
(2011) 12 MAD CK 0125

In the Madras High Court

Case No : Habeas Corpus Petition (MD) . No. 430 of 2011

Jegadeesh

APPELLANT

Vs

State and The Superintendent of Police

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 302, 341

Tamil Nadu Borstal Schools Act, 1925 — Section 10, 10A, 2(1), 8

Citation : (2011) 12 MAD CK 0125

Hon'ble Judges : S. Nagamuthu, J;M. Jaichandren, J

Bench : Division Bench

Advocate : P. Ramasamy, for the Appellant; A. Ramar Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The petitioner is the father of one Chezhan, who is a life convict. By judgment, dated 28.02.2007, the learned Additional Sessions Judge (Fast Track Court No. II), Tirunelveli in S.C. No. 237 of 2004 convicted him under Sections 148, 341 and 302 IPC (3 counts) and for the offence u/s 302 IPC, he has been sentenced to undergo imprisonment for life. The appeal preferred by him in C.A. No. 156 of 2007 was dismissed by a Division Bench of this Court by judgment, dated 08.04.2008. Thus, the sentence imposed on him has become final. While so, the petitioner has come up with this petition seeking to quash the substantive sentence of imprisonment imposed on the convict Chezhan and to set him at liberty. According to the petitioner, the life convict Chezhan is entitled for the benefits of Section 8 of the Tamil Nadu Borstal School Act and therefore, the substantive sentence of imprisonment imposed by the trial Court, which was confirmed by this Court, are not sustainable and therefore, the said substantive sentence of imprisonment should be quashed and the convict should be set at liberty.

2. We have heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the State.

3. In our considered opinion, the Habeas Corpus Petition is not maintainable and the relief sought for in the Habeas Corpus Petition cannot be granted, in view of the Full Bench Judgment of this Court in A. Thangammal vs. State reported in 2008 (1) MLJ (CrI) 834. In the said case, a question arose as to whether it is mandatory that in all cases, where an adolescent offender as defined in the Act is convicted, the accused should be ordered to be detained in the Borstal school in lieu of substantive sentence of imprisonment. The Full Bench in Paragraph No. 26 has dealt with the same as follows:

26. Whereas, the language of Section 8 of Borstal Schools Act is clearly different. The Court shall consider whether in lieu of passing a sentence of imprisonment, it shall pass a sentence of detention in Borstal School and before passing a sentence of detention, the Court shall call for a report from the Probation Officer where the offender permanently resided and any other report or representation it shall make further enquiry at it thinks fit as to the suitability of the case for treatment in Borstal Schools Act. Therefore, the Court is given the power to decide the suitability of the offender to be sent to Borstal detention in lieu of imprisonment. An apprehension may arise whether undeserving convicts would get the benefit of this provision merely because they are adolescent offenders. But, this apprehension must be rejected as baseless since Section gives the Court the discretion to pass either a sentence of imprisonment or detention in a Borstal School. It is the Court which has the duty to exercise this discretion properly. But, Section 10 and 10-A give the power to the Inspector General of Police and the State Government to transfer prisoners to Borstal School. Neither of the two authorities have the power to pass a sentence of detention in a Borstal School. Only the Court has that power. The power under Sections 10 and 10-A is a power of transfer to a Borstal School after a sentence of imprisonment has been passed by the Court. Section 10 which deals with adolescent offender undergoing imprisonment in consequence of a sentence passed either before or after the passing of this Act might with advantage be detained in a Borstal School, directs that such person shall be transferred from prison to a Borstal School, there to serve the whole or any part of the unexpired residue of his sentence. Similarly, Section 10-A also deals with power of State Government to transfer offenders who have been sentenced to transportation. Therefore, Section 8 is a first stage where in lieu of a sentence of imprisonment, sentence of Borstal School detention is passed. Section 10 and 10-A come later where a sentence of imprisonment has been passed and thereafter, the Inspector General or the State Government, as the case may be, shall direct transfer of that offender to Borstal School and other provisions shall apply as if he had been originally sentenced to detention in a Borstal School u/s 8.

In paragraph No. 29, the Full Bench has stated as follows:

"To conclude,

(a) The sections should be construed keeping in mind the objects and Reasons of the Act.

(b) With the object borne in mind, and the sentencing viewed from the angle of reforming the offender and making him a useful person of the Society, and in view of the Supreme Court decisions mentioned above, we hold that the word "imprisonment" in Section 2(1) must include "imprisonment for life".

(C) Section 8 gives the Court the discretion to decide whether the adolescent offender should be sentenced to imprisonment or be sent for detention to a Borstal School.

(d) Sections 10 and 10-A come into operation after the sentence is passed and the offender has been imprisoned accordingly.

4. From the judgment of the Full Bench of this Court, it is crystal clear that it is not necessary that in all cases, the trial Court or the Appellate Court should order detention of adolescent offender in Borstal School. It all depends upon various factors as enumerated in the Full Bench judgment. If once, the trial Court as well as the Appellate Court have sentenced the accused to imprisonment, the same shall become final and it cannot be challenged in a Habeas Corpus Petition. However, such a decision of the trial Court or the Appellate Court declining to order detention of the accused in Borstal School will not be a detriment for the convict to approach the Government or the authorities u/s 10 and 10-A of the Tamil Nadu Borstal School Act for relief. At any rate, in our considered opinion, in view of the judgment of the Full Bench, the Habeas Corpus Petition is not at all maintainable and therefore, the same is liable to be dismissed. In the result, the Habeas Corpus Petition fails and the same is, accordingly, dismissed.