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Court : Mumbai Nagpur

Decided On : Apr-25-2013

Judge : R.C. Chavan &Amp; Prasanna B. Varale

Appeal No. : Criminal Writ Petition No.93 of 2013

Appellant : Rajendra

Respondent : State of Maharashtra and Others

Judgement :

Oral Judgment: (Prasanna B. Varale, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. By the present petition, the convict/petitioner is challenging the show cause notices issued by the respondent no.3 as well as the order of proposed punishment passed against him. The controversy involved in the present petition is limited to the proposed punishment awarded to the convict/petitioner for his overstaying and surrendering late to the Jail Authorities after availing the parole leave. It is the submission of the learned counsel Mr. Samundre that though the petitioner, who availed parole leave, surrendered/returned late to the jail on his own accord, had submitted his explanation to the Jail Authorities for his late surrendering. The notices issued against the convict/petitioner and the proposed punishment for late surrendering, as reflected in the notices which is annexed to the reply filed by the State at page 25 Annexure R-III and page 33 Annexure R-VII

as well order passed by the Authority at page 34 Annexure R-VIII whereby the remission for his unauthorized late surrendering i.e. 1 x 5 x 96 i.e. 480 days and the judicial appraisal at page 35 Anexure R-IX are perused. In all these communications/orders, printed format are used. The learned counsel Mr. Samundre submitted that though the petitioner/convict reported the Jail Authorities at a belated stage, the prisoner had submitted reason along with documents of the ailment of the convict/petitioner and the fact that petitioner was under treatment. The learned counsel Mr. Samundre submitted that in all these communications/orders no reflection of application of mind of the Authorities is revealed. Mechanically the orders are passed stating that the Authorities have applied their mind and arrived at a conclusion. Mr. Samundre further submitted that this Court while dealing with similarly circumstanced petitioner's/convict's case observed that the Authorities are supposed to pass orders by applying their mind. Mr. Samundre placed reliance on the judgment of this Court in case of Sheikh Said Sheikh Najir Vs. State of Maharashtra and another reported at 2010 ALL MR (Cri) 3782.

3. Mr. Mirza, the learned Additional Public Prosecutor for State/respondents 1 to 3, made an attempt to support the orders passed by the Authority and tried to submit that the Authorities on application of mind passed the order. In support of his submission, Mr. Mirza invited our attention to the statement in the order to the effect that the prisoner could not submit any direct or circumstantial evidence and that when given an opportunity of personal hearing, the prisoner could not give satisfactory answers justifying his late surrender and therefore, the prisoner being liable to jail punishment, in exercise of powers vested in him the Superintendent proposed the punishment. Mr. Mirza, therefore, submitted that the Authorities passed the order on application of their mind.

4. We are unable to accept the submission of learned Additional Public Prosecutor Mr. Mirza. The statement, as referred above, nowhere reflects that the Authority has applied its mind, particularly on the backdrop of the fact that the petitioner/convict submitted reason for his late surrendering to the Jail Authority along with certain documents namely the hospital certificate issued by Vidarbha Ayurved Mahavidyalaya in support of his ailment and the treatment suggested by

the Authorities of the said Mahavidyalaya. Mr. Samundre was justified in placing reliance on the judgment of this Court in case of Sheikh Said Sheikh Najir (supra). This Court while considering the grounds raised in the petition, which are more or less identical to the grounds raised by the learned counsel for the petitioner namely that the orders do not reflect the reasons and the application of mind while passing the same. The order passed by the Superintendent of Jail does not show that the defence of prisoner is considered. While considering the orders impugned in the petition, it is observed that consideration of the material on record is not expressed and that the failure to record reasons results in denying the party an opportunity to know that the person has lost the case or has won it even. Considering this aspect of the matter, this Court thought it fit to interfere in the orders impugned. In the result, orders were set aside.

5. We see no reason to take a different view. The judgment of this Court squarely applies to the facts of the present case. The order passed as well as the notices issued by the Authority and the appraisal order nowhere reflect the application of mind or consideration of the material submitted by the convict/petitioner.

6. In view of these facts, in our opinion, the convict/petitioner has made out a case for setting aside the orders impugned.

7. In the result, petition is allowed. Show cause notices and orders impugned in the petition are set aside.

Needless to say that the Authority, by considering the submission of the convict/petitioner, may pass fresh orders.

It will not be out of place to state here that the learned Sessions Judges, who are dealing with references for their appraisal, shall ensure that they consider the references properly and the appraisal orders passed by the Judicial Officers must reflect their application of mind.

We hope and trust that henceforth due care and caution will be taken in the appraisal orders passed by the Judicial Officers.

Rule made absolute in above terms. No order as to costs.

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