

CWP No.15286 of 2018**Date of Decision: 05.09.2018****AMIT KUMAR HOODA****.....PETITIONER****VERSUS****STATE OF HARYANA AND ORS.****.....RESPONDENT(s).****CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present: Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J.(Oral)

The petitioner is suffering life sentence in Central Jail, Ambala. He is aggrieved against the order dated 24.11.2017 passed by the Commissioner, Ambala Division, Ambala, by which he has imposed the punishment of cancellation of remission of two months upon the petitioner.

Learned counsel for the petitioner has submitted that the reason for withdrawal of the remission of two months is because of the commission of an offence in jail by the petitioner by keeping a mobile phone with battery and SIM card. It is submitted that one FIR No.0364 dated 19.12.2015 was registered against the petitioner under Section 42-A of the Prisoners Act, 1894 and Sections 188 and 120-B of Indian Penal Code, 1860 at Police Station Baldev Nagar, Ambala. It is submitted that after the investigation in the said FIR, the petitioner was not sent up as an accused

to face trial, rather the trial was conducted against four other co-accused, namely, Mohinder Singh, Sandeep, Sucha Singh and Dinesh Thakur in Criminal Case No. 60-I, in which they have been acquitted by the Judicial Magistrate Ist Class, Ambala on 16.08.2017. It is further submitted that the cancellation of remission of two months vide the impugned order is patently illegal.

Learned State counsel has submitted that initially the petitioner was visited with the punishment of separate confinement for three months and forfeiture of remission of two months. The said punishment was challenged by the petitioner before the District and Sessions Judge, Ambala for judicial appraisal, in which punishment of separate confinement for three months was set aside but the forfeiture of remission of two months was maintained.

It is further submitted that there is no error committed by the Commissioner, Ambala Division, Ambala because he has relied only upon the order dated 26.12.2015 passed by the District and Sessions Judge, Ambala, which has not been challenged by the petitioner.

Learned counsel for the petitioner has submitted that even the order of judicial appraisal dated 26.12.2015 was not in accordance with law inasmuch as this aspect of the matter that the petitioner was not even tried for the alleged offence before the Competent Criminal Court has not been looked into by the District and Sessions Judge, Ambala.

After hearing learned counsel for the parties, examining the available record and taking into consideration the aforesaid facts and circumstances, the present petition is hereby allowed, and both the orders

dated 26.12.2015 passed by the District and Sessions Judge, Ambala (Annexure P-2) and the order dated 24.11.2017 passed by the Commissioner, Ambala Division, Ambala (Annexure P-1) are set aside and the matter is remanded back to the District and Sessions Judge, Ambala to reconsider the case of the petitioner in the light of the aforesaid facts and circumstances mentioned here-in-above by this Court. It is also directed that needful shall be done within a period of one month from the date of the receipt of certified copy of this order.

(RAKESH KUMAR JAIN)
JUDGE

September 05, 2018

Jyoti-IV

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No