

CWP No.22558 of 2017

[1]

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

**CWP No.22558 of 2017
Date of decision:07.11.2017**

Kamaldeep Kaur Rajoana

...Petitioner

Versus

Union of India and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Gursharan K. Mann, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner is allegedly the sister of Balwant Singh Rajoana, who was convicted for certain offences and sentenced to death along with his co-accused Jagtar Singh Hawara by the trial Court on 27.07.2007. The death sentence awarded to Jagtar Singh Hawara was commuted to life imprisonment but the sentence awarded to Balwant Singh Rajoana was maintained by this Court while deciding the Murder Reference No.6 of 2007. It is averred in the petition that Balwant Singh Rajoana did not seek any legal help during the trial, did not file any appeal against his death sentence, which was confirmed by this Court on 12.10.2010 and also did not file any SLP before the Supreme Court against the decision of this Court and has spent almost 21 years 10 months imprisonment, out of which about 10 years and 2 months have been spent after the sentence of death was awarded to him.

The petitioner has made a prayer for the issuance of a writ in the nature of *mandamus* to direct the respondents to commute the death sentence of Balwant Singh Rajoana (hereinafter referred to as the “condemned

prisoner”) to life imprisonment and to release him in accordance with law.

Before touching the merits of the case, learned counsel for the petitioner has been asked to argue on the issue of maintainability of this petition at the instance of the sister of the condemned prisoner, who actually is the aggrieved person.

Apparently, the condemned prisoner has accepted the death sentence as he did not challenge the order of this Court dated 12.10.2010 by way of an appeal before the Apex Court and even did not seek any legal assistance while facing the trial.

Counsel for the petitioner has submitted that in exceptional circumstances, this petition can be maintained by the sister of the condemned prisoner and in support of her submission, she has relied upon a decision of the Supreme Court rendered in the case of **Ayaaubkhan Noorkhan Pathan vs. The State of Maharashtra & ors.**, Civil Appeal No.7728 of 2012, decided on 08.11.2012 and a Single Bench judgment of this Court rendered in the case of **Gurcharan Kaur vs. State of Punjab**, 1986(1) R.C.R. (Criminal) 459.

I have heard learned counsel for the petitioner and examined the available record with her able assistance.

It is a settled legal position that a stranger cannot be permitted to enter into any legal proceedings unless he falls within the category of an 'aggrieved person'.

In **Ayaaubkhan Noorkhan Pathan's case (supra)**, the appellant was issued a caste certificate by the competent authority that he belongs to Bhil Tadvi (Scheduled Tribes) and on the basis of the said caste certificate, he was appointed as Senior Clerk in the Municipal Corporation, Aurangabad against

the vacancy reserved for persons under the Scheduled Tribes category. The appointment was given to the appellant after verification of the caste certificate but respondent no.5 in that case made a complaint to the Scrutiny Committee for recalling of the validity certificate on the ground that the appellant had obtained the said certificate by way of misrepresentation as he does not belong to the Scheduled Tribes and professes the religion of Islam. The Scrutiny Committee rejected the application. Respondent no.5 therein challenged that order of rejection in the High Court of Bombay, Aurangabad Bench, praying for a *de novo* inquiry in respect of the caste certificate of the appellant. The High Court disposed of the writ petition without going into the merits of the case but set aside the order of the Scrutiny Committee and remanded the matter to it to decide it afresh after hearing all the parties. Thereafter, the appellant filed the appeal before the Supreme Court. It was argued before the Apex Court by the appellant that respondent no.5 does not belong to reserved category and rather belongs to the General Category and, therefore, he had no right or *locus standi* to challenge the certificate issued to the appellant.

On the other hand, respondent no.5 argued that being a public spirited person, he has espoused the cause of the real persons who have been deprived of their right to be considered for the said post occupied by the appellant and also filed affidavits of relevant persons before the Scrutiny Committee to prove his allegations.

In this background, the Supreme Court first decided as to who would be a person aggrieved. It is observed that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for *habeas corpus* or *quo*

warranto. Another exception in the general rule is the filing of a writ petition in public interest. Otherwise, a person who raises the grievance himself must show that he has suffered legal injury and a stranger, having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others. It is also observed that a third person, having no concern with the case in hand, cannot claim to have any *locus standi* to raise any grievance but in the exceptional circumstances, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the Court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the Court, then the Court may examine the issue and in exceptional circumstances, grant the permission to espouse the cause of real aggrieved person(s).

Insofar as **Gurcharan Kaur's case (supra)** is concerned, it is not at all applicable to the facts and circumstances of the present case in view of the observations made by the Supreme Court in **Ayaaubkhan Noorkhan Pathan's case (supra)**, in which the issue of an 'aggrieved person' and *locus standi* has been thoroughly dealt with. The Supreme Court in **Ayaaubkhan Noorkhan Pathan's case (supra)** has held that in exceptional circumstances, if the actual person aggrieved, because of ignorance, illiteracy, inarticulation or poverty, is unable to approach the court, and a person, who has no personal agenda, or object, approaches the court on his behalf, then the court may examine the issue.

Learned counsel for the petitioner has actually pressed the aforesaid observations of the Supreme Court and argued that the condemned prisoner is not articulate, meaning thereby he is unable to express himself and,

therefore, the present petition has been filed by his sister.

However, I am unable to agree with her contentions because the condemned prisoner knew about his rights to defend himself during the trial but he deliberately chose not to seek any legal help. After his conviction and sentence, he did not choose to challenge the same by way of an appeal to the Supreme Court and had accepted the sentence awarded by the Supreme Court for the offence(s) committed.

In the criminal jurisprudence, the aggrieved person would be the one who would suffer the legal injury. The Supreme Court has rightly observed the exceptions of filing a writ petition in the nature of *habeas corpus* or *quo warranto* or even by way of a public interest. It also has observed that in exceptional circumstances, if it is felt by the Court that the aggrieved person, because of ignorance, illiteracy, inarticulation or poverty, is unable to approach the court, then the petition on his or her behalf, filed by others, may be considered but the facts of this case do not at all indicate in any manner that the condemned prisoner needs anybody's help to espouse his cause in the Court much-less for seeking a direction for his release by commuting the death sentence into life imprisonment.

Thus, in my considered opinion, the petitioner is not an aggrieved person and does not have any *locus standi* to maintain this petition and hence, the same is hereby dismissed as such.

November 07, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No