

(2009) 08 GUJ CK 0043

In the Gujarat High Court

Case No : Special Criminal Application No. 1177 of 2009

Sanjay @ Shivo Babulal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Constitution of India, 1950 — Article 20
Prisons Act, 1894 — Section 48A, 52

Citation : (2009) 3 GLH 762

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Trusha Patel, APP, for the Respondent

Judgement

D.H. Waghela, J.—The petitioner has approached this Court, through jail, for raising his grievance against three consequences, which followed his not returning to jail after being released on furlough. In peculiar facts of the case and in view of legal issue involved, learned Counsel, Mr.Ekant Ahuja was requested to assist the Court as an amicus curiae. There is no dispute about the fact that after being released on furlough for 15 days on 14.5.2007, the petitioner had not returned to jail in time and absconded for 177 days till he was caught by the police and brought to jail. Pursuant to that offence, he was served with a charge-sheet dated 19.12.2007 in terms of Clause 1277 of the Jail Manual, and after giving to him an opportunity of being heard, he was punished by order dated 1.1.2008 with forfeiture of two furloughs as well as forfeiture of the amount of surety bond. Thereafter, on the same facts and for the same offence, criminal case No.312 of 2009 was initiated in the Court of learned Metropolitan Magistrate, Ahmedabad, wherein, the petitioner having pleaded guilty, he was convicted and sentenced to fine of Rs.400/- and imprisonment till rising of the Court, and in default, to undergo simple imprisonment for two months.

2. Learned Counsel, Mr.Ahuja pointed out that while first punishment by the jail

authorities was inflicted under the provisions of Section 48-A of the Prisons Act, 1894, as applicable in the State of Gujarat, other punishment by the Court was inflicted upon the petitioner under the provisions of Section 51-B of the same Act. Relying upon the judgment of the Supreme Court in *State of Haryana Vs. Ghaseeta Ram*, it was submitted that a person cannot be punished for the same offence twice, once by the jail superintendent, and second time by the trial Court, on his conviction for the same offence. Learned APP submitted that ratio of the aforesaid judgment could not strictly apply in the facts of the present case insofar as relevant paragraphs of the Jail Manual were different and the proviso as found in Section 52 of the Prisons Act was not added to the provisions of Section 51-B of the Act. It was, on that basis, vehemently argued by learned APP that both the proceedings, one u/s 48-A. empowering the Superintendent to punish, and complaint u/s 51-B for fixing of criminal liability of the convict for further punishment were permissible and co-existing in the statute, by virtue of the State Amendments, which were operating in Gujarat.

3. It could be seen from plain reading of the provisions of Section 48-A and Section 51-B of the Prisons Act, that failure to observe, without sufficient cause, any of the conditions on which sentence of a prisoner is suspended or remitted or furlough is granted, is the gravamen of the offence attracting punishment. Major differences between the provisions of Section 48-A and 51-B are that the authority imposing punishment in case of Section 48-A is the Superintendent and the punishments are different; whereas provisions of Section 51-B require trial before a Court, after previous sanction of the State Government, and on conviction the punishment could extend to imprisonment for two years and fine upto Rs. 1.000/-. It appears from comparison of provisions of both the Sections that jail authorities may exercise its limited jurisdiction to punish the prisoner u/s 48-A or, in a given case, launch prosecution after obtaining sanction of the Government for more severe punishment. However, even in absence of any express provision, fundamental and inalienable right of a citizen, not to be punished twice for the same offence as enshrined in Article 20 of the Constitution, cannot be taken away or abrogated merely by absence of an express provision in the special statute. It is observed by the Supreme Court in *State of Haryana v. Ghaseeta Ram* (supra) thus:

"12. From an analysis of the provisions of the Prisons Act and the Manual (supra) it follows that where the offence, which is both a prison offence and an offence under the Indian Penal Code, or is otherwise a heinous offence, and is committed by the prisoner after his admission to jail, for which the Superintendent of Jail can impose punishment, which in his option is adequate for the said offence, he may proceed to impose the punishment on the prisoner under the Prisons Act and the Manual by following the procedure prescribed therein. But where he is of the opinion that adequate punishment cannot be inflicted by him, as his powers to award punishment in that behalf is limited by the Act or the Manual, he shall forward the prisoner to the competent Court having jurisdiction to try the offence. Where the Superintendent of Jail, has inflicted punishment, which in his

opinion was adequate punishment for the offence, then the prisoner cannot also be forwarded to the Magistrate for trial and be punished for the same offence twice in view of the bar contained in the 2nd Proviso to Section 52 of the Prisons Act and Para 627 of the Manual."

In the peculiar facts of the present case, after calling for Record and Proceedings of the Criminal Case No.312 of 2009, it was also seen that the prosecution was launched without an express sanction of the Government, which is a condition precedent for taking cognizance by the Court. Therefore, subsequent proceedings of that Criminal Case and the order made therein are liable to be quashed on both the grounds. Therefore, the punishment imposed pursuant to proceedings of Criminal Case No.312 of 2009 shall not operate and amount, if any, paid by way of fine pursuant to that order by the petitioner shall be refunded. The valuable assistance rendered by learned Counsel, Mr.Ahuja as amicus curiae has to be appreciated, particularly, in a case where the prisoner could neither plead his own case nor afford proper legal aid.