

(2004) 12 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (M) No. 1271 of 2004

State of H.P.

APPELLANT

Vs

Ram Lal

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 — Section 4, 8, 8(2), 9
Penal Code, 1860 (IPC) — Section 302

Citation : (2006) CriLJ 3070

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : H.K.S. Thakur, Dy. A.G, for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This application has been preferred by the State for grant of leave to appeal against the judgment dated 16-9-2004 passed by the learned Chief Judicial Magistrate, Sirmaur at Nahan whereby the respondent has been acquitted of the accusations u/s 8(2) read with Section 9 of the H.P. Good Conduct Prisoners (Temporary Release) Act, 1968 (hereafter referred to as "the Act").

2. The accusations against the respondent are that on conviction u/s 302 of the Indian Penal Code he was undergoing life imprisonment in Model Central Jail, Nahan. On his application he has temporarily released on 42 days parole w.e.f. 17-5-2002 to 27-6-2002 and was to surrender himself in the Jail on 28-6-2002. The respondent, however, failed to surrender on the due date and instead surrendered on 24-7-2004 after an overstay of 26 days against the sanctioned parole period, hence, a complaint was lodged against him in the trial Court u/s 9 read with Section 8(2) of the Act and accordingly he faced the trial on the aforesaid accusations. On the basis of the evidence brought on record, the trial Court found the respondent not guilty and accordingly acquitted him. Hence, this

petition.

3. I have heard the learned Deputy Advocate General for the applicant, who has read out the statements of the material witnesses, attested copies whereof are available with him and has also taken me through the judgment.

4. It does not appear to have been disputed even by the respondent that he was undergoing the sentence as claimed by the prosecution and was temporarily released on parole w.e.f. 17-5-2002 to 27-6-2002 and was to surrender himself on 28-6-2002 but in fact surrendered on 24-7-2002. His plea, however, is that he could not surrender on the due date because of illness and remained under treatment and had also telephonically conveyed to the Jail official that because of illness he was not in a position to surrender on due date but would surrender as soon as he was relieved of the illness.

5. To properly appreciate the matter, reference may be made to the relevant provisions of the Act.

Section 8 of the Act reads as follows:

8. Liability of prisoner 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 the Jail from which he was released.

(2) If a prisoner does not surrender himself as required by Sub-section (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 the 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 a reasonable opportunity of being heard, be awarded to him by the Superintendent of the Jail, namely,-

(a) a maximum cut of five days" remission for each day of overstay.

(b) stoppage of canteen concession for a maximum period of one month;

(c) withholding concession of either interviews or letters or both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner u/s 4 shall not be counted towards his sentence;

(e) warning; and

(f) reduction from the status and grade of "Convict Watchman" or "Convict

Overseer.

6. Section 9 of the Act reads as follows:

9. Penalty for failure to surrender :Any prisoner who is liable to be arrested under Sub-section (2) of Section 8, shall 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.

7. A bare reading of the aforesaid provisions make it clear that the prisoner on expiry of the period for which he is released under the Act shall surrender himself to the Superintendent of Jail from which he was released. In case he does not so surrender within 10 days from the due date he can be arrested by a police officer without warrant. In case the prisoner surrenders within a period of 10 days after the due date and satisfies the Superintendent of the concerned Jail that he was prevented by sufficient cause from surrendering on the due date no action is to be taken against him. In case he fails to satisfy the Superintendent that he was prevented by any sufficient cause he will be liable to be awarded specified penalties by the Superintendent. In case surrender was not within 10 days prisoner will further be liable to be punished u/s 9 of the Act. In view of the scheme of the aforesaid sections, I am of the view that the accused will be liable to be punished u/s 9 read with Section 8(2) of the Act only if he has failed to surrender on the due date without any sufficient cause preventing him from surrendering himself. However, in case the prisoner is prevented by a sufficient cause from surrendering himself on the due date he cannot be convicted and punished u/s 9 of the Act.

8. In the case in hand, as already stated hereinabove, the plea of the respondent is that he could not surrender in the Jail due to illness and had informed the Jail official telephonically and this plea of the respondent has been accepted by the trial Court.

9. It is not in dispute that the respondent was earlier released on parole twice and on both the occasions he surrendered himself to the jail authorities by due dates. It is also not in dispute that the respondent after having failed to surrender on 28-6-2002, the due date for his surrendering himself, voluntarily surrendered himself to the jail authorities on 24-7-2002. The aforesaid past conduct and voluntary surrender by the respondent, as aforesaid, clearly reveals that the respondent had no intention whatsoever to evade undergoing the sentence of imprisonment which he was yet to serve.

10. D.W. 1 Dr. R. K. Sood has stated that the respondent was suffering from enteric fever and was under his treatment w.e.f. 27-6-2002 to 24-7-2002 and was advised rest during the aforesaid period. He has proved the medical certificate Ext. DA having been issued by him showing the respondent under his treatment for the aforesaid illness during the aforesaid period. There is no reason

to disbelieve the version of D.W. 1.

11. No doubt, the respondent has not led any evidence to prove that he had telephonically informed the jail authorities about his illness but P.W. 1 admittedly the only witness examined by the prosecution is not in a position to deny that such information was given by the respondent on telephone No. 222237 installed in jail premises.

12. In the aforesaid circumstances, the judgment of acquittal sought to be impugned is not shown to be suffering from any illegality or serious irregularity, therefore, this is not a case fit for grant of leave to appeal.

13. As a result, this petition merits dismissal and is accordingly dismissed.