
(1992) 12 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous P No. 9642-M of 1991

Ghaseeta Ram

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 03-12-1992

Acts Referred:

Citation : (1993) 3 RCR(Criminal) 354

Hon'ble Judges : S.K.Jain, J

Advocate : P.S. Sullar, Veena Ashwani Talwar, Advocates for appearing Parties

Judgement

S.K. Jain, J. (Oral)

1. Ghaseeta Ram, petitioner herein, was sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code, by the learned Sessions Judge, Gurgaon, vide his judgment dated June 10, 1980. He was undergoing sentence in District Jail, Bhiwani. According to the allegations against him, he made a plan in conspiracy with the other prisoners to escape from the Jail on 16th September, 1984 and during the course of the execution of the said common object of their unlawful assembly, a jail warder was injured by him. He was tried and convicted under Section 148, 342/149, 332/149, 224, and 307/149 of the Indian Penal Code alongwith his coaccused by the Additional Sessions Judge, Bhiwani, vide his judgment of conviction on 22nd February, 1986. He alongwith his co accused was sentenced as under vide order of sentence of even date :

(i) One year R.I. under Section 148 IPC.

(ii) Six months R.I. under Section 342/149 IPC.

(iii) Two years R.I. under Section 332/149 IPC.

(iv) Two years R.I. under Section 224 IPC and

(v) Seven years R.I. under Section 307/149 IPC.

On the other hand, the Jail Superintendent after obtaining sanction of the

Inspector General of Prisons vide his order dated 17th September, 1984, imposed a punishment on him as under :

- (i) Remission of 23 months 18 days earned by him were forfeited; and
- (ii) he was permanently removed from the system of earning remissions.

This was done by the Jail Superintendent under para No. 633A of the Punjab Jail Manual. The prisoner vide this petition under Section 482 of the Code of Criminal Procedure has sought quashing of the said Jail punishment dated 17th September, 1984 passed by the Superintendent, District Jail, Bhiwani.

2. The respondents were served. Written statement has been filed. The sum and substance of the reply is that the Superintendent Jail in exercise of the powers under para No. 633A of the Punjab Jail Manual after obtaining the sanction of the Inspector General of Prisons has imposed the said punishment on the prisoner vide his impugned order.

3. Learned counsel for the parties have been heard.

4. Learned counsel for the petitioner has taken me through the provisions of sections 45, 46 and 52 of the Prisons Act; paras 611 and 627 of the Punjab Jail Manual and Article 20 of the Constitution of India, and has argued that a prisoner could not be punished twice over, once by the Additional Sessions Judge, Bhiwani and for the second time by the Superintendent Jail, Bhiwani for the same offence. She has placed reliance on the following judgments :

(i) Pritish Dev v. The State, AIR 1952 Calcutta 319; and (DB)

(ii) State v. Chandra Bali Singh, AIR 1960 Allahabad 124 (DB)

5. On the other hand, the learned AAG, Haryana, pressed into service, the provisions of para No. 633A of the Punjab Jail Manual and has argued supporting the impugned order passed by the Jail Superintendent.

6. I have given thoughtful consideration to the rival contentions.

Following facts are not in dispute;

(i) That while undergoing life imprisonment in the District Jail, Bhiwani, the petitioner formed an unlawful assembly with his coprisouers and in execution of the common object of that assembly i.e. to escape from the jail, injured seriously a jail warder;

(ii) that the petitioner alongwith his coprisoners and coaccused was tried by the Additional Sessions Judge, Bhiwani, and Court convicted him and his coaccused, and sentenced the prisoner to one year RI under Section 148 IPC, six months RI under Section 342/149 IPC, two years RI under sections 332/149 IPC, two years RI under section 224 IPC, and seven years RI under Section 307/149 IPC, vide his judgment dated 22nd February, 1986; and

(iii) that the Jail Superintendent, Bhiwani, vide his order of Sept. 17, 1984 Annexure P. 1, forfeited his remission of 23 months and 18 days earned by him and also excluded him from remission system permanently for the same offence.

7. Now, on to the legal position.

8. Article 20(2) of the Constitution of India provides that no person shall be prosecuted or punished for the same offence more than once.

9. Section 52 of the Prisons Act provides that if any prisoner is guilty of any offence against prison discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term shall be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in Section 46.

10. Para 627 of the Punjab Jail Manual is reproduced below :

"627. If any prisoner is guilty of any offence against prison discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class having jurisdiction, together with a statement of the circumstances, and such magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term shall be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46 of the Prisons Act;

Provided that the District Magistrate may transfer the case for inquiry and trial to any Magistrate of the first class; and

Provided also that no person shall be punished twice for the same offence".

11. It is evident on the face to the record that the Superintendent Jail, Bhiwani, in exercise of his powers under the above said para moved the competent Magistrate to enquire into the matter in accordance with the Code of Criminal Procedure, who had committed the case to the Court of Session, and thereupon, the learned Additional Sessions Judge had tried, convicted and sentenced the petitioner alongwith other coaccused as mentioned herein before. Second proviso to para 627, which has also been reproduced above, provides that no person

shall be punished twice for the same offence. Similarly proviso to section 52 of the Prisons Act provides that no person shall be punished twice for the same offence.

12. In `State v. Chandra Bali Singh, AIR 1960 Allahabad 124, the prisoners had refused to take food when offered by the jail authorities. It was found that such action on their part was an offence punishable under section 45 of the Prisons Act read with para 806 (17) of the rules framed under section of that Act. It was held that a prisoner cannot, however, be punished twice for the same offence in view of the second proviso to section 52 of the Act and also under Article 20(2) of the Constitution of India. Formal warning by the Superintendent of Jail is one of the punishments provided by Section 46(1) of the Act. After having inflicted formal warning by the Jail Superintendent for the said offence, their trial and conviction on the complaint submitted was illegal. Again Prithish Dev v. The State, AIR 1952 Calcutta 319 (DB), it was held that if a person had already been punished by Superintendent of the jail for an alleged offence under Sections 224 and 224/114, Penal Code, the proceedings for the same offences against the person would be against the provisions of Art. 20 of the Constitution and would be illegal. When the facts and circumstances of this case are examined, it is found that FIR No. 214, dated 16th September, 1984, in Police Station Bhiwani, under Sections 148, 307, 342, 332, 149 read with section 224 of the Indian Penal Code was registered against the petitioner on the same allegations and for the same offence for which he was punished by the Jail Superintendent vide his order dated 17th September, 1984. He was tried, convicted and sentenced to various terms of imprisonment under various sections by the learned Additional Sessions Judge, Bhiwani, vide his order of February 22, 1986. In view of the fact that the FIR had been registered on 16th September, 1984, it is evident that before lodging it the Jail Superintendent had formed an opinion that the prisoner was not adequately punishable by infliction of any punishment which he had power under the Jail Manual to award. Therefore, after having lodged the FIR he could not inflict punishment for the same offence on the prisoner on 17th September, 1984.

13. In view of the above discussion, this petition is allowed, the order dated 17th September, 1984 passed by the Jail Superintendent respondent No. 3, is hereby, quashed.