

Manish Dixit Vs. Inspector General (Prisons) and anr.

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Court : Rajasthan

Decided On : Jul-25-2003

Reported in : RLW2004(1)Raj187

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : Rajasthan Prisons Rule, 1951 - Rule 5, 7, 11, 16 and 17; Rajasthan Prisoners Open Air Camp Rules, 1972 - Rule 3; Indian Penal Code (IPC) - Sections 120B, 121 to 130, 223A, 224, 225, 231, 232, 302, 303, 311, 328, 332, 333, 364, 376, 377, 383, 392 to 402, 435 to 440 and 460

Appeal No. : D.B. Civil Writ Petition No. 2438 of 2003

Appellant : Manish Dixit

Respondent : inspector General (Prisons) and anr.

Advocate for Def. : R.N. Mathur, Addl. Adv. General

Advocate for Pet/Ap. : Bajrang Lal Sharma, Sr. Adv. and; Ashok Mishra, Adv.

Disposition : Petition dismissed

Judgement :

Shiv Kumar Sharma, J.

1. The prayer of the petitioner in the instant writ petition is as under:-

'It is therefore, humbly prayed that your lordships may graciously be pleased to accept and allow this writ petition and to call for and examine the record of the case and to pass appropriate writ, order or direction in the nature thereof:

(i) to direct the respondents to correctly calculate the remission and consequently to grant the benefit of remission properly to the petitioner;

(ii) to direct the respondents to include the remission period while calculating the entire sentence spent by the petitioner for the purpose of considering the case for admission to Open Air Camp;

(iii) to quash and set aside the order dated January 30, 2003;

(iv) to quash and set aside the order dated February 22, 2003;

(v) to direct the respondents to send the petitioner to Open Air Camp;

(vi) to declare the petitioner as senior most prisoner amongst prisoners in the jail;

(vii) to declare the entire action of the respondents as unjust, unfair, improper, unreasonable, arbitrary and unconstitutional;

Any other order or direction which your lordships may deem fit and proper may kindly be passed in favour of the petitioner in the interest of justice.'

(2). The petitioner averred in the writ petition that he is in jail and undergoing the sentence awarded to him in Sessions Case No. 158/94. The petitioner was taken in custody on July 12, 1994 in the said case and was finally convicted for the offences under Section 302, 397 and 364 IPC and 7/25(1)(a) of the Arms Act by the Special Judge SC/ST (Prevention of Atrocities Cases) Court, Jaipur. Under Section 302 IPC the petitioner was sentenced to suffer imprisonment for life. The conviction and sentenced awarded to the petitioner was maintained by the High Court and Apex Court. The petitioner contended that he is working in the jail factory from September 18, 1995 to August 1, 1996; in library from August 1, 1996 to December 14, 1997; in factory from December 14, 1997 to May 14, 1998. The petitioner has worked in Convict Section from May 14, 1998 to August 12, 1999; in Raw Material Store from August 12, 1999 to August 15, 2001. From October 15,

2001 the petitioner was made incharge of the Ward. The petitioner was again assigned the work of library on May 17, 2002 and since then the petitioner has been working in the library of Central Jail Jaipur.

(3). The contention of the petitioner is that according to Rule 5 of Rajasthan Prisons Rules, 1951 (for short '1951 Rules') the petitioner is entitled to get total remission of 18 months and 19 days i.e. 1 year 6 months and 19 days taking into consideration aforequoted work but the respondents have arbitrarily miscalculated the period of remission and have granted the remission only of 11 months and 22 days to the petitioner.

(4). The petitioner further averred that on the occasion of India's 50th Anniversary of Independence in the year 1997, the State Government had granted remission of six months to the convicted prisoners. Similarly in the year 1999 on the occasion of Golden Jubilee of formation of State of Rajasthan, the State Government had granted remission of six months to the convicted prisoners. The respondents have denied to grant the remission of six months granted on the occasion of India's 50th Anniversary of independence in the year 1997 on the pretext that the petitioner is ineligible for grant of remission falling in the categories of the offences. The petitioner was although convicted under Section 120B IPC, but the High Court vide judgment dated April 22, 1998 acquitted him of this charge.

(5). The petitioner also contended that the Supdt. Central Jail, Jaipur had recommended 30 days of remission for his exceptional good behaviour in the jail on August 6, 2001, but the said remission has not been granted to the petitioner. The petitioner also claims that under Rule 16 of 1951 Rules special remission may be given to the prisoners whether to entitle to ordinary remission or not for special services as mentioned in Clause (i) to (ix). In view of Rule 7 of 1951 Rules, 30 days special remission is to be granted in each year to the prisoner subject to good work and conduct in jail. The petitioner thus claims total remission of 3 years 9 months and 19 days. The grievance of the petitioner is that the respondents have counted the remission only of 1 year 5 months and 22 days and the case of the petitioner was not taken up for consideration for admission to Open Air Camp. Therefore the petitioner instituted D.B, Civil Writ Petition No. 5632/2001, which

was disposed of on August 14, 2002 in the following terms:-

'In view of this consensus arrived at between the learned counsel for the parties this writ petition is disposed of in the terms that the petitioner is free to apply for being sent to Open Air Camp and as and when such an application is filed, it is expected from the Committee or Board or competent officer as the case may be to decide the same in accordance with law within a period of two months from the date of receipt thereof. Where the prayer made by the petitioner in the application deserves no acceptance, a reasoned order may be passed.

As the writ petition has been disposed of the stay application has become infructuous and the same is dismissed. The interim order granted by the court stands vacated. No order as to costs.'

(6). Pursuant to the said order the petitioner submitted an application on October 14, 2002 before the Supdt. Central Jail, Jaipur. But it was not acted upon and the case of petitioner was not considered for admission to Open Air Camp and no communication in this regard was made by the respondents to the petitioner. The petitioner again filed D.B. Civil Writ Petition No. 7056/2002 seeking the prayer therein to direct the respondents to correctly calculate the remission of the petitioner and to grant him the benefit of the special remission granted by State Government and the recommendations made by Supdt. of Jail. The writ petition was decided vide order dated January 20, 2003 with the observation that inaction or omission on the part of the respondents not to comply with the order of this Court dated August 14, 2002 is wholly unjustified, uncalled for and deserves to be deprecated. A direction was issued to comply with the order within 15 days. The petitioner made further representation to the Supdt. Central Jail, Jaipur on January 23, 2003. The case of the petitioner for admission to Open Air Camp was considered in the meeting of January 30, 2003 of Prisons Open Air Camp Advisory Committee, who rejected the case of petitioner for sending him to Open Air Camp,

(7). The petitioner further averred that Supdt. Central Jail Jaipur vide order dated February 22, 2003 communicated to the petitioner that the petitioner is entitled to get the remission of 542 days i.e. 1 year 6 months and 2 days under Rule 5(a) and (b), Rule 11 and Rule 17 including special remission of 6 months of year 1999

from October 1, 1995 to January 31, 2003. The petitioner was denied the special remission of year 1997 on the pretext of conviction for offence under Section 120B 1PC. The representation of petitioner was disallowed vide said order dated February 22, 2003 by the Supdt. Central Jail, Jaipur. The petitioner in the instant writ petition has called in question the aforesaid orders dated January 30, 2003 and February 22, 2003 with a further prayer to direct respondents to send the petitioner in Open Air Camp (for short 'OAC') and to declare him senior most prisoner amongst the prisoners in jail.

(8). The respondents submitted reply to the writ petition and stated that the petitioner has remained on parole for a period of 2 years 4 months and 24 days. Besidethe said period the petitioner has remained on interim bail for a period of 575 days and he is not entitled to get benefit of remission for the period during which he remained out side the jail either on emergency parole or on interim bail. It has further been stated that in view of Rule 3(d) of Rajasthan Prisoners Open Air Camp Rules, 1972 (for short '1972 Rules') the petitioner is not eligible fore sending him in OAC on the ground that the petitioner has completed the sentence of 7 years awarded to him under Section 397 IPC. As the petitioner has been convicted under Section 397 IPC he is ineligible for admission to OAC in view of Rule 3(d) of 1972 Rules. It has further been contended that while the petitioner was on interim bail for the period from June 4, 2002 to June 18, 2002, the petitioner misused the liberty and committed offence for which the FIR was registered against him at Police Station Bajaj Nagar, Jaipur. Since the conduct of the petitioner was not satisfactory while undergoing the sentence in prison and availing the benefit of interim bail, the petitioner is not eligible for sending to OAC. Whereas in order of seniority of prisoners the petitioner comes at Sr. No. 132 and as per seniority position he is not entitled to be sent to OAC. OAC Committee has objectively considered the case of petitioner and did not find him eligible for sending to OAC. The petitioner is not entitled for sending him to OAC as a matter of right. It is also averred that the petitioner did not perform any special, excellent, exemplary or outstanding work which fall in the category of work as mentioned in Rule 16 of the 1951 Rules. Therefore, the petitioner is not entitled to get any special remission.

(9). Mr. B.L. Sharma, learned Senior Counsel took us to various relevant provisions and canvassed that Open Air prisons play an important role in the scheme of reformation of a prisoner. Placing reliance on *Rama Murthy v. State of Karnataka* (1), learned Senior Counsel contended that for the greater good of the society, which consists in seeing that the inmate of a jail comes out, not as a hardened criminal but as a reformed person. The open air prisons should be opened at all the District Headquarters of the country. Learned Senior counsel further urged that an order of acquittal under Section 120B IPC of petitioner wipes off conviction and sentence for all purposes and as effective as if had never been passed. In a criminal case the acquittal in appeal has the effect of retrospectively wiping out the conviction and sentence awarded by the lower court. Reliance is placed on *Vidya Charan Shukla v. Purshottam Lal Kaushik* (2).

(10). Per contra, Mr. R.N. Mathur, learned Additional Advocate General; contended that as per record of the jail the petitioner never donated the blood. It has further been urged that the petitioner has remained on parole and interim bail and this period cannot be treated as complete period for the purpose of giving the benefit of remission for the reason that the remission shall be counted at the end of sentence. The seniority of petitioner therefore comes Sr. No. 112a. Relevant provisions of 1951 Rules and 1972 Rules were referred before us.

(11). We have pondered over the rival submissions and scanned the record of prisoners placed before us for our perusal.

(12). Apex Court in *Mohd. Giasuddin v. State of A.P.* (3), observed that cruelty is not the answer of anti-social behaviour, such a behaviour has to be countered of re-culturisation. In *Rama Murthy's* case (supra) it was indicated that the 'Constitutional rights of the prisoners shall have to be interpreted in such a way that larger public interest does not suffer while trying to be soft and considerate towards the prisoners. For this, it has to be seen that more injury than is necessary is not caused to a prisoner. At the same time efforts have to be made to reform him so that when he comes out of prison he is a better citizen and not a hardened criminal.'

(13). It is in this backdrop that we have to consider the rights of the petitioner. Undisputedly the petitioner was acquitted by the Appellant Court of the charge under Section 120B IPC. The said order had the effect of retrospectively wiping out the conviction and sentence awarded by the trial Judge. The order of acquittal had wiped off conviction and sentence under Section 120B IPC for all purposes and as effective as it had never been passed. The Jail Authorities should interpret the order of acquittal legally while calculating the period of remission.

(14). It is also not disputed that the petitioner was convicted and sentenced under Section 397 IPC. Rule 3(d) of 1972 Rules provides that prisoners who have been convicted of an offence or offences under sections 121 to 130, 223A, 224, 225, 231, 232, 303, 311, 328, 332, 333, 376, 377, 383, 392 to 402, 435 to 440 and 460 of IPC shall ordinarily be not eligible for being sent to Open Air Camp. Thus the petitioner is ineligible for being sent to Open Air Camp. There is yet another circumstances against the petitioner while on interim bail from June 4, 2002 to June 18, 2002, the petitioner misused the liberty and committed offence for which a criminal case was registered against him in the Police Station Bajaj Nagar, Jaipur.

(15). We have also scanned the provisions contained in Rule 16 of 1951 Rules as well as the material on record and we find that the petitioner has not performed any special services that fall in the category of work as mentioned in Rule 16. Act of working in Jail factory, library, raw material store or as incharge of the ward does not come in the category of special service. The fact that the petitioner had donated blood, has been denied by the respondents and there is nothing on record to suggest that the petitioner had ever donated blood. This disputed question of fact cannot be gone into in the writ petition. We could have made inquiry about this fact, had the details of donation been given by the petitioner.

(16). We do not see any glaring infirmity in the impugned orders dated January 30, 2003 and February 22, 2003. From the record we find that the petitioner is not the senior most prisoner amongst prisoners in jail and is not entitled to the reliefs sought in the writ petition.

(17). For the foregoing reasons the writ petition being devoid of merit stands dismissed.

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