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

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Date of Decision: 01st February, 2024+ **W.P.(CRL) 2272/2022****CHANDER KANT JHA**

..... Petitioner

Through: Mr. Gautam Khazanchi, Advocate
from DHCLSC with Mr. Subham Jain, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Kunal Mittal, Mr. Arjit Sharma
and Ms. Rishika, Advocates for Mr. Sanjeev
Bhandari, ASC for State, with SI Vandana, PS
Hari Nagar.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been filed by the Petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of Punishment Ticket No.22 dated 01.10.2020 and judicial Appraisal Order dated 15.03.2021 issued against the Petitioner.
2. Petitioner is presently confined in Central Jail No.3, Tihar, New Delhi and serving the sentence of life imprisonment. On 01.10.2020, a Punishment Ticket was issued against the Petitioner by Jail authorities of Jail No.2, whereby punishment of stoppage of ICS and canteen facility for a period of 30 days was imposed upon him. Status report has been filed on behalf of the State.



3. Learned counsel for the Petitioner submits that the Petitioner has been falsely implicated and has been awarded the punishment without any fault on his part. The allegation against the Petitioner is that on 01.10.2020, convict Vikas informed the Jail authorities that on 30.09.2020 someone called his mother and asked her to provide her mobile number and address on pretext of enquiry in connection with parole of Vikas. The caller was impersonating himself as a Tihar Jail official, namely, Vikas Mishra and during the investigation, it was found that the call was allegedly made by the Petitioner and that three hand-written pages were also recovered from his possession, out of which on one-page PID (Prisoner Identification Details) numbers of 5 inmates were written and on two pages addresses and phone numbers of inmates were written along with address and contact number of Vikas.

4. It is contended that the aforesaid allegations have resulted in the impugned Punishment Ticket but without complying with the procedure laid down under the Delhi Prison Rules, 2018 (hereinafter referred to as 'Rules 2018'). It is urged that the procedure for awarding major punishments is provided in Rules 1272 and 1273 of Rules 2018, which require that for award of major punishment, prisoner should be given notice in writing, calling upon him to show-cause with reference to the alleged violation of the Jail Rules. The Jail Superintendent is under a mandate to hold an enquiry in a quasi-judicial manner, recording statements of concerned witnesses and giving full opportunity to the offender for his defence. Confessional statements of the offender are to be recorded in the presence of two witnesses and complete enquiry file, findings and punishment so awarded by



the Superintendent, after applying judicious mind, is to be immediately forwarded to the District and Sessions Judge for obtaining judicial approval in all cases except in cases of formal warning. In the present case, there is a total violation of the laid down procedure since Petitioner was not given an opportunity to defend himself and even the copies of the three pages, heavily relied upon by the Jail authorities and the learned Appraisal Judge, were not provided to the Petitioner, despite an RTI application. No show-cause notice was given to the Petitioner seeking his response to the allegations. Petitioner was forced to make a confession, which was later on relied upon for imposing the punishment but the alleged confession was not recorded in the presence of two witnesses, to the best of Petitioner's knowledge, as copy of the alleged statement was not provided to the Petitioner, despite requests in that behalf.

5. It is further contended that even on merits, the punishment is not sustainable. The phone facility provided by the Jail authorities is monitored/managed by Inmate Phone Facility Sahayak (Convict Sewadar) under the supervision of Assistant Superintendent In-charge for phone calls of inmates. A person before making a call, has to fill in the details in register maintained by the Inmate Phone Facility Sahayak. The Jail Authorities did not bring on record the said register or the testimony of the said Sahayak deliberately for reasons best known to them. It is admitted in the Status Report that only a verbal notice was given to the Petitioner and he was produced before the Superintendent, who heard him in the presence of three witnesses, whereafter the punishment was imposed. This procedure is unknown to Rules 2018 and/or principles of natural justice. For all these



reasons, the punishment must be set aside. Reliance is placed on an earlier order passed by this Court in Petitioner's own case in ***Chandrakant Jha v. State of NCT of Delhi, 2023:DHC:2244***, wherein Punishment Ticket dated 07.01.2020 was assailed and the Court held that it is mandatory to issue notice in writing and give a hearing to the offender as provided in Rule 1272 and hold enquiry in consonance with the procedure laid down in Rule 1273.

6. Mr. Kunal Mittal arguing on behalf of the State, for and on behalf of Mr. Sanjeev Bhandari, learned ASC, submits that Petitioner is a habitual offender and is undergoing life sentence in respect of 3 FIRs under Sections 302/201 IPC. Petitioner has spent over 16 years in judicial custody with remissions, however, his Jail conduct is unsatisfactory. The allegations leading to the impugned Punishment Ticket are serious, inasmuch as the Petitioner was found to be impersonating himself as Tihar Jail official, which is proved from the recording of the phone call obtained from the mobile phone of the mother of the convict Vikas. On an enquiry being made into the issue, Petitioner confessed in writing that he used the PID number of Vikas on 30.09.2020 to make a call on his mother's mobile number. Three hand-written pages were also recovered from his possession, which proved his delinquent conduct. It is further submitted that as per practice, after giving verbal notice to the Petitioner, he was produced before the Jail Superintendent and duly heard in the presence of three witnesses i.e. Assistant Superintendent, Shri R.N. Meena, Deputy Superintendent and one inmate Atbir Singh, before imposing the punishment, which has been duly approved by the Appraisal Judge. Order dated 15.03.2021 passed by the Appraisal Judge shows that ample opportunity was given to the Petitioner to



prove his innocence but he failed in doing so and instead confessed to the commission of the offence.

7. I have heard learned counsel for the Petitioner and learned counsel appearing on behalf of the State.

8. Rules 2018 have been made by the Government of NCT of Delhi in exercise of powers conferred by Section 71 of the Delhi Prisons Act, 2000. Rule 1271 classifies the punishments as minor and major punishments. The punishment awarded to the Petitioner is a major punishment and therefore, the procedure laid down in Rules 1272 and 1273 is required to be followed before awarding the major punishment. For ready reference, Rules are extracted hereunder:

“1271. The following punishment(s) may be awarded by the Superintendent to prisoners for committing any prison offence. These are classified into minor punishments and major punishments.

(a) Minor Punishments

I. Formal warning which shall be personally addressed to the prisoner by the Superintendent and recorded in the punishment book.

II. Loss of privileges given to the prisoners in detention for a maximum of one month

III. Forfeiture of earned remission up to ten days.

(b) Major Punishments

I. Forfeiture of remission up to a period of thirty days at any one time or with the approval of the Inspector General remove a prisoner from the remission system up to a period of six months; Provided that the Inspector General shall have power to forfeit all earned remissions, other than remissions given by the Government, or to remove a prisoner from the remission system for the entire period of his imprisonment;

II. Stoppage of recreational facilities up to a period of one month or canteen facilities for a period of 1 month or stoppage of interviews for a period of up to three months;

III. In case of breaches and violations in conditions of release on



parole or furlough, not counting the said period towards imprisonment.

IV. Segregation up to a period of three months and with the sanction of the Inspector General, up to a period of six months.

V. Monitoring under watch and security

VI. In case of any damage to Government property, recovery of cost for such damage after proper enquiry effective with judicial appraisal

VII. Inmate calling system stoppage up to 1 month

VIII. Forfeiture of recovered/seized money

Procedure for Awarding Punishment

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."

9. A bare perusal of Rule 1272 shows that the procedure prescribed mandates a written notice to the prisoner calling upon him to show-cause with reference to the alleged violation of the Jail Rules and for communication of the order of punishment. Rule 1273 mandates the Superintendent to hold an enquiry touching every prison offence committed



or alleged to have been committed by a prisoner and the enquiry has to be conducted in a *quasi-judicial* manner recording statements of concerned witnesses and giving full opportunity to the offender for his defence. Findings and punishments have to be recorded in a manner provided under law, after applying judicial mind. Superintendent is required to record the findings and punishment in his own hand in the prisoner's history ticket. No doubt that the word used in Rule 1272 is 'should' as opposed to the word 'shall' in Rule 1273, however, this Court in ***Chandrakant Jha (supra); Dalip Singh v. State (GNCT of Delhi), W.P.(CRL) 1849/2021, decided on 18.02.2022; Praveen Rana v. State (GNCT of Delhi), W.P.(CRL) 242/2022, decided on 29.03.2022 and Vipin Sharma v. State (GNCT of Delhi), W.P.(CRL) 44/2021, decided on 18.08.2022***, has repeatedly held that Rule 1272 mandates issuance of show-cause notice to the inmate and the Rule must be complied in its true letter, spirit and intent and wherever the procedure was not followed, matters were remanded back to the Respondent authorities to issue a show-cause notice and hold an enquiry as envisaged in the Rules 2018, afresh.

10. In the present case, perusal of the impugned Punishment Ticket as well as the Appraisal Order indicate that the procedure prescribed in the aforesaid Rules was not followed. No notice was issued in writing to the Petitioner calling upon him to show-cause with reference to the alleged violation of the Jail Rules. In fact, in the status report, it is clearly stated that on verbal notice, he was produced before the Jail Superintendent, who heard him in the presence of three witnesses. This violation is sufficient to set aside the impugned Punishment Ticket and the Appraisal Order.



11. It is the case of the State that Petitioner confessed to the alleged offence and therefore, there was no requirement of issuing a show-cause notice. This argument overlooks that Rule 1272 precedes Rule 1273 and the question of recording confession, if any, comes after a show-cause notice has been issued under Rule 1272 and therefore, an alleged confessional statement during enquiry cannot set right the illegal procedure of not issuing a show-cause notice under Rule 1272. Even assuming that Petitioner had confessed, learned counsel for the Petitioner is right in contending that confessional statements of the offender should be recorded in the presence of two witnesses. The contention is that copy of the confessional statement has not been provided to the Petitioner despite requests and therefore, it is not known if two witnesses have signed and thus this Court should examine the confessional statement to ascertain if the Rule has been complied with. In response to this, learned counsel for the State fairly concedes that the alleged confessional statement does not bear the signatures of two witnesses. Therefore, there is a clear violation of Rule 1273. It needs no gainsaying that Rules 1272 and 1273 are safeguarding provisions to protect the rights of the inmates, so that they are given full opportunity to defend their case and are not falsely implicated. Thus, even where an alleged confession is made by an inmate, the mandate of the Rule that it must be recorded in the presence of two witnesses cannot be bypassed. In the present case, admittedly there was no show-cause notice given to the Petitioner under Rule 1272 and the enquiry as envisaged under Rule 1273 has been conducted more in violation than in compliance of the salutary and safeguarding provisions of Rules 1272/1273. For all these reasons, the impugned Punishment Ticket and the



Appraisal Order cannot be sustained in law.

12. Accordingly, this petition is allowed setting aside the Punishment Ticket No.22 dated 01.10.2020 and the judicial Appraisal Order dated 15.03.2021, leaving it open to the State to give a proper show-cause notice to the Petitioner with reference to the alleged violation of the Jail Rules and proceed in accordance with law and the procedure laid down in Rules 2018, if so advised.

13. Petition stands disposed of in the aforesaid terms.

14. It is made clear that this Court has not expressed any opinion on the merits of the case and it is open to the Competent Authority to proceed in accordance with law, if it decides to reopen the matter and hold an enquiry afresh.

JYOTI SINGH, J

FEBRUARY 01, 2024/du/kks