

(1987) 07 MAD CK 0043
In the Madras High Court
Case No : Writ Petition 6864 of 1986

Babu alias Kurian

APPELLANT

Vs

Rajakumar, The Superintendent of Central Prison,
Palayamkottai and Director General of Prison, Madras

RESPONDENT

Date of Decision : 14-07-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 392, 397

Citation : (1987) LW(Cri) 398

Hon'ble Judges : Ratnavel Pandian, J;Padmini Jesudurai, J

Bench : Division Bench

Advocate : K. Rajkumar, for the Appellant; G.R. Edmund, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—This is a writ petition by a convicted prisoner against an order of the third respondent imposing a punishment of forfeiture of remission of 351 days. The petitioner is undergoing a sentence of seven years imposed on him on 4th November, 1981, by the Assistant Sessions Judge, Tuticorin, upon his conviction for offences under Ss. 392 and 397, I.P.C. While so, the prison authorities were informed that the petitioner had smuggled Kanja inside the prison and they have imposed the punishment of forfeiture of remission earned, which is provided as major punishment under R. 302 (b) of the Tamil Nadu Prison Manual Volume II.

2. The only point urged by the petitioner is that the punishment was imposed on him without observing the principles of natural justice. The case of the respondent is that as per Cl. 5 of R. 304, those principles need not be observed in case of serious violation of prison discipline. The relevant provisions are as follows :--

303 Awarding of punishments:

(1) The Superintendent shall examine any person touching any prison offence and determine thereupon whether to award a minor or major punishment and his determination shall be noted down while awarding punishment.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his version of the case. The competent authority shall conduct an enquiry into the case. No prisoner shall be punished except in accordance with the terms of rules.

(3).....

304. Enquiry before punishment:

(1)...

(2)...

(3) Whether prisoners are produced before the Superintendent for punishment, the Superintendent shall conduct a thorough enquiry in a fair manner. It shall not become a mechanical process for the mere awarding of punishments. Enquiry shall be conducted as promptly as possible. During enquiry, the accused shall be present. Witnesses shall be brought in one at a time.

(4)...

(5) In case of serious violation of prison discipline, the Superintendent may order the recording of statements of the persons concerned. When the Superintendent thinks that recording of statement is not necessary, he shall briefly record the salient facts of the case in the appropriate column in the punishment book in Form No. 15. If a prisoner has committed any infringement of the prison rules through ignorance or excusable carelessness, the Superintendent, shall admonish him without recording in the said Forms.

(6) The Officer, who conducts the preliminary investigation shall present his report and witnesses if any. The report shall be presented in a language that is commonly understood in the locality or by the accused, where necessary and available, an interpreter may be provided. The accused and his witnesses, if any, shall be heard.

(7) After the Superintendent is satisfied that all relevant facts of the case have come to light, he shall record his decision in the register. After enquiry, the punishment shall be promptly implemented as per rules.

3. Sub Rr. (1) and (2) of R. 303 prescribes in general terms the need of an enquiry and reiterates the principle as per which the person concerned should be given an opportunity of being heard. Sub-Rr. (3) and (6) of R.304 prescribe how the enquiry should be conducted, sub-R. (5) prescribes how the record of enquiry should be made and sub-R. (7) prescribes how the decision should be recorded and implemented. The contention of the respondents is that sub-R. (5) of R. 304 dispenses them with conducting an enquiry. There is nothing in that

sub-rule to justify such a conclusion. If that sub-rule was to authorise the Superintendent to award punishment without an enquiry and without affording to the accused an opportunity of being heard, both of which are elaborately provided in the other sub-rules, there will be an indication that the provision of sub-R. (5) will take effect notwithstanding the provisions of the other sub-rules. There is no such indication. Therefore, the other provisions apply in all cases. Normally, serious violation of prison discipline would entail severe punishment and the general principle of law is: the more severe the punishment the more elaborate and careful the enquiry. Therefore, the lawmaker would not have dispensed with enquiry in case of serious violation of prison discipline. Sub-R. (5) as pointed out earlier, only embodies the provisions relating to the way in which the record of the proceedings should be made in respect of the enquiry which shall be conducted before awarding any punishment. The word "serious violation of the prison discipline" is found in the sub-R. (5) only to indicate that in such cases the entire recording and statements of the person concerned should be made, whereas in less important cases the Superintendent can satisfy himself with briefly recording the salient facts of the case. This distinction is found in enquiries in all spheres. In important cases the verbatim statement is recorded whereas in petty cases the memorandum of the substance of the depositions of the person concerned is only made. Sub-R.(5) is nothing but the statement of that principle in respect of an enquiry for awarding punishment on nothing more. Therefore, the contention of the respondents that an enquiry is not necessary in case of serious violation of prison discipline is totally unacceptable.

3. In the result, the order of forfeiture of remission of 351 days passed against the petitioner is set aside. It is open to the authorities concerned to institute a regular enquiry proceedings in accordance with law for the mistake the petitioner might have committed, if they are so advised. The writ petition is allowed.