undergone total sentence of imprisonment for a period of 22 years 2 months and 16 days including earned remission. According to him, even as per the stand taken by the respondents in their counter affidavits, he had undergone sentence for a period of 20 years 1 month and 17 days including remission and set off as on 31.12.2004. In other words, according to the petitioner, he has already undergone full sentence of 20 years with remission. D E

(b) By order dated 24.11.2010, this Court disposed of W.P. (Crl.) Nos. 20 and 279 of 2004 with the following directions: F

> "In the light of the decision of this Court in *State of Haryana & Ors. vs. Jagdish,* 2010 (4) SCC 216 and considering the relief prayed in both the writ petitions, we dispose of the writ petitions by the following directions: G
>
> The State of West Bengal is directed to consider the claim of both the writ petitioners, life convicts and proceed to conclude the sentence for the purpose of consideration of remission as per the Statute/Policy applicable on the date of conviction and pass appropriate orders in terms H

of the above decision within a period of eight weeks from the date of the receipt of the copy of this order.

The Writ Petitions are disposed of.

Sd/-
(P.Sathasivam,J.)
Sd/-
(Dr. B.S.ChauhanJ.)"

3. It is the claim of the petitioner that in spite of the said order of this Court dated 24.11.2010 and in view of the West Bengal Correctional Services Act, 1992 (West Bengal Act 32 of 1992) (hereinafter referred to as "the W.B.Act"), the respondents have not released him which necessitated him to file the above contempt petition.

4. Pursuant to the notice issued by this Court, Mr. B.K. Srivastava, respondent No.1, Secretary to the Government of West Bengal, Judicial Department has filed the counter affidavit highlighting their stand. In addition to the same, Dr. G.D. Gautama, respondent No.2, Additional Chief Secretary to the Government of West Bengal, Home Department and Mr. Biplab Das - respondent No.3, Superintendent of the Presidency Correctional Home have filed counter affidavits reiterating their stand. In these counter affidavits, the State Government has highlighted that on going into the period of custody, other particulars and the provisions of the West Bengal Act, it rejected the prayer of the petitioner for his premature release, hence, according to them, there is no violation of order dated 24.11.2010 passed by this Court and prayed for dismissal of the present contempt petition.

5. We heard Mr. B.S. Malik, learned senior counsel for the petitioner and Mr. Avijit Bhattacharjee, learned counsel for the respondents.

Discussion:

6. In order to appreciate the claim of both the parties, it is useful to refer relevant provisions relating to release of prisoners under the W.B. Act. Section 2(c) of the W.B. Act defines "correctional home" which reads as under:

> "2(c) "correctional home" means any place used permanently or temporarily under the orders of the State Government for detention of persons, whether under-trial or convicted, in accordance with any order for confinement under any law providing for preventive detention or any other law for the time being in force, but does not include a place for confinement of a person under the custody of the police;"

Chapter XVII of the said Act deals with remission, release and parole. Section 58 speaks about remission, Section 59 relates to special remission to examinees and Section 61, with which we are concerned, speaks about release. Section 61 contains 6 sub-sections and thereafter Explanation has been appended to. Mr. B.S. Malik, learned senior counsel for the petitioner heavily relied on the Explanation to Section 61 which reads as under:

> "Explanation - For the purpose of calculation of the total period of imprisonment under this section, the period of imprisonment for life shall be taken to be equivalent to the period of imprisonment for 20 years."

7. Relying on the Explanation and in view of the fact that even according to the State, the petitioner has crossed 20 years in correctional home (prison), according to the learned senior counsel, as per order of this Court dated 24.11.2010, the respondents ought to have released the petitioner on completion of a period of 20 years. The above claim was resisted by Mr. Avijit Bhattacharjee, learned counsel for the respondents. According to him, it cannot be construed that the

A period of imprisonment for life is equivalent to imprisonment for 20 years. He further pointed out that in the absence of remission order for the whole period by the State Government, the petitioner cannot be released.

B 8. Even at the outset, Mr. B.S. Malik, learned senior counsel for the petitioner, relied on a decision rendered by this Court on 16.09.2011 in Writ Petition (Crl.) No. 38 of 2011 titled *Harpal Singh vs. State of Haryana & Another.* The said writ petition, under Article 32 of the Constitution, was filed by one Harpal Singh for issuing a writ of *Habeas Corpus* and to set C him at liberty forthwith from his illegal detention in the prison beyond 20 years of his sentence. This Court, after going into the Jail Custody Certificate dated 28.08.2011 issued by the Superintendent Central Jail, Ambala and finding that the petitioner had undergone imprisonment of more than 20 years D with remissions, allowed the writ petition and directed the authorities to release him forthwith from the jail unless his presence in jail is needed with reference to any other case.

9. After going into the relevant provisions, viz., Section 57 E of the Indian Penal Code, 1860 (in short "IPC"), Sections 2(c) and 61 of the W.B. Act as well as various decisions of this Court on this point, we are unable to accept the claim of the petitioner for the following reasons.

10. Before adverting to various decisions, it is useful to F reproduce Section 57 of IPC which reads as under:

> "57. *Fractions of term of punishment* - In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty G years."

11. At the foremost, it is useful to refer the decision of the Constitution Bench of this Court in *Gopal Vinayak Godse vs. The State of Maharashtra & Ors.,* AIR 1961 SC 600. In that case, a writ petition, under Article 32 of the Constitution, was H

filed for an order in the nature of Habeas Corpus claiming that the petitioner therein has justly served his sentence and should, therefore, be released forthwith. Among other questions, the main question considered by the Constitution Bench was whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period? The Constitution Bench, in an answer to the above question, said "No". The following discussion and ultimate conclusion are relevant:

> "5..... No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act. Though the Government of India stated before the Judicial Committee in the case cited supra that, having regard to Section 57 of the Indian Penal Code, 20 years' imprisonment was equivalent to a sentence of transportation for life, the Judicial Committee did not express its final opinion on that question. The Judicial Committee observed in that case thus at p. 10:
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> > "Assuming that the sentence is to be regarded as one of twenty years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application, and it was therefore rightly dismissed, but in saying this, Their Lordships are not to be taken as meaning that a life sentence must in all cases be treated as one of not more than twenty years, or that the convict is necessarily entitled to remission."
> >
> > Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall

A be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all embracing fiction. A sentence of
B transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

C "7. It is common case that the said rules were made under the Prisons Act, 1894 and that they have statutory force. But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act
D confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act. The rules, inter alia, provide for three types of remissions by way of rewards for good
E conduct, namely, (i) ordinarily, (ii) special and (iii) State. For the working out of the said remissions, under Rule 1419(c), transportation for life is ordinarily to be taken as 15 years' actual imprisonment. The rule cannot be construed as a statutory equation of 15 years' actual
F imprisonment for transportation for life. The equation is only for a particular purpose, namely, for the purpose of "remission system" and not for all purposes. The word "ordinarily" in the rule also supports the said construction. The non obstante clause in sub-rule (2) of Rule 1447
G reiterates that notwithstanding anything contained in Rule 1419 no prisoner who has been sentenced to transportation for life shall be released on completion of his term unless orders of the Government have been received on a report submitted to it. This also indicates
H that the period of 15 years' actual imprisonment specified

in the rule is only for the purpose of calculating the remission and that the completion of the term on that basis does not ipso facto confer any right upon the prisoner to release. The order of the Government contemplated in Rule 1447 in the case of a prisoner sentenced to transportation for life can only be an order under Section 401 of the Code of Criminal Procedure, for in the case of a sentence of transportation for life the release of the prisoner can legally be effected only by remitting the entire balance of the sentence. Rules 934 and 937(c) provide for that contingency. Under the said rules the orders of an appropriate Government under Section 401 Criminal Procedure Code, are a pre-requisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

8. Briefly stated the legal position is this: Before Act 26 of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the said Act, such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions - ordinary, special and State - and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for

A any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predict the time of his death. That is why the Rules provide for a B procedure to enable the appropriate Government to remit the sentence under Section 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the C appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

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From the above decision, it is clear that in the absence of subsequent order of remission by the competent Government either based on Section 57 of IPC or any other provision of the Criminal Procedure Code, 1973, the life convict cannot be E released. The above decision of the Constitution Bench has been followed in various subsequent decisions.

12. In *State of Madhya Pradesh vs. Ratan Singh & Ors.*, (1976) 3 SCC 470, following the decision of the Constitution F Bench in *Gopal Vinayak Godse's* case (supra), this Court held as under:

"4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under G the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in Gopal Vinayak Godse v. State of Maharashtra where the Court, following a decision of the Privy Council in Pandit Kishori Lal v. King-Emperor,AIR 1945 PC 64 observed as follows:

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"Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term. A

If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act. B C

* * *

A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life." D

The Court further observed thus:

"But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act.... Under the said rules the orders of an appropriate Government under Section 401 of the Criminal Procedure Code, are a prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life. E F G

The question of remission is exclusively within the H

province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Indian Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Indian Penal Code. In other words, this Court has clearly held that a sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life. In these circumstances, therefore, it is clear that the High Court was in error in thinking that the respondent was entitled to be released as of right on completing the term of 20 years including the remissions. For these reasons, therefore, the first contention raised by the Learned Counsel for the appellant is well founded and must prevail.

9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:

"(1) that a sentence of imprisonment for life does

not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;

(3) that the appropriate Government which is empowered to grant remission under Section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and

(4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction."

A After holding so, this Court set aside the order of the High Court releasing the prisoner therein from Central Jail, Amritsar.

13. In *Kartar Singh & Ors. vs. State of Haryana,* (1982) 3 SCC 1, a Bench of three Judges of this Court while considering the similar claim held as under:

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> "6.....Further, Section 57 IPC or the remission rules contained in Jail Manual (e.g. para 516-B of Punjab/ Haryana Jail Manual) are irrelevant in this context. Section 57 IPC provides that imprisonment for life shall be
> C reckoned as equivalent to imprisonment for 20 years for the specific purpose mentioned therein, namely, for the purpose of calculating fractions of terms of punishment and not for all purposes; similarly remission rules contained in Jail Manuals cannot override statutory provisions
> D contained in the Penal Code and the sentence of imprisonment for life have to be regarded as a sentence for the remainder of the natural life of the convict. The Privy Council in Pandit Kishori Lal case and this Court in Gopal Godse case have settled this position once and for all by
> E taking the view that a sentence for transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. This view has been confirmed and followed by this Court in two subsequent
> F decisions - in Ratan Singh case, and Maru Ram case In this view of the matter life convicts would not fall within the purview of Section 428 CrPC."

The Bench also considered *Gopal Godse* case (supra) and the decision of the Privy Council in *Pandit Kishori Lal vs. King*
G *Emperor,* AIR 1945 PC 64.

14. In *Laxman Naskar vs. Union of India & Ors.,* (2000) 2 SCC 595, this Court reiterated the same proposition.

15. The last decision which is directly on the point similar
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to the case on hand is *Mohd. Munna vs. Union of India & Ors. etc.* (2005) 7 SCC 417. The said case arose in a writ petition filed under Art. 32 of the Constitution. According to the petitioner therein, the length of duration of imprisonment for life is equivalent to 20 years' imprisonment and that too subject to further remission admissible under law. It was further pointed out that on completion of this term, he was liable to be released under Rule 751(c) of the West Bengal Jail Code. The petitioner relied on Explanation to Section 61 of the West Bengal Correctional Services Act, 1992 (West Bengal Act 32 of 1992) whereunder imprisonment for life is equated to a term of 20 years' imprisonment. As said earlier, it is a case identical to the case on hand. Here again, Explanation to Section 61 of the West Bengal Act was pressed into service. After going into the very same provisions and considering the decision of the Privy Council in *Pandit Kishori Lal's* case (supra) as well as the decision of the Constitution Bench in *Gopal Vinayak Godse's* case (supra), this Court concluded thus:

> "13. The counsel contended that by virtue of Rule 751(c) of the West Bengal Jail Code, the petitioner was liable to be released from jail on completion of twenty years. He also relied on the Explanation to Section 61 of the West Bengal Correctional Services Act, 1992 (W.B. Act 32 of 1992) wherein the imprisonment for life is equated to a term of twenty years' simple imprisonment for the purpose of remission. But there is no provision either in the Indian Penal Code or in the Code of Criminal Procedure whereby life imprisonment could be treated as fourteen years or twenty years without there being a formal remission by the appropriate Government. Section 57 of the Penal Code reads as follows:
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> > "57. *Fractions of terms of punishment.*-In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years."

A The above section is applicable for the purpose of remission when the matter is considered by the Government under the appropriate provisions. This very plea was placed before the Judicial Committee of the Privy Council in *Kishori Lal v. Emperor*[5] and the Privy Council B held as under: (AIR p. 67)

> "Assuming that the sentence is to be regarded as one of 20 years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application and it was C therefore rightly dismissed but, in saying this, Their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than 20 years or that the convict is necessarily entitled to remission."

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14. The Prisons Rules are made under the Prisons Act and the Prisons Act by itself does not confer any authority or power to commute or remit sentence. It only provides for the regulation of the prisons and for the terms of the E prisoners confined therein. Therefore, the West Bengal Correctional Services Act or the West Bengal Jail Code do not confer any special right on the petitioner herein.

15. In *Godse* case[6], the Constitution Bench of this Court held that the sentence of imprisonment for life is not for any F definite period and the imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. It was also held in AIR para 5 as follows: (SCR pp. 444-45)

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> "It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words 'imprisonment for life' for 'transportation for life' enable the drawing of any H such all-embracing fiction. A sentence of

transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life." A

16. Summarising the decision, it was held in AIR para 8 as under: (SCR p. 447) B

"Briefly stated the legal position is this: Before Act 26 of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison C in India. After the said Act, such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions D of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The Rules framed under the Prisons Act enable such a prisoner to earn remissions - E ordinary, special and State - and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is F only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not G possible to predicate the time of his death. That is why the Rules provide for a procedure to enable the appropriate Government to remit the sentence under Section 401 of the Code of Criminal Procedure on a consideration of the relevant H

A factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under
B Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

C We are bound by the above dicta laid down by the Constitution Bench and we hold that life imprisonment is not equivalent to imprisonment for fourteen years or for twenty years as contended by the petitioner.

17. Thus, all the contentions raised by the petitioner
D fail and the petitioner is not entitled to be released on any of the grounds urged in the writ petition so long as there is no order of remission passed by the appropriate Government in his favour. We make it clear that our decision need not be taken as expression of our view that
E the petitioner is not entitled to any remission at all. The appropriate Government would be at liberty to pass any appropriate order of remission in accordance with law."

16. It is clear that neither Section 57 IPC nor Explanation
F to Section 61 of the W.B. Act lays down that a life imprisonment prisoner has to be released after completion of 20 years. 20 years mentioned in Explanation to Section 61 of the W.B. Act is only for the purpose of ordering remission. If the State Government taking into consideration various aspects refused to grant remission of the whole period then the petitioner cannot
G take advantage of the above Explanation and even Section 57 IPC and seek for pre-mature release. Further the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 and neither
H Section 57 of the IPC nor any rules or local Acts (in the case

on hand W.B. Act) can stultify the effect of the sentence of life imprisonment given by the Court under the IPC. To put it clear, once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life. It is equally well settled that Section 57 of the IPC does not, in any way, limit the punishment of imprisonment for life to a term of 20 years.

17. In the case on hand, it is highlighted by the learned counsel for the respondents that in West Bengal there is a duly constituted Review Board for consideration of applications for premature release made by life convicts. It consists of:

1. Additional Chief Secretary, Home Department - Chairman of the Review Board;
2. Commissioner of Police, Kolkata - Member
3. Chief Probation Officer, West Bengal - Member
4. Inspector General of Prisons, West Bengal - Member
5. Judicial Secretary, West Bengal - Convener
6. Director General and Inspector General of Police, West Bengal - Member
7. Principal Secretary, Jails Department, West Bengal - Member

On receipt of the application for premature release except under Article 161 of the Constitution, the Review Board would go into all the details and place it before the Government. Ultimately on approval of the Hon'ble Chief Minister, the convict is prematurely released under Section 432 of the Criminal Procedure Code, 1973. Insofar as application under Article 161 is concerned, it was explained that the procedure followed

A remains the same but the file is finally placed before His Excellency the Governor of the State through the Hon'ble Chief Minister.

18. In the counter affidavits filed by the State, it is pointed B out that regarding the case of the petitioner -Khoka @ Prasanta Sen, the Sentence Review Board observed as under:

"The life convict was convicted on 18.01.1990 under Section 302/34 IPC and detained in connection with S.T. No. 01 of June 1989. He was released on parole from C Presidency Correctional Home on 29.04.2005 in compliance with Hon'ble Supreme Court's order in Writ Petition (Criminal) No. 279 of 2004. The police authority vehemently opposed the premature release of the life convict on the following grounds:

D

(a) He was a notorious fellow in the area before his conviction.

(b) He still maintains relationship with his old associates.

E

(c) He is within the age of 52 years with sound health.

(d) His socio economic condition is not sound.

(e) In case of his premature release there is every F possibility of his reverting to criminality.

(f) During his parole he has been technically serving life imprisonment binding him to refrain from criminal activities for the time being. There is every G possibility of his committing further crimes.

Considering the above fact, the Review Board did not find any reason to recommend premature release of the life convict now on parole."

H

It is seen that after careful consideration of all the aspects, the Review Board in its meeting held on 27.01.2011 did not recommend the petitioner for his premature release. The recommendation of the Review Board was placed before the State Government and the State Government accepted the recommendation of the State Sentence Review Board. The decision of the State Government was communicated to the petitioner vide letter No. 790-J dated 09.02.2012.

19. In view of the decision of the State Sentence Review Board, approval by the State Government and the principles enunciated in various decisions of this Court including the decision of the Constitution Bench in *Gopal Vinayak Godse's* case (supra), we find no merit in the contempt petition, consequently, the same is dismissed.

B.B.B. Contempt Petition dismissed.