
(1993) 05 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 3548-M of 1991 and Criminal Miscellaneous No. 11548 of 1992 (O&M)

Satpal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 11-05-1993

Acts Referred:

Citation : (1993) 2 AICLR 803 : (1993) 2 RCR(Criminal) 529

Hon'ble Judges : A.S.Nehra, J

Advocate : Ajay Johar, V.K. Jindal, Advocates for appearing Parties

Judgement

A.S. Nehra, J.

1. Satpal petitioner has filed this petition under Section 482, Code of Criminal Procedure read with Articles 226/227 of the Constitution of India for quashing the order dated 31.1.1991 passed by the Superintendent, Central Jail, Amritsar, by which the penalty of cut of 125 days of earned remission was proposed and the award of penalty was entered in the history sheet of the petitioner. The case of the petitioner for judicial appraisal was submitted to the Sessions Judge, Amritsar on 31.1.1991. The Sessions Judge, Amritsar, on judicial appraisal, vide his order dated 2.2.1991, approved the punishment of 25 days cut in the earned remission awarded to the petitioner and this judicial appraisal by the learned Sessions Judge, Amritsar, was conveyed to the Superintendent, Central Jail, Amritsar.

The sole argument advanced before me by the learned counsel for the petitioner is that, after having come to the conclusion that the petitioner had overstayed the period of temporary release by 25 days the Superintendent Jail had no jurisdiction to impose penalty under subsection (3) of Section 8 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter called as the Act) and the only course available to him was to lodge a complaint under Section 9 of the Act before a Court of competent jurisdiction.

2. In order to appreciate the above argument, it is expedient to examine the provisions of Sections 8 and 9 of the Act as also of rule 7 of the Punjab Good Conduct Prisoners (Temporary Release) Rules 1963, which are reproduced below for ready reference :

Section 8.

8. Liability of prisoners to surrender on expiry of release period and consequences of overstaying (1) On the expiry of the period for which a prisoner is released under this Act, he shall surrender himself to the Superintendent of Jail from which he was released.

2. If a prisoner does not surrender himself as required by Subsection (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 without a warrant and shall be remanded 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 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 reasonable opportunity of being heard, be awarded to him by the Superintendent of Jail namely;

- (a) A maximum "cut of five days" remission for each day of overstay;
- (b) Topping of canteen concession for a maximum period of one month;
- (c) Withholding concession of either interviews by 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 the status and grade of "Convict Watch man" or "Convict Overseer".

Section 96.

9. Penalty for failure to surrender Any prisoner who is liable to be arrested under subsection (2) of Section 8, should be punishable with imprisonment of either description which may extend to two years or with fine or with both;

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

Rule 7

7. Prisoner to be informed of the date of surrender and consequences of failure

thereof. Sections 8 and 10(2) (d) 1. Before a prisoner is allowed to leave the Jail on temporary release under the Act, he shall be informed by the Superintendent of Jail personally, about the date on which he has to surrender himself to the jail and if the consequences of his failure to do so, as provided in Sections 8 and 9 of the Act.

2. The Superintendent of Jail shall, on the failure of a prisoner released temporarily under the Act, to surrender on due date intimate the fact to the Superintendent of Police of the district concerned and the officer in charge of the Police Station within whose jurisdiction the place of residence of the prisoner during his temporary release is situated, who would take necessary action against the prisoner in accordance with the provisions of the Act.

3. The analytical examination of the abovesaid provisions shows that in view of the fact that the petitioner was arrested after the expiry of a period of more than ten days from the date on which he should have so surrendered, his case would fall under the provisions of subsection (2) of Section 8 of the Act. The Superintendent of Jail was bound to inform the Police authorities as required under sub rule (2) of Rule 7 and he had no jurisdiction to proceed against the petitioner under subsection (3) of Section 8 of the Act. This aspect of the matter seems to have escaped notice of the Sessions Judge also.

4. In view of the above legal position, the impugned order dated 3111991 passed by the Superintendent, Central Jail, Amritsar, and also the order dated 221991 passed by the Sessions Judge, Amritsar, are not sustainable in the eyes of law, which are hereby set aside. The Superintendent, Central Jail, Amritsar, is directed to inform the police authorities as required under subrule 1(2) of Rule 7 of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963.

5. This petition is disposed of as indicated above.