
(1997) 10 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4654-M of 1997

Rajbir

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Citation : (1998) 1 RCR(Criminal) 230

Hon'ble Judges : M.L.Singhal, J

Advocate : Gobind Dhanda, S.S. Rana, Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. This is a criminal misc. petition No. 4654M of 1997 under Section 482 of the Code of Criminal Procedure read with Articles 226/227 of the Constitution of India by Rajbir whereby he has prayed that imposition of jail punishment upon him vide orders Annexure P1 and P2 be quashed as they violate the principle of double jeopardy and vexation twice over for the same offence. The facts which have given rise to the filing of this criminal misc. petition may be noticed.

2. The petitioner was undergoing imprisonment of life passed upon him by the Sessions Judge, Rohtak vide order dated 15.6.1990 for the commission of murder. He was released on parole for a period of 6 weeks under Section 3(1)(c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

3. He went out of jail on parole on 20.5.1993 and was directed to surrender before the jail authority at Jail gate on 2.7.1993 after the expiry of the period of parole. It is averred that he could not surrender at the gate of the Jail on 2.7.1993 as he fell ill. He overstayed for a period of one month and 25 days and surrendered at the gate of jail on 26.8.1993. In support of his illness he produced medical certificate. Without considering that medical certificate, Superintendent, District Jail, Rohtak (respondent No. 2) got a case registered against him vide FIR No. 53 of 1989 under Section 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 at Police Station, Civil Lines,

Rohtak. He was tried for the said offence and ultimately he was convicted and sentenced to pay a fine of Rs. 1000/ or in default of payment of fine to undergo simple imprisonment for a period of one month by the Additional Chief Judicial Magistrate, Rohtak vide order dated 13.11.1995 (Annexure P1) on account of the aforesaid default. Vide order Annexure P2 he was transferred to Central Jail, Ambala from the District Jail, Rohtak and was deprived of availing parole for a period of one year. He was deprived of earning three annual good conduct remissions which are granted to the prisoners after three years under the provisions of the Punjab Jail Manual. He was also deprived of two weeks furlough which is granted under Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. Thus in this way for the same default/offence, petitioner has been awarded 5 punishments and has been deprived of certain benefits. Action of the respondents in awarding different punishments for the same default/offence and depriving him of certain benefits is illegal, arbitrary, discriminatory and offending the provisions of the Constitution of India and the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. He surrendered at the jail gate of his own and produced medical certificate indicating his helplessness in surrendering on the appointed date after the expiry of the period of the parole, which was not considered. He has undergone about 8 years actual sentence including detention as an undertrial. His conduct and behaviour has been good and orderly during the period both inside jail as well as outside jail and while on parole/furlough free from commission of any jail offence. No enquiry was held for determining the guilt of the accused as envisaged under Section 46 of the Prisons Act, 1894 and paragraph 83 of the Punjab Jail Manual which is mandatory before awarding jail punishment. In this case punishing authority did not conduct any enquiry, not even statement of single witness was recorded. The order of punishment Annexure P1 is thus void. The proceedings under Section 46 of the Prisons Act, 1894 are quasijudicial in nature and required to be conducted in meticulous compliance with the principles of natural justice. No enquiry was held, what to talk of examining the witnesses and providing an opportunity of being heard to the petitioner for defending himself and to cross examining the witnesses. The report made was false and a mere paper transaction. Jail punishment is liable to be quashed. No judicial appraisal was obtained from the Sessions Judge though obtaining judicial appraisal is a must and jail punishment without proper judicial appraisal is a nullity. If respondents had obtained judicial appraisal that was only a formality. Before granting judicial appraisal the Sessions Judge did not summon him for being heard. The respondents did not provide him any order showing judicial appraisal despite requests to them in this behalf. On merits also the very allegation was without any basis. No witness was examined by the punishing authority to support the charge against him.

4. Respondents opposed this criminal misc. petition urging that case under Sections 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which was registered against the petitioner for overstaying after the expiry

of the period of parole was for nonbailable and cognizable offence. He was tried for this offence by the Additional Chief Judicial Magistrate, Rohtak who sentenced him to pay a fine of Rs. 1000/ or in default of payment of fine to undergo simple imprisonment for two months for the said offence. The grant of parole to a prisoner is not initiated for one year after a major offence and punishment thereto as parole is only a concession in lieu of good conduct which is watched for one year as is implicit in the provisions of the said Act. As per paras 637 and 639 of the Punjab Jail Manual, the annual good conduct remission is granted to a prisoner after one year of the date of punishment. The remission period for annual good conduct remission starts from the first day of the month following the date of sentence or the date on which he was last punished for a prison offence. The petitioner was not granted annual good conduct remission under para 639 of the Punjab Jail Manual which was not by way of punishment. Transfer of a prisoner to any other jail in Haryana is not punishment as per paras 612 and 613 of the Punjab Jail Manual.

5. Sections 8 and 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 read as under :

Section 8 :

"(1) On the expiry of the period for which a prisoner is released under this Act, he shall surrender himself to the Superintendent of the Jail from which he was released.

(2) If a prisoner does not surrender himself as required by sub section (1) within a period of ten days from the date on which he should have so surrendered, he may be arrested by any Police Officer or Prison Officer without a warrant and shall be delivered over to the officer incharge of the prison from which he was released to undergo the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered, but fails to satisfy the Superintendent of the Jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for which he was released, all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of the Jail, namely :

(a) a minimum cut of five days remission for each day of overstay;

(b) stoppage of canteen concession for a maximum period of one month;

(c) withholding concession of either interviews or letters or both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards his sentence;

(e) warning;

(f) reduction from higher to a lower class or grade".

Section 9 :

"(1) Any prisoner who is liable to be arrested under subsection (2) of Section 8, shall be punishable with imprisonment of either description which may extend to three years and with fine.

(2) An offence punishable under subsection (1) shall be deemed to be cognizable and noncognizable.

Explanation The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for which he was convicted."

6. It is thus clear that Section 9 constitutes criminal offence for which the petitioner was dealt with by the Additional Chief Judicial Magistrate, Rohtak. He was tried, convicted and sentenced by him. Petitioner's overstaying after the expiry of the period of parole is a jail offence provided in the Punjab Jail Manual. He was ordered to be transferred from District Jail, Rohtak to the Central Jail, Ambala for his failure to surrender in time after his parole period was over. It was ordered that he should not be granted parole of any kind for a period of one year on account of this default. It was submitted by the learned counsel for the petitioner that the petitioner could not have been awarded five punishments for the same offence. His overstaying after the expiry of period of parole was punished by the Additional Chief Judicial Magistrate, Rohtak under Section 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. That should have been end of the matter. It was submitted that if the Superintendent of Jail was to award any jail punishment, he could have done so only after affording proper opportunity to him to defend himself. In support of this submission he drew my attention to *Saudagar Singh v. State of Punjab*, 1990(1) Recent Criminal Reports 680 . It was further submitted that he (Superintendent of Jail) ought to have obtained judicial appraisal to the jail punishment imposed by him upon the petitioner from the learned Sessions Judge. In support of this submission he drew my attention to *Satpal v. State of Punjab and others*, 1993(2) Recent Criminal Reports, 529.

7. Section 45 of the Prisons Act, 1894 has specified following acts to be prison offences :

"(1) Such wilful disobedience to any regulation of the prison as shall have been declared by rules made under Section 59 to be a prison offence;

(2) any assault or use of criminal force;

(3) the use of insulting or threatening language;

(4) immoral or indecent or disorderly behaviour.

(5) xxx xxx

(6) xxx xxx

(7) xxx xxx

(8) xxx xxx

(9) xxx xxx

(10) xxx xxx

(11 to 16) xxx xxx"

8. The overstayal after the expiry of the period of parole does not come within the ambit of Section 45 of the Prisons Act, 1894. Section 46 of the Prisons Act, reads as follows :

"Punishment of such offences :

The Superintendent may examine any person touching any such offence and determine thereupon and punish such offence by

(1) a formal warning;

(Explanation : A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment book and on the prisoner's historyticket;

(2) change of labour to some more irksome or severe form for such period as may be prescribed by rules made by the State Government.

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government;

(5) xxx xxx

(6) xxx xxx

(7) xxx xxx

(8) xxx xxx

(9) xxx xxx

(10 to 12) xxx xxx".

9. It is, thus, clear that shifting of the petitioner from District Jail, Rohtak to Central Jail, Ambala is not jail punishment. Similarly, depriving him of annual good conduct remissions which are granted to the prisoners under the provisions of Punjab Jail Manual after 3 years is not jail punishment. Depriving him of two weeks, furlough which is granted under Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is also not jail punishment. It would bear repetition that these are merely concessions which are granted to prisoners for maintaining orderly behaviour in jail or when he is on parole/furlough outside

jail.

10. In my opinion, it would be misnomer to treat the nonconferment of the aforesaid benefits on the petitioner as imposition of jail punishments. If these are not jail punishments, no judicial appraisal was required from the learned Sessions Judge.

11. In my opinion, there was nothing wrong in the imposition of this jail punishment. Furlough is granted to a prisoner for having maintained orderly behaviour and conduct while in jail free from commission of jail offence. Two weeks furlough is granted under Section 4 of the said Act. I do not see anything bad if the Jail Authorities order that no furlough should be granted to him because of this default. I do not see anything bad if the Jail Authorities order that he shall not be allowed three annual good conduct remissions which are granted to the prisoners after three years under the provisions of Punjab Jail Manual after three years. Jail punishments are awarded to a prisoner who has violated jail discipline. Parole is granted to a prisoner by way of concession for good conduct. Similarly furlough is granted to a prisoner for good conduct. In fact, these are concessions and not punishments, which were denied to him. It would be a misnomer to label the denial of these concessions as jail punishments. In this context, it is useful to reproduce here the provisions of para 639 of the Punjab Jail Manual, which reads as under :

Para 639

"Remission for good conduct (1) A prisoner eligible for remission under these rules, who for a period one year reckoned from the first day of the month following the date of his sentence or the date on which he was last punished for a prisonoffence, has committed no prisonoffence whatever, shall be awarded fifteen days ordinary remission in addition to any other remission earned under these rules. (Resol. No. G. of I. 161172 dated 25.6.1930).

(2) If, however, a prisoner completes three years of his sentence and is not punished during that period for any prison offence, he shall be granted 60 days" remission for good conduct at the end of the third year. In such cases the prisoner shall in addition be granted 15 days good conduct remission for each of the first two years only. The total remission earned shall not in any case exceed the maximum remission permissible under the rules, (G. of I Notn. No. F. 503222 dated 20.10.1923)

Explanation. For the purposes of this rule prison offences punished only with a warning shall not be taken into account."

For the reasons given above, this criminal misc. petition fails and is dismissed.