

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Writ Petition No.731 of 2014 (O&M)
Date of decision: 19.12.2015**

Rohit Chaudhary

..Petitioner

Versus

The State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Prateek Rathee, Advocate
for the petitioner.

Mr. Vikas Malik, DAG, Haryana
for the respondents – State.

Daya Chaudhary, J. (Oral)

The present petition has been filed for quashing of order of punishment dated 03.01.2014 awarded by the Superintendent, District Jail, Gurgaon (respondent No.2) as well as order of judicial appraisal dated 27.03.2014 passed by Sessions Judge, Gurgaon.

Briefly, the facts of the case are that the petitioner was arrested in case FIR No.490 dated 23.05.2002, under Sections 302, 307, 120-B IPC and Section 25 of the Arms Act registered at Police Station Central Faridabad and he was convicted and sentenced to imprisonment for life by the Additional Sessions Judge, Faridabad vide judgment dated 31.10.2005. Thereafter, an appeal was filed by him before this Court to challenge the said judgment of conviction and

order of sentence, which was dismissed and judgment passed by the Additional Sessions Judge, Faridabad was upheld. The petitioner has undergone total sentence of about 11 years without remissions and being eligible, applied for premature release and also for parole but the same was not accepted on the ground that he was awarded the jail punishment by Jail Superintendent on 03.01.2014. The events leading to imposition of this punishment are that, the petitioner has made a written request to keep him in security cell as other convicts, who were against him, were kept in the same barrack and he was apprehending threat at their instance. But in spite of making that request, no action was taken for the reasons best known to the concerned authority. Subsequent whereupon the petitioner made a complaint against Jail Superintendent on 18.12.2013 but still no action was taken and he was awarded major punishment of forfeiture of ten days' remission as provided under Para 630(2)(a) of Punjab Jail Manual as applicable to State of Haryana and because of this punishment, the temporary release of the petitioner was stopped. The Superintendent Prison, Gurgaon sent the case for judicial appraisal to the Sessions Judge, Gurgaon, but the same was also passed mechanically against the petitioner.

Both the orders passed by the Jail Superintendent as well as District and Sessions Judge, Gurgaon are subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that neither the

statement of any other inmate was recorded nor the petitioner was afforded proper opportunity to present his case. Only on the basis of statement of one prisoner, namely, Ashok Rathi, who belongs to the opposite group, the punishment was awarded. Learned counsel further submits that the petitioner has made a request to be shifted to the security cell whereas he was kept in the barrack of rival group. Learned counsel also submits that the Jail Superintendent has even asked for undue favour for accepting his plea, but the same were not fulfilled, resultantly, the major punishment of forfeiture of 10 days' remissions was imposed upon the petitioner. Learned counsel also submits that the petitioner being a convict is also entitled to fundamental right of equal protection of law, equality before law, right to speech and expression as available to other similarly situated persons. Moreover, the order imposing punishment was not supplied to him but the contents of that order were entered into the history ticket of the petitioner, which was exclusively kept in the custody of the Prison Administration. Co-convict of the petitioner, namely, Anupam, was also confined in safe cell as two rival groups were undergoing sentence. At the end, learned counsel for the petitioner submits that the petitioner has been deprived of his right to avail parole because of which, his children could not be admitted in School and he could not look after his family members. Learned counsel also submits that at present, no other case is pending against the petitioner except the present one wherein he is undergoing the

sentence and in other cases, he has been acquitted of the charge. Learned counsel has also relied upon judgments of this Court rendered in **Joga Singh vs. State of Haryana and others, 1988(1) RCR (Criminal) 145 and Pardeep Kumar vs. Narcotic Control Bureau, Chandigarh, 2015(2) RCR (Criminal) 592** in support of his contentions.

Learned State counsel has not disputed the order of punishment as well as appraisal order passed by District and Sessions Judge, Gurgaon. As per written statement filed by Superintendent, District Jail, Gurgaon, a false complaint was made by the petitioner and accordingly, he was awarded punishment of forfeiture of 10 days' remissions in view of provisions of para 630(2)(a) of Punjab Jail Manual. He further submits that the major jail offence was committed by him, hence the punishment was rightly awarded and the same has even been appraised and approved by the District and Sessions Judge, Gurgaon. Learned State counsel also submits that the case of premature release of the petitioner will be considered on completion of 14 years of actual sentence including period undergone during trial.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as other documents available on the file.

Admittedly, the petitioner is undergoing sentence of life imprisonment and has also undergone actual sentence of 13 years, 6

months and 20 days as on 12.07.2014 as reflected in the reply dated 15.07.2014. In one case, i.e., FIR No.284 of 2002, under Sections 397 IPC registered at Police Station Hodal, he has undergone the sentence and in five cases i.e., FIR No.486/2000, under Section 392 IPC registered at Police Station Sadar Ballabhgarh, FIR No.128/02 under Sections 392, 411 IPC registered at Police Station Jewar, FIR No.383/02 under Sections 302 and 120-B IPC registered at Police Station Dadri, FIR No.251/01, under Section 307 IPC, registered at Police Station Sadar Ballabhgarh and FIR No.213/02, under Sections 394, 397, 302 and 411 IPC registered at Police Station Sadar Bazar, Mathura, he has been acquitted of the charges.

On perusal of impugned order of punishment dated 03.01.2014, which has been affirmed by the District and Sessions Judge, Gurgaon, it is apparent that the inquiry was made with regard to conduct of the petitioner and it was found that he was in the habit of making false complaints against the jail staff just to put a pressure on the jail administration. While upholding order of Superintendent, District Jail, Gurgaon, it has been mentioned by Sessions Judge, Gurgaon that the allegations levelled by the petitioner do not appear to be correct and the punishment awarded by the Superintendent, District Jail, Gurgaon cannot be said to be disproportionate to the allegations levelled against him. Thus the punishment imposed upon the petitioner was judicially appraised and approved. But at the same time, it is also clear after perusing the order that the comments of Jail

Superintendent were sought wherein it was stated that co-convict Ashok Rathi was called and his statement was recorded whereas said Ashok Rathi belongs to rival group, who could not depose independently. The order of punishment has been passed simply by saying that the complaint of the petitioner was false and that too only by recording the statement of the petitioner as well as of one Ashok Rathi whereas the statement of any other prisoner was not recorded. It was held by Division Bench of this Court in **Pardeep Kumar's case (supra)** that at the time of imposition of jail punishment, the competent authority is to prepare a gist of allegations; the stand of the convict, oral or written and the conclusion thereof. The reasons may be brief, but it must be recorded. Even while exercising judicial appraisal, the Sessions Judge or the Chief Judicial Magistrate or Special Judicial Magistrate treat the function as that of administrative appraisal whereas such judicial appraisal is a quasi judicial function assigned to the Judicial Officers and the same is to be exercised after complying with the principles of natural justice. It has also been held that even in case of major jail punishment, the parole case of a convict is to be initiated after one year from the date of punishment. The relevant portion of said judgment i.e., para No.26 to 29, is reproduced as under: -

“26.It is thereafter, the process of judicial appraisal came into being. Though the Hon’ble Supreme Court directed way-back in the year

1979 to revisit the Prisons Act and the Prisoners Manual, but except some changes here and there, nothing much has changed. The provisions of imposition of fetters and whipping etc. are still part of the Jail Manual. Therefore, we find that the Prisons Act and the Jail Manual require complete overhaul and not cosmetic changes. Though it falls within the domain of Legislation, but we find that the observations of the Hon'ble Supreme Court in Sunil Batra's case (supra) have gone unheeded. Therefore, while reiterating the directions, we find that in respect of at least jail punishments and the judicial appraisal much is desired.

27.While exercising judicial appraisal, the Sessions Judge or the Chief Judicial Magistrates or other Judicial Magistrates are treating the function as that of administrative appraisal. We find that such judicial appraisal is a quasi judicial function assigned to the Judicial Officers and is required to be exercised after complying with the principles of natural justice and after going through the history sheet and the record of the convict.

28. At the time of imposition of jail punishment, the competent authority shall prepare a gist of allegations; the stand of the convict, oral or written and the conclusion thereof. The reasons may be brief, but it must be recorded. Thereafter, the Superintendent, Jail shall produce the record of the convict, who has been imposed punishment, to the Court of Chief Judicial Magistrate forthwith i.e. within 24 hours of the imposition of the punishment. The Court of Chief Judicial Magistrate or such other Judicial Magistrate entrusted keeping in view the severity and duration of the punishment, appraise the record either during the jail visit or by giving an opportunity to the convict through the legal aid counsel out of the list of Legal Aid Counsel maintained by the Chief Judicial Magistrate and/or by the Legal Services Authority. Such Judicial Magistrate shall record its reasons in support of its findings. Such decision shall be final subject to power of judicial review under Article 226 of the Constitution of India. Needless to say that power of judicial review is limited to examine the

*decision making process, as laid down by the Hon'ble Supreme Court in **Tata Cellular Vs. Union of India (1994) 6 SCC 651** and cannot be interfered with only for the reason that a different view is possible.*

29. Para 562 of the Punjab Jail Manual classifies the punishments imposable under 46 of the Act into minor and major punishments. On the other hand, para 630 of the Punjab Jail Manual, as applicable in the State of Haryana, classifies the punishments imposable under Section 46 of the Act into minor and major punishments. The consequences of jail punishments are contained in Rule 9 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, which disentitles a convict awarded a minor jail punishment that his parole case shall be initiated after six months from the date of punishment, whereas in case of a convict, who has been awarded a major jail punishment, his parole case shall be initiated after one year from the date of punishment. The extent and nature of punishment awarded by the Jail Superintendent is subject to judicial appraisal, in

the manner enumerated above. However, we feel that the minor and major punishments require rationalization and it will be open to the State Government or to the State Legislature to rationalize the jail punishments in more scientific and reasonable method keeping in view the current requirements.”

In view of ratio of judgment laid down in **Pardeep Kumar's case (supra)**, neither any fact finding inquiry has been conducted nor any proper opportunity has been granted to the petitioner and the impugned order has been passed without application of mind and as such, the same is hereby quashed.

Accordingly, the present petition is allowed and the District and Sessions Judge, Gurgaon is directed to reconsider the matter again in view of ratio of judgment in **Pardeep Kumar's case (supra)** and pass order afresh without being influenced by the earlier order passed by the Sessions Judge, Gurgaon.

However, it is made clear that in case, statement of any other inmate is required, the same be recorded. It is also directed that the Superintendent, District Jail, Gurgaon shall also consider the application for grant of parole, if pending or in case, such application is moved by the petitioner.

19.12.2015
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(DAYA CHAUDHARY)
JUDGE