
(1990) 08 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 631 of 1990

Sewa Singh

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 20-08-1990

Acts Referred:

Citation : (1991) 1 AICLR 401 : (1990) 2 RCR(Criminal) 623

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : Sh. B. S. Bhaur, Advocates for appearing Parties

Judgement

Jai Singh Sekhon, J.

1. The petitioner was awarded some jail punishments by the Superintendent Jail vide orders dated 231984 and 14.2.1988 under Sections 45 and 46 of the Prisons Act for certain misconducts in jail while undergoing life imprisonment. The petitioner has challenged the legality of those orders mainly on the ground that the proper procedure as provided. under Section 46 of the Act has not been followed, inasmuch as the enquiry was conducted by the Deputy Superintendent/ Assistant Superintendent, Jail whereas Section 46 of the Act envisages enquiry by the Jail Superintendent. It is also averred that the alleged confession by the petitioner before the concerned authority is not admissible in evidence in view of section 24 of the Indian Evidence Act.

2. The relevant portion of the order of the Superintendent fail in the case of sentence awarded on 231984 reads as under :

The prisoner is present. He has been given chance to prove himself innocent in this case. But his offence is proved according to his voluntary written statement. He is awarded the below noted punishment.

(i) Six days earned remission is cut.

(ii) To be kept separate under para 575 of the Punjab Jail Manual. The decision is announced".

The order of punishment passed by the Superintendent Jail on 931988 reads as under :

"Prisoner Sewa Singh is present. He has confessed before me that he is indulging in the sale of capsules in collusion with pharmacist Satpal for the last two months. The sale proceeds of these capsules would be distributed amongst the prisoner and pharmacist Satpal on fifty fifty basis. Sh. Satpal pharmacist used to arrange to supply of these Proxivin to the prisoner and the prisoner used to sell 3040 capsules daily. According to the statement of the prisoner, he used to give Rs. 250/ to Babu Satpal every week and the sale proceed in the form of coupons received from the prisoners were distributed by them on fiftyfifty basis.

Undertrial prisoner Tarsem Singh has stated that many times Babu Satpal supplied capsules to him also and he sold these capsules on his own and also he gave some capsules to prisoner Sewa Singh for sale. Babu Satpal has admitted in his statement that he used to bring these capsules for sale and on 1221988 he was caught redhanded at the main gate while smuggling the capsules in the jail. Head Warder Ajmer Singh has stated that on receipt of information he conducted the search of prisoner Sewa Singh. As a result of this search Rs. 801/ in cash and coupons worth Rs. 86/ (which did not belong to him) and 8 Proxivin capsules were recovered from the prisoner. The prisoner had committed jail offence by indulging in illegal sale of capsules in the jail in collusion with pharmacist Sat Pal. He has also committed offence by keeping cash amount in his possession and by keeping coupons and by selling capsules. The prisoner was afforded full opportunity to defend himself, but he did not produce any defence. Therefore, he is guilty of the offence committed. He is awarded the punishment of 12 days cut of earned remission. He is not fit for post of convict night watchman. He be sent to factory as ordinary prisoner. To be kept in Ward No. 3 under surveillance, the punishment is announced. The case be sent to learned District and Sessions Judge for appraisal....."

3. A bare perusal of the abovereferred impugned orders leaves no doubt that although the enquiry was conducted by the Deputy Superintendent or Assistant Superintendent of Jail. yet on 231984 the prisoner had himself filed a written statement admitting his fault. The Superintendent of Jail while holding enquiry and passing order under sections 45 and 46 of the Act is performing semijudicial function for a limited purpose. Thus, it cannot be said that the confessional statement was made before an authority but it was before the concerned officer during the proceedings.

4. Similarly, the perusal of the impugned order dated 931988 reveals that the prisoner had confessed before the Superintendent Jail, i. e. before the Superintendent Jail during the proceedings. Thus, it cannot be said that the confession being made to a person in authority is not admissible in evidence especially when there are no circumstances on the file for inferring that there was threat, inducement or promise on behalf of the Superintendent Jail before the petitioner confessed his guilt.

5. In view of the above referred confessions, the mere factum that the initial enquiry was held by the Deputy Superintendent Jail or Assistant Superintendent Jail is of no consequence.

6. However, keeping in view that the order of first punishment was passed more than 5 years earlier from today, it would be of no consequence in considering the mercy petition for premature release of the petitioner, as such misconduct by the prisoner will not remain in force for all times to come because that will take away the incentive from the prisoner to improve his conduct inside the jail. It is the consistent view of this Court that such punishment awarded to a prisoner shall be taken into consideration for a period of five years at the most. The decision of the Single Bench of this Court in Gurmit Singh v. State of Punjab, 1988(2) All India Criminal Law Report 1987 can be referred in this regard.

7. Except for the above referred observation regarding the punishment awarded on 231984, there is no merit in this petition. It stands disposed of accordingly.