
(1990) 08 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1474 of 1990

Raunak Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 29-08-1990

Acts Referred:

Citation : (1990) 2 AICLR 663 : (1991) 1 RCR(Criminal) 466

Hon'ble Judges : J.S.Sekhon, J

Advocate : Ambala., Sewa Singh, Advocates for appearing Parties

Judgement

J. S. Sekhon, J.

1. This order will dispose of this Writ Petition as well as Cr. W. P. No. 1315M of 1990 as those arise out of the same impugned order of jail punishment and relate to the same transaction.

2. Through these writ petitions, Rauank Ram and Dhir Singh petitioners had sought quashment of the order dated 731990 of the Superintendent, Central Jail, Ambala, inter alia, on the ground that proper procedure prescribed under Sections 45 and 46 of the Prisons Act, 1894 was not followed as no effective opportunity was given to the prisoners to defend themselves. It is also averred that the concerned Superintendent Jail had passed the order in a mechanical manner without application of mind. It is further averred that the concurrence of the concerned Sessions Judge to the punishment was not obtained and the petitioners had not received any notice from the Sessions Judge, Ambala before appraising the punishment.

3. In the returns filed by the Superintendent, Central Jail Ambala. It is maintained that the petitioners were rightly punished for negligence of their duties as lambardarwatchmen posted in Cell Block No. 36 on 6.6.1990 and that the punishments were awarded under para 381D of the Punjab Jail Manual and that the prisoners were duly associated with the enquiry which was conducted after following the due procedure. It is also maintained that the petitioners were

given full opportunity to cross-examine the witnesses and judicial appraisal from the learned Sessions Judge, Ambala was obtained vide endorsement dated 731990. The order of the learned Sessions Judge has been appended to the return as Annexure R. 1.

4. As none has put in appearance on behalf of the parties, I have carefully gone through the record of the case and the original file produced by, Shri Sewa Singh, Assistant Superintendent, Central Jail, Ambala. I have also heard Shri Sewa Singh on behalf of the respondents. A verbatim English translation of the original proceedings conducted by the Senior Assistant Superintendent Jail, Dy. Supdt. Jail on 631990, and the Superintendent Jail on 731990 read as under :

"6.3.1990

On 331990 a search was carried out on the extremists confined in Cell numbers 36 and 32. In the search some small saws (Kattans) were found from the extremists confined in Cell No. 36. On investigations, it has been found that the possession of these articles with the extremists is illegal and against rules and the responsibility lies on Nambardar Dheer Chohan s/o Niadar watchman for all the 24 hours in Block No. 1 of Cell No. 36. Had this nambardar discharged his duties with alertness then the Kattans would not have reached the extremists, because except for this nambardar, no other prisoner is allowed to go in the block and the watchmen are not allowed to go anywhere leaving their place of duty. From this, it is proved that these Kattans were brought by this watchman and he did not perform his duties with responsibility. Therefore this watchman is guilty as per provisions of para, 38 1 (a) of the Punjab Jail Manual and deserves to be punished.

Submitted for orders.

Sd/

Asstt. Supdt.

631990.

Convict Nambardar is present. He is liable for punishment under para 381(a) 608 (12) of the P.J.M.

Submitted for orders.

Sd/.

Deputy Superintendent.

7319

90 Convict Nambardar was found guilty. The prisoner was heard and he has no proof for his defence. He is punished for a cut in remission for 10 days. The case be got judicially appraised.

Sd/

Superintendent."

To the same effect are the proceedings conducted by the Senior Assistant Superintendent Jail, Deputy Superintendent Jail on 631990 and the Superintendent Jail on 731990, in the case of Raunaq Ram petitioner.

5. A bare glance through the same leaves no doubt that the contention of the respondents in the return that the prisoners were given full opportunity to cross examine the witnesses is not supported from the enquiry conducted by the above referred officials. The recording of evidence of the witnesses does not figure in the enquiry file. On the other hand, the person who maintains the Duty Roster of the prisoners lambardars/watchmen was supposed to have been examined by the Superintendent Jail in order to establish that Raunaq Ram petitioner alongwith Dhir Singh petitioner, another watchmen remained on duty in this cell for 24 hours continuously. On the face of it, it looks absurd that watchmen would remain on duty for 24 hours as they must be having rest and some time for relaxing and sleeping. There is no indication from the enquiry file regarding the actual hours during which these petitioners remained on duty on the concerned cell. The allegations against the petitioners are that they had neglected their duty, inasmuch as they had allowed the handing over of some kattans to the extremists detained in the said cell. There is no indication from this enquiry file whether any of these extremists during those days had met their relations although the interview register alongwith the concerned officer could have been examined in order to rule out the said possibility. Consequently, it appears that the Superintendent, Central Jail, Ambala had not only not followed the procedure laid down under Sections 45 and 46 of the Prisons Act, but also had held the petitioners guilty and awarded punishment of ten days cut in remissions on mere conjectures. The matter does not rest here as the learned Sessions Judge, Ambala had not applied his mind to the facts and circumstances of the case and had not passed a speaking order while according approval to the punishments awarded to the petitioners. The order of the, learned Sessions Judge according approval to the punishment reads as under :

"Returned in original to the Superintendent, Central Jail, Ambala with the remarks that the Judicial appraisal sought for is hereby accorded."

6. A bare glance through the same does not give an oblique indication that the learned Sessions Judge had gone through the facts and circumstances of the case and that he had accorded the appraisal after full application of mind. It was held by this Court in *Surat Singh v. State of Punjab*, 1990(1) Recent Criminal Reports 679 that the Sessions Judge is required to apply his mind to the facts and circumstances of the case and pass a speaking order regarding the proposed punishment awarded to a prisoner.

7. Consequently for the abovereferred reasons, the impugned orders of the Superintendent Jail are quashed by accepting these petitions. The referred jail

punishments shall no longer be an impediment for the consideration of the case for parole/furlough or premature release on mercy petition of the petitioners.

8. The original record has been returned to Shri Sewa Singh, Superintendent, Central Jail, Ambala.

JUDGMENT accordingly.