

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPCRL No.221 of 2010

Suri @ Suresh Chandra Gouda

Petitioner

Mr. M.K. Mohapatra, Adv.

-Versus-

State of Orissa & Anr.

Opp. Parties

Mr. D. Nayak, AGA

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

26.10.2022

Order No.

- 18.
1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
 2. Heard Mr. M.K. Mohapatra, learned counsel appearing for the petitioner and also Mr. D. Nayak, learned Addl. Government Advocate appearing for the Opposite Parties.
 3. It is a case where for absolute dereliction of the duty of the Superintendent of Jail where the petitioner was lodged for undergoing the sentence, the petitioner had to suffer illegal detention of 8 months and 22 days. The substratum of the relevant facts has not been contested by the Opposite Parties. The perspective-facts is required to be referred briefly for purpose of considering the claim of the petitioner.
 4. The petitioner was charged under Section 302 of the IPC and he was convicted under that Section for committing murder on culmination of the trial. Consequently, he was sentenced to suffer

rigorous imprisonment for life and to pay fine of Rs.5,000/- with default imprisonment of 1 year.

5. Being aggrieved, the petitioner filed one criminal appeal before this Court being CRLA No.95 of 2003. The said appeal was heard and disposed of by the Judgment dated 04.08.2009. By the said Judgment, the conviction under Section 302 of the IPC was set aside. However, the petitioner was sentenced under Section 326 of the IPC for committing grievous hurt and he was sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.10,000/- with default imprisonment of 1 year.

6. The petitioner submitted the Judgment of this Court to the Superintendent of Jail for his release from the jail in as much as, he had by that time, completed the substantive and the default imprisonment (both inclusive), but the Superintendent of Jail did not discharge his legal obligations as created by Rule 471 and Rule 472 of the Odisha Jail Manual. Rule 471 of the said Manual unambiguously provides that where the appellate court simply modifies a sentence passed by a lower court without change of section, or when the appellate court passes a new sentence by changing the conviction section or the punishment section or otherwise, the sentence finally passed shall count, unless otherwise specially directed from the first day or imprisonment under the original sentence.

7. Rule 472 provides that the date on which a prisoner is entitled to be released shall be calculated by the Superintendent and Jailor, and an entry shall be made in the release diary under that date, giving the name and serial number of the prisoner. It is not the duty of the committing officer to note the date of release on the warrant. If the date of release is stated on the warrant incorrectly or omitted, the warrant shall not be returned for correction on that account. The entry

in the release diary shall be made either by the jailor personally, or by an assistant jailor under his immediate supervision; in case the term of imprisonment be changed, either by the judicial imposition of additional imprisonment, or by remission of any part of the sentence, or by absence from the jail on bail or after escape, the fact shall be noted opposite such entry and a reference be made to the date of release. Under the new order, under which date a new entry shall be made.

8. Mr. D. Nayak, learned Addl. Government Advocate has referred to Paras 3 and 4 of the further affidavit which they filed in compliance of the order dated 28.03.2022, wherein the Opposite Parties have revealed their stand thus:

“3. That it is humbly submitted that the Judgment under Annexure-A1 was delivered on 04.08.2009 and in due course, the same was intimated to the learned Trial Court, on the basis of which the learned Trial Court was pleased to issue a modified warrant vide letter dated 20.11.2009, which was received by the predecessor of the deponent on 24.11.2009.

4. That it is respectfully submitted that on receipt of the above modified warrant, the modified sentence was calculated which was found to be expiring on 24.11.2010, as mentioned in the modified warrant by the jail authority. The said calculation was made by the jail authority in consonance with Rule 471 of the Odisha Jail Manual governing the field at the relevant point of time read with Section 428 of Cr.P.C. Rule 471 which has been scrupulously followed by the Jail Authority clearly provides as follows;

9. The above explanation as given by the Opposite Parties is unacceptable as such explanation cannot shield the Opposite Parties from their abject failure in performing the duty, cast by the Rules 471 and 472 of the Odisha Jail Manual.

10. Having observed thus, we are persuaded to hold that the Opposite Party No.2 is absolutely responsible for the illegal detention, which the petitioner has suffered. On scrutiny, we find the petitioner has successfully made out a case where we can exercise our Public Law Remedy jurisdiction for purpose of granting compensation. Having taken the relevant factors, such as the minimum wage and mental agony etc, in consideration we decide that the petitioner is entitled to get a lump sum compensation of Rs.1.5 lakhs, which amount shall be payable by the Opposite Parties within a period of 6 weeks from today. The Opposite Parties may recover the said amount from the Superintendent of Jail, who is responsible for the said dereliction.

11. In terms of the above observation and direction, this writ petition stands allowed. There shall be no order as to costs.

12. A copy of this order be supplied to Mr. D. Nayak, learned Addl. Government Advocate for onward transmission.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge