

(2010) 11 BOM CK 0081

In the Bombay High Court

Case No : Criminal Writ Petition No. 55 of 2007

Mohd. Asif Mohd. Hanif

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 112 BOMLR 4975 : (2011) 4 MhLj 738

Hon'ble Judges : A.R. Joshi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; S.S. Jachak, Additional Public Prosecutor for Respondent Nos. 1 and 2, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Heard finally by consent.

2. This is a petition by the prisoner, who has been convicted for offence punishable u/s 302 of Indian Penal Code. The Petitioner claims to have been convicted in 1993, and he is in jail since 24th October, 1991, i.e., from the date of arrest.

3. As the Petitioner is in prison and mostly he does not possess the documents of punishments of forfeiture of remission imposed on him during his jail term, the Writ Petition does not accompany those documents of two punishments. Petitioner prays for a direction for production of relevant documents, and upon production, the relief that the punishment of forfeiture of remission imposed on him be set aside.

4. The respondent No. 2 Superintendent of Prison has filed reply. In the reply, details of punishment are given, which are as follows:

[1] Petitioner was released on parole on 20-7-1994 for 7 days, however, he has reported on 8-12-94, which reporting was late by 133 days. Therefore, he was punished for delay of 133 days @ 2 days for each day of delay, for total 266 days. The approval of Sessions Judge, Amravati, was taken as per letter dated

3-8.96. Similarly, appraisal of Inspector General of Prisons, Pune, was taken vide letter dated 12-12-97.

[2] Even for furlough, Petitioner was released on 7-4-98 for 14 days, however, he has reported on 13-7-1999, which reporting was late by 447 days. Therefore, he was punished for delay of 447 days @ five days for each day of delay for 2235 days. Appraisal of District & Sessions Judge, Amravati, was obtained by letter dated 20-10-2000. Similarly, appraisal of Inspector General of Prisons, Pune, was taken as per letter dated 20.11.00.

5. The Petitioner was again released on furlough on 1st December, 2000 for thirty days, with extension for thirty days, however, has reported late by 516 days. It is seen that no punishment was ordered towards the delay of 516 days in the background that there was no remission available to the credit of the Petitioner, however, his name was permanently removed from eligibility of remission.

6. During oral submissions, learned Adv., for the Petitioner has argued that both punishments referred in paragraph No. 4 herein before are illegal on the grounds that:

[a] The approval of Deputy Inspector General of Prisons was not taken prior to passing of order of forfeiture, though the cut in remission is in excess of sixty days, as provided by Rule 25 of Chapter-27 of the Maharashtra Prisons Manual (1979).

[b] Date of approval is later to the date of approval by the Sessions Judge.

[c] Similar orders are set aside by Division Bench of this Court by the Judgment in case of Raju Natthuji Dhengre v. State of Maharashtra and Ors. 2009 ALL MR (Cri) 2652.

[d] After 2003, Petitioner was released on five occasions either on furlough or on parole. On all these occasions, he has returned to Jail on due dates, which exhibits that he has learnt a lesson and, therefore, cut in remission be set aside by taking a lenient view.

[e] If the cut in remission is not set aside, his imprisonment will be prolonged further for an indefinite period.

7. Considering facts of the matter, we are of the view that the failure to take prior approval of the Deputy Inspector General of Prisons is certainly an illegality. However, this Court cannot connive at the fact that the challenge to the order of cut in remission, which was done in 1994 and 1999 is agitated in the year 2007, i.e., belatedly by almost fourteen and nine years respectively. Moreover, the said challenge is made in the background of delayed reporting by 516 days in the year 2002.

8. Thus, the approach of the Petitioner towards the law and towards his obligation as to condition of furlough etc., is of total disrespect and callous. He

cares the least towards the conditions attached to the concessions granted to him, turns a blind eye to his conduct and habit and raises an issue belatedly as regards the illegality in passing the orders.

9. While the Petitioner wants that the Court should interfere when an illegality as is pointed out, he cannot expect one way traffic, namely he shall keep on violating the law, when it comes to his obligation, yet, he shall be entitled to argue that the Executive has not acted according to law.

10. We do not suggest that the Court is inclined to condone the illegality committed by the Executive. This Court would, however, refrain from interfering in the orders passed after a lapse of fourteen and nine years respectively, as the corrective action may not really result in corrective measure, but may result in granting an incentive to the failure in discharge of obligation on the part of delinquent prisoner.

11. We, therefore, decline to grant any indulgence in the facts of the matter. Authorities are, however, cautioned that they ought to maintain a strong vigil in adopting proper procedure as regards the prior approval.

12. In the result, we discharge the Rule.