

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

Criminal Writ Petition No. 1189 of 2018

Prashant S/o Arjun Mande (In jail)
Convic No. C-5059,
Detained in Amravati Central Prison,
at Amravati. **PETITIONER**

Vs.

1. State of Maharashtra, Through
Superintendent of Morshi Open Jail,
At Amravati.
2. Divisional Commissioner,
Amravati at Amravati
2. Deputy Inspector of General
of Prison (ER) at Nagpur. **RESPONDENTS**

Mr. P.M. Shambharkar, Counsel for petitioner.
APP for the respondents.

**CORAM : S.B. SHUKRE &
Mrs. PUSHPA V. GANEDIWALA,JJ.**

DATED : APRIL 15, 2019

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
by consent of parties.

2. In the present case there is a transfer of petitioner from
open prison to closed prison and in addition there is also a
penalty of forfeiture of period of 60 days from the remission
period of the petitioner. As regards the proposal of penalty of
forfeiture, report of the concerned Sessions Court is awaited, as
informed by the learned APP, which report was of the judicial
appraisal and called for on 12/4/2018. If this is true, we need not

wait for the report of the concerned Sessions Court as one does not know as to for how much more time the concerned Sessions Court would take in giving its report. After all, in these matters it is expected that the Sessions Court submit its judicial appraisal report as expeditiously as possible and in any case within a period of one month from the date of receipt of request for judicial appraisal. Be that as it may be, now we would consider this matter independently of any such report.

3. Only submission of the petitioner in the present case is that transfer to closed prison and punishment for forfeiture of certain days from period of remission amount to giving of two punishments for the same offence and it is not permissible under our Constitutional order and under Section 300 of the Criminal Procedure Code Learned APP disagrees.

4. We are of the view that disagreement shown by the learned APP is quite weighty. The reason being that both these aspects, transfer from open prison to closed prison and forfeiture of remission period by some days are distinct and different and could not be considered to be fulfilling the requirement of Article 20(2) of the Constitution of India and also Section 300 of the Criminal Procedure Code. The requirement is that there should be a double jeopardy in the sense that a man is convicted twice for the same offence. Here, the act is in the nature of a misconduct which invites two different types of consequences. First consequence is of transfer from open prison to closed prison and it is administrative in nature. Second consequence forfeiture of remission, period is, however, punitive in nature. Keeping the prisoner in open prison or closed prison is a matter of

administration of prison and part of policy of correctional services of varying nature to be given to the prisoners, depending upon their characteristics, conduct and inclinations. These correctional measures are available in both kind of prisons though their degrees and types differ. But, it is not the case that the correctional measures are not at all available in closed prisons. Such being the case, the administrative needs of the prisons are required to be taken into consideration by the prison authorities and while doing so, the prison authorities in their wisdom would decide as to which of the measures, whether those available in the closed prisons or those in open prisons, would be best applicable to a particular prisoner. This is how in our view transfer of prisoner from open to closed prison and vice-versa becomes administrative in nature standing on entirely different pedestal than that of a matter of forfeiture or reduction of remission period. So, we find no substance canvassed on behalf of the petitioner.

5. The learned counsel for the petitioner also takes an exception to resort made by the respondents to Rule 45 (11) of Chapter of Indian Prisons Act, 1894 and Rule 13(3) of Rule 17 of the Maharashtra Prison Manual, 1979 on the ground that there is no mention of in the Indian Prison Act, 1894, about the rules made under this Act and also under the Maharashtra Prison Manual. The objection in ignores law of delegated legislation and is rejected. There is no merit in the petition. Petition stands dismissed. Rule is discharged.

JUDGE

JUDGE