

Case Commentary: A Jurisdictional Bulwark on Remission Power

Bilkis Yakub Rasool v. Union of India, (2024) 1 S.C.C. 546, 560 (India).

1. FACTS

This case has its genesis in events that transpired during the Gujarat communal riots in 2002, during which time the victim, Bilkis Yakub Rasool, was gang-raped and several of her family members were killed. Because there were apprehensions that the trial in Gujarat would not be conducted fairly, the Supreme Court of this country ordered the transfer of the case to a Special CBI Court in Mumbai, Maharashtra. The court-convicted eleven accused and sentenced them to life imprisonment in 2008.

In the year 2022, one of the convicts, Radheshyam Shah, filed a writ petition in the Supreme Court of India with a prayer for a direction to the Gujarat Government to consider his remission application under the 1992 policy, suppressing the fact that a similar plea had been rejected by the Bombay High Court on jurisdictional grounds. The Supreme Court, on May 13, 2022, directed the Gujarat Government (the State where the offence occurred) to consider the application.¹

In furtherance of the above direction and without seeking the requisite opinion of the Presiding Judge of the convicting Court in Mumbai, the State of Gujarat granted remission and released all eleven convicts on August 15, 2022. The victim, Bilkis Yakub Rasool, challenged this release by way of a writ petition under Article 32 of the Constitution, inter alia contending that the State of Gujarat was jurisdictionally incompetent.

2. ISSUES

- Whether the State of Gujarat was the "appropriate Government" under §432(7) of the Code of Criminal Procedure, 1973 (CrPC) to consider and grant remission in view of the fact that the trial was transferred and sentence was passed in Maharashtra.
- Whether the earlier Supreme Court order of May 13, 2022, which directed the Gujarat Government to consider the remission was vitiated by fraud and hence a nullity.
- Whether the writ petition filed by the victim under Art. 32 of the Constitution was maintainable to challenge the State's executive order of remission.

3. APPELLANT'S ARGUMENTS (BILKIS YAKUB RASOOL)

The appellant (victim) principally argued :

¹ *Bilkis Yakub Rasool v. Union of India*, (2024) 1 S.C.C. 546, 560 (India).

- Lack of Jurisdiction: The only appropriate "Government" under §432(7) CrPC is the State where the accused was sentenced, which was Maharashtra. The Gujarat Government usurped this power and made the remission orders non est.²
- Procedural Violation: The Government of Gujarat did not meet the statutory requirement of obtaining the opinion of the Presiding Judge of the convicting court, Mumbai, under §432(2) CrPC.
- Fraud on the Court: The convict had secured the earlier Supreme Court order of May 2022 by deliberately suppressing material facts pertaining to transfer of trial and jurisdictional objections and, therefore, having played fraud upon the judicial system.
- Violation of Fundamental Rights: The arbitrary and illegal remission violated the victim's rights under Article 21 relating to life and dignity, and the right to equality under Article 14.

4. ARGUMENTS OF THE RESPONDENTS (UNION OF INDIA & GUJARAT STATE)

The respondents (principally the State of Gujarat and the convicts) argued:

Competence based on Offence Location: They contended that in the light of the precedent so mentioned in the order dated May 2022, the "appropriate Government" must be the State where the offence was committed, namely Gujarat, as the law stood at the relevant time. Binding Nature of Prior Order: The Supreme Court order in May 2022 was final, hence binding, and the Gujarat Government was only following a judicial direction. Writ petition is not maintainable because the remission was an executive order and exercise of clemency power, which cannot be challenged by a writ petition under Article 32, particularly by a third party-a victim-in an attempt to override the interim order passed earlier by the Supreme Court.

5. JUDGEMENT

The Supreme Court permitted the writ petition presented by Bilkis Yakub Rasool and delivered a judgment with the following principal conclusions:

- The State of Gujarat had no jurisdiction to pass the remission orders.
- The remission orders dated August 10, 2022 are null and void and set aside.
- The Supreme Court order earlier given on May 13, 2022, was declared non-binding and a nullity for having been obtained by fraud and suppression of material facts.
- The convicts were asked to surrender before the jail authorities in Gujarat within two weeks.
- It was held that the writ petition filed by the victim under Article 32 was maintainable.

² *Id.* at 581.

6. RATIO DECIDENDI (THE BINDING RULE)

The key binding principles of the judgment are:

1. Interpretation of "Appropriate Government": For the purpose of remission under §432(7) CrPC, the "appropriate Government" is exclusively the Government of the State within which the offender is sentenced, i.e., the State of the convicting court, and the mere occurrence of crime in a different State will not confer jurisdiction for remission.³
2. Fraud Vitiates Everything: The judicial order, even by the Supreme Court, is non est and a nullity if it is discovered to have been obtained by suppression of material facts or by playing fraud on the Court.⁴
3. Locus Standi of the Victim: A victim thus has the locus standi to challenge such an executive decision on remission under Article 32 of the Constitution since proper execution of the sentence is inextricably linked to the fundamental right of a fair trial and justice under Article 21.⁵

7. OBITER DICTA (NON-BINDING OBSERVATIONS)

The Court made several strong observations, which though not essential to the final decision on jurisdiction, give powerful context and guidance:

- Judicial Review of Remission: The Court made it clear that the power of remission is not a prerogative of mercy but a constitutional duty, which would be amenable to judicial review if exercised arbitrarily or mechanically without due consideration for the victim and the ends of justice.
- Criticism of Gujarat State: The bench severely criticized the Gujarat State for acting "in tandem" with the convict and abusing the process of law, observing that such a brazen act undermines the fundamental principle of the Rule of Law.⁶
- Consequences of Transfer: The judgment mentioned that once a trial is transferred by the Supreme Court, the transferee State must take all responsibilities pertaining to the execution of the sentence.

8. CRITICAL ANALYSIS (YOUR COMMENTS)

³ 3 *Id.* at 578.

⁴ *Id.* at 590 (citing *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 S.C.C. 1, 2 (India)).

⁵ *Id.* at 585 (discussing the application of Article 21 to the victim's right to justice).

⁶ *Id.* at 595.

The judgment in the case of Bilkis Yakub Rasool is an important judicial victory that underlines institutional checks and balances.

First and foremost, an interpretation of the final meaning of §432(7) CrPC should be made. The Supreme Court, in holding that only the State of the sentencing court has jurisdiction, has protected the sensitive authority of remission from localized, political, or communal pressures, particularly in cases that are transferred as a necessity. This ensures fairness and transparency and is in tune with the original intent of issuing a transfer order for conducting a fair trial.

More importantly, the willingness of the Court to declare its own prior order a nullity because of fraud represents a rare and monumental act of judicial self-correction.⁷ This strong action not only redressed a grave procedural injustice but also sent a clear and unmistakable signal that procedural manipulation to subvert justice shall not be condoned, irrespective of the platform from which the manipulative order was obtained. Finally, the affirmation of the victim's right to challenge the execution of the sentence under Article 32 was a progressive step toward a victim-oriented jurisprudence. It widens the horizon of fundamental rights and makes the Rule of Law not purely a procedural guarantee to the accused but a substantive shield to the victim. The judgment thus acted as an essential guardian of legal propriety and constitutional morality in India.

⁷*Lazarus Estates Ltd. v. Beasley*, [1956] 1 Q.B. 702 (Eng.) (stating that no court in this land will allow a person to keep an advantage obtained by fraud).