
(2005) 09 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 27246-M of 2002

Rajbir

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 223, 224

Citation : (2005) 4 RCR(Criminal) 925

Hon'ble Judges : M.M. Aggarwal, J

Bench : Single Bench

Advocate : Jitin Talwar, for the Appellant; Dinesh Arora, Assistant Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

M.M. Aggarwal, J.—Petitioner Rajbir is confined in Central Jail, Hisar as a convict undergoing life imprisonment.

2. According to the Petitioner, he had protested against certain illegal acts of the jail authorities and therefore, jail authorities had become inimical towards him.

3. On 13.7.1998 convicts Baljit Singh and Dalshera had escaped from the small window of the main gate. The allegations against the present Petitioner were that he had come to the Deodi and conspired/helped these two convicts to escape. Then Superintendent Jail vide order dated 15.7.1998 had directed his entire leave earned by him to be forfeited. He was also directed to be confined in separate cell for a period of three months.

4. This petition had been filed to challenge this order dated 15.7.1998 and earlier order dated 12.3.1998. However, counsel for the Petitioner did not press the prayer as far as order dated 12.3.1998 is concerned but had argued that case/ FIR No. 662 of 1998 had been registered at Police Station City Karnal under Sections 223, 224, 225/332, 353/34 IPC and Petitioner was being tried in that case. That when a criminal case had been got registered against Petitioner and

he had been sent for trial, then no other punishment could be inflicted since it will amount to double jeopardy and that order excluding him from remission system, could not be made.

5. Reply on behalf of the State had been filed in which it was admitted that case FIR No. 662 of 1998 had been registered at Police Station City Karnal and case is pending trial in the Court of Chief Judicial Magistrate, Karnal. It was pleaded that punishment awarded by the Superintendent Jail had been got judicially appraised from the Sessions Judge, Karnal vide office letter dated 8.9.1998. It was pleaded that punishment had also been confirmed by the Director General of Prisons, Haryana, vide his letter dated 8.7.1998.

6. As per Section 45(16) of the Prisons Act, conspiring to escape, or to assist in escaping, or to commit any other of the offences, is prison offence. Section 52 of the Prisons Act provides that no person shall be punished twice for the same offence.

Para 611 of Punjab Jail Manual, as applicable to Haryana, provides as under:

611. Powers of Superintendent - It shall be in the discretion of the Superintendent to determine with respect to any other act which constitutes both a prison offence and an offence under the Indian Penal Code, whether he will use his own powers of punishment or move the Magistrate exercising jurisdiction to enquire into in accordance with Code of Criminal Procedure.

Para 613 provides as under:

613. Loss of privileges under the remission system -

For a prison offence any one of the following punishments involving loss of privileges admissible under the remission system may be awarded:

- (a) Forfeiture of remission earned;
- (b) Temporary forfeiture of class, grade or prison privileges;
- (c) Temporary or permanent reduction from a higher to a lower class or grade;
- (d) Temporary or permanent exclusion from the remission system;

provided that -

No order directing the forfeiture of remission in excess of twelve days or the exclusion of a prisoner from the remission system for a period exceeding three months shall take effect without the previous sanction of the Inspector General.

7. Hon''ble Supreme Court in judgment reported as State of Haryana Vs. Ghaseeta Ram, , in a similar case, has upheld judgment of the High Court whereby order of the Superintendent Jail imposing punishment of forfeiture of remissions and permanently removing from the system of earning remissions has been set aside. Hon''ble Supreme Court had held that where the Superintendent

of Jail had inflicted punishment then the prisoner cannot be forwarded to the Magistrate for trial and cannot be punished for the same offence twice in view of proviso to Section 52 of the Prisons Act and para 627 of the Jail Manual. Hon''ble Supreme Court had also held that order of cancellation of remissions as per para 633-A of the Jail Manual, could be made only after a person was convicted and not before.

8. In the present case, it is admitted that Superintendent Jail had chosen to send the Petitioner to trial before the Magistrate exercising jurisdiction for offences. He has not yet been convicted. The trial is pending. In these circumstances, an order cancelling remissions could not be made till Petitioner was convicted.

9. Under these circumstances, this petition is allowed. Order of Superintendent Jail dated 15.7.1998 is set aside.

Petition allowed.