

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.872/2018

Balkrushna s/o Fattuji Rakhade (In Jail) .vs. The State of Maharashtra
through its Secretary, Ministry of Home, Mantralaya, Mumbai & Ors.

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

Court's or Judge's orders.

Mr. V. P. Maldhure, A.P.P. for respondents.

CORAM : SUNIL B. SHUKRE &
PUSHPA V. GANEDIWALA, JJ.
DATED : MARCH 20, 2019

1. This petition has been called out once in the first half and now in the second half and on both the occasions, Mr.P. M. Shambharkar, Advocate, who has been appointed through Legal Aid Committee of the State of Maharashtra, is absent. There is no message given whatsoever on behalf of the learned appointed counsel for postponing hearing of this petition. As this petition involves a question, which has a bearing upon the liberty of the petitioner, we have taken up this matter for final hearing on its own merits. Accordingly, we have heard Mr. Maldhure, learned A.P.P. for the respondents.

2. The learned A.P.P. has pointed out that this petition rests upon on only one ground; ground of double jeopardy and he submits that this issue has been squarely answered by the Division Bench of this Court in Criminal Writ Petition No.2310/2014, **Baig Salim Abdul Razzak Vs. State of Maharashtra and anr.**, decided on 15.12.2016, which view

has been reiterated by another Division Bench of this Court in Criminal Writ Petition No.309/2017, **Shaikh Razzak Shaikh Salim .vs. State of Maharashtra and two others**, decided on 04.05.2017.

3. On going through the grounds raised in the petition, we find that the learned A.P.P. is right in his submission that the only ground taken is of the rule against double jeopardy. It is the contention of the petitioner that for an offence of not reporting back to the jail after expiry of the period of his leave, an offence punishable under Section 224 of the Indian Penal Code was registered against him and he was sentenced to suffer three months imprisonment by learned Judicial Magistrate First Class, Tumsar on 29.11.2017 and, then, further punishment has been imposed upon him by cutting down his remission period by 190 days in the ratio of 1:5 for the delay of 38 days in returning to the prison. He submits that the latter punishment is hit by the rule against double jeopardy, enunciated in Article 20 of the Constitution of India and also his statutory right under Section 300 of the Code of Criminal Procedure.

4. This submission, however, is not correct. The Division Bench of this Court, in the case of **Baig Salim Abdul Razzak** (supra), relying upon the law settled by the Hon'ble Supreme Court in the case of **Maqbool Hussain Vs. State of Bombay**; reported in **1953 Cri. L. J. 1432**, has held that an offence under Section 224 of the Indian Penal Code is different

crime than the act of cutting down of the remission period as the latter is a disciplinary act while former is a judicial act. The Division Bench has also held that the conviction given for a criminal offence is a quite different from the punishment in the nature of reduction of the remission period imposed as a disciplinary act. This view has also been followed by subsequent decision of another Division Bench in the case of *Shaikh Razzak Shaikh Salim* (supra).

5. In the present case, the petitioner has been convicted for an offence punishable under Section 224 of the Indian Penal Code and then as a part of disciplinary action, the punishment of reduction in the remission period has been imposed upon the petitioner. The law settled by the Apex Court would show that; both these punishments are of different nature. One is for a criminal offence and the other is for the breach of the rule, resulting into disciplinary liability. As such, these facts are squarely covered by the aforesaid judgments.

6. In this view of the matter, we find no substance in the grounds taken in this petition and it deserves to be dismissed. Accordingly, the writ petition stands dismissed.

JUDGE

JUDGE