

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Writ Petition No. 428 of 2015

[Pravin Awadhoot Mendhe (in Jail) Vs. Divisional Commissioner, Amravati Divn., & another]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Ms. Radha Mishra, Adv. [appointed] for the petitioner.
Mr. R.S. Nayak, APP for respondents.

**CORAM : A.B. CHAUDHARI AND
P.N. DESHMUKH, JJ.**

DATE : 05th August, 2015.

Heard learned counsel for the rival parties.

The only question raised by the petitioner-prisoner in this petition is that though he himself has surrendered late by 641 days, offence under Section 224, Indian Penal Code, has been registered against him, and the punishment under the Jail Manual for late reporting in the jail has already been imposed. According to petitioner-prisoner, this amounts to double jeopardy within the meaning of Article 20 (2) of the Constitution of India.

The letter written by the petitioner was treated as a Writ Petition and counsel was appointed from the Legal Aid Panel. The issue is no more *res in tegrā* in view of the Supreme Court Judgment in the case of **Thomas Dana Vs. State of Punjab** [AIR 1959 SC 375], followed in **Union of India & others Vs. Sunil Kumar Sarkar** [2001 (3) SCC 414] and the Division Bench Judgment of this Court in case of **Anil Lala Saundade Vs. State of Mah.** [2003 LawSuit(Bom) 38]. The relevant paragraphs of the Division Bench Judgment of this Court are quoted for convenience, as follows:-

“[2] The petitioner was convicted on 16.4.1983 in Session Case No. 267/83 and was sentenced to life imprisonment. While undergoing sentence in Yarawada Open Prison, he escaped from the lawful custody on 24.5.1998 and was thereafter rearrested on 9.8.1998. Since he had escaped from lawful custody, he was prosecuted under section 224 of I.P.C., and sentenced to one year imprisonment which was to run consecutively after he undergoes life imprisonment. For the sentence of life imprisonment, the convict was put in the category under which he had to undergo sentence for a total period of 28 years, of course, with remissions. The prison authorities took disciplinary action against the prisoner under Rule 22 (2) of the Maharashtra Prisons (Remission and System) Rules, 1962, for escaping from the lawful custody. Under the said Rule, the entire remission earned by the petitioner, excluding the State remission and special remission, is liable to be deducted from the period of his imprisonment.”

[8] In our view, applying the above principle in the present case, two actions taken against the prisoner, one under the Indian Penal Code by prosecuting him and disciplinary action taken against him by deducting the remission earned by him, do not amount to double jeopardy within the meaning of Article 20 (2) of the Constitution. Since there is clear dicta of the Supreme Court one given by the Constitution Bench as far back as the year 1958 in the case of *Thomas Dana v. State of Punjab* (supra) and the other in the recent judgment of the Supreme Court in *Sunil Kumars case* (supra) in the year 2001, the judgment of the Division Bench of this Court, relied on behalf of the petitioner, is no longer good law or binding on us as the said judgment was per incuriam since the judgment of the Constitution Bench in *Thomas Danas case* was not considered by it.

[9] It would be relevant to point out that proviso to Rule 26 of Chapter XXVII of the Maharashtra Prison Manual Rules lays down that any measure taken for security and safe custody of a refractory or dangerous prisoner, or for preventing him from committing mischief, and exclusion from a privilege which is otherwise admissible only to a well behaved prisoner shall not be deemed to be punishment for the purposes of the Prison Rules."

This, petitioner-prisoner had no reason to file the instant petition in this Court. Petitioner is, therefore, liable to be saddled with costs. Hence the following order:-

Criminal Writ Petition No. 428 of 2015 is dismissed with costs in the sum of Rs.2,000-00 [rupees two thousand only] payable by the petitioner personally which shall be deducted by the jail authorities and deposited with the Govt. Treasury.

Fees payable to learned Adv. [appointed] for the petitioner are quantified in the sum of Rs.1,500-00 [rupees one thousand five hundred only].

Judge

Judge

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