

***Kehar Singh v. Union of India*, AIR 1989 SC 653: (1989) 1 SCC 204: 1988 Supp (3) SCR 1102: (1989) Cr LR 112**

Facts:

The former Prime Minister of India Smt. Indira Gandhi was assassinated on 31-10-1984 by Sub-Inspector Beant Singh and constable Satwant Singh. Both of them fired bullets at

Smt. Gandhi when she was proceeding to her office from her residence. In connection with this assassination, one Kehar Singh was convicted of an offence under section 120B read with section 302 of the Indian Penal Code and was sentenced to death. His son, Rajinder Singh, presented a petition to the President of India for the grant of pardon to Kehar Singh under Article 72 of the Constitution. In that petition reference was made to the evidence on the record of the criminal case and it was sought to be established that Kehar Singh was innocent, and that the verdict of the courts that Kehar Singh was guilty was erroneous.

Issues:

(1) The area and scope of the President's power under Article 72.

(2) Whether the petitioner is entitled to an oral hearing from the President on his petition invoking the powers under Article 72?

Judgment:

To any civilized society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order, and consequently, the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. The deprivation of personal liberty and the threat of the deprivation of life by the action of the State is, in most civilized societies, regarded seriously, and recourse, either under express constitutional provision or through legislative enactment is provided to the judicial organ. But the fallibility of human judgment being undeniable even in the most trained mind, a mind resourced by a harvest of experience, it has been considered appropriate that in the matter of life and personal liberty, the protection should be extended by entrusting power further to some high authority to scrutinize the validity of the threatened denial of life or the threatened or continued denial of personal liberty. The power so entrusted is a power belonging to the people and reposed in the highest dignitary of the State.

The power to pardon is a part of the constitutional scheme and it should be so treated also in the Indian Republic. It has been reposed by the people through the Constitution in the head of the State, and enjoys high status. It is a constitutional responsibility of great significance, to be exercised when occasion arises in accordance with the discretion contemplated by the context. In *Maru Ram v. Union of India*, AIR 1980 SC 2147: 1980 Cr LJ 1440, it was held that the President's power under Article 72 of the Constitution is to be exercised on the advice of the Central Government and not by the President on his own, and that the advice of the Government binds the head of the State.

In the exercise of power by Article 72 of the Constitution, it is open to the President to scrutinise the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of, and sentence imposed on the accused. The President is entitled to go into the merits of the case notwithstanding that it has been judicially concluded and to determine for himself whether the case is one deserving the grant of the relief falling within that power. But in doing so, the President does not amend or modify or supersede the judicial record. The judicial record remains intact and undisturbed. The President acts in a wholly different plane from that in which the court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it. And this is so notwithstanding that the practical effect of the Presidential act is to remove the stigma of guilt from the accused or to remit the sentence imposed on him. Further, the question as to the area of the President's power under Article 72 falls squarely within the judicial domain and can be examined by the court by way of judicial review.

Regarding the question, whether the petitioner is entitled to an oral hearing from the President on his petition invoking the powers under Article 72, the petitioner has no right to insist on an oral hearing before the President. The proceeding before the President is of an executive character, and when the petitioner files his petition, it is for him to submit with it all the requisite information necessary for the disposal of the petition. He has no right to insist on presenting an oral hearing. The manner of consideration of the petition lies within the discretion of the President. The President may consider the information sufficiently furnished before him in the first instance or he may send for further material relevant to the issues which he considers pertinent, and he may, if he considers it will assist him in treating with the petition, give an oral hearing to the parties.

Held:

The power under Article 72 entitles the President to examine the record of evidence of the criminal case and to come to a different conclusion from that recorded by the

court. But in doing so, the President does not amend or modify or supersede the judicial record. The President while exercising power under Article 72 acts under a constitutional power which is entirely different from the judicial power and cannot be regarded as an extension of it.

There is no right in the condemned person who has applied for pardon to insist on an oral hearing before the President. The manner of consideration of the petition lies within the discretion of the President and it is for him to decide how best he can acquaint himself with all the information that is necessary for its proper and effective disposal.