

Mohd. Harun Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-14-1990

Reported in : 1991CriLJ1083

Judge : D.P.S. Chauhan, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 430 and 482; Indian Penal Code (IPC) - Sections 379 and 411

Appeal No. : Criminal Misc. Appln. No. 13233 of 1988

Appellant : Mohd. Harun

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Kamal Krishna, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.P.S. Chauhan, J.

1. By means of this petition Under Section 482, Cr. P.C. the petitioner, Mohammad Harun, has prayed for quashing the order passed by the Chief Judicial Magistrate,

Jaunpur dated 30-9-1988 in Criminal Case No. 87 of 1986 (Annexure 1 to the petition).

2. The petition was admitted by this Court 23-12-1988 and learned Additional Government Advocate wanted time to ascertain the facts. This Court further ordered that :--

'It appears that the Magistrate has without making due enquiry as to who was guilty for releasing the applicant from jail without his undergoing the complete sentence or remission of any part of the sentence, has passed the impugned order. Under the circumstance, the operation of the order dated 30-9-1988 is stayed meanwhile.'

3. The brief facts of the case are that the petitioner in Criminal Case No. 87 of 1986, Under Section 379/411, IPC., P.S. G.R.P., Jaunpur, was convicted by the Chief Judicial Magistrate, Jaunpur, vide his order dated 23-8-1977 and was sentenced to one year's R. I. where against he preferred an appeal No. 113 of 1977 before the Sessions Judge who also dismissed the appeal on 29-3-1978. Thereafter, the petitioner approached by way of revision to this Court and this Court also on 31-7-1979 dismissed the revision but reduced the sentence from one year's R. I. to 9 months' R. I.

4. The petitioner accordingly to serve out the sentence so imposed upon him surrendered on 27-2-1984 and was sent to jail. The petitioner was released from jail on 20-4-1984.

5. After his release, the Jailor, District Jail, Jaunpur, made an application to the Chief Judicial Magistrate, Jaunpur, for issue of warrant of arrest against the petitioner on the plea that he had been released prematurely. The Magistrate accordingly issued warrant of arrest. This warrant of arrest was contested and was said to be illegal. The Magistrate after hearing the parties passed an order on 30-9-1988 that there is no justification for cancellation of the warrant and the application is accordingly rejected and the learned counsel was directed to produce the applicant within 20 days failing which the action for arrest and attachment shall be taken. This order is under attack in the present petition.

6. Heard learned counsel for the petitioner, Sri Kamal Krishna, and the learned Additional, Public Prosecutor, Sri P. S. Adhikari.

7. Learned counsel for the petitioner states that this release was in accordance with the provisions of Section 430, Cr. P.C., which reads as under :--

'430, Return of warrant on execution of sentence.--

When a sentence has been fully executed, the office executing it shall return the warrant to the Court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.'

8. He submits that it is not a case that the petitioner has absconded or unlawfully managed to get out of the jail. It was under a proper order and by a proper authority. If there was any fault, then the same was of concerned Jailor and in spite of punishing him, the petitioner is being punished for no fault of his own.

9. Learned Additional Public Prosecutor has filed a counter affidavit and has pointed out the facts stated in paragraphs 6 and 7 of the counter affidavit that the petitioner got extended the undertrial period fraudulently and as such the departmental enquiry was held by the authorities and after enquiry by the department it was found that the entries in respect of date of release mentioned in the register of undertrial were changed (the date of his release on 16-4-1976 fraudulently made instead of 31-10-1975). It was further stated that the departmental enquiry was also made in the case against the concerning officials who had released the petitioner on 29-4-1984, and after being satisfied, the higher authorities have also taken steps against the officials who are responsible for the wrong release of the accused.

10. The counter affidavit does not indicate as to who was the higher authority involved in the matter and it also does not indicate as to what action was taken against such an authority. It is a case of dereliction of duty on the part of the concerned authority for which the authority cannot blame the petitioner, from the record it appears that no action whatsoever was taken by the authority against any official and the statement made in the counter affidavit cannot be said to be free

from doubt.

11. The petitioner was required to undergo only 9 months' R.I. He served out the sentence and only five months and 15 days were left. The matter is old one as the conviction was recorded against the petitioner on 23-8-1977.

12. Learned Additional Public Prosecutor stated that the petitioner should be held liable for connivance or collusion. The argument would have had some force provided the prosecutor could have disclosed the name of the guilty person. In the absence of the person with whom the petitioner connived or colluded no action can be taken and the petitioner cannot be blamed.

13. The second submission is that Under Section 482, Cr. P.C. the power of this Court is limited. It is only for the purpose, firstly to arrest the abuse of the process of the Court, and, secondly, to secure the ends of justice. In the present case, none of the two ingredients is present.

14. So far as the abuse of the process of the Court is concerned, the learned Additional Public Prosecutor is right, but it cannot be applied in the case of the petitioner. The position is rather contrary. The process has been abused by the Jail authority by supplying wrong material Under Section 430, Cr. P.C. without care and caution. As regards the second submission to secure the ends of justice, it may be stated that in the system of administration of justice no interest is higher than the justice. It is a case where justice requires that for the fault of the Jailor or jail authority, whosoever may be, when the petitioner is himself not at fault, the petitioner should not be penalised after the lapse of such a long period to go back for serving out the sentence. It would be really ad nauseam if for the fault of the jail authority the person who has done no wrong is either to be blamed or condemned. No fault of the petitioner has been shown and the proof of wrong lies upon whom who affirms and not on who denies. Equity rectifies error and this case cannot be an exception. The Court has to proceed on the basis of maxim ex aequo et bono and see under the particular circumstance what is just and good. Looking into the facts and circumstances of the present case, I think it is just and good that the petitioner should not be sent back to serve out the remaining sentence after five and half months, which, I think, should be exonerated with the

caution that he will exhibit a good conduct and be of good behaviour.

15. The petition is accordingly allowed, and the order dated 30-9-1988 (Annexure-1 to the petition) is quashed.

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