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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.08.2022

+ W.P.(CRL) 44/2021

VIPIN SHARMA

..... Petitioner

versus

STATE (GOVTOF NCT OF DELHI)

..... Respondent

+ W.P.(CRL) 92/2021

VIVEK KUMAR SHARMA

..... Petitioner

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

MEMO OF APPEARANCE

Mr Akshay Bhandari, Advocate (through VC) for Petitioner

Mr Sachin Mittal, ASC for State with Mr Nishant Chauhan and Mr Alok Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (ORAL)

1. These are petitions seeking setting aside of the pending punishment awarded to the petitioners vide punishment ticket dated 02.01.2020. As per the punishment ticket it is stated:



“On 02.01.2020, a surprise search was conducted in all the wards of this jail at 17:00-19:00 hrs. by TSP, CRPF and DJ staff under the supervision of DIG(P), SCJ-11, 12 & 14, SCJ-13, Dy. Superintendent (MPHQ), Dy. Superintendent, CJ-11.

After the completion of searching some suspected inmates were called at SCJ-11 office for interrogation and during the course of interrogation inmate namely Azhar S/o Waseem disclosed information. During the course of searching as per disclosure of inmate Azhar S/o Waseem 04 Mobile Phone and 02 SIM cards were recovered from Ward No.03, Barrack No.201 in Air Duct. Inmate Azhar S/o Waseem also discloses the names of their associates namely Danish s/o Ikrar, Danish @ Tiggi s/o Afzal, Faizal s/o Md. Jamil, Afzal s/o Dildar, Ajay s/o Jagbir, Ashu @ Vishu s/o Bharat Bhushan, Vipin s/o Rajkumar (CT), Vivek @ Biliu S/o Jivan Lai (CT), Vijay @ Mannu S/o Pritam Singh (CT) who used mobile phone along with him.

As per the Jail Rules-2018, using Mobile phone inside the prison premises is prohibited and against the Prison Rule, all of above named inmates have violated jail rules. Hence, they all may be punished accordingly as per Delhi Jail Manual-2018.

**Sd/-
Asst. Supdt.**

**Sd/-
Dy. Supdt.**

(Handwritten) Heard all the inmate

all accepted using the mobile phones. However no one accepted ownership neither named anybody. They all have violated prison rules. Stoppage of inmate calling system and



Mulakat for one month will serve the justice subject to the approval of Hon'ble Judge."

2. Mr Bhandari, learned counsel appearing for the petitioners has challenged the punishment ticket on two grounds:

i) He states that the punishment ticket amounts to a 'Major' penalty in terms of Rule 1271 (b) II since stoppage of *Mulakat* is a major punishment, the procedure has to be followed as mandated in Rule 1272 and 1273 "Procedure for awarding Punishments". It is stated that the concerned authorities have violated the said rules, in so much so that procedure prescribed before awarding the punishment has not been followed.

(ii) He further states that the punishment awarded to the petitioner is also violative of Rule 1275 as the petitioner has been punished twice for the same offence by the same authority. He also submits that the Superintendent has to give reasons for awarding the punishment to the petitioner.

3. Per contra, the respondent has filed a reply wherein it has been stated that a search was conducted and during interrogation one inmate namely Azhar orally disclosed information and on his disclosure 4 mobile phones and 2 sim cards were recovered from Ward No.03, Barrack No. 201 in Air Duct. Azhar also disclosed name of his associates who were using mobile phones along with him and their names were Danish S/o Ikrar, Danish @ Tiggi S/o Afzal, Faizal S/o Md. Jamil, Afzal S/o Dildar, Ajay S/o Jagbir, Ashu @ Vishu S/o Bharat Bhushan, Vipin S/o Raj Kumar (petitioner in W.P.(CRL) 44/2021), Vivek @ Billu S/o Jeevan Lal (CT) (petitioner in W.P.(CRL) 92/2021), Vijay @ Mannu S/o pritam Singh(CT).

4. It is further stated that for non-compliance of Rule 1272 that the written punishment ticket was shown to the petitioners and after hearing the



petitioners, the punishment was awarded. As regards Rule 1273, it is stated that the petitioner denied written statement and hence no confessional statement was recorded as the petitioner was unwilling to provide the same in writing.

5. I have heard learned counsel for the parties.

6. I am of the view that the stoppage of *Mulakat* is a major punishment. Once a procedure for awarding the punishment has been prescribed in the Delhi Prison Rules, the same must be complied with in its true letter, spirit and intent. Rule 1272 mandates that before awarding the punishment, the prisoner should be given:

(i) written notice,

(ii) calling him to show cause with reference to alleged violation of the jail rules and

(iii) The order of punishment to be communicated to concerned prisoner.

7. Rule 1272 and Rule 1273 of the Delhi Prison Rules, 2018 are:

1272. For award of major punishment the prisoner should be given notice in writing, calling him to show cause with reference to the alleged violation of the Jail rules. The order of punishment should also be communicated to the concerned prisoner.

1273. The Superintendent shall hold an inquiry touching every prison offence committed or alleged to have been committed by a prisoner in the prison in a quasi-judicial manner recording the statements of all concerned witnesses, giving full opportunity to the offender for his defense.



Confessional statements of the offender should also be recorded in the presence of two witnesses. Findings and punishment in the manner provided in law should be recorded after applying judicious mind by the Superintendent in his own hand in the prisoner's history ticket. The complete enquiry file, findings and the punishment awarded shall be immediately forwarded to the District and Sessions Judge for obtaining judicial appraisal in all cases except in cases of formal warning. Where such information, on account of exigency is difficult to be forwarded immediately, be given within 2 days of finding. The Superintendent shall satisfy himself that every punishment so ordered, is duly carried into effect in accordance with law:

Provided that the Superintendent, at any time, if physically incapacitated from making such record, cause the same to be made in his presence and under his directions.

8. Showing of punishment ticket by no stretch of imagination can be said to be compliance of Rule 1272. The showing of punishment ticket is not akin to giving a show-cause notice. The show-cause notice requires that the prisoner/inmate should be put to notice and he must be informed in writing that he is required to respond to the charges levelled against him as well as the basis for those charges and the punishment which can be given to him in case his response is found unsatisfactory. The punishment ticket produced hereinabove has already found the petitioners guilty of violation of Prison Jail Rules. Only the punishment remained to be ascertained which has been



done subsequently through the handwritten note. The punishment ticket, hence, is not a show-cause notice and the same falls foul of Rule 1272.

9. Assuming that the punishment ticket could be construed as a show-cause notice, the factum of taking of action on Azhar's oral disclosure statement is also violative of Rule 1273. In the present case, it is stated that the inmate Azhar gave an oral disclosure statement. The same is also violative of Rule 1273 as Azhar's statement is akin to a statement of witness which has to be recorded. Oral discourse statement finds no mention in the Delhi Prison Rules.

10. Again assuming that the petitioners were unwilling to provide their confessional statements in writing, as has been stated by the respondent, the said oral statement of unwillingness also needs to be in the presence of witnesses. The whole idea of Rule 1272 and 1273 stems from the fact that the rights of the inmates need to be protected and any statement implicating them should be recorded in the presence of witnesses. Oral disclosure statement and oral confessional statements in the absence of witnesses finds no place in the Delhi Prison Rules.

11. Lastly, the punishment awarded to the petitioners is also violative of Rule 1275 as the petitioners have been punished twice over for the same offence by the same authority. The petitioners have been punished with (i) stoppage of inmate calling system and (ii) stoppage of *Mulakat* for one month. Rule 1275 reads as: "*No prisoner should be punished twice for the same offence by the same authority.*"

12. For all the above said reasons, I am of the view that the petition needs to be allowed and the punishment ticket dated 02.01.2020 needs to be set aside.



NEUTRAL CITATION NO: 2022/DHC/003215

13. Ordered accordingly.

JASMEET SINGH, J

AUGUST 18, 2022

sr

Click here to check corrigendum, if any

