
(1992) 10 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 7521-M of 1992

Jaswant Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 31-10-1992

Acts Referred:

Citation : (1993) 1 RCR(Criminal) 297

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

Advocate : V.K. Jindal, M.R.K. Rathor, Advocates for appearing Parties

Judgement

S.K. Jain, J.

1. Jaswant Singh was convicted and sentenced by General Security Force Court at HQ 41, Battalion, B.S.F. Ajnala, Amritsar, vide order of April 3, 1989 and awarded sentenced to undergo five years rigorous imprisonment under Section 30(b) of the Board Security Force Act. He has undergone sentence in Central Jail, Amritsar. He was released on parole on 16th January, 1991. He had to surrender before the jail Authorities on 29th January, 1991, but he failed to do so. He was arrested on 7.4.1991 and was handed over to the Jail authorities on 16.4.1991. Thus, the petitioner remained absent for 77 days unauthorisedly and had, therefore committed an offence punishable under Section 8 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1992, and, therefore, the Superintendent, Central Jail, Amritsar, awarded him punishment of cut of 38 days at the rate of cut of five days remissions for each day of unauthorised absence. The papers were submitted to the District and Sessions Judge, Amritsar, for judicial appraisal. Vide his order dated 5th July, 1991, the learned Sessions Judge, Amritsar, reduced the punishment to a out of 77 days earned remission instead of 385 days i.e. at the rate of cut of one day remission for each day of unauthorised absence. Jaswant Singh, prisoner, through this petition under Section 482 of the Code of Criminal Procedure read with Articles 226 and 227 of the Constitution of India has sought the quashing of the above said orders of the Jail Superintendent as well as that of the District and Sessions Judge, Patiala.

2. I have heard learned Counsel for the parties.

3. The only argument advanced before me by the learned Counsel for the petitioner is that the order of the Jail Superintendent was without jurisdiction and, therefore, the order of the learned District and Sessions Judge, could also not stand in the eye of law. Elaborating his argument, he has submitted that the powers of the Superintendent of Jail to award punishment to the petitioner in the eventuality of his having not surrendered after the expiry of the period for which he was released under the Act are limited to the extent that he could deal with the cases of only those prisoners who had surrendered within a period of ten days of the date on which they should have surrendered after the expiry of the period of which they were released and that since the prisoner herein was arrested 77 days after the expiry of the period for which he was released his case would not be covered under subsection (3) of Section 8 of the Act and the Superintendent Jail had no power to inflict the punishment on him.

4. I have carefully examined the provisions of Sections 8 and 9 of the Act which are reproduced below for ready reference :

"8. Liability of prisoner to surrender on expiry of release period and consequences of overstaying :

(1) On the expiry of the period for which a prisoner is released under this Act, he shall surrender himself to the Superintendent of the Jail from which he was released.

(2) If a prisoner does not surrender himself as required by subsection (1) within a period of 10 days from the date on which he should have so surrendered, he may be arrested by any police officer without a warrant and shall be remanded to undergo the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered, but fails to satisfy the Superintendent of Jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for which he was released, all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of the Jail, namely :

(a) a maximum cut of five days' remission for each day of overstay;

(b) stoppage of canteen concession for maximum period of one month;

(c) withholding concession of either interviews or letters or both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner under Section 4 shall not be counted towards his sentence;

(e) warning;

(f) reduction from the status and grade of "Convict Watchman" or "Convict Overseer".

Section 9 Penalty for failure to surrender :

Any prisoner who is liable to be arrested under subsection (2) of Section 8, shall be punishable with imprisonment of either description which may extend to two years or with fine or with both.

Explanation. The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for which he was convicted.

5. Analytical examination of the above two sections of the Act already shows that the powers of the Superintendent of Jail to award punishment to the prisoner who had been released temporarily from his Jail are limited to the extent that he could deal with the case of only that prisoner who had surrendered within a period of 10 days of the date on which he should have surrendered before the Jail authority after the expiry of release period. The case of the prisoner who surrenders even after 10 days of the expiry of the period for which he was released, has to be dealt with under Section 9 of the Act. He has to be arrested under Section 8(2) of the Act and dealt with under Section 9 of the Act which provides a punishment of imprisonment of either description which may extend to two years or with fine or both.

6. As mentioned hereinbefore, the prisoner herein, had not surrendered within 10 days after the expiry of the period for which he was released. He was arrested after 77 days of the expiry of the release period and, therefore, he had to be dealt with under Section 9 of the Act.

7. In view of the above provisions of the Act the only irresistible conclusion is that the Superintendent of Jail, Amritsar, had no power to deal with the case of the petitioner and inflict punishment, on him. His order dated 2nd July, 1991 is, therefore, quashed being without jurisdiction. Consequently, the order of the District and Sessions Judge, Amritsar, dated 5th July, 1991 is also quashed. It is for the State to proceed against the prisoner under the provisions of Section 9 of the Act. This petition is disposed of accordingly.

Pettition disposed of.