

at the rate of Rs. 500/- per year subject to Order 20 Rule 12 of the Code of Civil Procedure. It is made clear that the amounts collected by the Revenue and available in court will be given credit to while calculating the liability for mesne profits of the defendant.

### IN THE HIGH COURT OF KERALA

Present : K. T. Thomas and P. A. Mohammed JJ.

*Abubacker v. State of Kerala*

Code of Criminal Procedure, 1973 - Sec. 428 - Life convicts are entitled to claim the benefit of set off of the period of detention undergone by them as under trial prisoners - It is subject to the provisions contained in Sec. 428 and provided that orders have been passed by the appropriate authority under Sec. 432 or 433 of the Code.

Held : In order to claim the benefit of set off under Section 428, two essential conditions are required to be fulfilled ; (1) the accused person has, on conviction, been sentenced to imprisonment for a term, and (2) the accused person has undergone detention during the investigation, arrest or trial before the date of conviction. When these two conditions are fulfilled the liability of accused person to undergo imprisonment is restricted to the remainder of the term of imprisonment imposed on him by setting off the period of detention undergone by him as undertrial prisoner. This is a statutory right available to the accused person and he is entitled to claim this benefit subject to the fulfilment of the aforesaid conditions. Therefore, the sentence of imprisonment is always subject to the provisions of Section 428. This would be clear from the object of enactment of the new provision which came into force from April 11, 1974. The Joint Committee of Parliament while recommending its enactment intended to remedy the unsatisfactory situation, namely : "the accused persons who are kept in prison for long period as undertrial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as undertrial prisoners." It further pointed out that in some cases the accused person is made to suffer jail life for a period which is not proportionate to the gravity of the offence or even to the punishment provided in the statute. Therefore, in all cases where the imprisonment for a certain term is imposed on an accused person he is entitled to claim the benefit under Section 428 irrespective of whether the court imposing such imprisonment makes a direction in that behalf or not. Such benefit under Section 428 conferred on an accused person cannot be effaced by the manner in which

absence of an order allowing set off by the court imposing imprisonment. The position is well - settled that the period of detention undergone by the accused person as undertrial prisoners shall be set off against the sentence of life imprisonment imposed upon them subject to the provisions contained in Section 433A and provided that orders have been passed by the appropriate authority under Section 432 or 433 of the Code. (Paras 2 & 3)

AIR 1961 SC 600 ; AIR 1985 SC 1050 ; AIR 1991 SC 1792 — Relied on  
Smt. Susheela R. Bhatt (State Brief) — For Petitioner  
Director General of Prosecution (M. Retna Singh) — For State

### ORDER

Mohammed, J.

The common question that comes up for decision in this batch of petitions is whether the life-convicts are entitled to claim the benefit of set off of the period of detention undergone by them as undertrial prisoners against the sentence of life imprisonment imposed on them, under Section 428 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. Section 428 of the Code is thus:

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.

In order to claim the benefit of set off under Section 428 two essential conditions are required to be fulfilled; (i) the accused person has, on conviction, been sentenced to imprisonment for a term, and (ii) the accused person has undergone detention during the investigation, inquiry or trial before the date of conviction. When these two conditions are fulfilled the liability of accused person to undergo imprisonment shall be restricted to the remainder of the term of imprisonment imposed on him after setting off the period of detention undergone by him as undertrial prisoner. This is a statutory right available to the accused person and he is entitled to claim this benefit subject to the fulfilment of the aforesaid conditions. Therefore, the sentence of imprisonment is always subject to the provisions of Section 428. This would be clear from the object of enactment of this new provision which came into force from April 11, 1974. The Joint Committee of Parliament