
(1989) 09 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1453 of 1989

Jagir Singh @ Jagir Chand

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Citation : (1989) 2 AICLR 540 : (1989) 2 RCR(Criminal) 569

Hon'ble Judges : S.D.Bajaj, J

Advocate : P.C. Chaudhri, Raghbir Chaudhary, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. Criminal Writ Petition No. 1453 of 1989 has been filed by Jagir Singh detenu in Central Jail, Ambala, for quashing the jail punishment awarded to him by the Superintendent Central Jail, Ambala, on 7th September, 1988, vide order Annexure P1 on the ground that Assistant Superintendent in Jail, on whose report the enquiry against the detenu proceeded was hostile towards the petitioner; that the Deputy Superintendent who conducted the enquiry against the detenu did so without authority, without observing the statutory procedure prescribed for holding it and adopted a stand contrary to the one reported by Assistant Superintendent and that the punishment awarded to the detenupetitioner did not have due judicial appraisal in prescribed manner.

2. Punishing Authority, Superintendent Central Jail, Ambala stated in reply that besides the initial reports made by Sewa Ram, Assistant Superintendent of the Jail against the petitioner, there was an enquiry report submitted by the Deputy Superintendent and the petitioner's own confession in writing serving as basis for the jail punishment awarded to the petitioner. It was also asserted that the judicial appraisal of the punishment awarded to the delinquent had also been obtained from the learned Sessions Judge, Ambala.

3. I have heard Shri P.C. Chaudhary, Advocate, for the petitioner and Shri Raghbir Chaudhary, Advocate for the State and have carefully gone through the

summoned record.

4. Report, Annexure P1, dated 2nd September, 1988 submitted by Sewa Ram, Assistant Superintendent of the Central Jail, Ambala accuser the petitioner of having received 31/2 kgs. of rice from coprisoner Gurmeet Singh without permission of any official. Enquiry report submitted by the Deputy Superintendent on 5th September, 1988, stated that there was no rice in the stock in the jail store on 2nd September, 1988. It does not, therefore, stand to reason as to how could the petitioner pilfer rice from the jail store; which according to the enquiry report submitted by the Deputy Superintendent Jail did not have any stock of rice at all on 2nd September, 1988. It also does not stand to reason how could the permission from official, allegedly not obtained; if obtained could have brought about the stock of rice in the jail store for being pilfered therefrom by Gurmeet Singh for being passed on to petitioner Jagir Singh. The entire version set up against the petitioner by jail officers obviously appears to be a cock and bull story set up only to punish him. It was only for this reason that the jail officers aforesaid extracted a confession in writing from the accusedpetitioner. The confession so obtained is again a useless piece of paper on account of having been made to a person in authority inside the jail.

5. Observations made by my learned brother K.S. Bhalla, J. in Joga Singh v. Haryana State, 1988(1) Recent Criminal Reports 145 and by my learned brother Ujagar Singh, J., in Chattar Singh v. State of Haryana and others, 1988(1) Recent Criminal Reports 563 are adverted to with an approval on points of validity of the enquiry held and the judicial appraisal of record in identical circumstances. The relevant observations read :

Observation made by K.S. Bhalla, J.

"Careful scrutiny of proceedings with regard to punishment dated 18.11.1986 reveals that besides conjectural approach at places, no regular enquiry was held by any jail official what to say of an inquiry by the Jail Superintendent, who according to the rules is the punishing authority. Section 46 of the Prisons Act, 1894 speaks of determination with regard to the offence by the Superintendent and as such it is the Superintendent or the punishing authority who has to apply its mind to the facts and circumstances of the case and reach a conclusion. The process of determination cannot possibly be delegated to any other authority subordinate to the Superintendent. Concededly no inquiry was made by the Superintendent himself. Deputy Superintendent Grade I whose proceedings dated 15.11.1986 are quoted at page 4 of the petition has simply said that he enquired at his personal level. It is nowhere suggested if he recorded statements of any persons and in so doing he associated the delinquent prisoner. The learned Counsel on behalf of the respondents could not show me from the record if statement of any coprisoner was recorded in arriving at the suggested conclusion, by any authority whatsoever. Concededly statements of none of the petitioners was recorded in the suggested inquiry. Proceedings under Section 46 of the Prisons Act are quasijudicial in nature and the orders passed under that

section bring penal consequences to a prisoner. It has drastic effect on his jail life as the same can result in forfeiture of all the remissions earned by him. Therefore these proceedings should always be in conformity with the principles of natural justice. In that, besides recording of evidence to prove a fact, it should be recorded in the presence of the prisoner, as the same is sought to be used against him. Also the application of the mind is to be that of the punishing authority. The witnesses are required to be examined by the Jail Superintendent himself and delinquent should also be given an opportunity to cross-examine the witnesses. This is the only recognised manner in which the Superintendent can determine upon any jail offence."

Observations made by Ujagar Singh, J.

This case was sent for judicial appraisal and the only order written by the District and Sessions Judge is as under :

"Perused Judicial appraisal recorded and approved as proposed. Returned to jail authorities."

The above endorsement is dated 19.8.1983. This endorsement does not show whether the facts of this case have been gone into with a view to find out whether the procedure for awarding jail punishment was followed or not.

xxx xxx xxx

xxx xxx xxx

The very term "Judicial appraisal" means that the facts have to be gone into with a view to administering justice and, if necessary, the convict is to be summoned for hearing.

3. xxx xxx xxx

xxx xxx xxx

These words do not fulfil the requirements of a judicial appraisal in this offence also the mandatory procedure was not followed, as indicated above.

With these observations, this petition is accepted and jail punishments recorded against the petitioner are set aside."

6. In result, Criminal Writ Petition No. 1453 of 1989 succeeds and is allowed. JUDGMENT Annexure P1 is quashed, punishments awarded to the accusedpetitioner are set aside and the petitioner is ordered to be restored to his old status of C.N.W. while undergoing the life imprisonment inside the Central Jail, Ambala.