cannot take advantage of his own wrongs and claim decree of divorce on such grounds.

26. Admittedly, the appellant-wife has lodged a complaint against respondent-husband and his relations under sections 406/498-A IPC, which is not yet decided. Therefore, at the present moment it cannot be said/deduced that she has lodged a false complaint against the husband and has thus caused mental torture to him. This is also a fact that after this complaint, at the intervention of the panchayat the respondent-husband entered into a compromise with the appellant-wife and brought her back to his house.

27. In my considered view, the lower Court has utterly failed to scan the evidence minutely and to arrive at correct conclusion so far as decision on issue No. 1 is concerned. The finding recorded thereon is hereby set aside.

28. Resultantly, the appeal is allowed. The impugned decree of divorce is hereby set aside.

J.S.T.

Before V.S. Aggarwal, J

SULAKHAN SINGH—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

Crl. W.P. 229 *of* 95

19th May, 1997

Army Act, 1950 as amended by Act No. 37 of 1992—S.169-A—Indian Penal Code, 1860—S. 302—Code of Criminal procedure, 1973. S. 428—Army instructions dated 13th November, 1986—Army Headquarters letter No. 22548/RS1 dated 24th June, 1963—Life convict—Release of—Set off of period spent under pre-trial detention—Prisoners who were undergoing imprisonment when S. 169—A of the Army Act was enforced on 6th September, 1992 would be entitled to the benefit of set off of period spent in custody during investigation, inquiry and trial under the said Section—Case of the petitioner directed to be considered and reviewed accordingly.

Held that provisions of Section 169-A of the Army Act are by

and large identical to Section 428 of the Criminal Procedure Code. It must follow that prisoners who are undergoing imprisonment when Section 169-A of the Army Act was enforced would be entitled to the benefit of Section 169-A of the Army Act. Infact perusal of Section 169-A of the Army Act shows that set off with respect to the period spent in custody during investigation, enquiry or trial has to be allowed in all cases. This would include when a person is sentenced to undergo imprisonment for life by the Court Martial under the Army Act. The only exception drawn is if it is a term of imprisonment in default of payment of fine. That is not so in the present case. The petitioner is entitled to the set off period undergone by him during the course of investigation, enquiry and trial. Therefore, the case of the petitioner requires to be reviewed in accordance with their instructions because as already pointed out, the petitioner has undergone 14 years actual imprisonment. Question of considering the remissions does not arise. No opinion is being expressed with respect to that fact.

(Para 9, 12 and 13)

S.S. Johal, Advocate, for *the petitioner.*

S.K. Pipat, Sr. Central Govt. Standing Counsel, for *the respondent.*

JUDGMENT

V.S. AGGARWAL, J.

1. This is a petition filed by Sulakhan Singh petitioner under Article 226 of the Constitution of India for his release contending that his detention is in violation of law.

2. The relevant facts are that petitioner was an Sepoy in the India Army. On 4th February, 1984 the petitioner was awarded life imprisonment. It was confirmed and promulgated by Commanding Officer 20 Punjab. Petitioner has represented that he had already undergone 9 months and 2 days during the course of trial, 11 years 1 month and 14 days as the actual sentence when the petition was filed and has earned remission for 4 years 4 months and 17 days. In this process he has already undergone more than 14 years of sentence and is entitled to be released.

3. In the reply filed respondents 1 and 3 have contested the petition. The respondent case is that petitioner was convicted and awarded life imprisonment in terms of Section 302 IPC. Section 433-A Cr. P.C. applies and petitioner cannot be released unless he has served 14 years of imprisonment. The instructions had been

issued dated 13th November, 1986 by the Army authorities for review of the sentence awarded by the Court Martial. The relevant portion of the same reads :—

"Periodic Review by Army Headquarters :

3. Periodic reviews by Army Headquarters are undertaken at set stages without receipt of any petitions. These reviews generally conform to the practice adopted on the civil side. Jail reports are called for the scrutinise the prisoners' conduct in jail while he is serving his sentence. Terms of imprisonment are remitted based on the merits of the case and the degree of reformation that is evident from the jail report, which indicates, *inter-alia*, the remissions that the convict has earned under the jail rules. The intervals at which these reviews are carried out have been laid down in Army Headquarter letter No. 22548/RS1 dated 24 June, 1963, and are re-produced below :—

(a) on completion of 12 months actual imprisonment (i.e. imprisonment excluding remission) in cases of sentence of over one year but less than 2 years;

(b) on completion of half sentence of imprisonment (including remissions earned) in cases where the sentence is for a term of two years of more;

(c) on completion of 3/4th sentence of imprisonment (including remissions earned) in cases of persons convicted on charges of mutiny, theft of arms and ammunition, aiding the enemy, attempt to murder and breaches of security ;

(d) on completion of 14 years imprisonment (including remissions earned) in cases of persons sentenced to imprisonment for life. A second review is carried out on completion of 18 years imprisonment (including remissions earned), and subsequently every year.

Note :—A person convicted for an offence of murder shall not be released from prison until he has served at least fourteen years of actual imprisonment. (Section 433-A of the Criminal Procedure Code)."

As per these instructions it is claimed that petitioner's case cannot be considered for release. There is no dispute that petitioner was enrolled in the Army (Punjab Regiment) on 20th June, 1973. He was tried by G.C.M. for the offence under Section 69 of the Army

Act i.e. murder. He was awarded punishment to suffer life imprisonment on 14th February, 1984. It was denied that the petitioner has undergone 15 years, 1 month and 26 days of imprisonment. Further more it has been contended that Section 169-A of the Army Act is not applicable to prisoners undergoing imprisonment for life. The period of pre-trial cannot be excluded from the total period of life imprisonment.

4. During the course of arguments, petitioner's learned counsel contended that Section 169-A has been inserted in the Army Act, 1950. It would be retrospective and apply to those prisoners who were undergoing imprisonment when this provision came into being. He also urged that the under-trial period that the petitioner has undergone would be set off against the actual period, the petitioner has to undergo for imprisonment and he has undergone more than 14 years actual imprisonment and, therefore, is entitled to be released.

5. As against this the respondents' learned counsel had argued that Section 169-A of the Army Act will not apply to prisoners undergoing life imprisonment. The said provisions are not retrospective. In addition to that he urged that the actual period to be undergone namely 14 years has to be counted from the date the sentence is pronounced. In other words, the period of sentence undergone during and before that has to be excluded.

6. The first and foremost question thus that comes up for consideration is as to whether the provisions of Section 169-A of the Army Act are retrospective or not. The said provisions were inserted in the Army Act, 1950 by virtue of Act No. 37 of 1992 passed on 6th September, 1992 by the Parliament. It reads :—

> "169A. Period of custody undergone by the officer or person to be set off against the imprisonment.—When a person or officer subject to this Act is sentenced by a court-martial to a term of imprisonment, not being an imprisonment in default of payment of fine, the period spent by him in civil or military custody during investigations, inquiry or trial of the same case, and before the date of order of such sentence, shall be set off against the term of imprisonment imposed upon him, and the liability of such person or officer to undergo imprisonment on such order of sentence shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him."

The said provisions are with minor modification as would be noticed hereinafter, are para materia with Section 428 of the Code of Criminal Procedure. Section 428 reads :—

> "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."

7. These were benevolent provisions enacted to ensure that the period undergone by a prisoner during the course of trial, investigation or enquiry should be set off against the term of imprisonment imposed upon the prisoner. This has been so enacted because in many cases the accused are kept in prisons for very long period as under-trial prisoners. The sentence of imprisonment ultimately awarded is a fraction of the period spent in Jail as under-trial period. To ensure that no unnecessary detention takes place Section 428 of the Code of Criminal Procedure, 1973 had been enacted. Almost on the same lines, provisions of Section 169-A of the Army Act came into being.

8. With respect to Section 428 of the Code of Criminal Procedure, the question arose as to whether it would be retrospective in its operation or not. In the case of *Mr. Boucher Pierre Andre* v, *Superintendent, Central Jail Tihar, New Delhi and another* (1), the supreme Court considered the said fact and returned the finding that the prisoners undergoing imprisonment when Section 428 of the Code of Criminal procedure came into being, would be entitled to the benefit of the same. In paragraph 3 the Supreme Court held :—

> "We must, therefore, imagine the sentence imposed upon the petitioner as one imposed under the new code of Criminal Procedure and then give effect to all the consequences and incidents which would inevitably flow

1. AIR 1975 SC 164

from or accompany a sentence imposed under the new Code of Criminal Procedure. Now, there was no dispute before us that section 428 would be clearly applicable where an accused person has been sentenced to imprisonment under the new Code of Criminal Procedure. The applicability of S. 428 was resisted only on the ground that it does not apply to a case where an accused person has been sentenced under the old Code of Criminal Procedure. But if the sentence imposed on the petitioner, though under the old Code of Criminal Procedure, is to be regarded, for the purposes of the new Code, as a sentence passed under the new Code and all the consequences and incidents are to be worked out on that basis, Section 428 must clearly be held to be applicable to the case of the petitioner and his liability to undergo imprisonment must be restricted to the remainder of the term imposed on him, after setting off the period for which he was detained during the investigation, inquiry and trial of the case against him."

Further it was clarified that when a person is sentenced to imprisonment in default of payment of fine, that too would be as much a sentence of imprisonment as substantive sentence. In paragraph 4 the Court held :—

"When an accused person is sentenced to imprisonment for a term in default of payment of fine, it is as much a sentence of imprisonment imposed upon him as a substantive sentence of imprisonment. It is true that where an accused person is sentenced to imprisonment for a term in default of payment of fine, he can avoid "undergoing such imprisonment by making payment of the fine, but if he does not, he would have to undergo such imprisonment and that would be for the full term specified in the sentence. No distinction can be made in principle between a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of fine and both must be held to be within the scope and intendment of Section 428. The object of enactment of Section 428 is, as pointed out by the Joint Committee of Parliament while recommending its introduction."

The same view prevailed with the Supreme Court in the

subsequent decision in the case of *Suraj Bhan* v. *Om Prakash and another* (2). It was held that even though the conviction was prior to the enforcement of Section 428 Cr. P.C., the benefit of Section 428 would be available to such conviction. In paragraph 7 the Court held :—

> "It is also clear from S. 428 Criminal Procedure Code itself that even though the conviction was prior to the enforcement of the new code of Criminal procedure, benefit of Section 428 would be available to such a conviction. Indeed Section 428 does not contemplate any challenge to a conviction or a sentence. it confers a benefit on a convict reducing his liability to undergo imprisonment out of the sentence imposed for the period which he had already served as an under-trial prisoner. The procedure to invoke Section 428, Criminal Procedure Code, could be a miscellaneous application by the accused to the court at any time while the sentence runs for passing an appropriate order for reducing the term of imprisonment which is the mandate of the section."

9. It has already been noted above that provisions of Section 169-A of the Army Act are by and large identical to Section 428 of the Criminal Procedure Code. There is no ground thus to take a different view. In fact Annexure P-5 is the copy of the letter issued by the Army Headquarter produced by the petitioner which reads :—

> "(a) Whether provisions of set off is retrospective in operation ?
>
> It is clarified that benefit of set off is not retrospective in operation as such that it does not see to set at nought either the conviction or the sentence already undergone. The new section operates, however perspectively on the sentence which yet remain to be served and curtails it by setting off the period detention, custody undergone by the accused person during the investigation, inquiry or trial of the case. In short the benefit of set off would be available to a convict, awarded the sentence of imprisonment either before or after the new law came in to force.

2. AIR 1976 SC 648

The same is accordingly given where applicable.

(b) Should the benefit of set off be available against the imprisonment awarded under Section 8

Though section 169 A, specifically deals with a sentence of imprisonment awarded by a Court Martial but keeping in view the principle of equity the benefits of the said section would equally apply to sentence of imprisonment awarded under Section 80 of the Army Act."

This is basically on lines in accordance with the decision in the case of Mr. Boucher Pierre Andre (supra) and in any case it must follow that prisoners who are undergoing imprisonment when Section 169-A of the Army Act was enforced. would be entitled to the benefit of Section 169-A of the Army Act.

10. So far as the contention of the respondents that the under-trial period and the period undergone during enquiry or investigation in case of life convicts is not order set off is concerned, reliance was placed by the respondents' learned counsel on the decision of the Supreme Court in the case of *Kartar Singh and others* v. *State of Haryana* (3). But the said decision had been considered and over-ruled by the Constitution Bench of the Supreme Court in the case of *Bhagirath* v. *Delhi Administration* (4). The supreme Court held that benefit of Section 428 Cr.P.C. would be available even to a life convict. In paragraph 8 the Court held as under:—

"To say that a sentence of life imprisonment imposed upon an accused is a sentence for the term of his life does offence heither to grammar nor to the common understanding of the word 'term'. To say otherwise would offend not only against the language of the statute but against the spirit of the law, that is to say, the object with which the law was passed. A large number of cases in which the accused suffer long undertrial detentions are cases punishable with imprisonment for life. Usually, those who are liable to be sentenced to imprisonment for life are not enlarged on bail. To deny the benefit of S. 428 to them is to withdraw the application of a benevolent provision from a large majority of cases in

3. AIR 1982 SC 1439
4. AIR 1985 SC 1050

which such benefit would be needed and justified."

In face of the clear observations of the supreme Court, the contention of the respondents' learned counsel is insignificant and without any basis.

11. Attention of the Court has been drawn towards the decision of the supreme Court in the case of *Ajit Kumar* versus *Union of India and others* (5), urge that set off of pre-trial detention is not to be made available to persons convicted and sentenced by the Court Martial under the Army Act. However, the decision would become redundant because after the said decision Section 169-A of the Army Act has been inserted.

12. In fact perusal of Section 169-A of the Army Act shows that set off with respect to the period spent in custody during investigation enquiry or trial has to be allowed in all cases. This would include when a person is sentenced to undergo imprisonment for life by the Court Martial under the Army Act. The only exception drawn is if it is a term of imprisonment in default of payment of fine. That is not so in the present case. Therefore, the petitioner is entitled to the set off period undergone by him during the course of investigation, enquiry and trial.

13. Seemingly the petitioner has already undergone 14 years of actualy imprisonment. The Army Headquarter on 24th November, 1992 had informed the wife of the petitioner:—

1. "Please refer to your petition dated nil addressed to the Defence Minister and copy endorsed to the Chief of the Army Staff on the above matter.

2. In this regard it is to inform you that the case for premature release of your husband will be reviewed on completion of 14 years rigorous imprisonment, that is, in 1998."

Keeping in view the aforesaid the case of the petitioner requires to be reviewd in accordance with their instructions becuase as already pointed out above the petitioner has undergone 14 years actual imprisonment. Question of considering the remissions does not arise. No opinion is being expressed with respect to that fact.

14. For these reasons given above the petition is allowed. It is directed that the respondents shall consider if the petitioner

5. AIR 1988 SC 283

has actually undergone 14 years actual imprisonment. This would include the under-trial period and the period undergone through investigation, enquiry and trial also. If the petitioner has already undergone 14 years imprisonment, his case would be reviewed in accordance with the instructions for release and findings above.

R.N.R.

Before R.L. Anand, J.

JASWANT SINGH & ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB & ANOTHER,—*Respondents*

Crl. R. 532 of 96

20th May, 1997

Code of Criminal Procedure, 1973—Ss. 145 & 146—Code of Civil Procedure, 1908—S. 9, Order 39 rules 1, 2 & 2-A—Pendency of Civil proceedings does not bar Executive Magistrate to exercise power under S. 146(1) Cr. P.C.—In absence of firm findings after adjudication by Civl Court regarding possession over land in dispute resort can be had to S. 145 Cr. P.C. in emergent situations in order to avoid breach of peace—Ex-parte interim injunction does not amount adjudication—Order of 'status quo' by Civil Court on application under order 39 rules 1 & 2 also does not amount to adjudication of rights of parties-Object of S. 145 Cr. P.C., stated—Meaning of 'Status Quo' explained.

Held that this Court understands the meaning of *'status quo'* as that it does not adjudicate the rights of the parties finally. By passing such types of orders, i.e. *'Status Quo'*, the Civil Court only gives directions to the parties to lead evidence further so that their ultimate right of possession is established. In my opinion, the *'status quo'* order is no order in the eyes of law as the matter regarding possession is left open by the Civil Court, which at the relevant time was not in a position to adjudicate one way or the other regarding the factum of possession. The object of the proceedings under Section 145 Cr. P.C., is totally different, that is, to maintain peace and tranquility with respect to the immoveable property till the rights of the parties are either adjudicated by the Executives Magistrate under Section 145 Cr. P.C. or by a Civil Court.

(Para 8)