
(2004) 06 BOM CK 0118
In the Bombay High Court
Case No : Criminal W.P. No. 1321 of 2003

Dagdu Shripati Doiphode

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-06-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34, 46

Citation : (2004) 3 MhLj 1053

Hon'ble Judges : R.S. Mohite, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : Aslam S. Shaikh, for the Appellant; P.H. Kantharia, Assistant Public Prosecutor, for the Respondent

Judgement

R.S. Mohite, J.—By this writ petition the petitioner seeks a direction to the Superintendent, Yerawada Central Prison, Pune to include the petitioner in the remission register of the prison and seeks a further direction- that the remission earned by him may not be deducted.

2. The petitioner was convicted for offences punishable under Sections 302, 304 read with 34 of the Indian Penal Code vide Judgment and order of the Sessions Court dated 15-2-1994 passed in Sessions Case No. 426 of 1992.

3. In pursuance of an order passed by the Division Bench of this Court directing the Divisional Commissioner of Police, Pune Division to release the petitioner on a 30 days parole, the petitioner was released from Yerawada Central Prison on 1-4-1997. He was supposed to surrender on 2-5-1997 but did not do so. The petitioner was ultimately arrested by Wanvadi Police Station, Pune on 25-11-2001 and was therefore, late by 1668 days in surrendering.

4. On 30-11-2001, Superintendent of Yerawada Central Prison issued a show cause notice to the petitioner calling upon him to show cause as to why he should not be punished for a prison offence. It may be mentioned here that, this show cause notice did not mention the nature of the punishment that was

proposed to be imposed.

5. It appears that the Superintendent of Prison, after receipt of the reply, proposed to impose a punishment of permanent removal of the petitioner's name from the remission register. Therefore, by a letter bearing reference No. 21534/2001 dated 12/2001. The Superintendent, Yerawada Central Prison informed the Joint District Judge, Pune about the sentence proposed to be given to the petitioner and by a reply dated 18-1-2002 addressed by the Registrar, District Court Pune, he was informed by the Joint District Judge, Pune that the proposed sentence given to the prisoner was accepted and approved. The record indicates that, thereafter, on 29-5-2002, a letter was addressed by the Incharge Personal Assistant to the Deputy Inspector General of Prison, Western Region, Pune-6 in which it was stated that the punishment of permanently stopping the privilege of remission was approved.

6. We have perused the record and the affidavit filed by Mr. Ashok S. Karkar, Jailor Group-II of Yerawada Central Prison, Pune. The respondents have sought to justify the impugned order on the basis of Rule 23 of Chapter 38 of the Jail Manual which is reproduced hereinunder.

23. Subject to the provisions of Rule 22, a Superintendent may punish any prison-offence u/s 46 of the Act, in either of both the following methods, that is to say, by

(a) "forfeiting" any ordinary or special remission for a period not exceeding 60 days.

(b) removing any prisoner from the remission system for a period not exceeding one year :

Provided that; where the Superintendent is of opinion that higher punishment by way of forfeiture of remission or removal from the remission system (or both) is necessary in the case of any prisoner, he may, with the previous sanction of the Inspector General, award such higher punishment (including permanent removal from the remission system).

7. It is the contention of the respondents that in accordance with the aforesaid provisions, they have obtained confirmation of the punishment from the District Court, Pune on 23-1-2002 and the Deputy Inspector General of Prisons on 30-5-2002.

8. On perusal of the order said to have been passed by the Deputy Inspector General of Prisons, we find that the same is signed by the Incharge Personal Assistant of the Deputy Inspector General of Prisons. Nothing has been shown to us to indicate that the power of the Inspector General of Prisons have been validly delegated to the person who has signed the order on 29-5-2002. Rule 23 quoted above requires that before such higher punishment can be given, previous sanction of the Inspector General of Prisons is to be taken for awarding such higher punishment. In the present case, it does not appear to have been

done.

9. Apart from this, we find that the impugned order does not give any reason as to why the higher punishment has been granted. The order said to have been passed by the Joint District Judge also does not indicate the reasons as to why higher punishment was accepted and approved.

10. The show cause notice dated 30-11-2001 did not even indicate the nature of the proposed punishment, thus preventing an effective reply.

11. In our view, for the aforesaid reasons, the impugned order passed by the Superintendent, Yerawada Central Prison, Pune-6 will have to be set aside. On setting aside the said order, we propose to remand the matter back to the competent authority for imposition of punishment in accordance with law.

12. In the result, the order passed by the Superintendent of Yerawada Central Prison, Pune-6 dated 3-12-2002 is quashed and set aside and the matter is remanded to him for imposition of proper and reasonable punishment in accordance with law. Accordingly, petition stands disposed of.

13. Rule is made absolute in the aforesaid terms with no order as to costs.

14. All concerned to act on the copy of this order duly authenticated by the C.S./ Sheristedar of this Court.