
(1991) 09 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No.9083-M of 1991

Moti Lal

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Citation : (1992) 1 RCR(Criminal) 370

Hon'ble Judges : Jai Singh Sekhon, J

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

Judgement

Jai Singh Sekhon, J.

1. Moti Lal is undergoing imprisonment for life under the order dated 1131983 of learned Sessions Judge, Amritsar. He was released on furlough for two weeks on 1531991 and was required to surrender on 3031991 but. he surrendered on 451991. While surrendering after over staying the convict produced medical certificate issued by Guru Nanak Dev Hospital, Amritsar. showing that he remained admitted in the hospital from 2731991 to 1041991. The Superintendent Jail, vide his order dated 651991 came to the conclusion that the detenu has failed to explain the period of overstaying for atleast 15 days even if the medical certificate is taken to be true and imposed five days cut of remission for each day of delay. This order was got approved from the learned Sessions Judge, Amritsar.

2. Through this petition, the petitioner challenges the above referred order of Superintendent Central Jail, Amritsar. inter alia on the ground that no regular inquiry was held as envisaged by Section 8 of the e Punjab Good Conduct Prisoners (Temporary Release) Act and that the petitioner was not afforded sufficient opportunity to explain his absence. It was also maintained that the judicial appraisal granted by the learned Sessions Judge Amritsar was not an appraisal in the eye of law as the entire record was not forwarded to the said Court and no opportunity was afforded to the petitioner to explain his conduct before the Sessions Judge, Amritsar.

3. In return filed by Shri Gurcharan Singh, Superintendent Central Jail Amritsar, on behalf of the respondents it is maintained that no regular inquiry was called for as the detenu has not challenged that he had surrendered in the jail after the above referred overstay. It is also maintained that full opportunity was afforded to the detenu to explain his over stay period and that due judicial appraisal was taken from the concerned Sessions Judge.

4. I have heard the learned counsel for the parties besides perusing records.

5. Admittedly no regular inquiry was held in this case against the petitioner in order to afford the prisoner a sufficient opportunity to explain his misconduct although the provisions of Section 9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, do provide for affording reasonable opportunity of being heard to the prisoner before awarding the sentence by the Superintendent of the concerned jail in case the Prisoner fails to surrender on due date after the expiry of period of further or parole etc. The Superintendent Jail. in the return had tried to justify that no inquiry was called. for under the rules. Thus under the circumstances of this case it can be said that after the release of the prisoner from Guru Nanak Dev Hospital, Amritsar he may not still be feeling better due to indisposition.". Consequently, under the peculiar circumstances of this case the non affording of sufficient opportunity to the prisoner to explain his" misconduct for overstaying furlough period would vitiate the entire proceeding and result in quashing the sentence imposed by the Superintendent Central Jail, Amritsar.

6. The matter does not rest here as the order passed by the learned Sessions Judge, Amritsar reveals that he did not apply his mind to the facts and circumstances of the case. The order passed by the Sessions Judge, Amritsar, reads as under :

"On judicial appraisal only by the Punishment of. fifteen days cut in the earned remission awarded to the convict Moti Lal son of Shingara Ram is hereby approved."

7. This order does not reveal that the entire record was produced before the learned Sessions Judge, Amritsar, at that time or that the prisoner was heard by the concerned Judge before according the appraisal. In *Nirbhai Singh & ors. v. State of Punjab*, 1988(1) Recent CR 356 , Mr. Justice Ujjagar Singh of this Court held as under :

"So far as the appraisal by the learned Sessions Judge, vide his order dated 26/3/1987 is concerned the order passed on that date does not show that the petitioners were given an opportunity to bring to the notice of Sessions Judge the facts leading to the jail punishment and that they had no opportunity to point out the illegalities committed during the enquiry by the jail authorities. This order of judicial appraisal is quasi judicial order and that too passed by a Senior Judicial Officer of the Superior Judiciary of this High Court and. it is always expected that while judicially appraising the jail punishment a notice it required to be issued to the convicts to whom jail punishment is awarded for the ends of justice. If such

opportunity is given these matters can be decided satisfactorily at that level just by cursorily going through the punishment record."

8. Again in *Surat Singh v. State of Punjab*, 1990(1) Recent Cr 679 . I have taken the same view. Thus the order awarding punishment is also bad. in the eye of law due to nontaking of valid judicial appraisal as it could not be said that dictum of the Apex Court in *Sunil Batra's* case, AIR 1980 SC 1579, regarding the taking of prior judicial appraisal to the proposed sentence or at least immediately after imposing the sentence has been complied with.

9. For the reasons recorded above the impugned order imposing the out in the remission of sentence is hereby set aside by accepting this Petition.