

(2009) 06 MAD CK 0065

In the Madras High Court

Case No : Habeas Corpus Petition No. 2121 of 2008

A. Jaya

APPELLANT

Vs

The State and The Officer-in-charge, Borstal School

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Tamil Nadu Borstal Schools Act, 1925 — Section 10, 8

Citation : (2009) 06 MAD CK 0065

Hon'ble Judges : S.J. Mukhopadhaya, J;Raja Elango, J

Bench : Division Bench

Advocate : S. Manoharan, for the Appellant; V.R. Balasubramanian, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The petitioner, the mother of the detenu, has preferred this Habeas Corpus Petition, alleging that the detention of

the detenu-Parasuraman @ Dori Kannan, is illegal.

2. According to the petitioner, the detenu was born on 5.5.1987 and on the date of commission of offence, he was only 19 years old. The detenu

being adolescent offender at the time of commission of the offence, should have been kept in Borstal School till he attains the age of 23 years, but

the learned Judicial Magistrate No. 2, Kancheepuram, remanded the detenu to judicial custody and detained him at Central Prison, which is illegal.

3. Learned Additional Public Prosecutor appearing for the respondents submitted that the detenu cannot claim the benefit of Section 8 of the Tamil

Nadu Borstal Schools Act and in order to detain a person in the Borstal School, it is the discretion which depends on the Court which convicted

the offender. Similarly, u/s 10 of the Tamil Nadu Borstal Schools Act, the power is

vested with the Inspector General of Prisons to transfer a prisoner to a Borstal School taking into consideration the nature of the offence committed by the detenu. Learned Additional Public Prosecutor also raised the question of maintainability of the Habeas Corpus Petition and according to him, the ground that the detenu is an adolescent offender, cannot be taken for the first time in a petition for Habeas Corpus.

4. We have heard the learned Counsel appearing for the parties and perused the records.

5. u/s 8 of the Tamil Nadu Borstal Schools Act, the Court which passes the sentence of detention, is empowered to pass such sentence of

detention in Borstal Schools and under the said provision, when it appears to a Court having jurisdiction under the Act that an adolescent offender

should, by reason of his criminal habits or tendencies, or association with the persons of bad character, be subjected to detention for such term and

under such instruction and discipline as it appears most conducive to his reformation and the repression of time, in lieu of passing a sentence of

imprisonment, the Court may pass a sentence of detention in a Borstal School for a term which shall not be less than two years and shall not

exceed five years and in no case, such term can extend beyond the date on which the adolescent offender will attain the age of 23 years. For

passing such order, a report is required to be called for from the Probationary Officer of such area in which the offender permanently resides at the

time when he committed the offence and shall consider any other report or representation as may be preferred.

6. In the present case, the petitioner has failed to show that on the basis of the report of the Probationary Officer or other report or representation,

having regard to the criminal habits or tendencies or association of the detenu's presence of bad character, the Court ought to have passed an

order of reformation by sentencing the detenu in Borstal School. In the absence of such a pleading on record before the Court, in a Writ of Habeas

Corpus, it is not possible for the Court to decide as to whether the adolescent offender should have been sent to the Borstal School for

reformation or not. The Court which passed the sentence is empowered to decide the case of detention as to whether the detenu will be detained

in a prison or in a Borstal School for reformation. Till it is shown that the Court

which passed the sentence has not applied its mind, taking into consideration the report of the Probationary Officer or the other report of representation, no presumption can be drawn that the Court, while passing the order of detention ought to have passed the order of detention in a Borstal School. No presumption can be drawn that the Court while passing the order of sentence has not applied its mind. The presumption will be that the Court, as per the discretion, has to decide as to whether the adolescent offender should be sent to prison or in lieu of that, should be sent to Borstal School.

7. The question of maintainability of a petition for Habeas Corpus on the ground that a person sentenced to imprisonment is entitled to the benefit

of the Tamil Nadu Borstal Schools Act, fell for consideration before a Division Bench of this Court (Madurai Bench) in the case of Bindu alias

Bindu Selvakumar and Anr. v. The Home Secretary, The Government of Tamil Nadu, Fort St. George, Chennai-600 009 and 2 Ors. in H.C.P.

(MD). Nos. 266 and 267 of 2008, dated 27.6.2008, wherein the Division Bench held as follows:

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4. No Habeas Corpus Petitions alleging illegal detention can be filed merely on the ground that the person sentenced to imprisonment claims that he

will be entitled to the benefits of Borstal Schools Act, since under the Act, the Court may send adolescent offender to prison. It is merely a

question of discretion whether they should go to Borstal Schools instead. Therefore the detention or sentence of imprisonment to an adolescent

offender is per se not illegal. Therefore we hold a habeas corpus petition is not maintainable.

8. In view of the observations as made by us, while we find no merits in the present case, in view of the judgment of the Division Bench of this

Court as cited above, we hold that the present Habeas Corpus Petition is also not maintainable, which is accordingly dismissed.