
(1990) 01 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 3928 of 1989

Ravi Kumar@ Bittu

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-01-1990

Acts Referred:

Citation : (1990) 1 CurLJ 515 : (1990) 1 RCR(Criminal) 678

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : Rozy A Singh, V.K. Jindal, Advocates for appearing Parties

Judgement

Jai Singh, Sekhon, J.(Oral)

1. The petitioner is undergoing imprisonment for life in a murder case and being confined in Central Jail, Jalandhar, and while being so confined in Borstal Jail, Faridkot, he was allegedly found in possession of IS intoxicant tablets by Assistant Superintendent of the said Jail on 2661983. The Assistant Superintendent, Jail, reported the matter to the Deputy Superintendent who directed him to keep the petitioner in segregation ward till orders of the Jail Superintendent. The Jail Superintendent awarded punishment in the shape of 12 days" cut in the period of remissions vide his order dated 171983. Feeling aggrieved against the same, he has invoked the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India contending that the punishment was awarded to the petitioner by the Superintendent, Jail, without holding any regular enquiry or complying with the provisions of natural justice and without affording the prisoner any opportunity to defend himself. It is also maintained that the Jail punishment awarded in 1983 should not operate as an impediment after a lapse of so many years in considering the case of premature release of the petitioner.

2. In the return filed by the Superintendent. District Jail, Faridkot, it is maintained that the petitioner was given full opportunity to defend his case but he failed to explain the possession of the intoxicant tablets. It is further maintained that the petitioner confessed his guilt before the Enquiry Officer and

thus was rightly convicted and sentenced under Sections 45 and 46 of the Prisons Act. A copy of proceedings of the said enquiry has also been appended as Annexure R1.

3. The contention of Miss Rozy A. Singh, Advocate, appearing on behalf of the respondent State that the lapse on the part of the petitioner in approaching this Court after a number of years is itself sufficient to dismiss the writ petition is not acceptable as the impugned order is void ab initio. As a matter of fact, this order has no legal entity or sanctity in the eyes of law. The Superintendent, Jail, had not held the enquiry as envisaged under the provisions of Section 46 of the Prisons Act. No doubt no specific mode of enquiry is provided in awarding jail punishment, yet all the same the Enquiry Officer was required to follow the rules of natural justice while holding such enquiry, which in turn implies that he should have made enquiries from the Assistant Superintendent, Jail, as the latter had recovered 15 intoxicant tablets from the personal search of the petitioner in the presence of prisoner. In that case, it could only be said that the petitioner was given full opportunity to defend himself. The matter does not rest here as in the impugned order Annexure R1, the Superintendent, Jail, has not specifically mentioned about the alleged confession of prisoner before him but strange enough in the return filed by the Superintendent, it is so alleged. This circumstance further reveals the excessive zeal of the Superintendent, Jail, to cover up the infirmities in the impugned order passed by him.

4. The matter is not *res integra* as earlier also a similar controversy came under the scrutiny of the Single Bench of this Court in *Inderjit Singh v. State of Punjab*, 1982 (Vol. 2) CLR 129, wherein after elaborate discussion and placing reliance on the Division Bench decision of the Bombay High Court in *Danial H. Walcott J. Prisoner at Central Prison v. Jail Superintendent, Central Prison*, 1972(1) Cr. LJ 673, it was held that while holding such enquiry the Superintendent Jail, should associate the prisoner with recording the statements of the witnesses and should afford him effective opportunity to defend himself.

5. For the foregoing reasons, the impugned order of punishment Annexure R1 is ordered to be quashed by accepting this writ petition to the extent indicated above.