
(1990) 01 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 2368 of 1989

Gurnam Singh

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Citation : (1990) 1 RCR(Criminal) 496

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : Ravinder Kaur, V.K. Jindal, Advocates for appearing Parties

Judgement

J.S. Sekhon, J. (Oral)

1. Gurnam Singh, petitioner while. undergoing imprisonment in Central Jail, Ferozepur was awarded different jail punishments on 741980, 4.4.1981 2091981 and 291986 under Section 46 of the Prisons Act, 1894 by the Superintendent of the said Jail. He has invoked extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India for quashing these punishment or in the alternative for issuing a direction not to take into consideration the said jail punishment while considering the case for his premature release mainly on the ground that rules of natural justice and proper procedure was not followed. It is also maintained that the orders of punishment were not got approved from the concerned Sessions Judge and that the said punishments cannot be taken into consideration after the expiry of five years. In the return filed by the Superintendent Jail it is maintained that all the relevant orders were passed after holding a proper enquiry but the orders were not got approved from the Sessions Judge as there was no such provision in the Act to do so and Supreme Court judgment in Sunil Batra v. Delhi Administration, AIR 1980 (Volume67) SC 1579 providing such approval, was delivered afterwards.

2. I have heard the learned counsel for the parties. A Single Bench of this Court in Gurmit Singh v. State, 1988(2) All India Criminal Law Reporters 927 : 1988(2) Recent Criminal Reports 490 , has taken the view that the punishment awarded to a prisoner should operate as an impediment in the matter of premature

release etc. upto a period of five years only. Mrs. Ravinder Kaur, Advocate, appearing for the State has failed to point out any authority to the contrary. In these circumstances all the punishments except the one awarded on 2.9.1986, being prior in time by more than five years cannot be legally taken into consideration while considering the case of the petitioner for premature release.

3. The question then raised whether the punishment awarded by the Superintendent Jail vide orders dated 2.9.1986, suffers from any legal infirmity. In this regard Mr. Jindal, learned counsel for the petitioner contended that since the sentence was not got approved from the concerned Sessions Judge, it cannot be said to be legal in the eye of law. He has placed reliance on *Sunil Batra v. Delhi Administration*, AIR 1980 (Volume 67) SC 1579. A perusal of the said judgment leaves no doubt that a judicial appraisal of sentence awarded to a prisoner under the Prisons Act, has to be obtained before passing a final order but the approval at least should be obtained with two days of passing such order. Admittedly in the case in hand, no such approval was obtained from the Sessions Judge, even though order was passed in the year 1986 and the judgment of the Supreme Court was delivered in the year 1979 in *Sunil Batra's* case (supra). Consequently the order of punishment dated 2.9.1986 has to be quashed. It is ordered accordingly.

4. The writ petition stands disposed of in the light of above observations.