
(2013) 07 RAJ CK 0202
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7314 of 2013

Jairam Das @ Ramji	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14
Penal Code, 1860 (IPC) — Section 121, 122, 123, 124, 125

Citation : (2013) 07 RAJ CK 0202

Hon'ble Judges : Veerendr Singh Siradhana, J; R.S. Chauhan, J

Bench : Division Bench

Advocate : Anshuman Saxena, for the Appellant; Javed Choudhary, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner, Jairam Das @ Ramji, has approached this Court with a limited prayer that the respondents should be directed to consider his case for being transferred from the Central Jail, Jaipur to an Open Air Camp. Brief facts of the case are that the petitioner was involved in a criminal case for offences under Sections 302 and 201 IPC. Subsequently, he was convicted and sentenced by the Additional Sessions Judge (Fast Track) No. 2, Jaipur City, Jaipur by judgment dated 06.12.2004 passed in Sessions Case No. 104/2002. Subsequently, the petitioner filed a criminal appeal before this Court. However, the said appeal was dismissed by judgment dated 03.03.2008. So far, the petitioner has undergone a sentence of thirteen years and ten months including remission. Since he was not keeping well and since he happens to be an old person, he was hoping that he would be transferred to the Open Air Camp. However, so far his case has not been considered ostensibly on the ground that he happens to be eighty-four years old, and is a bachelor. Therefore, the petitioner has filed this petition before this Court.

2. The learned counsel for the petitioner has pleaded that the issue whether an

elderly person would be eligible to be transferred to the open air camp, has been settled by this Court in the case of Rati Ram Vs. State of Rajasthan & Ors. (D.B. Civil Writ Petition No. 74/2013, decided on 18.02.2013).

3. Secondly, in the case of Geeta Devi Vs. State of Rajasthan, this Court had already opined that a convicted prisoner cannot be denied the right to be transferred from jail to the open air camp on the ground that he is unmarried. Therefore, the second reason being given by the Superintendent, Central Jail for non-consideration of the petitioner's case is no longer tenable.

4. On the other hand, the learned Deputy Government Advocate has contended that Rule 3(h) of the Rajasthan Prisoners Open Air Camp Rules, 1972 (for short "the Rules of 1972"), clearly stipulates that the prisoners above the age of sixty years and a convicted prisoner who happens to be unmarried, are ineligible for being transferred to the open air camp. Thus, the respondents are justified in not considering the petitioner's case for such a transfer.

5. Heard the learned counsel for the parties and perused the documents attached with this petition.

6. Rule 3 of the Rules of 1972, is as under:-

3. Ineligibility for admission to open air camp:-The following classes of prisoners shall ordinarily be not eligible for being sent to Open Camp:-

(a) Prisoners whose ordinary place of residence is outside the State of Rajasthan or who have been convicted by a Court Martial.

(b) Prisoners convicted under the Explosive Substances Act, 1908.

(c) Persons who have escaped from the jails or who have attempted to escape from a lawful custody.

(d) Prisoners who have been convicted of an offence or offences under sections 121 to 130, 216A, 224, 225, 231, 232, 303, 311, 328, 332, 333, 376, 377, 383, 392 to 402, 435 to 440, and 460 of the Indian Penal Code (Act XLV of 1860).

(e) Prisoners who have been sentenced to less than five years imprisonment.

(f) Prisoners who are habitual with more than two previous convictions of imprisonment to their credit.

(g) Prisoners whose conduct in the jail is not good provided that a prisoner who would have not received any jail punishment for two years preceding the date of the recommendations of his name for admission to the Open Camp may be considered eligible.

(h) Prisoners who are below 25 years of age and above 60 years of age.

(i) Prisoners who are lunatic or have mental deficiency or are physically incapacitated.

(j) Prisoners who have no fixed abode in Rajasthan.

(k) Detenues and Civil Prisoners.

(l) Prisoners convicted for vagrancy.

(m) Prisoners who are unmarried.

7. A bare perusal of the rule clearly reveals that the word "ordinarily" has been used. Obviously, use of the word "ordinarily", clearly stipulates that under extraordinary circumstances, the rule can be relaxed and the bar contained in the rule need not be applied.

8. In the present case, although the petitioner happens to be eighty-four years old person. Nonetheless his nephew, Ram Gopal Gurjar has given an undertaking in the form of an affidavit that he is willing to look after the petitioner, who happens to be his real Uncle, in case the petitioner were transferred to the open air camp. Therefore, the rule should not be applied and can be relaxed in favour of the petitioner. Moreover, it cannot be forgotten that the rules are part of the reformatory theory of punishment; they are social beneficial piece of Legislation. Therefore, the rule should be given as liberal application as possible. Thus, the bar contained in Rule 3(h) of the Rules of 1972 should be relaxed in the petitioner's case.

9. As far as the marital status is concerned, in the case of Geeta Devi Vs. State of Rajasthan (supra), this Court had already opined that the bar contained in Rule 3(m) of the Rules of 1972 is unconstitutional. In the said case, this Court has held as under:-

16. In totality, we are of the considered opinion that the classification of the prisoners made under Rule 3(m) of the Rules of 1972 on basis of marital status is a (sic) irrational and is having no nexus with the object sought to be achieved by the Rules of 1972. The classification impugned is discriminatory and arbitrary too and as such i.e. in violation of Article 14 of the Constitution of India. The Rule concerned, therefore, is declared bad and as such is set aside.

10. Therefore, this second reason being given by the respondents is clearly misplaced. For the reasons stated above, this petition is, hereby, allowed. The respondent No. 4, the Superintendent, Central Jail, Jaipur, is directed to place the petitioner's case before the concerned Committee. The Committee is directed to consider the case of the petitioner within a period of one month from the date of receipt of his case. The petitioner shall be at liberty to challenge the decision of the Committee, in case it were to go against his interest.