

(2014) 07 BOM CK 0337

In the Bombay High Court

Case No : Criminal Writ Petition No. 640 of 2005

Balaji Ganeshrao Pawar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 304

Citation : (2015) ALLMR(Cri) 1492

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J.

Bench : Division Bench

Advocate : Maya Jamdhade, Advocate, for the Appellant; S.G. Nandedkar, APP, for the Respondent

Final Decision : Disposed off

Judgement

S.S. Shinde, J.?This writ petition is filed with two-fold prayers, which are as follows:--

"(a) to direct respondent No. 2 to produce the petitioner's son, namely, Sandeep, and release him from prison.

(b) Respondents may be directed to pay appropriate/reasonable compensation to the petitioner's son for his illegal detention."

It is the case of the petitioner that the petitioner is resident of Rohipimpalgaon, taluka Mudkhed, district Nanded. It is further case of the petitioner that, son of the petitioner, namely, Sandeep s/o Balaji Pawar, after completion of the sentence awarded by the High Court in Criminal Appeal No. 515/2002 ought to have been released forthwith, however, he was not released and, therefore, his detention after the date on which he was entitled for his release after undergoing sentence, becomes illegal and, therefore, he is entitled for compensation, and also action is required to be taken against erring officers.

2. The petitioner's son, namely, Sandeep Balaji Pawar, was accused in Sessions

case No. 108/2001. Learned Ad hoc Additional Sessions Judge, Nanded, in Sessions Case No. 108/2001, by judgment and order dated 20th August, 2002, convicted him for the offense punishable under Section 304 Part II of IPC, directing him to suffer rigorous imprisonment fourteen years and to pay fine of Rs. 5,000/-; in default, to suffer rigorous imprisonment for six months.

3. The said judgment and order was challenged by the convict in Criminal Appeal No. 515/2002 before the High Court. The said appeal was heard by the High Court and by judgment and order dated 8th Oct., 2003, it came to be partly allowed. Though the order of conviction was maintained by the High Court, the sentence was reduced to a term of four years.

4. It is the case of the petitioner that his son, as per the Judgment and Order passed by the High Court in Criminal Appeal No. 515/2002, completed his sentence of imprisonment on 30th April, 2005. It is his further case that since his son could not pay the amount of fine of Rs. 5,000/-, was subjected to undergo in default sentence for the period of six months. Even that period expired on 30th October, 2005. After completing the sentence and the default sentence, since there was no other offence at his discredit, he was entitled to be released on 31st October, 2005. Thus, according to the petitioner, continuance of his son - Sandip in the prison from 1st November till his release on 23rd December, 2005, is illegal detention and he is, therefore, entitled to be awarded with adequate compensation.

5. This Court heard this petition for admission on 22nd Dec, 2005, and after considering the judgment and order passed by the Sessions Court, Nanded, and also the judgment and order passed by the learned Single Judge of this Court in the Criminal appeal held that, if Sandeep was arrested on 30th April, 2001, and if he is continuously in prison, taking into consideration the set off granted, his sentence ought to have been terminated on 30.10.2005. This Court directed the Registry to send a fax message to Prison authorities communicating order passed by the Court on 22nd Dec, 2005, as also writ of High Court upon conclusion of Criminal Appeal No. 515/2002 pronounced on 8.10.2003. This Court further directed that simultaneously, copies of all the three documents should be forwarded to Nashik Road Central Prison, by Speed Post, with Acknowledgment Due, for necessary action.

This Court further directed the Registrar (Judicial) to conduct a discreet enquiry and find out the reasons as to why intimation of High Court decision reducing the sentence did not reach to the Prison authorities well in time although the matter was decided in Oct., 2003. For that purpose, the Registrar (Judicial) was directed to consider the time and manner of transit of writ from High Court Registry and also by the Sessions Court, Nanded, and evidence if any, regarding despatch, receipt by the addressee and acknowledgements. It was further observed that the Registrar (Judicial) should submit report by fixing liability of the lapse before this Court latest by 25th Jan., 2006.

The moment, fax message from the High Court was received to Nasik Road Central Prison, entire prison machinery came in motion and said Sandeep was released on the very next day i.e. on 23rd of Dec, 2005.

6. Pursuant to the directions of the Court, as aforesaid, the Registrar (Judicial) conducted an enquiry and reached to the conclusion that the jail authority, Nanded, has not taken care to see whether the copy of the judgment was received by the jail authority at Nashik. The relevant paragraph from the report of the Registrar (Judicial) submitted to this Court reads thus:

"It appears from the report of the Superintendent, District Prison, Nanded that convict Sandip Balaji Pawar was transferred to District Prison, Nashik on 28.8.2002. In spite of the writ and the copy of the judgment having been received by the jail authority, Nanded on 1.11.2003, the same was forwarded to the jail authority, Nashik on 31.12.2003 that too by ordinary post. The Superintendent in his report has not stated why two months time was required for compliance. It further appears that the jail authority, Nanded has not taken steps to ascertain whether the writ and the copy of the judgment had been received by the jail authority at Nashik. It goes to show that the jail authority, Nanded has not taken care to see whether copy of the judgment was received by the Jail authority, Nashik."

7. It is thus evident from the report dated 30.01.2006 submitted by the learned Registrar (Judicial) that the copy of the Judgment and Order passed by this Court in Criminal Appeal No. 515/2002 and the concerned writ in that regard was received to the jail authorities at Nanded through District & Sessions Court, Nanded on 31st October, 2003. Further, there is a written communication dated 23.1.2006 on record from the Incharge Superintendent, District Prison, Nanded, viz. A.S. Walhekar, addressed to the Registrar of this Court, wherein the fact that the copy of the decision in Criminal appeal No. 515/2002 delivered by the High Court was received at Nanded District Prison through the District & Sessions Court, Nanded on 31.10.2003, is indicated. The aforesaid communication further makes it clear that the then Superintendent of Nanded District Prison forwarded the copy of Judgment and Order of High Court so received to the Superintendent, Nasik road Central Prison on 31.12.2003. Along with the letter dated 23rd of January, 2006, written by Superintendent, Nanded District Prison to the Registrar of this Court, copy of the aforesaid letter dated 31.12.2003 written to the Superintendent, Nasik Road, Central Prison, is annexed. Thus, though the copy of the Judgment and Order passed by this Court in Criminal Appeal No. 515/2002, was received to the District Central Prison, Nanded well in advance on 31.10.2003, the Superintendent, Nanded District Prison did not immediately forward it to the Central Prison at Nasik Road, where the concerned accused was transferred and/or shifted and forwarded it after lapse of about two months. From the report submitted by Registrar of this Court, it is further clear that the then Superintendent of District Prison, Nanded had forwarded the copy of the Judgment and Order to the Superintendent, Nasik Road Central Prison by

ordinary post. It is the contention in the reply filed by the Superintendent, Nasik Road Central Prison that no such letter or copy of judgment was received at Nasik Road Central Prison and only after the communication from the High Court, that too by way of fax, that they came to know about the order passed by the High Court when the period of sentence of the said convict was reduced to four years. Registrar of this Court in his report submitted to this Court has rightly observed that the then Superintendent, Nanded District Prison has shown utter negligence; firstly in not sending the copy of the concerned Judgment and Order immediately after it was received at Nanded; secondly, sending it by an ordinary post; and thirdly, not taking care thereafter to ascertain and verify whether the copy of the judgment was, in fact, received at Nasik Road Central Prison.

8. The material on record apparently shows the negligence on the part of the then Superintendent, District Prison, Nanded. However, it is the duty of the State; and more particularly, the Department, which looks after the affairs of the prisons in the State to find out as to because of whose negligence, the High Court writ could not reach to the prison, where the concerned accused was undergoing sentence and which has ultimately resulted in his illegal detention for a long period of about 43 days.

9. From the record, it is clear that the son of the petitioner was illegally detained at Nasik Road Central Prison for about 43 days. The illegal detention even for a day is to be taken very seriously since it pertains to the liberty of an individual. Son of the petitioner is, therefore, entitled for adequate compensation. In the peculiar facts and circumstances of this case, we direct Respondent No. 1 to pay compensation amounting to Rs. 50,000/- (Rupees fifty thousand) to the son of the petitioner, viz. Sandip within three months from today. We make it clear that no prayer for extension of time for depositing the amount of compensation will be entertained. We further make it clear that it will be open for the Respondent No. 1-State to initiate an inquiry against the erring officers and recover the said amount from their salaries.

Rule made absolute in above terms. Petition stands disposed of.