

Hemchand Vs. State

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Court : Madhya Pradesh

Decided On : Nov-22-1956

Reported in : AIR1957MP48; 1957CriLJ758

Judge : Sen and ;Bhutt, JJ.

Acts : Prisons Rules - Rule 121; [Prisons Act, 1894](#) - Sections 46; [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 491

Appeal No. : Misc. Petn. No. 506 of 1956

Appellant : Hemchand

Respondent : State

Advocate for Pet/Ap. : M. Adhikari, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. This petition of prisoner Hemchand Jain under Article 226 of the Constitution is directed against the orders of the Superintendent of the Central Jail, Jabalpur, forfeiting certain periods of remission to be counted under the Rules issued by the State Government under the [Prisons Act, 1894](#), and the Prisoners Act, 1900.

2. The prisoner was sentenced to one year's rigorous imprisonment in a criminal case on 11-7-1953. He was on bail until 11-5-1954 and was committed to prison on 12-5-1954 on dismissal of his appeal. He was again released on bail on 24-5-1954 and was re-admitted to jail on 16-9-1955. Thereafter he was again released on bail on 20-1-1956 and was re-committed to prison on 16-5-1956. In this connection, it was not disputed before us that in the State Government's return the date 17-5-1956, is a mistake for 16-5-1956. Since 16-5-1956, the prisoner is serving sentence. The sentence would accordingly expire on 28-12-1956 and not on 29-12-1956 as stated by the State Government.

3. Till the quarter ending December, 1955, the prisoner earned 12 days of remission at the rate of 4 days per month as provided by R. 148 of the Prisons Rules. He earned 2 days of remission for the first fortnight of January 1956. For the second fortnight of May 1956 also, he is entitled to 2 days of remission which the State Government did not calculate on the assumption that as he was committed to prison on 17-5-1956, he had not completed imprisonment for the full fortnight. This remission, however, will have to be allowed as in fact he was committed to prison on 16-5-1956 which has to be counted towards the period of sentence served. In June 1956, he earned 4 days of remission. For the third quarter of 1956, he earned 12 days of remission. Besides these, he is entitled to an award of remission of 15 days which was granted to all the prisoners in honour of the Independence Day. The total period of remission earned by him upto 30-9-1956 thus comes to 47 days as against 45 days calculated by the State Government.

4. The Superintendent of Jail, by order dated 6-1-1956, directed forfeiture of 30 days of remission for the alleged misbehaviour of the prisoner on 12-11-1953, 13-11-1955, 18-11-1955 and 22-11-1955. On 30-5-1956, he further directed forfeiture of 4 days of remission for the alleged misbehaviour on 29-5-1956. Until 6-1-1959 the prisoner had earned only 12 days of remission. Under R. 121 of the Prisons Rules, it is only the remission that is earned that can be forfeited by way of punishment. The forfeiture of 30 days of remission as directed in the order dated 6-1-1956 was, therefore, conceded by the learned Advocate General for the State to be invalid beyond the period of 12 days. The question is whether the forfeiture

of the remaining period of 12 days as ordered on 6-1-1956 and of 4 days as directed on 30-5-1956 can be maintained.

5. So far as the first four offences are concerned, the reports were recorded by Shri Iगतपुरी-कर who was Octagon Officer of the Jail. The first offence was said to have been committed in the presence of the Medical Officer who had gone to give the prisoner artificial feeding. The third offence was said to have been committed before the second Assistant Medical Officer when he had gone to take Ms weight. The fourth offence was also said to have been committed before him when he had gone to give him enema. Whether or not Shri Iगतपुरीकर was present on these three occasions and had witnessed the incident does not appear from the reports. The report of the second offence also does not show whether it was committed in his presence. Only Shri Iगतपुरीकर was examined by the Superintendent in respect of these offences.

As regards the offence dated 29-5-1956, it does not appear from the record of the punishment whether the guard, Deonath, before whom the offence was said to have been committed was at all examined. Under Section 46 of the Prisons Act, the Superintendent is empowered to examine any person touching an offence. This, however, does not mean that he need not examine the necessary witnesses to prove the commission of the offence. Apart, therefore, from the question whether it was necessary to record the evidence of the witnesses, the punishments do not appear to be based on proper evidence. This is tantamount to miscarriage of justice and accordingly the punishments are liable to be quashed.

6. As the prisoner had earned 47 days of remission, the sentence expired on 5-11-1956. His detention subsequent to that date is, therefore, illegal.

7. The petition is accordingly allowed. The orders of the Superintendent of the Central Jail, Jabalpur, dated 6-1-1956 and 30-5-1956, forfeiting 30 days and 4 days of the prisoner's remission are set aside and it is directed that he be set at liberty forthwith.