

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5460 OF 2019

Vijay G. Kalia .. Petitioner

Versus

The State of Maharashtra and Ors. .. Respondents

Mr. Ashutosh Gole for the petitioner.

Mr. Arfan Sait, APP for the respondent State.

CORAM : B.P. DHARMADHIKARI,
ACTING CHIEF JUSTICE &
NITIN R. BORKAR, J.
DATE : MARCH 13, 2020

P.C.:

The contention of the petitioner is by a common order passed in Execution Application No. EA/16/04 of 2016 and EA/16/05 of 2016, the State Consumer Disputes Redressal Commission has on 16/3/2017 imposed cumulative sentence of three years under section 27 of the Consumer Protection Act. In an entirely unconnected matter of extending to him the benefit of remission available on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar, on administrative side, the Registrar has on 18/2/2019 informed the Superintendent of the concerned Jail that the punishment is to be undergone consecutively.

2. Learned counsel submits that the choice of punishment as cumulative has been made on judicial side and it could not have been undone in such a manner and in the proceedings on Administrative side. It is also submitted that the alteration to the prejudice of the prisoner could not have been ordered behind his back.

3. Learned APP submits that as per remission scheme the appraisal of convicting court is a must and while submitting that report, the convicting court appears to have made some remarks. Our attention is invited to the fact that the Registrar of the State Consumer Forum has sent the said communication as per orders of the Chairman of the State Forum. Learned APP submits that against such order the law permits remedy of appeal before the National Forum and therefore, this court should not intervene in this matter. He also adds that the punishment under section 27 in two different matters cannot be cumulative or concurrent.

4. We do not wish to go into any disputed question at this stage. Petitioner has not been served with any judicial order passed by the Chairman of the State Forum modifying the order of punishment dated 16/3/2017. For him the modification is being done by letter dated 18/2/2019 sent by the Registrar of that

Forum.

5. Whether the choice of punishment was made properly, whether it is cumulative or then there cannot be concurrent punishment in law are all debatable issues which cannot be gone into at this stage. The State Forum has to first examine whether such an exercise of reopening of the order dated 16/3/2017, if any, is possible while submitting the appraisal report under section 432 of Cr.P.C. As all these disputes have lost sight of, we quash and set aside the communication dated 18/2/2019 and place the matter back before the State forum for fresh consideration.

6. The Petitioner completes his three years in jail on 16/3/2020. We therefore, direct the State Forum to hear him and to pass suitable order afresh in accordance with law within next two weeks.

7. Petitioner/his representative to appear before the State Forum for this purpose on 16/3/2020 at 11.00 am.

8. Petition is thus partly allowed and disposed of.

NITIN R. BORKAR, J.

ACTING CHIEF JUSTICE