
(2003) 01 BOM CK 0030

In the Bombay High Court

Case No : Criminal Writ Petition No. 1442 of 2002

Anil Lala Saundade

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Maharashtra Prisoners (Remission System) Rules, 1962 — Rule 22, 22(2)
Penal Code, 1860 (IPC) — Section 224, 302
Sea Customs Act, 1878 — Section 167

Citation : (2003) BomCR(Cri) 820 : (2003) 2 MhLj 403

Hon'ble Judges : V.K. Tahilramani, J;S.S. Parkar, J

Bench : Division Bench

Advocate : N.N. Gawankar, for the Appellant; D.S. Mhaispurkar, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Parkar, J.—This petition has been filed by the convict seeking release from the prison on the ground that he has undergone actual imprisonment of more than 14 years for the offence of murder punishable u/s 302 of IPC. The petition has been filed in the following circumstances.

2. The petitioner was convicted on 16.4.83 in Session Case No. 267/82 and was sentenced to life imprisonment. While undergoing sentence in Yerawada Open Prison, he escaped from the lawful custody on 24.5.98 and was thereafter rearrested on 9.8.98. Since he had escaped from lawful custody, he was prosecuted u/s 224 of IPC and sentenced to one year imprisonment which was to run consecutively after he undergoes life imprisonment. For the sentence of life imprisonment, the convict was put in the category under which he had to undergo sentence for a total period of 28 years, of course, with remissions. The prison authorities took disciplinary action against the prisoner under Rule 22(2) of the Maharashtra Prisons (Remission and System) Rules, 1962, for escaping from the lawful custody. Under the said Rule, the entire remission earned by the petitioner, excluding the State remission and Special remission, is liable to be

deducted from the period of his imprisonment. The period of remission which was liable to be deducted was 5 years 2 months and 5 days as per the affidavit filed by S.R. Pawar, Jailor Group II attached to Yerawada Central Prison, Pune, dated 29.10.2002. The petitioner had undergone total sentence as on 30.9.2002 as follows:-

(a)

Total sentence upto 30.9.2002

19 1 19

(b)

Set off from 29.1.1982 to 30.9.2002

8 18

(c)

Remission upto 30.9.2002

11 5 18

Total 31 3 25

(d)

Deduction of remission (-) due to escape

5 2 5

26 1 20

From the aforesaid period of 31 years 3 months 25 days, the remission of 5 years 2 months and 5 days was deducted due to the disciplinary action taken against him under Rule 22(2) of the aforesaid rules. Thus, the petitioner had with remissions undergone the period of sentence of 26 years 1 month and 20 days.

3. The argument advanced on behalf of the petitioner is that it is a case of double punishment in the sense that apart from sentence of the imprisonment of one year recorded against the prisoner u/s 224 IPC, the State has deducted the remissions of 5 years 2 months and 5 days earned by him and thus the prisoner was doubly punished which is violative of Article 20(2) of the Constitution of India.

4. In support of this contention, reliance was placed on the unreported judgment of the Division Bench (Coram : Puranik and D Silva, JJ.) of this Court dated 8.10.92 delivered in Criminal Writ Petition No. 644/92, Dnyandeo Sidhu Pote v. The State of Maharashtra. That was a case where the prisoner was punished in 3 ways because he had escaped from lawful custody. Firstly, he was prosecuted and convicted u/s 224 of IPC and sentenced to 3 months R.I. Secondly, his remissions were cancelled under the Prison Rules and thirdly the category of his

punishment was changed under the guidelines by increasing the period of incarceration from 18 years under category 2(b) to 24 years under category 6. In view of the above, the Division Bench held that it was a case of double jeopardy under Article 20(2) of the Constitution.

5. In our view, so far as the constitutional provision is concerned, the prohibition is against the prisoner being prosecuted and punished for the same offence more than once. In the present case, the prisoner was tried for offence u/s 224 of IPC and after finding that he had escaped from lawful custody illegally, he was sentenced to one's year R.I. The other action taken against him is under Rule 22 of the Maharashtra Prisons (Remission and System) Rules, 1962 which is only a disciplinary action taken against the prisoner for which there was no prosecution lodged against him nor there was any order of conviction and sentence awarded as contemplated under Article 20(2) of the Constitution.

6. It would be relevant to refer to two judgments of the Apex Court in this connection.

The first case is of Thomas Dana Vs. The State of Punjab, decided by the Constitution Bench of the Supreme Court. In that case, the Supreme Court was considering the principle of double jeopardy laid down in Article 20(2) of the Constitution. The question before the Supreme Court was whether prosecution under the Penal Code and the action taken under the provisions of Section 167 of the Sea Customs Act were hit by Article 20(2) of the Constitution. It was held that the proceeding before the Sea Customs authorities u/s 167 of the Sea Customs Act was not a prosecution within the meaning of Article 20(2) of the Constitution observing that "prosecution" means a proceeding either by way of indictment or information in the criminal courts in order to put an offender upon his trial. Thus, in the present case, the imposition of penalty under the Prison rules would not amount to prosecution as contemplated under Article 20(2) of the Constitution.

7. Another judgment of the Supreme Court is in the case of Union of India and Others Vs. Sunil Kumar Sarkar, . That was a case where delinquent was found guilty and sentenced by the General Court Martial to R.I. for 6 months under Army Act. The disciplinary authorities had punished him by dismissing him from service under the rules for the said misconduct. It was held that Court Martial proceedings and disciplinary proceedings deal with different aspects i.e. one under the Army Act and another under the Service law i.e. Central Civil Services (CCA) Rules under which disciplinary action was taken and therefore, the concurrent proceedings under the two i.e. Army Act and CCS (CCA) Rules would not amount to double jeopardy within the meaning of Article 20(2) of the Constitution.

8. In our view, applying the above principle in the present case, two actions taken against the prisoner, one under the Indian Penal Code by prosecuting him and disciplinary action taken against him by deducting the remission earned by

him, do not amount to double jeopardy within the meaning of Article 20(2) of the Constitution. Since there is clear dicta of the Supreme Court one given by the Constitution Bench as far back as the year 1958 in the case of *Thomas Dana v. State of Punjab* (Supra) and the other in the recent judgment of the Supreme Court in *Sunil Kumar's case* (Supra) in the year 2001, the judgment of the Division Bench of this Court, relied on behalf of the petitioner, is no longer good law or binding on us as the said judgment was per incuriam since the judgment of the Constitution Bench in *Thomas Dana's Case* was not considered by it.

9. It would be relevant to point out that proviso to Rule 26 of Chapter XXVII of the Maharashtra Prison Manual Rules lays down that any measure taken for security and safe custody of a refractory or dangerous prisoner, or for preventing him from committing mischief, and exclusion from a privilege which is otherwise admissible only to a well behaved prisoner shall not be deemed to be a punishment for the purposes of the Prison Rules.

10. In the result, this petition is devoid of any merits and is, therefore, rejected.