
(1992) 02 BOM CK 0045

In the Bombay High Court

Case No : Criminal Writ Petition No. 171 of 1991

Gajanan Mohanlal Sikchi

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 28-02-1992

Acts Referred:

Constitution of India, 1950 — Article 21
Maharashtra Prisons (Discipline) Rules, 1963 — Rule 17
Prisons Act, 1894 — Section 45(12), 46

Citation : (1993) 1 BomCR 147 : (1992) 94 BOMLR 254

Hon'ble Judges : S.G. Mutalik, J; H.D. Patel, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; H. Ahmad, A.G.P., for the Respondent

Judgement

H.D. Patel, J.—The petitioner having been convicted in the year 1975 was sentenced to imprisonment for life for offence u/s 302 of the Indian Penal Code. He is undergoing the sentence in Central Prison, Nagpur. By this petition the petitioner seeks to challenge the punishment imposed upon him for the prison offence which he is said to have committed on 4-11-1987. It is alleged that on the said date the petitioner was found to be in possession of a currency note of Rs. 10/- during his personal search. From the averments in the petition as well as from the counter-affidavit, it is clear that the punishment awarded for committing the prison offence was forfeiture of 60 days remission which the prisoner had already earned. Besides this forfeiture of 30 days of yearly remission and 7 days of monthly remission was also inflicted upon the petitioner. The net effect of the punishment was that the petitioner lost 97 days of remission which he had already earned or would become due as per rules in force. According to the petitioner the imposition of the punishment was without issuance of a show cause notice or holding of an enquiry as envisaged by the Prisons Act or the Rules framed thereunder and therefore the punishment was liable to be quashed being contrary to law and/or in violation of the principles of natural justice. The punishment is also challenged on the ground of

excessiveness and beyond the scope of the powers vested in the Superintendent of Jail. In any event, it was also urged that the punishment as imposed cannot survive for want of prior approval of the Inspector General of Prisons.

2. We must observe here that no papers pertaining to the charge, enquiry or the punishment imposed came to be filed despite repeated chances given from time to time. It seems that the respondent No. 2 has no papers at all which could be filed. No doubt the Jailor has filed the counter affidavit in which it is stated that the petitioner was brought before the Superintendent after he made necessary enquiries for passing suitable orders. After hearing the petitioner necessary orders of punishment came to be passed. It is thus apparent that no enquiry worth the name was admittedly made by the Superintendent of Jail as contemplated by the Prisons Act or the Rules in force. Can the punishment imposed in the aforesaid circumstances be upheld?

3. Section 45 of the Prisons Act enumerates the acts which are prison offences. Sub-clause (12) thereof which stipulates receiving, possessing or transferring any prohibited article is a prison offence. Section 59 authorises the State Government to make rules on various matters mentioned in that section. Clause (13) thereof permits the rules to be framed for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited. Accordingly, the Maharashtra Prisons (Discipline) Rules, 1963 was framed. Under sub-rule (iv) of Rule 17, the Bank notes and cash is included in the articles prohibited in prison. Therefore, no doubt is left that currency note is a prohibited article and finding the same on the prisoner would be a prison offence.

4. Section 46 of the Prisons Act empowers the Superintendent to examine any person, touching a prison offence and to determine thereupon, and punish the offender. Even the punishments are enumerated in that section under sub-sections (1) to (10) of that section. As held in *Danial H. Walcott J. Prisoner Vs. Superintendent, Nagpur Central Prison*, that before any punishment is imposed upon the prisoner he has a right to be heard. It is also held in that case that the material on the basis of which punishment is proposed should be disclosed to the petitioner and further that the punishment must be by a speaking order. In other words, the Superintendent must state reasons for finding the prisoner guilty. Necessarily evidence must also be recorded which is indicated in the section itself. The names of witnesses must also be incorporated in the punishment book which is required to be maintained u/s 51 of the Prisons Act. All these procedures are required to be followed before the punishment can be inflicted.

5. The fundamental rights of the prisoner are not denuded except to the extent lawful incarceration by its own compulsion has the effect of limiting those rights. Even a prisoner enjoys the right guaranteed under Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to the procedure established by law and that law establishing the procedure must be just, right and fair and not arbitrary, fanciful and oppressive. Imposition of punishment of forfeiture of remission caused to the petitioner does affect his

right of personal liberty of early release from confinement. The procedure for imposition of penalty of cut in remission must meet the requirement of Article 21, that is, the procedure must be just, proper and fair and not arbitrary and oppressive. While interpreting section 46 of the Prisons Act, it must be taken to be implicit that the enquiry contemplated therein must be consistent with the principles of natural justice and in that background the prisoner must be given sufficient opportunity to explain his conduct and the material appearing against him in the enquiry before he is found guilty of the prison offence.

6. It would be clear from the facts appearing above that the petitioner at no stage was asked to explain his conduct or the material appearing against him. No procedure of any type was followed which could be said to be in accordance with law or the principles of natural justice. All this lends serious infirmity to the order impugned and it cannot be upheld.

7. Since the petition can be allowed on the basis of aforesaid findings, it is not necessary for us to consider the nature of punishment that could be inflicted for the prison offence alleged to have been committed by the petitioner.

8. In the result, the petition succeeds. The punishment awarded to the petitioner of forfeiting 97 days of remission is hereby quashed and set aside. The prison Authorities are however, at liberty to take such action as they deem fit in respect of the alleged prison offence, after following due procedure of law. If no action is taken within a period of one month from the date of this order, necessary correction be carried out in the punishment book by cancelling the entry made therein. The Rule is accordingly made absolute.

Rule made absolute.