
(1996) 09 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 8486-M of 1995

Mohinder Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Citation : (1996) 3 AICLR 859 : (1996) 3 RCR(Criminal) 616

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

Advocate : P.C. Chaudhary, Aparna Mahajan, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. The petitioner Mohinder Singh son of Rulia Ram, a life convict, undergoing imprisonment in Central Jail, Ambala has approached this Court under Section 482 of the Cr.P.C. and Articles 226 and 227 of the Constitution of India for quashing the impugned jail punishments dated 11.8.1987 (Annexure P1) and 1.2.1995 (Annexure P2) and for directing the respondents to pay Rs. 5,000/ as compensation.

2. The petitioner is undergoing imprisonment for life along with his four brothers in Central Jail Ambala since the date of their respective arrest. According to the petitioner all of them have undergone more than ten years" actual sentence of imprisonment besides earning remissions and are qualified and entitled to be released prematurely as per the Govt. Instructions. The petitioner claims that on a false report made by the Assistant Superintendent on 8.8.87, the Superintendent of Central Jail Ambala (R.3) issued a warning as per his order dated 11.8.1987 (Annexure P1) for an alleged jail offence of keeping Rs. 15/ with him (the petitioner) without any enquiry as required by Section 46 of the Prison Act.

3. On 29.1.1995, the Asstt. Superintendent had taken into possession certain articles and submitted his report to the Superintendent Jail for orders. On 30.1.1995, the Deputy Superintendent forwarded the report to the

Superintendent Jail with his remarks that the prisoner had violated para 606(2) of Punjab Jail Manual. On 1.2.1995, the Superintendent of Jail without holding any enquiry as envisaged under Section 46 of the Prisons Act passed an order (Annexure P.2) punishing the petitioner with a deduction of seven days' remission and forfeiture of all the articles mentioned in the report. This was done illegally and arbitrarily without affording any opportunity of being heard to the petitioner. The report and the jail punishment are contained in Annexure P.2. These jail punishments Annexures P.1 and P.2 are liable to be quashed since there was no enquiry before imposing the jail punishments upon the petitioner and since the petitioner was neither heard nor permitted to adduce the evidence, nor any witness was examined relating to the alleged jail offence. The judicial appraisal was not in accordance with law and the judgment of the Hon'ble Supreme Court. The petitioner was not summoned nor given any notice by the Sessions Judge before giving approval to the jail punishment. The petitioner was not heard by the Sessions Judge. The articles taken into possession as mentioned in P.2 from the pippas of all the five brothers are of daily use and necessity. All the articles are available for sale in the jail canteen and the petitioner and his brothers purchased many of them from the jail canteen for valuable consideration. None of these articles, which was taken into possession is either prohibited or injurious to the health of any human being. The Superintendent Jail has wrongly and illegally recorded in the impugned orders that the petitioner had admitted his mistake. Confession before an authority under whom the person is confined is no confession in the eye of law. The respondents have caused a loss of Rs. 5,000/ to the petitioner and his brothers by wrongly and illegally taking possession of their valuable articles of daily use. The petitioner and his brothers are, therefore, entitled to compensation for the articles wrongfully and illegally taken from them. The allegation that the articles were meant for sale is false. The articles recovered are not even sufficient for the five brothers confined in the jail.

4. The third respondent filed the following reply on behalf of all the three respondents : The petitioner committed the jail offence for which he was awarded punishment which has been duly appraised and approved by the Sessions Judge Ambala after summoning the petitioner in the Court and verifying the facts of the case (Annexure R.1). The punishment awarded to the petitioner on 11.8.1987 was in accordance with the rules, and it being only a warning has effect for three months.

5. The articles mentioned in the list of items contained in Annexure P.2 clearly show that the items recovered were not meant for personal use of the petitioner. The petitioner was involved in hoarding/storing the items for sale which is an offence within the meaning of provisions of Punjab Jail Manual. The facts of the case were duly verified and the petitioner himself admitted the facts. Hence the punishment awarded is in accordance with the Rules. The petitioner was given opportunity to defend himself, but he admitted the commission of the offence. The Assistant Superintendent himself recovered the items from the possession of

the petitioner in the presence of other prisoners. The case of the petitioner was then enquired into by the Dy. Superintendent and the punishment was awarded in accordance with the Punjab Jail Manual. 176 post cards, 123 inland letters, 55 packets of Raj Darbar Gutka were recovered, which cannot be termed as articles meant for personal use of the petitioner. These items were stored in contravention of the rules and the petitioner was rightly punished. Only two items, namely items 5 and 12 are available in the Jail Canteen and the rest of the items have been smuggled by the petitioner into jail illegally. The petitioner committed the jail offence in contravention of the provisions of the Punjab Jail Manual and was punished after making a proper enquiry. No case for invoking the extraordinary jurisdiction of this Court has been made out.

6. Even at the time of issuing of notice of motion, the same was confined only with regard to Annexure P.2, i.e., the order dated 1.2.1995 imposing the jail punishment on the petitioner, since the other jail punishment comprised in Annexure P.1 is of year 1987 which the petitioner has not questioned till 1995. The only question that will have to be considered is whether the jail punishment dated 1.2.1995 comprised in Annexure P.2 was not awarded in accordance with the provisions of law and the rules and is liable to be quashed.

7. I have heard the counsel for both the sides. Annexure P.2 contains the report by the Asstt. Superintendent made on 29.1.1995 wherein he has stated that on that day the search made disclosed that 14 items were kept by the prisoner in the tin. He has listed the items, according to which there were 176 post cards, 123 inland letters, 69 chhutki holy books, 78 chhutki Mithi, 4 packets of tobacco, 24 ball point refills, 15 packets of match box etc. The Asstt. Superintendent of Jail had stated that these items were being sold by the prisoner. The Deputy Superintendent on 30.1.1995 submitted the report to the Superintendent of Jail stating that the prisoner had violated para 606(2) of the Punjab Jail Manual. On 1.2.1995, the Superintendent Jail passed the following order :

"Convict is present. He admits his fault. Aforementioned 14 items have been recovered from this prisoner. He cannot keep them as per rules. He had kept them for sales to other prisoners illegally. He has committed jail offence. Taking lenient view I punish him with deduction of seven days remission. Out of the articles recovered from prisoners, the articles which are usable by other prisoners like post card, Inland, Neel, Topary, Dhoopbatti, refills of ball pen, Battery cells be kept in jail Canteen and others like tobacco, etc. be destroyed. Judicial appraisal be taken from the Sessions Judge Ambala."

8. The learned counsel for the petitioner contends that from this order it is obvious that the Superintendent Jail had not examined any witness and that the petitioner had not been given an opportunity to put forth his defence. He also contends that he Superintendent Jail had relied upon the alleged admission by the petitioner which cannot at all be relied upon. In paragraph 6(i) of this petition, the petitioner has specifically stated that the punishing authority did not hold any enquiry before awarding the punishment relating to the alleged jail

offence nor was any opportunity given to the petitioner. The petitioner has also alleged in paragraph 6(vi) that the alleged confessional statement has neither been recorded nor has it been substantiated by recording evidence. He has also alleged that the confession before an authority under whom the prisoner is confined is no confession in the eye of law. In reply to para 6(i), the Superintendent of Jail has merely stated that the petitioner was awarded punishment after due verification of the facts of the case and after giving the petitioner all the opportunity for his defence. It has further been stated that the petitioner has himself admitted the commission of the offence and that the Asstt. Superintendent himself has recovered these items from the possession of the petitioner in the presence of other prisoners. With regard to the alleged confession, the Superintendent of Jail has stated that it has been recorded in the history ticket which remains in the possession of the petitioner.

9. As rightly contended by the learned counsel for the petitioner, these contentions put forth by the respondents cannot at all be sustained. This Court in *Inderjit Singh v. State of Punjab and others*, 1982(2) CLR 129, has held after taking into consideration the provisions of Section 46 of the Prisons Act, 1894, that the enquiry under this section is of a quasijudicial nature and must be held according to the provisions of natural justice, and that before determining whether a prisoner has committed a prison offence, he has to be afforded an opportunity to refute the allegations made against him. It has been held as follows :

"It is implicit in this process that the delinquent convict is associated with the process of determination. The statements of witnesses conversant with the fact have to be recorded in the presence of the convict. Thereafter, he has to be given an opportunity of being heard so that he may refute the allegations made against him."

This decision clearly supports the contention of the petitioner that witness/ witnesses should have been examined before punishing a delinquent convict for a jail offence. Another decision of this Court in *Ravi Kumar v. State of Punjab*, 1990(1) RCR 678 holds that the enquiry officer has to follow the rules of natural justice and that the Asstt. Superintendent of Jail who allegedly recovered the prohibited articles should have been enquired. In *Devinderpal Singh v. State of Punjab*, 1991(1) RCR 179 it was held as follows:

"Only after examining the material witnesses and granting due opportunity to the petitioner to crossexamine such witnesses and after affording adequate opportunity to lead evidence in defence, as well as the right to be heard, the Superintendent, Central Jail, Ludhiana could legally conclude as to whether the petitioner had committed any jail offence or not."

10. In this case, as pointed out already, it is seen that the Superintendent Central Jail has proceeded to convict the petitioner herein on his alleged confession. He has not examined any witnesses in support of the charge levelled

against the petitioner. Therefore, it is clear that the conviction of the petitioner cannot be sustained.

11. So far as the confession is concerned, it does not appear to be a written confession. Even if there be any confession it does not appear that any evidence of the alleged confession was given. Even if the confession had been made only in the presence of the Superintendent Jail himself who conducted the enquiry, such a confession is useless and cannot be relied upon. In *Jagir Singh v. State of Haryana*, 1989(2) RCR 569 it was held that a confession by the prisoner before the jail officials is useless piece of paper on account of having been made to a person in authority inside the jail. So holding, the jail punishment was set aside.

12. Therefore, the petitioner could not have been convicted on the basis of the alleged admission of the guilt. So, the conviction of the petitioner for the jail offence and the sentence passed against him have to be set aside. But, I feel that in this case, where the petitioner was allegedly in possession of so many items of prohibited articles, the Superintendent Jail should be directed to hold the enquiry into these allegations against the petitioner by examining witness/ witnesses and affording an opportunity to the petitioner to defend himself not only by crossexamining the witnesses produced by the prosecution but also by leading evidence on his own side, and putting forth his case.

13. In the result, the petition is allowed in part setting aside the conviction of and the punishment given to the petitioner by order dated 1.2.1995 (Annexure P.2). However, the Superintendent of Jail concerned will hold an enquiry with regard to the allegations dated 29.1.1995 contained in Annexure P.2, in accordance with the provisions of law and in the light of the observations made above after giving due opportunity to the petitioner to put forth his case.

14. The petition is dismissed in so far as it relates to the conviction and punishment comprised in Annexure P.1.