

(2002) 04 PAT CK 0072
In the Patna High Court
Case No : C.W.J.C. No. 2747 of 2002

Akhilesh Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 267, 268
Prisoners Act, 1900 — Section 29, 29(1), 29(2)

Citation : (2002) 2 PLJR 600

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : H.K. Kumar and S.N. Singh, for the Appellant; Rishi Raj Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. The Petitioner, an undertrial prisoner, who has been transferred from Divisional Jail, Nawada to Central Jail, Bhagalpur being aggrieved by the order as contained in Annexure-1 has come to this Court challenging the correctness, validity and propriety of the said order.

3. From the said order it appears that two groups having rivalries on number of scores were lodged in the very same jail at Nawada. The order says that Akhilesh Singh, Ratan Singh, Mohan Singh and Nikhail Singh belong to one group while the other prisoner Ram Kumar Yadav belongs to another group. These prisoners are facing trials in different Courts and are alleged to be involved in the massacres. The order further says that because of the bad blood between these two groups and the permanent enmity between them, law and order situation has erupted in the said jail. Under the said order all the five prisoners have been transferred from Nawada Jail to Special Central Jail, Bhagalpur and Central Jail, Bhagalpur. The Petitioner says that this transfer order is perse illegal and is without any authority of law.

4. Learned Counsel for the Petitioner referring to Section 268 of the Code of Criminal Procedure and Section 29 of the Prisoners Act, 1900 Submitted to the Court that powers u/s 268 of the Code of Criminal Procedure do not relate to transfer of one prisoner from one prison to another but in fact clothes the State Government with a power to issue an order that a particular offender/undertrial prisoner shall not be produced before a Court even if a production warrant is issued u/s 267 of the Code of Criminal Procedure. Interpreting Section 29 of the Prisoners Act, it is further contended that class of the convicts only can be transferred from one jail to another and as the Petitioner is not a convict he should not be transferred either u/s 29(1) or Section 29(2) of the said Act.

5. Learned Counsel for the State Govt. however Submitted that in relation to particular prisoner/convicts, the Prisoner Acts, 1990 has given authority to the State Govt. to transfer them from one jail to another jail but as the Code of Criminal Procedure or the Prisoners Act do not put any ban on the powers of the State Govt. in effecting transfer of one undertrial prisoner from one jail to another jail, no wrong can be found with the order issued by the State Government. He further Submits that looking to the law and order situation prevailing in the Divisional Jail, Nawada, the State cannot be allowed to remain a silent spectator and give a licence to the rival groups to have the law in their hands. I have heard the parties at length.

6. Section 268 of the Code of Criminal Procedure, as rightly contended by the learned Counsel for the Petitioner, relates to issuance of an order by the State Govt. whether general or special that any prisoner or class of prisoners shall not be removed from the prison in which he or they may be confined or detained. It further provides that after such an order is issued, so long as the orders remain in force, any order made by any Court u/s 267 of the Code of Criminal Procedure so long as the order issued u/s 268 of the Code of Criminal Procedure remains in force, shall have effect in respect of such prisoner or class of prisoners. Obviously Section 268 has nothing to do with the power of the State Govt. in effecting transfer of one prisoner from the jail to another jail.

7. Section 29 of the Prisoners Act provides that the State Govt. may by general or special order provide for the removal of any prisoner confined in a prison, who is under sentence of death, or in lieu of sentence of imprisonment or transportation, or in default of payment of fine, or in default of giving security for keeping the peace or for maintaining good behaviour, to any other prison in the State. Section 29, Sub-section (1) in fact relates to the convicts who are lodged in jail and are undergoing particular sentences. Sub-section (2) of Section 29 simply provides that Subject to the orders and under the control of the State Govt., the Inspector General of Prisons in a similar manner may order transfer of the convicts as described under Sub-section (1) of Section 29.

8. On the touchstone of these two provisions the order issued by the State Govt. certainly cannot be approved but the question still remains that whether in a case like this, this Court should hold that there is a legal lacuna in the provisions

of law and leave the parties to settle their scores by taking the law in their own hands or the provisions of law should be harmoniously construed to bring the intention of law in accord with the dispensation of justice.

9. Section 29 of the Prisoners Act, 1900 and Section 268 of the Code of Criminal Procedure are enabling provisions. Section 268 enables the State Government to issue an order that a particular prisoner shall not be removed from a particular jail even for his production before the Court. Section 29 of the Prisoners Act enables the State Govt. or the Inspector General of Prisons to transfer a particular or a class of convicts from one jail to another. In either of the Acts there is no disabling provisions to say that looking to the exigencies, urgencies or emergencies, the State Govt., shall be absolutely powerless and would not be in a position to transfer one undertrial prisoner from one jail to another jail.

10. True it is that the law has provided for enabling provisions but it would not be fair on my part to hold that even in absence of a disabling provision, the State Govt. would have no powers. A perusal of Annexure-1 would make it clear that the State Govt. is showing its great concern to the situation as prevailing in Divisional Jail, Nawada. The report Submitted by the Officers of the Jail would show that the criminals are at loose, they are proposing to settle their scores in the jail campus itself. Of late I have gone through certain news which says that the Superintendent of Jail, Deputy Superintendent of Jail, the Wardens and the other employees of the State Govt. whether they belong to the regular constabulary or the jail are mortally afraid of those prisoners who are lodged in the jail and in fact are running a parallel government in the jail itself. I will take notice of such a notorious fact that the jail conditions in Bihar are not upto the mark and the State Govt. is obliged to take remedial measures by providing further force and arms and ammunitions to those persons, who have not only to keep the prisoner/undertrials in the jail but have to look after their own safety.

11. As there is no disabling provisions either in the Code of Criminal Procedure or in the Prisoners Act, 1900 not permitting the State Govt. to transfer one undertrial prisoner from one jail to another, I am of the opinion that the State Govt. looking to the exigency of the situation is entitled to order transfer of the undertrial prisoner from one jail to another jail. I find no reason to interfere in the matter. The petition is dismissed.