
(1992) 09 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11807-M of 1991

Baldev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-09-1992

Acts Referred:

Citation : (1992) 3 AICLR 614 : (1993) 1 RCR(Criminal) 106

Hon'ble Judges : H.S.Brar, J

Advocate : Vikrant Sharma, J.S. Bhatti, Advocates for appearing Parties

Judgement

H.S. Brar, J.

1. In this petition under Section 482 of the Code of Criminal Procedure, read with Articles 226/227 of the Constitution of India, the detenupetitioner has prayed for quashing of the Jail, punishments, dated February 11, 1985, March 23, 1985 and November 11, 1989 awarded to him for the jail offences alleged to have been committed by him.

2. It is stated in the petition that the detenu did not commit any jail offence and no jail Punishments was ever awarded to him during the entire period of sentence except those referred to in the petition. It is further stated by the petitioner that his conduct and behaviour inside as well as outside the jail when he had enjoyed temporary release on parole and furlough on a number of occasions remained satisfactory.

3. At the time of arguments, the learned Counsel for the petitioner assailed the Jail Punishment awarded to the petitioner on November 11, 1989 only, as according to him, no Jail Punishments dated February 11, 1985 and March 23, 1985, referred to in the petition had been passed at all. This is practically not denied by the respondents in their written statement.

4. The written statement unfortunately is not happily worded and seems to have been filed with little care. In para 2 of the written statement, it is stated as

under :

".....The fact of the matter is that the prisoner committed three Major Jail Offences. On two occasions that is on 11.2.1985 and 23.3.1985 he was given chance to improve his conduct although he deserved to be awarded punishment. On third occasion that is on 12.10.1989 he again committed a Jail Offence....."

5. A bare look at the aboveextracted portion indicates that in its earlier part it is stated that three Major Jail Offences were committed by the petitioner but in the later part, it is clearly stated that the Jail Offence was committed by him only on October 12, 1989. It is thereafter stated in the same para that only one Jail Punishment was awarded to the prisoner on November 11, 1989 for the jail offence committed by him on October 12, 1989. The punishment awarded on November 11, 1989 is reproduced as under :

"Punishment Awarded on 11.11.1989 : The prisoner is present. He is proved guilty for remaining absent from 4.10.1989 to 11.10.1989. The warrant Officer has stated that he got leave extended twice, once on the sickness of his wife and second time due to the death of his fatherinlaw and due to his own illness. But he has not given any cogent proof for absenting himself from 4.10.1989 to 11.10.1989. According to the medical certificate of Amloh Civil Hospital, Amloh, he remained admitted in that hospital from 7.10.1989 to 9.10.1989. He has not got his leave extended from the competent authority or from the Hon"ble Punjab and Haryana High Court, therefore he is guilty for remaining absent from the jail. In case he is given three days benefit of his absence due to his illness as verified by Amloh Hospital Authorities, even then he is guilty of absence of 5 days which is violation of Section 8(3) of the Punjab Good Conduct Prisoners (Temporary) Release Act, 1962.

He is punished to cut for 10 days earned remission. The punishment is announced."

6. This order of Jail Punishment awarded by the Jail Authorities, as per the submissions of the learned Counsel for the petitioner, is invalid and has no value in the eye of law. To substantiate his submissions, he advances two main grounds (i) that though the detenu has given detailed explanation for not surrendering himself to the Jail in time by production of a Medical Certificate from Civil Hospital, Amloh, yet the Superintendent of the Jail did not take it as a valid explanation and punished him instead, and (ii) no proper judicial appraisal of the Jail Punishment has been made by the learned District and Sessions Judge.

7. I find force in the submission made by the learned Counsel for the detenu when he says that no proper judicial appraisal of the jail Punishment awarded to the petitioner has been made by the learned District and Sessions Judge. He has disposed of the matter vide his order, dated January 16, 1990, Copy annexured with the Reply as Annexure R1, just by writing as under :

".....The punishment awarded by you vide your letter No. 10058 dated

11.11.1989 is hereby approved....."

Such an order cannot be termed more than a cryptic order and even otherwise it does not seem to be an order of judicial appraisal by the District and Sessions Judge. It rather seems to be only an intimation from the District and Sessions Judge, Ferozepore to the Superintendent,, Central Jail, Ferozepore. It is worth mentioning here that when a judicial appraisal is made by the learned District and Sessions Judge, it is his bounden duty to go into the facts and circumstances of the case with a view to find out whether the Jail Punishment is valid or not. When the violation of the Rules/Regulations or the provisions of an Act has to be determined judicially, when the final decision to be taken by the District and Sessions Judge should also be a judicious one which is not so in the case in hand.

8. Not only this, nothing is forthcoming from the order as to whether an opportunity of hearing was at all afforded to the prisoner, nor any reasons have been given about the validity or otherwise of the explanation furnished by him for his late surrender to the jail. An opportunity of hearing is also required to be given to the prisoner to state his case. If only the verdict of the Jail Authorities has to be taken as a gospel truth then the very purpose of judicial appraisal by the District and Sessions Judge, is defeated.

9. In view of what has been discussed by me above, this petition succeeds on this short ground alone that proper judicial appraisal of Jail Punishment was not made by the learned District and Sessions Judge, as required under the law. The impugned order imposing jail punishment by way of cut in the remission of sentence, being bad in the eye of law, is quashed.