
(1986) 07 GUJ CK 0014
In the Gujarat High Court

Bhanuprasad Aditram

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 31-07-1986

Acts Referred:

Bombay Prevention of Gambling Act, 1887 — Section 48A
Prisons Act, 1894 — Section 48A

Citation : (1987) CriLJ 1777 : (1987) 2 GLR 778

Hon'ble Judges : D.H. Shukla, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—Prison offence may be committed even when a prisoner is physically outside the prison. For such a prison offence he can be dealt with by the Prison authorities and if the incident is also an offence under provisions of any other law, the person concerned may also be convicted and sentenced for the offence under such ordinary law. The learned Counsel for the petitioner contends that the prisoner who has been convicted for offence under the Bombay Prevention of Gambling Act by a competent criminal court cannot be dealt with by the Jail authorities and no punishment can be imposed upon him by the Jail authorities. The aforesaid contention is required to be decided in the background of facts that follow.

2. The petitioner is a prisoner. He was released on furlough commencing from Aug. 28, 1985 to Sept. 12, 1985. During this period he committed an offence under the provisions of the Bombay Prevention of Gambling Act ("Gambling Act" for short) and was convicted and sentenced with imprisonment till rising of the Court and to pay certain amount of fine. This is an admitted position. On the basis of the aforesaid allegations, admitted and also proved, the Jail authorities directed that (i) the prisoner's remission of 30 days be withdrawn; (ii) an amount of Rs. 100/-deposited by him as security deposit be forfeited; and (iii) his entitlement to furlough for the year in question be also forfeited. The petitioner contends that the aforesaid threefold punishment had been imposed upon him for one and the same offence. In his submission, for the offence

committed by him under the provisions of the Gambling Act he has already undergone the sentence and paid the fine imposed by the learned Magistrate; now he cannot be subjected to double jeopardy for one and the same offence.

3. There is basic misconception in the submission advanced by the learned Counsel for the petitioner. When the petitioner committed an offence under the Gambling Act, he did not commit one offence. In fact he committed two offences, one under the Gambling Act for which he was convicted and sentenced by the court of J.M.F.C., Nadiad. At the same time he committed another offence covered by the provisions of Section 48-A of the Prisons Act, 1894 (hereinafter referred to as "the Act" for short). Section 48-A of the Act provides that failure to observe any of the conditions on which a prisoner is released on furlough shall be deemed to be a prison offence. It also provides for punishment in case of contravention of the provisions of the section.

4. The punishing authority for the offence u/s 48-A of the Act is the Superintendent of the Jail concerned. In the instant case the Superintendent of Jail passed an order imposing penalty as stated hereinabove. The petitioner-prisoner preferred an appeal before the Inspector General of Prisons. In the detailed order dated July 16, 1986 passed by the Inspector General of Prisons, it is made clear that the petitioner-prisoner has been convicted by the J.M.F.C. for the offence under the Gambling Act, while the Jail authorities have punished the prisoner for the breach of conditions mentioned in the order for releasing the prisoner on furlough. This amounts to a prison offence under the provisions of Section 48-A of the Act.

5. It may be noted that the prisoner did accept the conditions on which he was released on furlough. We have been shown the original bond executed by the prisoner wherein it is clearly stated that the prisoner shall abide by the terms and conditions stipulated in Schedule-B. We have also been shown a pro forma of the order releasing the prisoner on furlough. One of the conditions is that the prisoner shall keep good behaviour and shall not contravene the provisions of any of the statutes in force in India. The prisoner was required to give an undertaking also. The undertaking clearly indicates as to what will be the consequences of the breach of conditions.

6. Thus it is clear that while on furlough leave the prisoner may be outside the prison, but he is required to abide by the conditions on which he is released on furlough. If he commit breach of any of the conditions imposed upon him while releasing him on furlough, the same amounts to a prison offence as provided u/s 48-A of the Act. In this view of the matter the Inspector (general of Prisons rightly held that the prisoner has been awarded punishment by the Jail authorities for the prison offence, and not for the offence committed by him under the Gambling Act. Thus it is obvious that the order passed by the Inspector General of Prisons in appeal, confirming the order passed by the Superintendent, Baroda Central Prison, cannot be said to be outside the scope of the powers conferred upon the Jail authorities.

7. Here reference may be made to the provisions of R. 1287 of the Bombay Jail Manual, which admittedly applies to the prisoner. This rule, inter alia, provides that in each case of breach of any of the conditions of furlough or parole, necessary punishment or punishments shall be awarded by the Superintendent of Prison with due regard to the circumstances of each case. The rule further provides that all the punishments mentioned in the rule or in Section 48-A of the Act need not necessarily be awarded in each case. However, it is left to the discretion of the Superintendent to decide which particular punishment or punishments should be imposed. In the instant case it is clear that the petitioner was released on furlough inter alia on the condition that he shall not contravene any of the provisions of the statutes in force in India. It is also not in dispute that the petitioner committed an offence under the Gambling Act while on furlough and thus he committed breach of these conditions. Therefore, reading the provisions of R. 1287 of the Bombay Jail Manual together with Section 48-A of the Act, it is abundantly clear that the petitioner having committed a prison offence was liable to be dealt with under the provisions of R. 1287 of the Bombay Jail Manual and/or under the provisions of Section 48-A of the Act. Hence there is nothing illegal or improper if the punishment as stated above has been imposed upon the prisoner for the prison offence committed by him.

8. The learned Counsel for the petitioner submitted that the punishment imposed upon the petitioner is excessive and should be reduced. We are not inclined to enter into this question because ordinarily the quantum of punishment is within the discretion of the Jail authorities. Moreover, in the instant case we do not find that the punishment imposed upon the prisoner can be said to be excessive.

9. At this stage the learned Counsel for the petitioner requests that he be permitted to withdraw the petition. The request is granted. The petitioner is permitted to withdraw the petition. The petition stands rejected as withdrawn. Rule discharged.