

(2008) 07 MAD CK 0076
In the Madras High Court
Case No : H.C.P. No. 486 of 2008

Dr. L. Prakash

APPELLANT

Vs

The Superintendent, Puzhal Central Prison -1, Puzhal,
Chennai

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Citation : (2008) 07 MAD CK 0076

Hon'ble Judges : V. Periya Karupiah, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Karuppan, for the Appellant; M. Babu Muthu Meeran, Assistant Public Prosecutor, for the Respondent

Judgement

D. Murugesan, J.—Dr. L. Prakash, the petitioner is a life convict and he is presently confined in Central Prison, Puzhal, Chennai. He was found guilty and was sentenced to under go imprisonment as detailed below:-

(i) Rigorous imprisonment for seven years and also to pay a fine of Rs. 5000/-in default to undergo rigorous imprisonment for six months for the offence u/s 506(ii) of IPC

(ii) Rigorous imprisonment for ten years and also to pay a fine of Rs. 5,000/-in default to undergo rigorous imprisonment for six months for the offence u/s 367of IPC

(iii) Rigorous imprisonment for five years and to pay a fine of Rs. 1,00,000/- in default to undergo rigorous imprisonment for six months for the offence u/s 67 of the Information Technology Act, 2000

(iv) Rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- in default to undergo rigorous imprisonment for six months for the offence u/s 5 of Immoral Traffic (Prevention) Act, 1956

(v) Imprisonment for life and to pay a fine of Rs. 5000/- in default to undergo

rigorous imprisonment for six months for the offence u/s 6 of Immoral Traffic (Prevention) Act, 1956

(vi) Rigorous imprisonment for two years and to pay a fine of Rs. 2000/- in default to undergo rigorous imprisonment for six months for the offence u/s 6 of Indecent Representation of Women (Prohibition) Act, 1986

(vii) Rigorous imprisonment for seven years and to pay a fine of Rs. 5000/- in default to undergo rigorous imprisonment for six months for the offence u/s 27 of the Arms Act, 1959.

2. He has approached this Court seeking a direction to the Superintendent of Central Prison, Puzhal, Chennai to receive a lap top computer with word processor facility and printer purchased on his behalf and handover the same to him and consequently permit him to put in use of the same. The petitioner is not only sought for relief for a provision of lap top computer for himself, but also a provision of lap top to deserving prisoners, like the petitioner so as to enable them to make their time more productive.

3. The petitioner has sought for a provision of computer based on the following averments:-

(i) He is a leading orthopedic surgeon in the country and was also a former Secretary of Indian Orthopedic Association. He is also an author of six books and numerous scientific publications. Even during the incarceration for over a period of six years, he did not remain idle and wrote "Mahabharata" in English. So far, he has written 89 books on various subjects including humor, self help, religious based, mythology, detective and thriller novels. Being a prisoner, he is entitled to fundamental right relating to freedom of speech and writing under Article 19 of the Constitution of India and that though he was allowed to work unfettered, he had to take longhand and painstakingly writing of nearly thirty five thousand and odd pages. Though he has already possessed M.B.B.S. and M.S., degrees and M.Ch., higher specialty degree apart from FASIF, in order to enrich and educate himself, a provision of a personal computer or laptop and other related accessories are absolutely necessary,, since such a provision would make the job of writing pain free and efficient editing and in carrying out correction work. The same would enhance the quality and efficiency in the job and some times to add creation.

(ii) The Central Prison situate in Puzhal at Chennai is one amongst most modern prison in Asian Country and the same is equipped with a computer lab with about dozen computers. Yet, he is unable to take the full benefit of the system as the computers are primarily intended to put in use to train the inmates of the prison and the facilities have to be shared among 600 other prisoners. As he is financially stable and solvent to purchase the computer from and out of his own resources without recourse to other means and that he is not expected to waste all spare time of the rest of his life in jail, he required a laptop or computer facility for his own to be used inside the prison. Though he has made several

requests, the same evoked no positive response and the jail authorities refused to provide a laptop computer which necessitated him to approach this court by way of the present habeas corpus petition.

4. In support of the above averments, Mr. R. Karuppan, learned counsel appearing for the petitioner would submit that prisoner like any other individual is entitled to fundamental right and merely because he is a prisoner, he cannot be deprived of his fundamental rights under Articles 14, 19 and 21 of the Constitution of India. As the petitioner is a Doctor, he has got every right to enrich himself with the modern medical facilities which in other words right to education and he is entitled to have for his exclusive a laptop computer or desk top personal computer at his cost of his own. Such a right cannot be curtailed merely on the ground that he is a life convict. Therefore, the petitioner is entitled for a provision of laptop computer or desk top personal computer with word processor. The denial of such provision would amount to infringement of his fundamental right guaranteed under Article 19 of the Constitution of India. Hence, he seeks for a direction by this Court to the authorities concerned to provide a lap top computer or desk top personal computer for the petitioner with word processor facility.

5. The claim of the petitioner is resisted by the respondent firstly on the ground that there are ten computers made available to give training for the prisoners and that Rule 298 of Tamil Nadu Prison Rules, 1983, prohibits certain articles and under sub clause (n) to the said Rules "unauthorized writing material" is classified as prohibited articles. The laptop computer or desk top personal computer for writing books is a prohibited article within the meaning of the said sub rule. Hence, the petitioner is not entitled to have a laptop computer or desk top personal computer of his own for his exclusive use inside the prison.

6. Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor representing on behalf of the respondent would on the other hand contend that the petitioner being a convict under the provisions of Information Technology Act, 2000 and is serving sentence as against the sentence of imprisonment for five years and to pay a fine of Rs. 1,00,000/-imposed for the offence u/s 67 of Information Technology Act, 2000, apart from the conviction and sentence for the various offences, is not entitled to have the benefit of owning a laptop computer or any other computer at his cost of his own and exclusive use inside the prison. There is every possibility of misusing the computer for other communicative purposes as the petitioner is well acquainted with operation of computers.

7. The learned Additional Public Prosecutor would further submit that there is every possibility to have access with inter-net connection through cards without wires and further there is every possibility of putting in use of pen drive, microchips for the purposes of communications. The authorities being empowered to regulate the inmates of the prison should take into consideration the safety and security of the prisoners. He would also place reliance to the Rule 298 of the Tamil Nadu Prison Rules, 1983 (Vol.11) and would submit that earlier

under sub clause (r) to Rule 298 of the Rules only "unauthorized writing materials" were classified as prohibited articles, latter by an amendment, the State notified in exercise of its power conferred under Rule 59 of the Prisons Act, 1894 (Central Act IX of 1894) issuing order in G.O.MS. No. 1447 Home (PRI. V) Department dated 16.10.2007 and inserted sub clause (rr) to the Rule 298 of the Tamil Nadu Prison Rules, 1983 which reads as under r

(rr) Cell phone, SIM Card, Mobile battery chargers or any other accessories which are used for communication purpose.

8. By virtue of the above said sub clause, lap top computer and other computers are prohibited, as they are likely to be used for communication purposes, The learned Additional Public Prosecutor would also submit that the petitioner cannot as a matter of right seek for a provision of laptop computer or desk top personal computer of his own at his cost to be kept inside the prison for his exclusive use. Hence, he seeks for dismissal of the habeas corpus petition.

9. The petitioner has not only prayed for a direction to provide a laptop computer or desk top personal computer for his exclusive use at his own cost, but has also prayed to give a general direction for such a provision to be made available for every deserving and desiring inmate in the prison. In our considered opinion, it would only be proper for us to deal with the issue in question in this habeas corpus petition only with respect to the claim relating to the petitioner, as we are concerned with the claim of the petitioner alone. Hence, the relief sought for in the petition in regard to making available the provision of laptop computer or desk top personal computer for every deserving and desiring inmate in the prison cannot be considered and the claim is confined only with respect to the claim of the petitioner.

10. In view of the above rival contention the issue arises for consideration is as to whether the petitioner is entitled a right to have a laptop computer or desk top personal computer for his exclusive use inside the prison while he is serving the sentence.

11. In order to evaluate the above issue, firstly the right of a prisoner, who is serving sentence, as to his above entitlements should be considered. In this context, the observations of the Supreme Court that immediately occur to our mind is the judgment rendered in Sunil Batra Vs. Delhi Administration and Others etc., , At page 506, it has been held

Mr. Justice Douglas, in his dissenting view, stated "prisoners are still "persons" entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requires of due process.

The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether. For example, public addresses by prisoners may be put down but talking to fellow prisoners cannot. Vows of silence or taboos on writing poetry or drawing cartoons are violative of Article 19. So also, locomotion may

be limited by the needs of imprisonment but binding hand and foot, with hoops of steel, every man or woman sentenced for a term is doing violence to part III.

Further in para 568 it has been held:-

It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the constitution. Prisoners are entitled to all constitutional rights unless their liability has been constitutionally curtailed. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards. By the very fact of the incarceration prisoners are not in a position to enjoy the full panoply of fundamental rights because these very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed.

(ii) In *Sunil Batra Vs. Delhi Administration and Others etc.*, , at page 509 it has been held

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practice" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.

(iii) In *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, at page 767 it has been held

31. It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.

(iv) In *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others*, , at page 724, it has been held

24. Thus, according to the definition under the Prisoners Act, there is a convict, there is an under trial and there is a civil prisoner who may be a detenu under preventive detention law. None of the three categories of prisoners lose their fundamental rights on being placed inside a prison. The restriction placed on their right to movement is the result of their conviction or involvement in crime. Thus a person (prisoner) is deprived of his personal liberty in accordance with a procedure established by law which must be reasonable fair and just.

(v) In *Sube Singh Vs. State of Haryana and Others*, at page 197 it has been held

36. Convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the State to ensure that there is no infringement of the inalienable right of a citizen to life, except in accordance with law, while the citizen is in its custody.

12. It is now, therefore, recognized that the right of a prisoner to enrich himself the knowledge especially on the subject in which he is quite conversant would also certainly be a fundamental right guaranteed under Article 19 of the Constitution. The enrichment correlates the education and the education is not possible without there being adequate facilities. The education project in prison is an important component of multi-pronged strategy to be adopted in the reformation of prison. It is a matter of fact that the prisoners are part and parcel of our society and so it is our moral responsibility to enable them to catch up with the rest of the society. Therefore, the main object must be to make best utilization of the time of the prisoners and to develop positive and constructive thoughts in them, in addition, to insert creativity in their mind in the place of criminality. Such activities are not only helpful to impart education to the prisoners but also are important tool of stress management. The educational activities therefore, keep the prisoner occupied and enable them to contribute something positive and constructive for the society inside and outside the prison.

13. The education must not be made available only to the segregated wing and excluding the same for the reach of the prisoner. Such an argument would only be an outdated slogan as it is now mandatory for the State to provide education to all, of course, subject to the economic constraint. The education is becoming an increasingly important determinant for living standard. The Education has been regarded in all societies and therefore human history both as an end in itself and as means for the individual society to grow.

14. By virtue of Article 19 of the Constitution, even in case of prisoners right to education cannot be denied. This leads us to the next issue namely that in the interest of the security of the prison, can a prisoner be denied a right to have a laptop computer or personal computer of his own at the guise that he has right

to education under Article 19 of the Constitution of India.

15. There cannot be two opinion that the power to regulate the inmates shall lie with the Superintendent of concerned prison and as well on the State. As has been pointed out by the Apex Court in *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and Another, , the right of the prisoner and his personal liberty cannot be deprived except, in accordance with the procedure established by law, which must be reasonable, fair and just.

16. The claim of the petitioner is that he is a Doctor by profession and in fact he is a higher specialty degree holder in medicines. He has specifically come before this Court with the grievance that he intends to equip himself with the modern medical facilities in the medical field and for which a laptop computer or desk top personal computer will be of great assistance in knowledge assimilation and education. This factual aspect has not been denied by the respondent. The core objection would be that the petitioner being a convict u/s 67 of Information Technology Act, 2000 and he being conversant with the operation of the computer, if he is provided with a laptop computer or desk top personal computer for his exclusive use inside the prison where he is presently confined, there is every possibility of misusing the same by the petitioner. Therefore, it is in the wisdom of the jail authorities in the form of regulation to deny such a provision to the prisoner, the petitioner. Further, the apprehension is that in view of the advanced technology, there is every possibility to get access to inter-net connection through cards without wire and there is also every possibility to communicate information"s through the handy devices pen-drive, microchips, etc.

17. Much is stressed on Prison Rules namely, the prisoner is not entitled for a laptop computer or desk top personal computer, as it is prohibited article in terms of sub Clause (rr) to Rule 298 of The Tamil Nadu Prison Rules, 1983. We have extracted the above said clause in the earlier portion of this order and of course the said clause relates to Cell phone, SIM Card, Mobile battery chargers or any other accessories, which are used for communication purposes. If strictly construed, the word "which are used for communication purpose" it shall necessarily relate to the accessories attached to the Cell Phone, SIM Card, Mobile battery chargers and the said sub clause (rr) to Rule 298 of the Tamil Nadu Prison Rules, 1983, does not explicitly include either desk top computer or laptop computer or any other accessories attached to such a lap top computer or desk top computer including printer and word processor.

18. In this context, the submission of Mr. R. Karuppan is that either desk top personal computer or laptop computer or any other accessories attached to the same could not be considered as prohibited article in terms of the above said clause. We are not in agreement with the said submission, as in the process of a regulatory measure when the government comes forward with the rules relating to prohibited articles, the rule cannot be given strict interpretation and the object of the rule is only to ensure the safety and security of the prison and merely because the rule refers to only cell phone, SIM cards, Mobile battery chargers or

any other accessories which are used for communication purpose, in our considered opinion, the provision of laptop computer or any other computer or any of the accessories attached to the same is excluded from the applicability of said sub clause, as such laptop computer or desk top personal computer can also be used for communicative purposes.

19. Though laptop computer or desk top personal computer can also be considered to be a prohibited article in terms of rule, the prohibition would only be in respect of a prisoner possessing the same for his own and exclusive use inside the cell in which he is confined. In fact the computers may certainly be of an assistance for a prisoner for his enrichment in his educational knowledge. Equally, the possibility of misusing of such a computer cannot be ruled out. The latest models of compact laptop computers are presently available with infrared, blue tooth, wi-fi wireless facilities apart from wired net-work. By use of infrared, one person can communicate with the other user provided he is within a very short distance and the devices viz., laptops, cell phones or ipods, etc. are held very closely. Of course this facility can be used only in a one room or cabin and communicable is not possible beyond that area.

20. Insofar as blue tooth is concerned, this is another facility, which is more or like infrared but it is not necessary to hold the devices near the laptop. What is necessary that the other device should also have the blue tooth facility. Blue tooth can cover long distance than infrared. A person standing in another room can receive and/or send data from or to laptop computer from another room without any difficulty.

21. As regards, Wi-fi facility is concerned, this is acronym for "wireless Fidelity". This facility is in use in major countries in the rest of the world. This facility is also available in Chennai of course in a limited places. Nevertheless by using this facility a user of the laptop computer can browse the internet just as the conventional computer but without any wired network. Even in the laptop computer without Wi-fi facility, one can connect a data card and browse through the net from anywhere in the country while on roaming. By this facility any document or graphics or drawings can be transmitted from the laptop computers to any other like devices and one can also send and/or receive voice calls. As far as communication is concerned, in terms of comparison between a mobile phone and a laptop, laptop computer is more useful to an user in that he can not only send and/or receive voice calls, but he can easily transmit and/or receive all types of data also. If any accessories is made with Wi-Fi facility it will be very difficult to locate the identity of the offender after the commission of such cyber crime as he can easily destroy the laptop after copying the data to some other device.

22. By virtue of the above caution, it must be held that though as a prisoner, the petitioner has got a right enrich his knowledge and to get acquainted with the modern facilities in the medical field, such a right could be restricted by the established procedure of law and the only caution would be that the said

procedure must be reasonable, fair and just. In our considered opinion, the regulatory clause (rr) to Rule 298 of the Tamil Nadu Prison Rules, 1983 is reasonable, as it is intended only to regulate the inmates of the prison. We hasten to add that we have not come to such a conclusion by taking note that the petitioner was convicted under the provisions of Information Technology Act, 2000, as it makes no difference as to the entitlement of the prisoners to claim facilities. Equality in law of course precludes discrimination of any kind, whereas equality in fact may involve the necessity by different treatment in order to contain a result which establishes an equilibrium between different situation.

23. Coming to the factual position that ten pieces of computers are made available in the Central Prison in question. However, it could be seen from the counter affidavit that those computers are meant only for giving training to the prisoners. In fact, the counter affidavit specifically states that no computer will be spared for personal and exclusive use of any of the prisoners.

24. In our considered opinion the petitioner is not entitled to possess either laptop computer or desk top personal computer with word processor facility or any other accessories attached to the same of his own in the cell where he is presently lodged. Nevertheless, his right to get education, acquire knowledge and enrich himself in the medical field and the modern medical facilities cannot be curtailed. In these circumstances, it would only be proper to direct the Superintendent of Central Prison, Puzhal, Chennai to allow the petitioner to use any one of the Computers already available in the prison for the use of the petitioner and he shall prescribe the timings for such usage. Further, the Superintendent of Central Prison and the person or persons authorized by him on his behalf shall supervise and monitor as to the fact, whether the petitioner uses the computer only for the purpose for which the petitioner has approached this Court viz., to write books or to enrich himself in the medical field at the time when he is at work in the computer. The above directions would endure to the entitlement of the detainee only in the event the computers are not used for training for the other inmates of the prison. With these observations, this habeas corpus petition is disposed of.