

Before Surya Kant & R.P. Nagrath, JJ.

RAM KISHAN—Appellant

versus

STATE OF PUNJAB AND OTHERS—Respondents

LPA No. 21 of 2006

January 25, 2013

Letters Patent Appeal, 1919 - Cl.X - Punjab Jail Manual, 1996 - Prs. 634, 635 & 637 - Notifications dated 21.4.1982 and 7.11.1985 relating to grant of special remissions to prisoners - Appellant convicted but stood acquitted in Criminal Revision - Complainant filed appeal and conviction restored by Hon'ble Supreme Court - Appellant admitted in Central Jail on 15.1.1986 - Released by Superintendent giving benefits of Notifications - Complainant challenged release by Jail Authorities - Court allowed holding benefit of remission wrongly granted - Letter Patent Appeal dismissed.

Held, that the learned Single Judge observed as under:-

"A perusal of instructions dated 21.4.1982 (Annexure P-2) shows that it deals with three categories of convicts viz. (a) prisoners who happened to be confined in any jail on 28.3.1982 and who have been convicted by the Civil Court of criminal jurisdiction in the State of Punjab; (b) prisoners who were convicted before 28.3.1982 but subsequently released on bail subject to the condition that they surrender in the jail for undergoing the un-expired portion of their sentence; and (c) prisoners who participated in the Sports Meet and Borstal Band Boys.

On a specific query from the Bench, learned State counsel fairly conceded that respondent No. 3 did not fall in any of the aforementioned three categories. He submitted that the Superintendent, Central Jail, Patiala, appears to have granted him the benefit by treating him to be a person falling under category (b). As already observed, a person falling in category

(b) above is only entitled to remission if he surrenders in jail for undergoing unexpired portion of his sentence. It is an admitted position in this case that even after the judgment of the Supreme Court convicting respondent No. 3 on four counts, he did not surrender before any Court and warrants of arrest had to be issued from time to time, which were successfully evaded by him for 8½ months. He was ultimately arrested by the police on 15.1.1986.

Similarly, instructions dated 7.11.1985 grants benefit of remission of two categories of prisoners viz., (a) prisoners who are confined in jail on 4.11.1985 and who have been convicted by the Civil Courts of criminal jurisdiction in the State of Punjab and (b) prisoners who were convicted before 4.11.1985 but subsequently released on bail subject to the condition that they surrender in this jail for undergoing the unexpired portion of their sentence.

It is clear that respondent No. 3 does not fall in either of the aforementioned two categories."

(Para 6)

Further held, that we do not find any ground to differ with the view taken by learned single judge. The appeal is accordingly dismissed.

(Para 12)

Kapil Aggarwal, Advocate, *for the appellant*.

Munisha Gandhi, Addl. AG, Punjab.

None for respondent No. 3.

R.P. NAGRATH, J.

(1) In this Letters Patent Appeal, correctness of the view of learned Single Judge, interpreting the scope of notifications dated 21.4.1982 and 7.11.1985 (Annexures P-2 and P-3, respectively) has been challenged. These notifications relate to the grant of special remissions to the prisoners.

(2) Under notification dated 21.4.1982 (Annexure P-2), the Governor of Punjab, granted special remission on the occasion of Punjab Prisoners Sports Meet, to the prisoners who happened to be confined in any jail on 28.3.1982 and who have been convicted by the Court of criminal jurisdiction in the State of Punjab as under:-

(i) to (iii) xxx xxx xxx

(iv) Prisoners undergoing sentence of not more than 2 years imprisonment. - 3 months

It was clarified that all the prisoners convicted before 28.3.1982 but subsequently released on bail shall also be entitled to the remission only if they surrender in the jail for undergoing the un-expired portion of their sentence. This concession was not applicable to the prisoners of certain categories as mentioned in para 4 of the notification to which we are not concerned.

(3) Similar kind of special remission was granted vide notification dated 7.11.1985 (Annexure P-3) to commemorate the Punjab Accord, to the prisoners, who happened to be confined in any jail on 4.11.1985 and who have been convicted by the Court of criminal jurisdiction in the State of Punjab to the extent mentioned therein and the prisoners undergoing sentence of not more than 2 years imprisonment were granted 4 months of remission. This was subject to the same condition that the prisoners convicted before 4.11.1985 but subsequently released on bail shall also be entitled to the remission only, if they surrender in the jail for undergoing un-expired portion of their sentence.

(4) The facts of the case may be briefly stated:

The appellant was convicted and sentenced for the offences under Sections 294/354/384/506 of the Indian Penal Code (for short "IPC") on 28.1.1981 by the Judicial Magistrate 1st Class, Rajpura, but stood acquitted by this Court in Criminal Revision No. 656 of 1981. The complainant-respondent No. 3 filed Criminal Appeal No. 177 of 1985 which was allowed on 1.5.1985 and the Hon'ble Supreme Court restored the conviction on all the four counts. The maximum sentence which the appellant had to undergo was rigorous imprisonment for six months each for offences under Sections 384 and 354 IPC.

(5) The appellant was admitted in the Central Jail, Patiala, on 15.1.1986 vide order of the Additional Sessions Judge, Patiala and released by the Superintendent of the Central Jail, on 16.1.1986 by giving benefit of notifications dated 21.4.1982 and 7.11.1985 (Annexures P-2 and P-3). The certificate issued in this regard by the Superintendent of Central Jail, Patiala, is Annexure P-4. This action of Jail Authorities was challenged by the complainant-respondent No. 3 in CWP No. 3049 of 1987 which was accepted and order Annexure P-4 was quashed. The appellant was directed to surrender before the Chief Judicial Magistrate, Patiala, for undergoing unexpired period of his sentence as awarded by the Supreme Court.

(6) The learned Single Judge observed as under:-

"A perusal of instructions dated 21.4.1982 (Annexure P-2) shows that it deals with three categories of convicts viz. (a) prisoners who happened to be confined in any jail on 28.3.1982 and who have been convicted by the Civil Court of criminal jurisdiction in the State of Punjab; (b) prisoners who were convicted before 28.3.1982 but subsequently released on bail subject to the condition that they surrender in the jail for undergoing the un-expired portion of their sentence; and (c) prisoners who participated in the Sports Meet and Borstal Band Boys.

On a specific query from the Bench, learned State counsel fairly conceded that respondent No. 3 did not fall in any of the aforementioned three categories. He submitted that the Superintendent, Central Jail, Patiala, appears to have granted him the benefit by treating him to be a person falling under category (b). As already observed, a person falling in category (b) above is only entitled to remission if he surrenders in jail for undergoing unexpired portion of his sentence. It is an admitted position in this case that even after the judgment of the Supreme Court convicting respondent No. 3 on four counts, he did not surrender before any Court and warrants of arrest had to be issued from time to time, which were successfully evaded by him for 8 ½ months. He was ultimately arrested by the police on 15.1.1986.

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It is clear that respondent No. 3 does not fall in either of the aforementioned two categories."

(7) An attempt is made by the appellant's counsel to controvert the above observations by contending that the petitioner in fact surrendered in the Court of Additional Sessions Judge on 15.1.1986 by moving an application through Sh. S.P. Joshi, Advocate.

(8) We have called for the record of Criminal Miscellaneous No. 12 of 1985 of the Court of Additional Sessions Judge, containing order dated 15.1.1986, which reads as under:-

"It is now 2 P.M. when the accused Ram Kishan as wanted in execution of warrants issued by this court for his re-arrest in compliance with the orders passed by the Supreme Court in criminal appeal No. 177 of 1985 has surrendered in this court. He has submitted an application that he may be taken into custody. Accordingly accused Ram Kishan is taken into custody and be sent to jail to undergo the sentence of imprisonment. Intimation be sent to the High Court about compliance of High Court/SC orders."

(9) The perusal of a fore-stated file also shows that on receipt of the judgment dated 1.5.1985 of the Hon'ble Supreme Court, an order dated 30.5.1985 was passed, issuing re-arrest warrants for 15.6.1985 and the warrants were being repeatedly issued by the concerned Court. There is an order dated 11.12.1985 for execution of the re-arrest warrants by 16.1.1986 and the Court concerned took up the file on 10.1.1986, to expedite the compliance of the warrants and directed the SHO of Police Station Rajpura, to appear personally in the Court for previous non-compliance.

(10) The above-stated facts reveal that the appellant did not immediately surrender to undergo the sentence imposed upon him and successfully evaded his arrest for about 8½ months from the judgment of Hon'ble Supreme Court.

(11) The controversy as to whether the appellant surrendered on 15.1.1986 or arrested in execution of warrants issued against him would pale into insignificance in view of the principle settled by the Hon'ble Supreme Court in *Jai Parkash and others* versus *State of Haryana and others (1)*, in respect of exactly similar notifications issued by the Governor of Haryana. There were 5 petitioners before the Hon'ble Supreme Court. During pendency of appeal filed by petitioner No. 1, he was granted bail by the High Court on 12.1.1976. His appeal was dismissed on 28.9.1978. The appellant stated that he was arrested on 29.1.1979, while he was going to surrender himself to serve out the remaining part of the sentence. The Hon'ble Supreme Court held as under:

"6. Para 637 of the Punjab Jail Manual which is relevant for consideration of the question raised, is set out herein:-

*"MANUAL FOR THE SUPERINTENDENCE AND
MANAGEMENT OF JAILS IN THE PUNJAB*

637. Subject to the provisions of paragraph 634 remission under paragraph 635 shall be calculated from the first day of the calendar month next following the date of the prisoner's sentence; any prisoner who, after having been released on bail or because his sentence has been temporarily suspended is afterwards readmitted in the jail, shall be brought under the remission system on the first day of the calendar month next following his re-admission, but shall be credited on his return on jail with any remission which he may have earned previous to his release on bail or the suspension of his sentence. Remission under paragraph 636 shall be calculated from the first day of the next calendar month following the appointment of the prisoner as convict warder, convict overseer or convict night watchman."

7. On a reading of the aforesaid provision it is manifest that a prisoner who has been released on bail or whose sentence has been temporarily suspended and has afterwards been re-admitted in jail will be brought under remission system on the first day of the calendar month next following his readmission. In other words, a prisoner is not eligible for remission of sentence during the period he is on bail or his sentence is temporarily suspended. The submission that the petitioners who were temporarily released on bail are entitled to get the remission earned during the period they were under bail, is not at all sustainable. As such the remissions that were inadvertently given to these petitioners cannot be taken into account in considering the total period of sentence undergone by them while considering their premature release from imprisonment under paragraph 637 of the Punjab Jail Manual. It also appears from the order of the Governor of Haryana dated 14th August, 1977 annexed as Annexure 'R1' to the writ petition that the special remission was granted by the Governor of Haryana to only those prisoners who were in confinement on 14th August, 1977 on the occasion of the first visit of the Chief Minister of Haryana to jail and who had been subsequently released on bail. It is pertinent to set out paragraph 2 of the said order:-

"All those prisoners who have been convicted before the 14th August, 1977 but subsequently released on bail shall be entitled to the remission only if they surrender in the jail for undergoing the unexpired portion of their sentence."

8. The petitioners though convicted prior to 14th August, 1977 that is the date of visit of the Hon'ble Minister to the Jail were granted bail before the said date. As such they are not entitled to the said remission in accordance with the order of Governor of Haryana. Secondly, all these

petitioners did not surrender in the jail for undergoing the unexpired portion of their sentences immediately after their appeals were dismissed by the High Court. On the other hand, the petitioner No. 1 whose appeal was dismissed on 28.9. 1978 did not surrender either to the jail or to the Magistrate for serving out the remaining part of sentence till he was arrested on 29.1.1979 in pursuance of the warrant issued by the court. The petitioner Nos. 2 to 5 who were released on bail by the High Court during the pendency of their appeal did not surrender in the jail immediately after their appeal was dismissed on 8.12.1978. They surrendered themselves to the Magistrate only on 16.2.1979 to serve out the remaining part of their sentence. As such, it cannot be said that they have surrendered in jail for undergoing their unexpired period of sentence immediately after their appeals were dismissed and so they are not eligible for remissions as envisaged in the said Government order dated 14.8.1977 referred to hereinbefore.

11 This means that a convict in order to get the benefit of remission as directed by the said order issued under Article 161 of the Constitution of India has to surrender voluntarily at the Jail after expiry of bail. In the instant case, petitioner No. 1 did not surrender in jail or before the Magistrate after his appeal was dismissed by the High Court and the petitioner No. 1 had been arrested under warrant of arrest as he did not surrender in jail after his appeal was dismissed. Petitioners who were on bail also did not surrender immediately after dismissal of their appeal but they surrendered themselves after two months of dismissal of their appeal. In such circumstances, it cannot be said that the petitioners are entitled to the remissions as envisaged in the said Government order dated 11/14 January, 1985."

(12) For the foregoing reasons, we do not find any ground to differ with the view taken by the learned Single Judge. The appeal is accordingly dismissed. The appellant be taken into custody for undergoing the unexpired period of his sentence as awarded by the Hon'ble Supreme Court. A copy of this order be sent to the Chief Judicial Magistrate, Patiala, for compliance. A copy thereof be also sent to the Principal Secretary (Home), Punjab, for communication to all the concerned for compliance in all the similar matters. The summoned record of Criminal Miscellaneous No. 12 of 1985 be sent back forthwith.
