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

EX.P. 109/2019

Date of Decision : 05.07.2023

IN THE MATTER OF:

INOX AIR PRODUCTS PRIVATE LIMITED

..... Decree Holder

Through:

Versus

MR. ARUN RATHI

..... Judgement Debtor

Through: Mr. Tanmaya Mehta and Mr. Subhash
Chawla, Advocates for Judgment Debtor

Ms. Nandita Rao, ASC (Criminal) for
Govt. of NCT of Delhi

Mr. V.K. Yadav, Superintendent, Central Jail
No.7, Tihar with Mr. Abhijit Shankar, Law
Officer, Tihar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.(ORAL)



EX.APPL. (OS) 747/2023 (Under Order XXI by Judgment Debtor)

1. By way of present application filed under Section 151 CPC read with Order 21 CPC, the applicant/Contemnor - *Arun Rath* has prayed that his case be considered for grant of remission in accordance with Delhi Prison Rules, 2018.

2. Briefly, this Court vide order dated 24.05.2019, while noting the facts of the case and especially the conduct of the applicant, found him guilty of contempt of Court for violating orders as well as the undertaking given before the learned Arbitrator. The Court directed the applicant to deposit a sum of Rs.5.05 crores i.e., the value of the machinery and equipment which had gone missing, to the Decree Holder. It was further directed that if the said amount was not paid within six weeks, the applicant would be liable to undergo civil imprisonment for a period of three months.

The said order was challenged before the Division Bench by way of CONT.APP. (C)15/2019. The challenge came to be dismissed vide order dated 26.11.2019 against which an S.L.P. (Crl.) No. 665 of 2020 was preferred, which was also dismissed however, time to deposit the amount was extended vide orders dated 11.11.2022 and 15.12.2022. Thereafter, a Review Petition No.12/2023 filed before the Division Bench also came to be dismissed on 13.01.2023.

The Court, on 29.03.2023, while noting that the applicant had failed to deposit the amount of Rs. 5.05 crores, directed him to surrender and undergo three months civil imprisonment in terms of the order dated



25.05.2019. Reportedly, the applicant surrendered on 10.04.2023 and has been in civil prison since then.

3. Pertinently, during the pendency of the present application, a representation made by the applicant before the Jail Authorities came to be rejected on 01.07.2023.

4. Mr. Tanmaya Mehta, learned counsel for the applicant contended that the applicant having been found guilty of contempt and punished with civil imprisonment is entitled for grant of remission. He challenged the very basis of communication dated 01.07.2023 which is an illegal and arbitrary exercise of power by the jail authorities.

5. Ms. Nandita Rao, ASC (Criminal), on the other hand, has disputed the applicant's submissions. She contended that the applicant being a civil prisoner is not entitled for any remission as the punishment awarded to the applicant is not a substantive sentence. She further contended that the Rules do not provide for any remission under the heading of Civil Prison in Chapter XXXIII.

6. It is pertinent to note that the order dated 24.05.2019 was passed in a petition filed under Section 12 of the Contempt of Courts Act, 1971 (hereinafter, referred to as the 'Act'). The proceedings under the Act for civil contempt culminate in punishing the contemnor for non-compliance and disobedience of the order of Court. The proceedings are unlike execution proceedings under the Code of Civil Procedure, as in the contempt proceedings the Court is mandatorily required to satisfy it and record a finding that the disobedience was willful and intentional.



Sub-Section 1 of Section 12 of the Act provides that a contempt of Court may be punished with a simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Sub-Section 3 which starts with a non-obstante clause provides that where a person is found guilty of civil contempt and if the Court considers that a fine will not meet the ends of justice and a sentence of imprisonment is necessary, instead of sentencing into simple imprisonment, direct that he will detain in a civil prison for such period not exceeding six months. Not only the proceedings under the Act are quasi-criminal in nature, but also the orders passed are to be treated as orders passed in criminal cases. [Ref: Andre Paul Terence Ambard v. The Attorney-General of Trinidad and Tobago, reported as **AIR 1936 PC 141**; Sahdeo v. State of U.P., reported as **(2010) 3 SCC 705**.]

7. At this stage, this Court deems it profitable to refer to other relevant provisions to appreciate the issue involved in the present case.

8. The expressions “criminal prisoner”, “convicted criminal prisoner” and “civil prisoner” have been defined in Section 3 (2) (3) and (4) of The Prisons Act, 1894 as under:

(2) “criminal prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or Authority exercising criminal jurisdiction, or by order of Court-martial.

(3) “convicted criminal prisoner” means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in



prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882 (10 of 1882) or under the Prisoners Act, 1871.

(4) “civil prisoner” means any prisoner who is not a criminal prisoner.

Sub-Section 5 of Section 3 of The Prisons Act, 1894 further provides that “remission system” means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jail.

9. The Delhi Prisons Act, 2000 (Delhi Act No.2 of 2002) also provides the definition of “civil prisoners”, “convicted criminal prisoners” and “criminal prisoner” which are *pari materia* with the definition under The Prisons Act, 1984. While exercising powers under Section 71 of The Delhi Prisons Act, 2000, Govt. of NCT of Delhi framed Delhi Prison Rules, 2018 (hereinafter, referred to as the ‘Rules’). The rules relevant for the present case are extracted hereunder:-

“CHAPTER-XVIII

REMISSION

1169. Without prejudice to the provisions of Article 72 of the Constitution of India and the Section 432 of the Code, remission can be earned under the provisions of the Delhi Prisons Act, 2000, on the prisoner fulfilling the conditions required hereinafter. However, Remission is a privilege to a prisoner cannot be claimed as a right.

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1172. In the context of this chapter:

I. ‘Prisoner’ means a convict and/ or includes a person committed to prison in default of furnishing security for



maintaining peace or good behaviour and also includes persons convicted by a Military Court.

II. 'Sentence' means a sentence as finally fixed on appeal or revision or otherwise, and includes an aggregate of more sentences than one and an order of imprisonment in default of furnishing security for maintaining peace or good behaviour.

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*1175. Eligibility: The following types of **convicted prisoners** shall be eligible for ordinary remission:*

I. Prisoners having substantive sentences of two months and more,

II. Prisoners, sentenced to simple imprisonment for two months or more, who volunteer to work,

III. Prisoners employed on prison maintenance services requiring them to work on Sundays and Holidays, e.g. sweeping, cooking etc, irrespective of the length & nature of their sentence i.e., simple or rigorous imprisonment

IV. Prisoners undergoing imprisonment in lieu of fine which immediately follows and is in continuation of the substantive sentence of not less than three months.

Note: It will be the responsibility of the prison administration to provide work to all eligible prisoners. If for any reason the prison administration fails to do so the prisoners, who are otherwise eligible for remission for work, should be granted it as per their normal entitlement under the orders of the Inspector General of Prisons.

1176. Non-Eligibility: The following types of prisoners will not be eligible for ordinary remission:

I. Prisoners having substantive sentence of less than two months,

II. Prisoners sentenced in default of payment of fine only,



III. Prisoners whose sentence is reduced to less than two months (in such cases remission already earned, if any, should stand forfeited),

IV. Prisoners, who are convicted of an offence committed after admission to the prison under Sections: 147/148/152/224/302/304/304A/306/307/ 308/ 323/ 324/ 325/ 326/ 332/ 333/ 352/ 353/ 376 or 377 of IPC or of an assault committed after admission to the prison on a warder or other officer or under any other law for misusing the concession of parole/furlough granted under that law.

V. Prisoners debarred from remission as punishment for committing prescribed prison offences,

VI. Prisoners specifically debarred from remission by the Government or the Inspector General of Prisons or under any law or rule;

VII. Prisoners undergoing sentence in the Narcotics, Drugs and Psychotropic Substances Act (NDPS) cases, provided they are convicted after the 29th May, 1989;

VIII. During out-periods which are not reckoned as part of sentence (being periods during bail, escape and other periods, which are treated as out-periods and not reckoned as part of sentence under specific orders of the Government issued in that behalf).

(emphasis supplied)

10. In the present case, the Court vide order dated 24.05.2019 directed that on the applicant failing to deposit the amount of Rs.5.05 crores, he would undergo civil imprisonment for three months. It is apparent that while passing the aforesaid order, the Court had exercised its power under Section 12 (3) of the Act and the applicant's imprisonment is nothing but detention in civil prison for three months.



11. Personal liberty is one of the cherished objects of Indian constitution and deprivation of the same can only be in accordance with law and in conformity with the provision thereof, as stipulated in Article 21 of the Constitution. It is well established that a procedure established by law cannot be arbitrary, unfair or unreasonable.

12. In the considered opinion of this Court, a plain reading of the aforesaid Rules would show that while providing eligibility for remission in Rule 1175, the expression used is “convicted prisoner”. The expression is inclusive and does not distinguish between a convicted “civil prisoner” and a “criminal prisoner”. Although, in Chapter XXXIII of the Rules applicable for civil prisoners, there is no separate provision for remission, however, the same by itself would not mean that Rule 1175 of the Rules becomes inapplicable to the applicant. Also, there is no specific exclusion of the civil prisoners in Rule 1176 either. Therefore, this Court is of the view that the aforementioned definition and rule are inclusive of both kind of prisoners. Also, the contention that applicant has not been awarded a substantive sentence is equally fallacious as the applicant has been convicted and punished with substantive sentence of detention in civil prison for three months and as such, he is eligible for remission in terms of Rule 1175(1).

13. In view of the aforesaid, the application is allowed and the Jail Superintendent is directed to grant the benefit of remission to the applicant/contemnor as per the applicable Rules.



14. The Registry shall forthwith communicate a copy of this order to the Office of The Superintendent of Prisons, Central Jail No.7, Tihar, New Delhi for information and immediate compliance.

15. A copy of this order be also given *dasti* to the counsels for both the parties.

16. The application is disposed of in above terms.

(MANOJ KUMAR OHRI)
JUDGE

JULY 5, 2023/na/v



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