

Harendra M. Parekh Vs. Superintendent District Jail and ors.

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Court : Gujarat

Decided On : Aug-12-1994

Reported in : 1995CriLJ1847

Judge : A.P. Ravani, J.

Acts : Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 - Sections 15, 15(1), 15(4) and 15(5)

Appeal No. : Special Civil Application No. 1998 of 1982

Appellant : Harendra M. Parekh

Respondent : Superintendent District Jail and ors.

Advocate for Def. : N.D. Nanavati, G.P.

Advocate for Pet/Ap. : S.H. Sanjanwala, Adv.

Judgement :

ORDER

A.P. Ravani, J.

1. The petitioner has challenged the legality and validity of order dated March 8, 1982 passed by the State Government of Gujarat in Civil Supplies Department. By this order it is directed that the original detenus, namely, Shri Mavinchandra

Zaveri, Shri Dhanraj Fakrichand Zaveri, Shri Dipak Fakirchand Zaveri and Shri Satishchandra Kantilal Zaveri had committed breach of conditions of the order of parole. Thus they had contravened the provisions of Section 15(5) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the Act' for short). Therefore it was decided to forfeit the amount of Rs. 10,000/- (Rupees Ten thousand) deposited by (sic) each of them as and by way of penalty. Pursuant to this order the Superintendent of District Jail, wrote letter dated March 15, 1982 addressed to the surety, i.e the petitioner herein, that the entire amount of Rs. 40,000/- (Rupees forty thousand) deposited by him has been forfeited to the Government.

2. It is an undisputed position that the original detenu were ordered to be released on parole for a period of five days, i.e. October 28, 1981 to November 1, 1981. On October 30, 1981 they applied to the Government for extension of parole inter alia on the ground that some relative of one of the detenus had died and, therefore, they were required to attend the after-death ceremony of the deceased. On this ground extension of parole was prayed for. However, by letter dated November 2, 1981 the Government informed all the four detenus that their request dated October 30, 1981 for extension of parole has been rejected. Immediately on receipt of this letter the detenus surrendered themselves to the custody on November 3, 1981. When they surrendered they wrote letter dated November 3, 1981 addressed to the Superintendent, District Jail, Surat. Therein also they have stated that they had requested for extension of parole, but the Government has refused parole and in these circumstances there was delay in surrendering.

3. Learned counsel for the petitioner submitted that the order imposing penalty of Rs. 40,000/- has been passed without affording an opportunity of being heard to the petitioner. Therefore it is required to be quashed and set aside. Section 15 of the Act provides for temporary release of persons detained. It would be better to reproduce the entire section which reads as follows:-

'Temporary release of persons detained:-

(1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either

without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time cancel his release.

(2) In directing the release of any person under Sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in (he direction.

(3) Any person released under Sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person, fails without sufficient cause to surrender himself in the manner specified in subsection (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under Sub-section (1) fails to fulfil any of the conditions imposed upon him under the sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.'

Learned counsel for the petitioner submits that there was sufficient cause for not surrendering on the specified dated. Therefore no penalty could have been levied. -The submission cannot be accepted. The expression 'without sufficient cause' occurs in Sub-section (4) of Section 15 and not in Sub-section (5) thereof. As far as the provision of Sub-section (5) is concerned, once there is failure to fulfil any of the conditions imposed upon the detenus, as per the order passed under Sub-section (1), the liability arises. This would result into forfeiture of the bond and imposition of penalty.

4. Learned counsel for the petitioner submits that there was no intention on the part of the detenus not to surrender. There is delay of only one day in surrendering and that too for good reasons. Therefore it is submitted that in facts of the case cancellation of the bond and imposition of penalty of forfeiture of the entire amount of Rs. 40,000/- is very harsh. He submits that the amount of penalty is in far excess of the contravention alleged and held proved. Therefore it is submitted that

the amount of penalty may be reduced. He further submits that the order be passed by this Court and he does not wish the matter to be remanded.

5. Having regard to the overall facts and circumstances of the case, in my opinion, if the amount of penalty is reduced to Rs. 15,000/- it would meet the ends of justice.

6. In the result the petition is partly allowed. The order of imposition of penalty is modified to the effect that the penalty imposed upon the petitioner shall stand reduced to Rs. 15,000/- (Rupees Fifteen thousand) instead of Rs. 40,000/- Balance amount of Rs. 25,000/- (Rupees twenty five thousand) shall be paid to the petitioner as expeditiously as possible.

7. It will be open to the petitioner to obtain certified copy of this judgment and order and produce the same before the appropriate authority. In case certified copy of this judgment and order is produced before the appropriate authority, the authority concerned will take appropriate action within a period of one month from the date of receipt of the certified copy and see to it that the amount is paid to the petitioner within a period of one month from the date of receipt of the certified copy.

8. Rule made absolute to the aforesaid extent, with no order as to costs.