

(2015) 11 MAD CK 0041

In the Madras High Court

Case No : W.P.(MD) No. 19216 of 2015 and M.P.(MD) Nos. 1 and 2 of 2015

Dhayal

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Penal Code, 1860 (IPC) — Section 109, 120(b), 147, 148, 302
Prisoners Act, 1900 — Section 29

Citation : (2015) 11 MAD CK 0041

Hon'ble Judges : S. Vaidyanathan, J.

Bench : Single Bench

Advocate : M. Subash Babu for Susikumar, for the Appellant; D. Muruganandam, Addl. Govt. Pleader, for the Respondent

Judgement

S. Vaidyanathan, J.—This petition has been filed, seeking to quash the impugned order passed in No. Tha.Ku.3/100/2015 dated 22.09.2015 by the 5th respondent, in and by which, the Remand Prisoner, namely, Pandi @ Attack Pandi was ordered to be remanded in the Central Prison, Palayamkottai instead of the Central Prison, Madurai, based on the telephonic message of the Deputy Inspector General of Prison (Incharge). The petitioner has also sought a direction to the 2nd respondent for transfer of her husband/the Remand Prisoner to the Central Prison, Madurai.

2. The case of the petitioner in nutshell is as follows:

"i) The petitioner's husband was arrested at Mumbai on 21.09.2015 by the Inspector of Police, Subramaniapuram Police Station, Madurai in connection with a case in Crime No. 68 of 2013 for the offences under Sections 147 , 148 , 341 , 427 , 302 , 120(b) , 109 r/w 34 IPC and that he was produced before the Judicial Magistrate No. IV, Madurai on 22.09.2015. Though the Remand Prisoner was initially ordered to be detained in the Central Prison, Madurai, subsequently, all of a sudden, he was transferred to the Central Prison, Palayamkottai.

ii) It is submitted that immediate thereof, the petitioner filed an application in Crl.M.P. No. 3433 of 2015 dated 01.10.2015 before the Judicial Magistrate No. IV, Madurai, seeking for her husband's transfer to the Central Prison, Madura, pursuant to which, the Inspector of Police, Subramaniapuram Police Station filed an objection, by stating that since the Remand Prisoner has several cases in Madurai and his friends and relatives have been visiting him frequently, he was transferred to the Central Prison, Palayamkottai. In addition to that, the 5th respondent also appeared before the Magistrate and stated that on the basis of the telephonic message from the Deputy Inspector General of Prison (Incharge), the impugned order was passed by him. The Magistrate has closed the application on 08.10.2015, by observing that even though the order of the 5th respondent is violative, he has no jurisdiction to interfere with the same.

iii) The said impugned order was assailed by the petitioner, on the ground that the 5th respondent has no jurisdiction to pass such an order and therefore, the impugned order is without jurisdiction and is liable to be set aside. Further, no material has been placed to show that the Remand Prisoner has a threat in the Central Prison, Madurai. It is also the apprehension of the petitioner that there is every possibility of the Police to eliminate her husband by way of fake encounter. It is also stated that though all the cases are pending against him only in Madurai, it will cause more financial burden to the State exchequer for production of the Remand Prisoner before the concerned Magistrate every time.

iv) It is further pointed out that though 5th respondent is aware of the fact that he has no jurisdiction to pass the order of transfer, due to compulsion and force, he was made to pass such order. Thus, it is prayed that the Remand Prisoner may be ordered to be transferred back to the Central Prison, Madurai."

3. The 5th respondent has filed a counter to the petition, by inter alia stating as under:

"i) It is stated that the impugned order is not an order passed by the 5th respondent and it is only a letter addressed to the 4th respondent, intimating redirection of the Remand Prisoner to the Central Prison, Palayamkottai, which letter was handed over to the escort party on 22.09.2015 as per the orders of the 2nd respondent, received through the 3rd respondent over phone on 22.09.2015 in view of security reasons. Due to paucity of time, such immediate measure was taken to avoid any untoward incident. It is also stated that on the very same day, an order of ratification was obtained from the 2nd respondent and therefore, it cannot be said that the order of transfer of the Remand Prisoner was not issued by the 2nd respondent.

ii) It is further stated that there is more possibility of insecurity to the Remand Prisoner and there are also chances of forming groupism inside the prison, as the Remand Prisoner is a local prominent persons in Madurai city. Not only the Remand Prisoner, but also other 12 remand prisoners, who are suspected to be involved in the present case have already been transferred to the Central Prison,

Salem during the year 2013.

iii) In the counter, various Rules, Act and Manuals have been relied upon to substantiate confinement of the Remand Prisoner in the Central Prison, Palayamkottai. It is stated that there is no need to produce the Remand Prisoner every time in person for extension of remand, as all the District/Judicial Magistrate Courts in Madurai are already connected through Video Conferencing to all Central Prisons. At present, there are 4 cases pending against the Remand Prisoner in Crime Nos. 68 of 2013, 42 of 2013, 332 of 2010 and 78 of 2009 and in all the cases, his remand is being extended by way of video conferencing. Therefore, it is prayed for dismissal of the writ petition."

4. The main thrust of argument put forth by the counsel for the petitioner is that the power of transfer of a Remand Prisoner from one Prison to another Prison is vested only with the Inspector General of Prison in terms of Section 29 of the Prisoners Act, 1900 and the Tamil Nadu Prison Rules, 1983. In support of his submission, the counsel for the petitioner has relied upon the judgment of this Court in the case of The Superintendent of Prisons, Chennai v. The Inspector of Police, Maduravoyal Police Station, Chennai (Crl.O.P. Nos. 21004 and 21005 of 2015) dated 03.09.2015.

4.1. However, a reading of the judgment shows that in the said case, referred to above, the Magistrate has passed an order of transfer of the remand prisoner therein, exceeding his jurisdiction and therefore, this Court had interfered with the order of the Magistrate and set aside the same.

5. On the contrary, the Additional Government Pleader has contended that though Section 29 of the Prisoners Act, 1900 empowers the Inspector General of Prisons alone to order transfer of a prisoner from one prison to another central jail, Section 59 of the Act authorizes the State Government to make rules consistent with this Act. In pursuant of the same, the State Government has brought an amendment to Rule 18, empowering the Deputy Inspectors Generals of Prisons to pass such order of transfer. Moreover, the impugned order is not an order, but a correspondence, passed through the escort party to the 4th respondent for redirection of the Remand Prisoner and therefore, an administrative order cannot be challenged.

6.1. The Additional Government Pleader, in support of his plea with regard to the limitation of the fundamental rights of an under trial prisoners, has cited a judgment in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, , wherein it has been held as under:

"21. The fundamental right of an undertrial prisoner under Article 21 of the Constitution is not absolute. His right of visitations as also other rights are provided in the Jail Manual. The Respondent as an undertrial prisoner was bound to maintain the internal discipline of the jail. Such a fundamental right is circumscribed by the prison manual and other relevant statutes imposing reasonable restrictions on such right. The provisions of the Bihar Jail Manual or

other relevant statutes having not been declared unconstitutional, the Respondent was bound to abide by such statutory rules."

Therefore, it is vehemently contended that as the impugned order has been passed solely with a view to avoid group clash, which will lead to more administrative problems in the Central Prison, Madurai, the said order cannot be faulted with and it requires no interference by this Court.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. A precise view of the entire facts of the case would unearth the fact that the husband of the petitioner, namely, Pandi @ Attack Pandi, who has been implicated as an accused in respect of a case in Crime No. 68 of 2013 for the offences under Sections 147 , 148 , 341 , 427 , 302 , 120(b) , 109 r/w 34 IPC, after two years of search, was arrested by the Inspector of Police, Subramanianpuram Police Station, Madurai on 21.09.2015 in Mumbai and was produced before the Judicial Magistrate No. IV, Madurai for judicial custody. Subsequently, on the orders of the 5th respondent on the basis of the telephonic message from the 3rd respondent, the Remand Prisoner was confined in the Central Prison, Palayamkottai. The act of the respondent was opposed to by the petitioner by filing an application before the Magistrate and the Magistrate, for want of jurisdiction, declined to interfere with the same and closed the application on 08.10.2015. Therefore, the petitioner is before this Court by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

9. Before going into the merits of the case, this Court feels it appropriate to extract the relevant Rules, Act and Manual for better appreciation of the case.

"i) Section 29 of the Prisoners Act, 1900 reads as follows:

"Section 29 -----

(ii).....

(b) by the Inspector General of Prisons -

(i) from one Central Jail to another Central jail or to a District jail or a subsidiary jail,

(ii) From one district jail to another district jail or a Central jail or a subsidiary jail; or

(iii) from one subsidiary jail to another subsidiary jail or to a district jail or a Central jail" -- Madras Act 11 of 1958, s. 8 (4-6-1958). (a) Substituted by T.N. Act 14 of 1994), S. 2 (4-3-94)."

ii) Rule 570 of Tamil Nadu Prison Rules, 1983 describes as under:

"570. Power of Inspector General -

(1) The Inspector General subject to the order and under the control of the Government is authorized to sanction the transfer from one prison to another within the State of such prisoners as are referred to in Section 29 of the Prisons Act, 1900 (Central Act III of 1900) except those under sentence of death.

iii) Once again Rule 820 of Tamil Nadu Prison Rules, 1983 emphasizes as under:

"820. Transfer of an undertrial or remand prisoner on emergency or on administrative grounds - During an emergency or on administrative grounds, the Inspector General is authorised to transfer undertrial or remand prisoners from one prison to another within the State, provided that if a prisoner is transferred to a place outside the jurisdiction of the court concerned, prompt intimation shall be sent to the court. The prisoner shall be produced before the court on the due date."

10. Tonsuring of unnecessary facts, as per the Act and the Rules made thereunder, it is vividly clear that only the Inspector General of Prisons alone is the competent person, for ordering redirection an undertrial prisoner from one prison to another prison. However, in this case on receipt of telephonic message from the Deputy Inspector General of Prisons, the Superintendent, Central Prison, Madurai, has passed the order, which is impugned in this writ petition, which is construed as a mistake committed on the administrative side.

11. At this juncture, the Additional Government Pleader has referred to Section 59 of the Prisons Act, 1894 to contend that the State Government has got powers to amend the Rules. By invoking the said provision, the State Government, by way of G.O. Ms. No. 1739 dated 20.11.1991, made an amendment to Rule 18 and inserted certain rules for the purpose of delegation of powers to the Deputy Inspector General of Prisons, which is extracted below:

"18(1)....

(2) The duties of each of the Deputy Inspector Generals of Prisons at the Ranges are as follows:--

(i) & (ii).....

(iii) He shall be the authority to order the transfer of prisoners from one Central Prison to another under his jurisdiction whenever necessary due to overcrowding or on disciplinary grounds except the transfer of a prisoners on disciplinary grounds from a Casual to a Habitual Prison subject to ratification by the Inspector General of Prisons."

12. On a close scrutiny of the amendment, cited supra, it is seen that the amendment is not consistent with Section 59 of the Act, as the provisions of Section 59 with regard to the power of the State Government to make Rules more particularly in a case of transfer of a prisoner from one prison to another prison on the orders of the Deputy Inspectors General of Prisons is silent. Therefore, any rule, which is inconsistent with the Statute will not prevail over.

13. The contention of the petitioner is that Rule 520 provides for certain facilities, such as seeing and communicating with his relatives, friends or legal advisers with a view to the preparation of an appeal or to the procuring of bail and shall also be allowed to have interviews or write letters to his relatives, friends or legal advisers, once or twice or often, if the Superintendent considers it necessary. Such freedom is affected, because of his transfer to the prison, which is far off from Madurai. He further stated that no wrong decision can be ratified by simply invoking the provisions of Rules.

14. Though the said argument looks attractive at the threshold, but if seen in depth, it has no logic, as any administrative act can be ratified, as the administrative error can be easily eroded by way of ratification. For example, if a student commits a mistake and in the absence of the Head Master of the school, the Teacher himself can impose some punishment against the particular student and later on get it ratified by the Head Master. So far as the contention of the petitioner with regard to the fundamental rights is concerned, it is very limited with respect to prisoners so long as the prisoners maintain discipline in the prison as held by the Supreme Court in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadhav and another) (supra)

15. When the administrative error can be curable in respect of a layman or a student, there should not be any barricade by way of technicality, as in the present case, the Remand Prisoner is branded as a criminal in various cases and in case of retaining him in the Central Prison, Madurai, it will definitely cause great hardship to the prison authorities. But, at the same time, the inconsistent order, which is not in consonance with the statute, pursuant to which, objection was also raised on the side of the petitioner, cannot be allowed to stand and therefore, the impugned order is liable to be set aside.

16. Accordingly, this writ petition is partly allowed and the impugned order dated 22.09.2015 is set aside. The Inspector General of Prisons is directed to decide the issue, keeping in mind the prevalent situation existing now and also in accordance with the Act and the Rules made thereunder and pass suitable orders within a period of ten working days from the date of receipt of a copy of this order.

17. At this juncture, the counsel for the petitioner made a request that till the 2nd respondent passes afresh order, the Remand Prisoner may be brought back and confined to the Central Prison, Madurai. This request cannot be acceded to, for the simple reason that without knowing the present situation prevailing in the Central Prison, Madurai, such blanket direction cannot be issued and therefore, at this stage, this Court cannot put the clock back and it is for the authorities to take a decision with regard to the prison in which the Remand Prisoner should be confined. No costs. Consequently, connected miscellaneous petitions are closed.