

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

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CRWP-8239-2020

Date of Decision:15.01.2021

VIKAS MANCHANDA

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Siddharth Gupta, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

SUVIR SEHGAL, J.(ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

Instant petition has been filed under Article 226 of the Constitution of India seeking quashing of the impugned order dated 17.08.2020, Annexure P-4, whereby punishment of forfeiture of remission of 4 days has been imposed upon the petitioner by respondent No.2 and has been approved by the learned Sessions Judge, Ambala.

Facts, in brief, leading to the filing of the present petition are that the petitioner is a convict in criminal case bearing FIR No.258 dated 01.09.2009 registered at Police Station Ambala, and is undergoing the sentence of imprisonment for life. He stands convicted in another FIR against which appeal is pending. On 01.07.2020, a mobile phone was recovered from the prison cell where the petitioner and three co-prisoners were lodged and FIR No.480 dated 01.07.2020 was registered under Section 42-A of Prisons Act, 1894, Annexure P-1. In terms of Para 630 (3) of the Punjab Jail Manual, as applicable to Haryana, proceedings were initiated against the petitioner and after conducting inquiry, punishment of withdrawal of 4 days earned remission was imposed upon the petitioner. Vide letter dated 08.07.2020, Annexure P-2, respondent No.2 forwarded the punishment, which was judicially appraised by

the learned Sessions Judge, Ambala vide impugned order after hearing the petitioner through video conferencing.

Counsel for the petitioner has argued that the procedure as prescribed under the Prisons Act, 1894 and Punjab Jail Manual has not been followed. He has placed reliance upon a Division Bench judgment of this Court in **Pardeep Kumar vs. Narcotic Control Bureau, Chandigarh 2015(2) PLJ (Criminal) 537**, Annexure P-3.

State counsel has referred to the reply filed by Superintendent, Central Jail, Ambala, on behalf of respondents No.1 and 2 and argued that due process has been followed before imposing the punishment and getting it judicially appraised.

Counsel for the parties have been heard.

The issue is no longer res integra. A Division Bench of this Court in Pardeep Kumar's judgment (supra) has observed as under:-

“At the time of imposition of jail punishment, the competent authority shall prepare a gist of allegations; the stand of the convict, oral or written and the conclusion thereof. The reasons may be brief, but it must be recorded. Thereafter, the Superintendent, Jail shall produce the record of the convict, who has been imposed punishment, to the Court of Chief Judicial Magistrate forthwith i.e. within 24 hours of the imposition of the punishment. The Court of Chief Judicial Magistrate or such other Judicial Magistrate entrusted keeping in view the severity and duration of the punishment, appraise the record either during the jail visit or by giving an opportunity to the convict through the legal aid counsel out of the list of Legal Aid Counsel maintained by the Chief Judicial Magistrate and/or by the Legal Services Authority. Such Judicial Magistrate shall record its reasons in support of its findings. Such decision shall be final subject to power of judicial review under Article 226

*of the Constitution of India. Needless to say that power of judicial review is limited to examine the decision making process, as laid down by the Hon'ble Supreme Court in **Tata Cellular Vs. Union of India, (1994) 6 SCC 651** and cannot be interfered with only for the reason that a different view is possible. ”*

An examination of the impugned order imposing punishment upon the petitioner shows that neither the gist of allegations has been prepared, nor the stand of the convict has been considered nor any reasons have been assigned before arriving at the conclusion. There is nothing on the record to show that any enquiry was conducted. The impugned order has been passed by the jail authorities in a mechanical manner. It is not discernible as to whether the history sheet and record of the convict was placed before the learned Sessions Judge, while seeking judicial concurrence of the punishment.

This Court is, therefore, of the view that the impugned order cannot be described to have been passed in due compliance of the principles required for judicial appraisal, which have been enumerated by the Division Bench of this Court in Pardeep Kumar's case (supra).

In view of the above discussion, the impugned order cannot be sustained and the sentence is ordered to be quashed.

While setting aside the impugned order, liberty is granted to the jail authorities to take fresh recourse in terms of the provisions of the Prisons Act, 1894, and the Jail Manual.

Petition is disposed of.

15.01.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No