STATE OF HARYANA

v.

GHASEETA RAM

FEBRUARY 28, 1997

[DR. A.S. ANAND AND K. VENKATASWAMI, JJ.]

Prisons Act, 1894/Punjab Jail Manual—Sections 52, 45, 46—Paras 608, 610, 627 and 633-A—Bar on Punishment for the same offence twice—Whether Jail Superintendent competent to impose punishment of cancellation of remission when the prisoner sent for trial for the same offence—Held : Once prisoner has been sent for trial, the jail Superintendent divested himself of the power to impose any punishment—As the Prisoner was tried and convicted by criminal court for the same offence, the punishment imposed by Jail Superintendent could not be sustained in view of the bar contained in the second proviso to Section 52 of the Prisons Act, Para 627 of the Jail Manual and Article 20(2) of the Constitution of India—High Court rightly quashed the punishment imposed by Jail Superintendent—Power under para 633-A can be exercised only after conviction is recorded against the prisoner and not before he is actually convicted—Punishment of forefeiture of remission imposed, much before conviction by the trial Court—Not sustainable—High Court was right in quashing the order of the Superintendent of Jail—Constitution of India, 1950, Article 20(2)—No person can be prosecuted and punished for the same offence more than once.

The respondent, while undergoing life imprisonment formed an unlawful assembly with his co-prisoners and in execution of the common object to escape from the jail, seriously injured a jail warden. After lodging a first information report he was sent for trial to the Sessions Court. He was convicted by the trial Court and various terms of imprisonment were imposed upon him under various sections of the Indian Penal Code. For the same offence, the Superintendent of Jail, in exercise of his power under Section 633-A of the Punjab Jail Manual, after obtaining sanction from the Inspector General of Prisons forefeited the entire remission earned by the prisoner and the also permanently excluded him from the system of earning remission. The respondent moved the High Court under Section 482 Cr.P.C. for quashing the punishment imposed by the Jail Superintendent *interalia* on the ground that he could not be punished twice for the

A same offence. High Court allowed his petition and quashed the order of the Jail Superintendent holding it to be in violation of the provisions of the Punjab jail Manual, the Prisons Act, 1894 and Article 20(2) of the Constitution of India. The State preferred the present appeal against the order of the High Court.

B Dismissing the appeal, this Court

HELD : 1.1. From an analysis of the provisions of the Prisons Act, 1894 and Punjab Jail Manual, it follows that where the offence, which is both a prison offence and an offence under Indian Penal Code, or is C otherwise a heinous offence, and is committed by the prisoner after his admission to Jail, for which the Superintendent of Jail can impose punishment, which in his opinion is adequate for the said offence, he may proceed to impose the punishment on the prisoner under the Prisons Act, and the Manual by following the procedure prescribed therein. But where he is of the opinion that adequate punishment can not be inflicted by him, as his D power to award punishment in that behalf is limited by the Act or the Manual, he shall forward the prisoner to the competent Court having jurisdiction to try the offence. Where the Superintendent of Jail, has inflicted punishment, which in his opinion was adequate punishment for the offence, then the prisoner can not also be forwarded to the Magistrate E for trial and be punished for the same offence twice in view of the bar contained in the second proviso to Section 52 of the Prisons Act and para 627 of the Manual. [557-H, 558-A-C]

1.2. In the instant case the Superintendent of Jail forwarded the prisoner together with the statement of the case after the registration of F FIR to the competent Magistrate to enquire into the matter in accordance with the provisions of the Code of Criminal Procedure. The Superintendent of Jail, thus, exercised the discretion vested in him under para 611 of the manual read with section 52 of the Act and para 627 of the Manual and thereby divested himself of any power to impose any punishment for G the same offence for which the prisoner was forwarded to the competent Magistrate for trial. The prisoner was tried and convicted by the criminal court. Since the respondent was punished for commission of a prison offence by the trial court, for the same offence he could not also be punished by the Superintendent of Jail. [558-E-G]

H 2.1. A bare reading of para 633-A of the Manual shows that remis-

sion earned by a prisoner may be cancelled on the conviction of the prisoner, with the sanction of the Inspector General of Prisons, but that can be done only after the conviction is recorded against the prisoner in respect of an offence punishable under the India Penal Code and committed by the prisoner after his admission to Jail but not before he is actually convicted. Punishment under para 633-A follows conviction and is not punishment for the commission of the offence, which led to his conviction after trial. Indeed, such a punishment does not offend the second proviso to section 52 of the Prisons Act or Para 627 of the Manual. [559-B-C]

2.2. In the instant case, the respondent was admitedly convicted and sentenced by the Additional Sessions Judge for committing various offences under the Indian Penal Code, while he was undergoing sentence for a previous conviction vide judgment dated 22.2.1986. An order of cancellation of remission under Para 633—A of the Manual could, therefore be made only after 22.2.1986, the date of conviction by the trial court. It could not precede his conviction. The punishment of forfeiture of remission, was imposed by the Superintendent of Jail on the respondent on 17.9.1984, much before his conviction had been recorded by the trial court. This certainly was not permissible under para 633-A of the Manual. The order of punishment by the Superintendent of Jail passed on 17.9.1984 is, thus, not sustainable on the plain language of para 633-A of the Manual. The respondent appears to have been punished by the Superintendent of Jail under para 613 of the Manual for commission of the prison offence and not under para 633-A of the Manual. The respondent has, therefore, been punished for the same offence twice-once by the Superintendent of Jail and the second time by the trial court on his conviction for the same offence. It could not be done in view of the bar contained in section 52 of the prisons Act read with para 627 of the Manual. The High Court, therefore, was right in quashing the order dated 17.9.1984 of the Superintendent of Jail. [559-E-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 670 of 1994.

From the Judgment and Order dated 3.12.92 of the Punjab & Haryana High Court in Crl. Misc. P. No. 9642-M of 1991.

Prem Malhotra and Jasbir Malik for the Appellant.

A R.S. Sodhi (A.C.) for the Respondent.

The Judgment of the Court wad delivered by

DR. ANAND, J. : This appeal by Special Leave raises an interesting question about the scope of para 633-A of the Punjab Jail Manual
B (hereinafter referred to as the Manual) relating to cancellation of remission earned by a prisoner. The brief facts giving rise to the filing of this appeal are :

While undergoing sentence of life imprisonment for an offence under
C Sections 302/149 and 148 I.P.C. as imposed by the learned Sessions judge, Gurgaon, vide judgment and order dated 10.6.1980, the respondent is alleged to have made a plan in conspiracy with some other prisoners, to escape from the jail on 16.9.1984. In execution of the said plan, a jail warden, was allegedly assaulted by the respondent on 16.9.1984. A First Information Report was lodged and the respondent was sent up for trial
D for various offences under the Indian Penal Code to the Session Court. He was convicted by the learned Additional Sessions Judge and various terms of imprisonment for offences under Section 307/149 I.P.C.; 342/149 I.P.C.; 332/149 I.P.C.; 148 and 224 I.P.C. were imposed upon him by judgment and order dated 22.2.1986, arising out of the occurrence in
E the jail on 16.9.84. It transpired from the record that after the FIR was lodged on 16.9.1984, the jail Superintendent, vide his order dated 17.9.1984, in exercise of his powers under para 633-A of the Manual, after obtaining sanction of the Inspector General of Prisons imposed the following punishment upon him :

F (i) Forfeiture of remission of 23 months 18 days earned by him; and

(ii) permanently removed from the system of earning remissions.

The respondent filed a petition in the High Court under Section 482
G Cr. P.C. seeking quashing of the punishment imposed by the Jail Superintendent, District jail, Bhiwani, on 17.9.1984 on various grounds but principally on the ground that respondent could not be punished for the same offence twice. In the counter affidavit filed by the State in the High Court, the stand taken by the respondent was that the Jail Superintendent, in
H exercise of the powers under para 633-A of the Manual, after obtaining

sanction of the Inspector General of Prisons, was competent to impose the punishment and that the imposition of such a punishment did not offend the rule of double jeopardy. A

The High Court found the following facts to be admitted between the parties : B

> "(i) That while undergoing life imprisonment in the District Jail, Bhiwani, the Petitioner formed an unlawful assembly with his co-prisoners and in execution of the common object of that assembly i.e. to escape from the jail, injured seriously a jail warden;
>
> (ii) that the petitioner along with his co-prisoners and co-accused was tried by the Additional Sessions Judge, Bhiwani, and that Court convicted him and his co-accused, and sentenced the prisoner to one year RI under section 148 IPC, six months RI under Sections 342/149, two years RI under Sections 332/149 IPC, two years RI under Sec. 224 IPC, and seven years RI under Sec. 307/149 IPC, vide his judgment dated 22nd February, 1986; and
>
> (iii) that the Jail Superintendent, Bhiwani, vide his order of September 17, 1984 - Annexure P.1. forefeited his remission of 23 months and 18 days earned by him and also excluded him from remission system permanently for the same offence." C D E

After noticing some provisions of the Prisons Act and Punjab Jail Manual as well as Article 20 of the Constitution of India, the High Court came to the conclusion that the *punishment* awarded by the Superintendent, District Jail, Bhiwani, vide order dated 17.9.84, offended Article 20 of the Constitution, since the respondent had been, on the same allegations and for the same offence, convicted and punished by the Additional Sessions Judge in the criminal trial. Consequently the application filed by the respondent was allowed and the order of the Jail Superintendent, District Jail, dated 17.9.1984, was quashed and set aside. The State has filed this appeal by special leave. F G

Mr. Prem Malhotra, learned counsel appearing for the State, has reiterated the stand of the State Government as was reflected in the counter-affidavit filed in the High Court and submitted that the High Court could not have, in the established facts and circumstances of the case, H

quashed the order of punishment dated 17.9.1984 because that punishment had been imposed on the administrative side for a prison offence under Para 633-A of the Manual following the conviction of the respondent for commission of the prison offence on 16.9.1984, vide judgment of the trial court dated 22.2.86 and that the said punishment did not offend Article 20 of the Constitution of India.

Mr. R.S. Sodhi, learned counsel, appearing as *amicus curiae* at the request of the Court, on the other hand submitted that though the punishment imposed by the Superintendent, District Jail, on 17.9.1984 under Para 633-A of the Manual, even if, strictly speaking did not offend Article 20 of the Constitution of India, it was not sustainable as the necessary condition for the imposition of that punishment under Para 633-A of the Manual was not available on 17.9.84 since the respondent by that date had not been convicted for commission of the prison offence committed on 16.9.1984. Learned counsel further submitted that both under Section 52 of the Prisons Act and Para 627 of the Manual, no person can be punished for the same offence twice and the imposition of punishment by the Superintendent of Jail was on that account also.

We have given our anxious consideration to the respective submissions raised at the bar.

Since, the facts as found by the High Court (supra) are not in dispute, it would be proper to notice some of the relevant provisions of the Prisons Act and the Punjab Jail Manual.

Section 45 of the Prisons Act, 1894 enumerates various prison offences. It provides :

> "45. *Prison-offences.* - The following acts are declared to be prison offences when committed by a prisoner :
>
> . . . . . .
>
> (2) any assault or use of criminal force;
>
> . . . . . .
>
> (16) conspiring to escape, or to assist in escaping, or to commit any of the other offences aforesaid."

Section 46 provides that the Superintendent of the Jail may examine any person touching any such offence, and determine thereupon, and punish such offence by imposing any of the punishments contained therein. Punishment of forfeiture of remission for commission of Jail offence is provided in clause (4) which reads :

"Section 46. *Punishment of such offences.* -

. . . . . .

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government.

. . . . . "

Section 52 of the Prisons Act deals with the procedure regarding committal of heinous offences. It reads thus :

"*Procedure on committal of heinous offence.* - If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class (or Presidency Magistrate) having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46 :

(Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate : and)

Provided also that no person shall be punished twice for the

A same offence."

Chapter XIX of the Punjab Jail Manual deals with offences and punishments.

Para 608 *inter alia* declares the following acts to be prison offences
B when committed by a prisoner while admitted to jail :

"608. *Acts declared to be prison offences by Act IX, 1894.*

. . . . . .

C (2) any assault or use of criminal force.

. . . . . .

(4) immoral or indecent or disorderly behaviour.

D . . . . . .

. . . . . .

(16) conspiring to escape, or to assist in escaping or to commit any other of the offences aforesaid."

E Para 610 deals with the situation where the Superintendent of jail is obliged to refer the case to the court of competent Magistrate for trial under the Code of Criminal Procedure and reads :

"610. *Reference to Magistrate.* - When in the opinion of the
F Superintendent any of the following offences are established against any prisoner, he shall refer the case to the Magistrate exercising jurisdiction for enquiry in accordance with the Code of Criminal Procedure, 1898 :

(1) offences punishable under section 147, 148 and 152 of the
G Indian Penal Code;

(2) offences punishable under sections 222, 223 and 224 of the Indian Penal Code;

(3) offences punishable under section 304-A, 309, 325 and 326 of
H the Indian Penal Code;

(4) any offence triable exclusively by the Court of Session." A

Para 611 provides :

"611. Powers of Superintendent. - It shall be in the discretion of the Superintendent to determine with respect to any other Act which constitutes both a prison-offence and an offence under the B Indian Penal Code, whether he will use his own powers of punishment or move the Magistrate exercising jurisdiction to enquire into in accordance with the Code of Criminal Procedure."

Punishment for commission of prison offences is provided for in Para 612. C it *inter alia* provides that the Superintendent may punish the offence by loss of privileges admissible under the remission system for the time being in force as may be prescribed by the rules. Para 613 deals with the loss of privileges under the remission system. It provides :

"613. *Loss of privileges under the remission system.* - For a prison D offence any one of the following punishments involving loss of privileges admissible under the remission system may be awarded :

(a) Forefeiture of remission earned.

E

(b) Temporary forfeiture of class, grade or prison privileges.

(c) Temporary or permanent reduction from a higher to a lower class or grade.

(d) Temporary or permanent exclusion from the remission F system;

Provided that -

No order directing the forefeiture of remission in excess of G twelve days or the exclusion of a prisoner from the remission system for a period exceeding three months shall take effect without the previous sanction of the Inspector-General."

Para 627 deals with the procedure on committal of heinous offences. It lays down : H

A "627. *Procedure on comittal of heinous offence.* - If any prisoner is guilty of any offence against prison-discipline which by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act, to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner and upon conviction, may sentence him to imprisonment which may extend to one year such term to be in addition to any term for which such prisoner was under going imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in Section 46 of the Prisons Act ;

Provided that the District Magistrate may transfer the case for inquiry and trial to any Magistrate of first class : and

Provided also that no person shall be punished twice for the same offence."

Para 633-A reads thus :

"633-A. *Ordinary remission not earnable for certain offences committed after admission to jail.* - If a prisoner is convicted of an offence committed after admission to jail under sections 147, 148, 152, 224, 302, 304, 304-A, 306, 307, 308, 323, 324, 325, 326, 332, 333, 352, 353 or 377 of the Indian Penal Code, or of an assault committed after admission to Jail on a warder or other officer or under section 6 of the Good Conduct Prisoners Probational Release Act, 1926 (X of 1926), the remission of whatever kind earned by him under these rules up to the date of the said conviction may, with the sanction of the Inspector-General of Prisons, be cancelled."

It is seen that Section 45 of the Prisons Act corresponds to Para 608 of the Manual. Both these provisions declare prison offences when committed by a prisoner. Any assault or use of criminal force as well as any conspiracy to escape from jail or to assist in escaping from jail or to commit any other

offence have been declared to be prison offences. Punishment for such offences under Section 45 includes imposition of punishment of loss of privileges admissible under the remission system for the time being in force. Para 610 of the Manual makes it obligatory on the Superintendent of Jail, when any of the offences under the Indian Penal Code, specified in that paragraph are established to have been committed by any prisoner, to refer the case to the Magistrate, exercising jurisdiction for enquiry in accordance with the Code of Criminal Procedure, 1898.

So far as the commission of heinous offences are concerned, Section 52 of the Prisons Act is in *pari materia* the same as para 627 of the Manual. An analysis of the two provisions shows that where a prisoner is guilty of commission of any offence against prison discipline which in the opinion of the Superintendent of Jail is not adequately punishable by infliction of any of the punishments which he has the power under the Act or the Manual to impose, he may forward the offending prisoner to the Court of the District Magistrate or to any Magistrate of the First Class, having jurisdiction to enquire into and try the offence, together with a statement of the circumstances under which the prisoner was being so forwarded for trial in accordance with law. The Trial Court upon conviction, may sentence the prisoner to undergo imprisonment in addition to any term for which the prisoner was under going imprisonment when he committed such an offence. The Trial Court may also convict and punish the prisoner for committing various offences referred to in Para 610 of the Manual for which he was charged and tried by it. Para 611 of the Manual leaves it to the discretion of the Superintendent of Jail, to determine with respect to any "other act" which constitutes both a prison offence and an offence under the Indian Penal Code, whether he will use his own powers of punishment or forward the prisoner to a competent Magistrate exercising jurisdiction to enquire into the offence in accordance with the Code of Criminal Procedure. The exercise of powers under section 52 of the Prisons Act or Para 627 of the Manual, however, is subject to the proviso that "no person shall be punished twice for the same offence."

From an analysis of the provisions of the Prisons Act and the Manual (supra) it follows that where the offence, which is both a prison offence and an offence under the Indian Penal Code, or is otherwise a heinous offence, and is committed by the prisoner after his admission to jail, for

A which the Superintendent of Jail can impose punishment, which in his opinion is adequate for the said offence, he may proceed to impose the punishment on the prisoner under the Prisons Act and the Manual by following the procedure prescribed therein. But where he is of the opinion that adequate punishment cannot be inflicted by him, as his power to award
B punishment in that behalf is limited by the Act or the Manual, he shall forward the prisoner to the competent Court having jurisdiction to try the offence. Where the Superintendent of Jail, has inflicted punishment, which in his opinion was adequate punishment for the offence, then the prisoner cannot also be forward to the Magistrate for trial and be punished for the same offence twice in view of the bar contained in the 2nd proviso to
C Section 52 of the Prisons Act and Para 627 of the Manual.

In the instant case, the Superintendent of Jail, appears to have been satisfied that he could not impose adequate punishment on the prisoner for assaulting the jail warden and for entering into a conspiracy with his
D co-prisoners to escape from jail on 16.9.84, and he, therefore, forwarded the prisoner together, with the statement of the case after the registration of FIR, to the competent Magistrate to enquire into the matter in accordance with the provisions of the Code of Criminal Procedure. The Superintendent of Jail, thus, exercised the discretion vested in him under Para 611
E of the Manual read with Section 52 of the Act and Para 627 of the Manual and thereby he divested himself of any power to impose any punishment for the same offence for which the prisoner was forwarded to the competent Magistrate for trial. The learned Magistrate to whom the prisoner was sent up for trial found that the case was triable by the Sessions Judge
F and accordingly he committed the case to the Court of Sessions. The learned Additional Sessions Judge, thereupon, tried the prisoner and convicted and sentenced him along with the other co-accused as already noticed vide judgment and order dated 22.2.1986. Since, the respondent was punished for commission of a prison offence by the trial court, therefore for the same offence he could not also be punished by the Superin-
G tendent of the Jail.

The State, however, took the stand before the High Court and reiterated the same before us that the Superintendent of Jail had not acted either under Section 52 of the Prisons Act or para 627 of the Manual but
H that he had exercised the powers under para 633-A of the Manual and that

punishment under the said para could be imposed by the Superintendent of Jail on the conviction of the prisoner by the competent court and such punishment does not offend the proviso to para 627 of the Manual or Section 52 of the Prisons Act, not being punishment for the same offence for which the respondent was convicted by the trial court.

A bare reading of para 633-A of the Manual shows that remission earned by a prisoner may be cancelled on the conviction of the prisoner, with the sanction of the Inspector-General of Prisons, but that can be done only *after* the *conviction is recorded* against the prisoner in respect of an offence punishable under the Indian Penal Code and committed by the prisoner after his admission to jail not *before he is actually convicted.* Punishment under Para 633-A follows conviction and is not punishment for the commission of the offence, which led to his conviction after trial. Indeed, such a punishment does not offend second proviso to Section 52 of the Prisons Act or Para 627 of the Manual.

In the instant case, the respondent was admittedly convicted and sentenced by the Additional Sessions Judge for committing various offences under the Indian Penal Code, while he was under going sentence for a previous conviction vide judgment dated 22.2.1986. An order of cancellation of remission under para 633-A of the Manual could, therefore, be made only *after* 22.2.1986. It could not precede his conviction. The punishment of forefeiture of remission as already noticed, was imposed by the Superintendent of Jail on the respondent on 17.9.1984, much before his conviction had been recorded by the trial court. This certainly was not permissible under para 633-A of the Manual. The order of punishment dated 17.9.1984 is, thus, not sustainable on the plain language of Para 633-A of the Manual. The respondent appears to have been punished by the Superintendent Jail under Para 613 of the Manual for commission of the prison offence and not under Para 633-A of the Manual. The respondent has, therefore, been punished for the same offence twice - once by the Superintendent of the Jail and the second time by the trial court on his conviction for the same offence. It could not be done in view of the bar contained in Section 52 of the Prison Act read with Para 627 of the Manual. The High Court, therefore, committed no error in quashing the order of the Superintendent of Jail dated 17.9.1984.

A It follows from the above discussion that the impugned order does not call for any interference. This appeal merits dismissal and is, accordingly, dismissed.

Before parting with this judgment we would, however, like to place on record our appreciation for the assistance rendered by Mr. R.S. Sodhi, B Advocate, at our request.

H.K. Appeal dismissed.