
(1993) 05 KL CK 0005

In the High Court Of Kerala

Case No : Criminal M.C. No. 179 of 1989

A Convict Prisoner in the Central Prison

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-05-1993

Acts Referred:

Kerala Prisons Rules, 1958 — Rule 197, 200, 204, 254

Citation : (1993) CriLJ 3242

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : James Vincent, Amicus Curiae, K. Radhakrishnan Nair and Molly Jacob, for the Appellant; M.B. Kurup, General and Mohan C. Menon, Sr. Govt. Pleader, for the Respondent

Judgement

Chettur Sankaran Nair, J.—This case was registered on the basis of a petition sent to this Court, by a convict prisoner lodged in the Thiruvananthapuram Central Jail. He remains like many others - a nameless face in the pageant. According to him, the conditions prevailing in the prison where he is detained and in other prisons as well, are sub-human and have a trigger effect on crime and vice. He submits that some convicts enjoy the liberty to do what they like, making others feel indignant and rebellious. They get money through silent conduits in the jail and also Narcotic drugs. Often, the money is sent by criminals trained by them, who have served their term and gone out. Some jail officials connive with the prisoners. The case of one "S.S." who in league with two prison officials (since dismissed) committed robberies is pointed out. Another life convict "M" who associated himself with habitual offenders committed an idol theft while on parole adds petitioner. Some of the habitual offenders sent to the Viyyur Jail find their way back to Trivandrum and other prisons, and their association turns first offenders into hard core criminals, according to petitioner. This will defeat chances of reformation, which is one concern of law. Homosexuality and other forms of physical assaults are rampant in the Prison. Petitioner refers to the names of certain prisoners, who rule the roost. An

overlord - vassal system prevails in Prisons, says he. Petitioner prays that remedial measures be taken by this Court, lest institutionalised crime rises higher and higher.

2. The scenario presented reminds one of what Pushkin or what Papillon by Henri Charriere reveals. Life in prison has been described by Jawaharlal Nehru. In *Sunil Batra Vs. Delhi Administration and Others etc.*, , life in prison is portrayed.

For years and years, prisoners do not see a child, a woman, or even animals. They lose touch with the outside world. They brood and wrap themselves in angry thoughts of fear and revenge and hatred; forget the good of the world, kindness and joy. Oscar Wilde says :

"Every prison that men build is built with bricks of shame and bound with bars, lest Christ should see, how men, their brothers maim".

One cannot expect the state of life in prison to be the same in the free world. Constraints on freedom are inevitable. Incarceration becomes necessary in social interest. Crimes have to be prevented and criminals punished to maintain the even tenor of life in the community. The basic object of Criminal Law is to suppress criminal enterprise. Society must be protected from transgressions of Law. To achieve this end, there must be correspondence between the crime committed, and the punishment imposed. When the two fail to jibe, scorn and disrespect for Law will be the harvest. As pointed out by the Streetfield Committee on sentencing, the question to be asked is "who should be the! beneficiary of the criminal justice system - the community or the offender". Undoubtedly, the society must be the beneficiary or larger beneficiary. In *State of Punjab Vs. Mann Singh and Another*, , *Asharfi Lal and Others Vs. State of Uttar Pradesh*, , *R. v. Lycett* (1968) 2 All ER 1021, *D.P.P. v. Ottewell* (1968) 3 All ER 153, *R. v. Storey* (1973) 3 All ER 562, *Trop v. Dulles*, (1958) 356 US 86, *Furman v. Georgia* (1972) 408 US 238, *Robert Edward Marshall v. U.S.*, (1974) 414 US 417 and a catena of cases, the need for imposing penal sanctions \\ in adequate measures was highlighted. Justice to the victim and the community must be assured by the criminal justice system. As pointed out by Lord Scraman (Hamlyn Law Lectures), there are contemporary challenges and if the system cannot meet them, they will destroy it". Criminal Law reveals cross-cultural conflicts. Public interest must be served, while the human dignity of the prisoner is; maintained and the rigours of imprisonment are ameliorated.

3. May be, every prisoner looks back at the dawn and views with anguish, the empty space which is used to fill his world. Imprisonment may strip him of certain facets of life. Necessary, it is. At the same time, he does not become a non-person and such rights, as human dignity require and circumstances justify must be granted to him. The problems must be identified before remedies are thought of.

4. Prison system which is a method of handling criminals was the result of historic accidents. It was not a carefully thought out plan. Prisons existed from

ancient days. Segregating criminals from society to protect it is an acknowledged necessity of every civilised State. Yet, unduly harsh treatment is not favoured by civilised States. The Eighth Amendment in the U.S. Constitution is a recognition of this. In ancient days, the prisons were bleak places. The great prison in Rome was built by Pope Innocent X in 1655. There were generalised institutions for the care of criminals. Seventeenth and Eighteenth Centuries saw the rise of "Prisons", "Jails", "houses of correction", "rasp houses", "spin houses", and "maisons de force" (See John Lewis Gillin - "Criminology and Penology": 3rd Ed. page 372).

5. Sir Edmund Du Cane, the first Chairman of the Prison Commission, brought to the notice of the British Parliament, inadequacies in the prison system and made suggestions for change. He was severely criticised by the Press for his innovations. The fortnightly Review - April 1894, came down heavily on him. However, slowly the winds of change blew softly, but surely, on the landscape.

6. Mr. Herbert Gladstone and Sir Godfrey Lushington stressed the need for creating a climate congenial to reformation in prison. The U.N. Congress on Prevention of Crimes and Treatment of Offenders (1955) observed:

"The purpose and justification of a sentence of imprisonment or a similar measure is ultimately to protect Society against crime. This can be achieved only if the period of imprisonment is used to ensure, as far as possible, that upon his return to society, the offender is not only willing, but able to lead a law abiding and self-supporting life. To this end, the institution should utilise all the: remedial, educational, moral, spiritual and other forces."

(Emphasis supplied)

7. Prison deprives liberty. Even while doing this, prison system must aim at reformation. Liberty has always been one of the most cherished possessions of Man. It has many nuances. This personal autonomy extends beyond animal existence. This theme is highlighted in *Munn v. Illinois* (1877) 94 US 113. Blackstone in his *Celebrated Commentaries on Laws of England* said :

"Personal liberty includes the power to locomotion of changing situation, or removing one's person to whatsoever place one's inclination may direct, without imprisonment or restraint, unless-by due course of law."

It is so valuable a right that even the

"poorest may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm enter; the rain may enter but the King of England cannot enter; all his forces do not cross the threshold of that ruined tenement."

8. But, that is not to say that restraint of liberty is not permissible. It becomes not only permissible, but necessary because of the need to protect society. The changing crime scenario must be reckoned. The decade beginning with the

Sixties noticed an increase of 76% per cent. of murders, 224 per cent. increase in robberies and 121 per cent. increase in rape and an overall increase of 144 per cent. in U.S.A. (James Inciardi). The summer of love, flower children, pseudo-religious rites, spurt in drug traffic and such like, revolutionised the crime scenario. Peace loving people must be protected from those like Charles Manson, Crippin, Gracy (who killed 33) and Allen Fish, who was a cannibal. Urban gorillas and Pleasure Districts fuel the problems.

"Justice is too good for some people and not good enough for others." (Norman Douglas)

The fascination for crime was increasing, with the influence of media, drugs and psychedelic culture. A 1984 survey showed that one violent crime was committed every twenty-eight seconds in the United States, and a murder every twentyeight minutes. Morality cannot be legislated, but law must be enforced.

9. Different problems of prison life deserve notice. A major problem is that of overcrowding in prisons. The consequences are unwholesome. Prisoners fight with each other; they mingle freely, and the freshers get trained by hard core criminals. Indiscriminate mingling of prisoners lead to sexual abuses and homosexuality. Prison riots occur occasionally. The Statement filed by the D.I.G. of Prison on behalf of the Government dt. 2-2-1993 shows that in 1991 the strength of the prisoners in Kerala Jails was 14313 (13077 males and 1236 females). A good many of them were first offenders, almost 10,000. 976 had suffered at least two convictions and 718 at least three convictions. These hardened criminals influence the first offenders, and the prisons become schools of vice. The accommodation available in the Jails was for 5471 against the actual population of 14313. Only 19,700 Sq. Metres of space is available in Kerala Jails. Prison riots have taken place due to overcrowding in New Mexico, Sao Paulo and other places. In Mexico, 1136 prisoners were lodged in the place meant for 800. In the riots, 33 died. Sao Paulo riots claimed 111 lives. Justice Ismail Committee Report stressed the need to avoid overcrowding (page 91 of the Report). A similar suggestion was made by the R. L. Narasimhan Committee. Provisions of the Kerala Prison Manual also provide for a minimum space. Segregation also is contemplated by Rules 197, 200 and 204 of the Kerala Prison Rules. The Model Prison Manual and All India Jail Manual also make provision for segregation. Justice Ismail and Justice Narasimhan Committees found the need for segregation, imperative. Effective action must be taken for segregation and classification of prisoners.

10. Courts have highlighted the need for classification. The decisions in Sanjay Suri and Another Vs. Delhi Administration and Another,) and Lowell v. Aaron Helm (1983) 459 US 460, are cases in point. Often, the criminal Courts leave the columns relating to classification blank in the Warrants issued by them. Often, this is due to paucity of information. The investigating agency and the prosecution fail to furnish relevant data to the Courts. This situation must change to make classification effective.

11. With imprisonment, a radical transformation comes over a prisoner, which can be described as prisonisation. He loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life. The intimate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes,

"Crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal".

(Working Papers - Group on Prisons and Borstals - 1966 U.K.) Prison culture creates new sub-cultures; often, the prisoner dies a civil death. The identity of prisoner is always defined in the context of a social group. He becomes socially naked (Louis Bloom Cooper : "Progress in Penal Reform"). Hence, jails have been called "schools of Crime" (John Lewis Gillin - Criminology and Penology). Recidivism becomes rampant. First offenders, casual offenders and habituals are hurled together like "rats in a hamper" and "pigs in a sty" (J.M.J. Sethna).

12. One way of improving the situation will be by introducing work culture in prisons. Simple imprisonment leaves the prisoner idle, with leisure for idle thoughts. Work will provide necessary therapy against this. The prisoner can earn wages, develop work habits, gain experience in trades and acquire skills. This will ease boredom. Open jails will provide the necessary atmosphere and venue, and experience shows that the conditions have been better in the open jails. That apart, the vast human resources can be turned productive. In the words of Chief Justice Warren Berger, jails should be "factories with fences rather than warehouses for criminals". Open jails are in existence in this country, as elsewhere and they have proved successful. Some of those are :

(i) The Neyyar Open Prison.

(ii) Ghurma Open Air Camp-Sone.

(iii) U. P. Prison Cement Factory, Bhadra.

13. Prisoners can be usefully employed and their earnings can support not only their families, but the families of the victims of their crimes. The Kerala Jail Rules make provision for payment of wages to prisoners, who work. The payment ranges from Re. 1 to Rs. 4/-. That will not offer any motivation either to work or to feel the dignity of work. Of course, prisoners cannot expect the same wages, as those outside. But, reasonable wages after meeting the supporting costs or what is known as the "user fee", must be paid. This will induce prisoners to work, and part of the earnings could be ear-marked for the victims, or a Fund for victim compensation that the State may maintain. There are certain provisions in the Prison Rules, like Rule 254. But, they hardly touch the fringe of the problem. A work force could be developed and could be employed on public works, bringing about much saving - and certainty of progress, to public works

undertaken by the State. With adequate regulatory measures, work force could be loaned to other agencies. John Lewis Gillin (Criminology and Penology - page 399) refers to five ways in which the work culture can change prison life and identified the areas. They are :

- (i) Alleviation of tedium of prison life,
- (ii) Repression of crimes.
- (iii) Production of economic commodities (which can decrease cost of support).
- (iv) Reformation; and
- (v) Prison discipline.

He also advocated four systems of labour in which the work force could be utilised. They are:

- (i) Lease system,
- (ii) Contract system,
- (iii) Piece-price system; and
- (iv) Public work system.

14. Jail which is a spending Department, can be made into a revenue earning Department. The prisoners in the Neyyar jail are engaged in various activities, like growing and tapping rubber trees. What little they earn, goes into the revenue, and there are no funds to generate further activities. If Societies headed by Senior Government Officials are registered, the income generated by the Societies, can be used for further development activities. People can also be employed in activities, other than those now undertaken. They can work in conventional industries, like hand-weaving, tailoring, carpentry, smithy etc. There are several skilled persons like painters, artisans, carpenters etc. coming, to prisons. They can be profitably employed, generating economic wealth. Vegetable gardens, dairies, etc. could be developed. There is already provision in Chapter XL of the Prison Rules in this regard. Binding of Text Books (now done by profit making private agencies), making of file boards and tags, and similar activities can be entrusted with prisoners. Saving can be effected by Government and possible kickbacks can be avoided.

15. Conditions of jails also require improvement. Better jails must be built with educational and recreation facilities. As observed by Louis Bloom Cooper - Proposal for Penal Reforms - ,

"Philosophically, education and penal reforms make peculiar bed-fellows. Education, like its historical companion Greek drama, wears two masks, one induces individuals into social values, and the other deduces from the individuals their full potential as persons."

Jail staff should also be trained in their responsibilities. Corruption among jail staff must be wiped out. Corruption in jail, and its extent were noticed by the Supreme Court in *Sunil Batra Vs. Delhi Administration and Others etc.,*). The Apex Court noticed how certain named prisoners enjoyed luxuries of life. The Court noticed that Air Coolers, food from good hotels and facilities for recreation were available. The Court noticed that some of the Jail staff were pandering to prosperous prisoners, assuring that they would bring "not tarts", but real society girls."

16. The jail monitoring system now covered by rules 12, 13, Chapter XXXII, Chapter LVI etc. must be made more effective. The employment of temporary hands, which I noticed in several jails which I visited, must be dispensed with. Such members of staff have no commitment. Complaints are occasionally made about the manner of their functioning. Facilities for prayer, discourses, etc. involving social service groups and missionaries will go a long way in reforming prisoners. I have noticed the involvement of certain religious and social groups in Neyyar Jail, and such, I found absent in the Trivandrum Central Jail and in the Kannur Central Jail. Some of the voluntary organisations that are active in the Kerala Jails are "Jesus Helps", "Shanthi Bhavan" and "Jesus Fraternity" under the Kerala Catholic Bishops' Conference. Provision for proper staff, visits by senior citizens, provision for recreation and education would have a very salutary effect.

17. There are other aspects of prison life to which Shri James Vincent refers. Referring to Havlock Ellis, he submitted that sexual urge is the strongest urge in most people. Repression of this instinct, has bad effects according to him. He referred to the provision for conjugal visits prevailing in some of the Prisons in the United -States. James A. Inciardi (University of Delaware) in "Criminal Justice" quoted Henry Miller to refer to instances of homosexuality, violence and other forms of vice. Shri James Vincent advocated conjugal visits, which is permitted in some of the State Penitentiary in Mississippi, California, North Carolina etc. This is an area falling outside our jurisdiction, and I do not consider it proper to go into this aspect, or issue any direction.

18. I may also notice some of the complaints voiced by prisoners to which reference is made by Shri James Vincent, who visited several prisons in the State to prepare his Report and submit it before this Court. Some of the prisoners say that they are not aware of the position of their cases, or who defend them. This complaint does not seem to be factually correct. The records, in the Criminal Section reveal that the information is furnished. Instances have been brought to my notice, where prisoners have been meeting their counsel while on parole. For that matter, by Crl. M.P. No. 1013/93 the Indian Federation of Women Lawyers (Kerala Branch) submitted that some of the prisoners on parole, have been visiting lady Advocates defending them during late hours of night, causing them embarrassment.

19. Prisoners have also complained about the quality of food given to them. One convict (Ali Moosa; C. 4195) insisted that fruits should be supplied. I have seen

the food supplied to prisoners in four Jails of the State, making surprise inspections. The food could be better; but consistent with the constraints, the food cannot be considered bad or inadequate. Some of the prisoners (Ex: C 1451) complain of the attitude of society to prisoners. A human approach is needed. But one cannot overlook that:

"the State of Criminal Law continues to be, as it should be a decisive reflection of the consciousness of society."

(Friedman - Law in Changing Society)

Some of the prisoners (for example : Convict Nos. 1343 & 1547) complained of bad treatment by Jail Authorities. Some complaints are exaggerated. Employment of dedicated jail staff would obviate these complaints. However, superior Officers should ensure that there are no excesses: It is necessary that short-term employees who have no interest in the Institution should not be engaged.

20. The problems are varied and appreciable financial commitment would be involved in dealing with them. However, absence of resources will be no justification for failing to secure humane conditions in prison. Institutional reform litigations must be put on a higher pedestal. Where Government has a constitutional obligation, it cannot plead want of funds, in excuse for not discharging its sovereign functions (see 1980 (93) Harward Law Review 465 - "The Ordinary and Extraordinary in Institutional Litigation" by Theodore Eisen Berg and Stephen Yeezelin; and "Constitution, the Court and Human Rights" - Michael Perry, Chapter V p. 146). The Supreme Court of India has also pointed out the need and justification for affirmative action in such areas Municipal Council, Ratlam Vs. Vardichan and Others, , State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, , People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , and Peoples Union for Civil Liberties v. Union of India It must be remembered that safeguards of liberty have frequently been forged in controversies involving not very nice persons. As Justice Benjamin Cardozo observed :

"The great tides and currents which engulf the rest of men, do not pass judges by."

The course which Courts should adopt, has been indicated by Oliver Wendell Holmes. The Court must have the capacity,

"to. mould ancient principles to present needs, unique in range and prophetic in power, with the grasp of its significance as the basis, upon which purposes of man are shaped."

21. I have considered the range of problems revealed from the petition, the material placed before me by Shri James Vincent as Amicus Curiae and Shri Mohan C. Menon as Government Pleader, and from my observations while visiting prisons. I have reminded myself of the constraints on the Court in public interest

litigations, as also the perceptions that should prevail in institutional litigations. The need for affirmative action indicated by the Supreme Court and the financial constraints on the State have also been borne in mind. Having due regard to these, the following directions are issued :

(1) The State shall build sufficient number of prisons to accommodate prisoners. It is reported that no prisons have been built in recent times. Even jails, should not be cages for human beings. Surroundings make their impact on human mind. Serenity elevates human perceptions, unlike depressing ghettos. Open jails in areas where land is easily available, with necessary security must be thought of. This must be done as expeditiously as possible, making a meaningful beginning within two years from today. High security prisons shall be built to house the category of prisoners who are considered dangerous, and whose numbers are certainly not on the decrease. Scientific classification of prisoners must be made.

(2) State shall effectively implement segregation, keeping habitual offenders away from freshers, to avoid the possibility of hard core criminals turning jails, to schools of crime.

(3) State will ensure that short-term appointments of prison staff are not made, and that adequate trained staff is provided in jails, keeping in view needs of security.

(4) State will take appropriate action to pay reasonable wages to prisoners so that, motivation for work is generated. Reasonable wages need not be the equivalent of minimum wages. Cost of support of prisoners, circumstances that lead to incarceration etc, can be reckoned in fixing such wages. Broadly stated, something in the neighbourhood of half the statutory minimum wages should be reasonable. State will also take appropriate measures for creation of a Fund, for victim care to which an appreciable part of prisoners' earnings could be diverted.

(5) State will consider the possibility of registering societies for managing economic activities in jails on a profitable basis, enabling the ploughing back of the profits - to productive channels instead of treating the income from jails as another source of revenue. The pointer should be to innovation and not to the beaten track.

(6) The State shall consider the feasibility of creating a work force, which can be useful and economical to it. Open jails and a work force go together. Vast human resources can be gainfully utilised.

(7) State may consider the advisability of avoiding short term imprisonment and simple imprisonment, wherever possible. Necessary statutory amendments could be thought of, substituting short term sentences with free work or work with regulated wages. Association with hard core criminals in jail can be avoided, thus.

(8) Considering the grievances voiced by some of the counsel appearing for prisoners, and considering the need to provide facilities to paroled prisoners to meet their counsel, the Registry will make appropriate arrangements for

providing a meeting place in the premises of the High Courts where prisoners can meet their counsel and give instructions by prior appointment. A Desk in the Criminal Section for this purpose, can be thought of

(9) Sufficient provision will be made to segregate civil prisoners and military prisoners, from prisoners convicted of criminal charges.

(10) Proper arrangements will be made for escort of prisoners from jails to Courts and back; it has to be considered whether number of postings involving transport of prisoners can be reduced.

(11) A rational parole policy must be evolved. Parole is a salutary measure. But, a prisoner who invites incarceration by his conduct, cannot expect the same freedom as free citizens. Yet, such restricted freedom, as can be granted, could be granted on the basis of sound considerations. The policy is for the State to make.

(12) Blades for shaving, sterilised needles in Dispensaries and sufficient fans should be provided. Sanitary napkins which are not included in the clothing supplied to female prisoners, should also be supplied.

(13) Necessary facilities for the jail staff must be provided. There are some jails without rest rooms and toilets and staff who take turns often have to sit on verandhas. It must be remembered that congenial working environment alone can ensure a contented service.

(14) Reservation of a nominal percentage of jobs for convict prisoners of good behaviour, can be an incentive and it would be consistent with the concept of rehabilitation.

(15) Educational and recreational facilities, within reasonable limits may be provided in prisons. Weekly or fortnightly discussions, availing of the good offices of religious or social organisations or enlightened citizens, can go a long way in reforming the convicts.

22. I have not given time bound directions because of the difficulties it may create due to financial and administrative constraints. But, it is hoped that expeditious and meaningful, action will be taken by the State.

23. I place on record appreciation of the help rendered to this Court by Shri James Vincent who visited several jails at his cost, collected literature and material, prepared elaborate paper books and argued his case ably. To meet his actual expenses in this regard, the State is directed to pay Rs. 4,000/- (Rupees Four Thousand) to him.

24. I also place on record appreciation of the help rendered to me by Shri Mohan C. Menon, Government Pleader, who also collected relevant and necessary material and helped the Court.