

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1839-2017 (O&M)

Date of Decision: 26.10.2017

Dinesh @ Nitu

..Petitioner

versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Anirudh Kush, Advocate, for the petitioner.

RAMENDRA JAIN, J.

1. Through the instant revision under section 401 of the Code of Criminal Procedure, the petitioner sought setting aside/modifying the judgment dated 27.1.2017 of the first appellate court dismissing his appeal, thereby affirming the judgment of conviction dated 15.7.2016 and order of sentence dated 18.7.2016 of the trial court, holding him guilty and convicted under sections 8 of the Haryana Good Conduct Prisoner (Temporary Release) Act, 1988 (hereinafter referred to as “the Act”) and sentencing him under section 9 (1) of the Act in the following terms:-

Under section 9 (1) of the Act To undergo three years rigorous

imprisonment with fine of Rs.1000/-. In case
of default thereof, further undergo rigorous
imprisonment for three months.

2. In nut-shell, the petitioner was undergoing life imprisonment in
case FIR No.9 dated 12.1.2000 under section 302 read with section 34 IPC

and 25 of the Arms Act, pertaining to Police Station Sadar, Sonapat in District Jail, Sonapat. He was released on six weeks' parole on 22.3.2006 pursuant to order dated 22.3.2006 of the District Magistrate, Sonapat, and was to surrender at the gate of District Jail, Sonapat on 04.05.2006, but he did not surrender. Consequently, the Superintendent of District Jail, Sonapat, got registered FIR No.163 dated 20.5.2006 under sections 8 and 9 of the Act against the petitioner in Police Station City Sonapat. Despite best efforts, when the petitioner could not be arrested, he was declared proclaimed offender vide order dated 12.12.2006 by the then learned Chief Judicial Magistrate, Sonapat and a challan was presented before the trial court. Thereafter petitioner after more than nine years surrendered before the Chief Judicial Magistrate Sonapat on 18.8.2015 in case FIR no.09 dated 12.1.2000 under section 302 read with section 34 IPC and 25 of the Arms Act, Police Station Sadar, Sonapat, in District Jail, Sonapat, in which he was undergoing life imprisonment. Since the petitioner jumped the parole, therefore, he was charge sheeted under sections 8 and 9 of the Act and after completion of trial, convicted the petitioner in the manner indicated in the opening paragraph of this judgment. In his appeal also, the petitioner remained unsuccessful as the same was dismissed on 27.1.2017.

3 Learned counsel for the petitioner contends that the trial court, while convicting the petitioner ought to have ordered that the sentence of the petitioner shall run concurrently with the sentence of life imprisonment. In the absence of any such direction by the courts below the petitioner has to undergo additional sentence of three years.

4 After giving thoughtful consideration to the submission made by learned counsel counsel for the petitioner, revision, being without any

merit, fails and is liable to be dismissed for the reasons to follow:-

5 A perusal of the file shows that the petitioner was undergoing life imprisonment in case FIR No.09 dated 12.01.2000 under section 302 read with section 34 IPC and 25 of the Arms Act, Police Station, Sadar Sonapat. In pursuance of the order passed by the District Magistrate, Sonapat, he was released on parole for six weeks. He was to surrender before the jail authorities on 4.5.2006, but he did not do so. Consequently, he jumped parole on 04.05.2006 and remained absconded for a period of more than nine years. He, ultimately, surrendered before the Chief Judicial Magistrate on 18.8.2015.

6 The sole question that arises for consideration is whether the sentence of three years rigorous imprisonment under sections 8 and 9 (1) of the Act awarded to the petitioner by both the learned courts below shall run concurrently with that of the sentence of life imprisonment which he was undergoing for the offence under section 302 IPC.

7. In order to resolve the controversy in the matter, this court deems it appropriate to refer to Section 9 of the Act, which reads as follows:-

“9. Penalty for failure to surrender:- (1) Any prisoner who is liable to be arrested under sub-section (2) of section 8, shall be punishable with imprisonment of either description which may extend to [three years but shall not be less than two years]

(2) An offence punishable under sub-section (1) shall be deemed to be cognizable and non-bailable.

Explanation.- The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for

which he was convicted.”

8 On a perusal of the Explanation to Section 9 of the Act, it is abundantly clear that the sentence of three years' rigorous imprisonment imposed upon the petitioner in the instant case shall not run concurrently with the sentence of life imprisonment awarded to him under section 302 IPC.

9. The submission of the learned counsel for the petitioner that both the learned courts below did not appreciate while passing the impugned judgments that the sentence awarded to the petitioner in the instant case shall run concurrently with the sentence of life imprisonment awarded under section 302 IPC can not at all be acceded to, inasmuch as the petitioner had committed a separate offence under sections 8 and 9 (1) of the Act, for which, he was prosecuted, convicted and sentenced for three years, which is in addition to the punishment awarded to the prisoner for the offence in which he was undergoing life imprisonment. The observations made by both the learned courts below, in my considered opinion, is correct and do not call for interference.

10 In view of the discussions made above, revision, being without any merit, fails and is hereby dismissed.

26.10.2017
VK

(RAMESH NARAYAN JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |