
(1988) 01 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1374 of 1987

Surjit Singh

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Citation : (1988) 1 AICLR 783 : (1988) 1 RCR(Criminal) 564

Hon'ble Judges : Ujagar Singh, J

Advocate : J.S. Dhillon, Advocates for appearing Parties

Judgement

Ujagar Singh, J.

1. The petitioner seeks quashing of jail punishment awarded by order dated June 16, 1986, passed by the Superintendent, Central Jail, Hissar. The short point which is to be seen is whether the order passed by the Superintendent, Central Jail, Hissar, is a judicial determination on the facts and circumstances of the case as required by section 46 of the Prisons Act. The word "determine" used in the section has been interpreted by judicial pronouncements to show that the order of jail punishment is a quasi judicial order and has to conform to the judicial level. In this case, on 16th June, 1986, the Senior Assistant Superintendent, Hissar, writes a note showing that the petitioner was released on two weeks furlough on 27th May, 1986 and was to surrender on 11th June, 1986, but the petitioner instead surrendered on 16.6.1986. This note is submitted by the Senior Assistant Superintendent to the Deputy Superintendent, who writes his own note saving that the petitioner seems "some mental tension in the brain of the convict and it is proved that he reached up to Jail Canteen with his guardian Jhilmill Singh son of Hazar Singh on 11.6.1986. Thereafter he separated from him." The Deputy Superintendent was also of the view that the convict has some mental tension, but, therefore, says that the petitioner is guilty for violation of the rules. Both the above notes were put up before the Superintendent and his order shows as under :

"Convict heard. The convict is mentally disturbed. His five days earned remission

per day is hereby seized for his absence for 5 days. Keep him under the supervision of Assistant Medical Officer in 24 Chakki and give him proper treatment. Get his judicial appraisal."

2. It is admitted by the Deputy Superintendent that the convict after getting furlough came to jail on 11th June, 1986, the date he was to surrender and the convict was accompanied by his guardian Jhilmill Singh. There is no violation of the rules. It is not understood how the allegation has been levelled when he surrendered on 11th June, 1986. The petitioner was observed to be mentally disturbed and having mental tension in his brain. The violation to be punishable has to be intentional. Even if it is accepted that the surrender of the petitioner is taken to be only on 16th June, 1986, and not on 11th June, 1986, the convict cannot be held liable to punishment specially when the convict was directed to be kept under the supervision of an Assistant Medical Officer for treatment at a proper place. This jail punishment is liable to be quashed not only on the ground that there is no violation and that regular procedure of enquiry was not followed but also on the ground that the petitioner was a mental patient and finding the petitioner as such, he was directed to be kept under the supervision of the Assistant Medical Officer. On these grounds the jail punishment is liable to be quashed. Further, it is to be noted that the case was sent to the District and Sessions Judge, Ambala, for a judicial appraisal as indicated vide Annexure R1 and the District and Sessions Judge, Ambala, passed the following order :

"Seen and returned in original to the Superintendent, Central Jail, Ambala."

3. This order cannot be said to be a judicial appraisal. I have repeatedly held in such cases that the facts and circumstances of the case have to be gone into by the District and Sessions Judge with a view to find out whether the jail punishment is valid or not. When the violation of the Rules/Regulations has to be determined judicially then judicial appraisal has to be on a higher footing specially when the judicial appraisal has to be done by a judicial officer of the status of a District and Sessions Judge.

4. In this view of the matter, this petition is accepted and the order of judicial appraisal recorded on Annexure R1 as also the order of jail punishment recorded in Annexure P2 are quashed. This petition is disposed of accordingly.