

Keemat Singh Vs. Inspector General of Prisons and ors.

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Court : Punjab and Haryana

Decided On : Nov-10-1993

Reported in : 1994CriLJ1884

Judge : Harmohinder Kaur Sandhu, J.

Acts : Indian Penal Code (IPC) - Sections 34, 302 and 326; [Prisons Act, 1894](#) - Sections 46; Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Criminal Misc. Petn. No. 11308-M of 1992

Appellant : Keemat Singh

Respondent : inspector General of Prisons and ors.

Advocate for Def. : A.R. Sidhu, Dy. Adv. General

Advocate for Pet/Ap. : V.K. Jindal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Harmohinder Kaur Sandhu, J.

1. Keemat Singh petitioner along with three other co-accused was tried for an offence under Section 302/34 I.P.C. by Sessions Judge, Patiala, but he was held

guilty for the offence under Section 326/34 I.P.C. and was sentenced to undergo imprisonment for seven years and to pay a fine of Rs. 1000/-. At present he is confined in Central Jail, Patiala and he has filed this petition under Section 482 of the Code of Criminal Procedure for quashing of punishment for the jail offence awarded to him by Superintendent, Open-air Jail, Nabha, on 28th February, 1992. The petitioner contended that the allegations against him were that he was roaming in the jail after taking some intoxicating pills and he was not found at the place fixed for him. He was awarded punishment for this offence and his two months earned remissions were forfeited. He further alleged that before awarding punishment to him no enquiry was conducted as envisaged under Section 46 of the Prisons Act. No person was examined in his presence nor he was allowed to cross-examine any witness. Enquiry, if any, conducted by the Superintendent Jail, was conducted by him, sitting in his office. His case was not sent to the Sessions Judge concerned for judicial appraisal nor any speaking order was passed by the Sessions Judge for approving the punishment. He was never summoned by the Sessions Judge nor he was heard. The punishment was, therefore, arbitrary and illegal.

2. In the return filed by the respondents this fact was admitted that the petitioner was undergoing imprisonment for seven years. It was maintained that while undergoing sentence in open Jail, Nabha, he was allotted labour at Tubewell No. 1, but on the night of February 28, 1992 he was caught by Wardar Gurdip Singh while roaming at Tubewell No. 3 under the influence of liquor. He was informed about the offence that he committed and punishment awarded to him by the Superintendent Entry was' also made on his history ticket. Before the punishment was awarded statements of the witnesses were recorded in the presence of the petitioner and he was given an opportunity to cross-examine the witnesses. The petitioner himself in his statement admitted that he had taken liquor from the villager.

3. I have heard the counsel for the parties.

4. The learned counsel for the petitioner did not assail the punishment awarded to the petitioner on the ground that no proper enquiry was conducted by the

Superintendent Jail before the punishment was awarded to the petitioner and his sole contention was that the Punishment was liable to be set aside as there was no proper appraisal of the same by the Sessions Judge. A reference was made to Annexure R/1 which was a memo addressed by the District and Sessions Judge, Patiala to the Superintendent, Central Jail, Patiala. It contained the following wording:-

'The punishment awarded by the Superintendent Open-air Jail, Nabha, to convict Keemat Singh son of Chanan Singh is hereby approved.'

The learned counsel urged that judicial appraisal means proper evaluation of the punishment awarded to a convict by the learned Sessions Judge. The order passed by the learned Sessions Judge was not a speaking order and it did not reveal that before the approval was granted the record of the case was examined or that the petitioner was summoned and heard. In support of his contention he placed reliance on the case of *Raunaq Ram v. State of Haryana*, (1991) 1 Recent Cri R 466 (Punj & Har) and *Joginder Singh v. Inspector General Prisons*, (1992) 2 All India Cri LR 319 (Punj & Har). In this Inter case it was held :--

'The Sessions Judge is required to apply his mind to the facts and circumstances of the case and pass a speaking order regarding the proposed punishment or the punishment awarded to a prisoner. A reference to Annexure P/6 placed on record with the written reply shows that the learned Sessions Judge passed some order immediately when the communication was received. The document does not show that judicial mind was applied or that the convict-petitioner was given an opportunity to show any infirmity in the procedure followed by the jail authorities while awarding the jail punishment in question, in this situation the jail punishments cannot be described to have been judicially appraised and are hereby quashed '

In the present case also the petitioner was never summoned by the Sessions Judge to point out the illegalities committed during the enquiry by the Jail Superintendent nor he was asked whether he made a confession of his offence. The petitioner was punished for taking liquor and roaming at Tubewell No. 3 which was not the place fixed for him but no enquiry was made whether he was

subjected to medical examination before giving finding that he was under the influence of some intoxicant. Simply stating that the punishment awarded to the prisoner is approved is not a sufficient compliance to make the appraisal to be judicial. Since the petitioner was not heard nor the record was perused before the punishment was approved, it cannot be said that there was judicial appraisal of the punishment.

As a result I accept this petition and quash the jail punishment awarded to the petitioner on 28th February, 1992 by the Superintendent Open-air Jail, Nabha.

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