
(1987) 11 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 650 of 1987

Joga Singh

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 19-11-1987

Acts Referred:

Citation : (1988) 1 RCR(Criminal) 145

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

Advocate : S.K. Sharma, V.K. Jindal, Advocates for appearing Parties

Judgement

K.S. Bhalla, J.

1. Petitioner Joga Singh was sentenced to life imprisonment by Sessions Judge, Kurukshetra in March, 1980 and since then he is continuously confined in jail. He is undergoing his sentence in Central Jail, Ambala. While undergoing sentence he has been awarded jail punishment twice on 24.5.1986 and 18.11.1986. As such punishments work as impediment in his way to get relief of parole or furlough under Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, he has challenged the validity of those punishments contending that they are illegal. The detail of the proceeding undergone before awarding those punishments is contained in para 4 in the present petition. In reply to the said para, the respondents have stated 'admitted being matter of record'. Thus obviously the record of the proceedings as cited by the petitioner in his petition is not disputed.

2. According to the petitioner the punishment dated 24.5.1986 was not got confirmed from the Sessions Judge concerned and with regard to punishment dated 18.11.1986 there was no regular inquiry. No judicial appraisal is forthcoming with regard to first punishment and it is mentioned in the written statement that the same was not readily traceable. It goes without saying that no punishment can be awarded to a prisoner without judicial appraisal of the Sessions Judge, in view of Sunil Batra's case (A.I.R. 1980 SC 1579).

3. Careful scrutiny of proceedings with regard to punishment dated 18.11.1986

reveals that besides conjectural approach at places, no regular inquiry 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 termination 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 or 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 statement of none of the co prisoners was recorded in the suggested inquiry. Proceedings under Section 46 of the Prisons Act are quasi judicial in nature and the order passed under that Section brings 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 crossexamine the witnesses. This is the only recognised manner in which the Superintendent can determine upon any Jail offence.

4. It was held in *Inderjit Singh v. State of Punjab and others*, 1982(2) CLR 129, that it is apparent from the statutory provisions that the Jail Superintendent has to determine as to whether a convict has committed any jail offence. He having not so determined, admittedly, the second punishment also becomes invalid and cannot stand.

5. For the aforesaid reasons, the impugned punishments awarded by the jail authorities are liable to be quashed. I order accordingly.