

(1993) 07 MAD CK 0010

In the Madras High Court

Case No : H.C.P. No's. 267 and 346 of 1993

M. Ayyasamy and another

APPELLANT

Vs

Inspector General of Prisons, Ormes Road, Madras-10 and
another

RESPONDENT

Date of Decision : 19-07-1993

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 302

Citation : (1993) LW(Cri) 481

Hon'ble Judges : Venkataswami, J;Swamidurai, J

Bench : Division Bench

**Advocate : S. Govindarajan, for the Appellant; I. Subramaniam Additional Public
Prosecutor, for the Respondent**

Judgement

Swamidurai, J.—H.C.P. No. 267/93 is filed by a life convict who has been sentenced to undergo imprisonment for life for an offence of

murder u/s 302 I.P.C. by the learned Sessions Judge, Madurai in S.C.63/90 and H.C.P. No. 346 of 1993 is filed by the life convict who has been

sentenced to undergo imprisonment for life for an offence of murder u/s 302, I.P.C. by the learned Additional Sessions Judge, Madurai in S.C.

No. 83/86 and both these Petitioners were imprisoned in Central Prison, Madurai. The Petitioner in H.C.P. No. 346/93 has already undergone

imprisonment for a period of more than five years at the Central Prison, Madurai from 8.12.86 to 19.6.92. Later on he was shifted to Central

Prison, Cuddalore on 19.6.92 against his will and consent. The Petitioner in H.C.P. No. 267/93 has undergone imprisonment for a period of two

years at the Central Prison, Madurai from 20.4.90 to 21.6.92. Later on he was shifted to Central Prison, Cuddalore on 21.6.92 against his will

and consent. The reasons given by both the Petitioners in their respective petitions for their transfer, is the same. The Petitioners appear to have questioned the jail authorities about the short supply of food to the convicts in the Central Prison, Madurai and also about the lack of quality of food and other articles permitted to the convicts by the Government. It is also stated by them that the jail authorities did not hear their grievances and so, the Petitioners started a protest by fasting in the jail premises. Enraged by their protest the Petitioners were transferred from Central Prison, Madurai to Central Prison at Cuddalore. Cuddalore is about 350 K.M. away from the native places of the Petitioners at Madurai and their family members find it very difficult to go over to Cuddalore and see them. Further, the Petitioners' family members are poor and they are unable to offer high fare for their travel from Madurai to Cuddalore. The family members of the Petitioners are also in a helpless condition to maintain themselves. The Petitioners have also stated that they are physically psychologically affected by their transfer to Cuddalore and that if they are transferred back to Central Prison, at Madurai, they will have the moral, emotional and psychological support from their family. The Petitioners have also stated that they have deprived of their right to interview their family members and friends and that it is contrary to law and accepted procedures and also amounts to violation of their rights guaranteed under Article 21 of the Constitution of India.

2. The Petitioners relied upon the decision in the case of Sunil Batra Vs. Delhi Administration and Others etc., In spite of their oral representations to the Superintendent, Central Prison, Cuddalore, second Respondent herein, no action was taken for their re-transfer to Madurai. By their re-transfer, no prejudice would be caused to any one and therefore, they filed these writs of Habeas Corpus and for a direction to the Respondents 1 and 2 to transfer them from the Central Prison, Cuddalore to the Central Prison, Madurai.

3. The Respondents 1 and 2 have filed a common counter affidavit sworn to by the first Respondent, Inspector General of Prisons in H.C.P. No.

267 of 1993 contending as follows: The Petitioner in H.C.P. No. 267 of 1993 was transferred to Central Prison, Cuddalore on 21.6.92 on

disciplinary grounds based on the prison offences committed by him as per Inspector General's Order No. 19481/83/92 dated 8.6.92 and

admitted in Central Prison, Cuddalore on 22.6.92. This Petitioner is habitual prison offender. The extract of the history sheet enclosed reveals that

he had committed three major prison offences, while he was in Central Prison in Madurai. Though he was punished for the offences committed by

him, he did not reform himself and his activities affected the morale and discipline of the prisoners in Central Prison, Madurai. All the efforts to

correct himself as a well behaved prisoner by advice and warning punishments awarded according to the prison rules were in vain. Besides the

offences committed by him in Central Prison, Madurai, he was in the nature of instigating the other prisoners to commit prison offences. Therefore,

based on the proposal of the Superintendent, Central Prison, Madurai, he was transferred to Central Prison, Cuddalore on 21.6.1992 which has

been declared as a punishment in prison meant for confining such habitual prison offenders as per Rule 5(2) of Tamil Nadu Prison Manual Vol.II.

As per Rule 568 of Tamil Nadu Prison Manual Vol.II, transfer of prisoners to any other prison for custody and treatment in suitable institution is in

accordance with the classification procedure. The inconvenience of the Petitioner by such transfer cannot be accepted at all. The transfer from

Central Prison, Madurai to Central Prison, Cuddalore Prison, Cuddalore, is in order and there is no breach of violation of any law of the land. The

first Respondent has also narrated the various prison offences said to have been committed by the Petitioners on 21.10.91 and 3.3.92. The

Petitioner was also warned severely for his alleged prison offences committed by him on 21.10.1991. The Petitioner was given punishment of

deprivation of remission of 20 days from the period of his imprisonment.

4. In H.C.P. No. 346 of 1993 the Respondents 1 and 2 have filed a common counter affidavit sworn to by the first Respondent stating as follows:

The Petitioner was transferred from Central Prison, Madurai to Central Prison, Cuddalore on 20.6.92 on disciplinary grounds based on four major

prison offences committed by him as per Inspector General of Prisons order No. 19481/W3/92 dated 8.6.92 and admitted in Central Prison,

Cuddalore on 20.6.92. This prisoner is a habitual prison offender. The extract of the history sheet enclosed reveals that he committed four major

prisons offences for which he was transferred from Central Prison Madurai. Though he was punished for the offences committed by him, he did

not reform himself and his activities affected the morale and discipline of other prisoners in Central Prison, Madurai. He was transferred on 20.6.92

to the Central Prison, Cuddalore. Because of the behaviour of the prisoner in committing major prison offences, he was transferred to Central

Prison, Cuddalore. The Petitioner is stated to have committed prison offences on 13.10.91, 23.2.92, 3.3.92 and 7.4.92. For the offence alleged to

have been committed on 13.10.91 the Petitioner was warned severely and for the offence said to have been committed by him on 23.2.92, a

period of 20 days of remission in sentence was ordered to be cancelled. For the offence said to have been committed by him on 3.3.92, the

Petitioner was not only warned, but he was also recommended for transfer to the Central Prison at Cuddalore. Again, for the offence said to have

been committed on 7.4.92, a period of 20 days of remission in sentence was ordered to be cancelled for this Petitioner.

5. Learned Additional Public Prosecutor contended that the order of transfer of these Petitioners to the Central Prison Cuddalore is an

administrative order passed against these Petitioners in view of the offences committed by them in the Central Prison at Madurai. According to

him, the Petitioners are incorrigible and that the first Respondent, by virtue of the powers conferred upon him, as per Rule 568 of Tamil Nadu

Prison, Manual Vol-II, the Petitioners were transferred to the Central Prison, Cuddalore and there is no irregularity or illegality in the orders

passed by the first Respondent. Learned Additional Public Prosecutor also contended that if these Petitioners were not dealt with as per the above

said rule by the prison authorities especially by the first Respondent then there will be no control over the prisoners within the Central Prison,

Madurai and therefore, the order impugned had to be necessarily passed to keep control over the prisoners within the jail.

6. Rebutting this contention, learned Counsel for the Petitioners submitted that the Petitioners have already been punished for the alleged prison

offences committed by them and that the transfer of these prisoners from Madurai Central Prison to Cuddalore Central Prison, would be a double

punishment for the Petitioners. Even the annexure filed by the first Respondent in the respective counter affidavits reveals that the respective

Petitioner has been punished by the prison officials for the alleged prison offences committed by them at Central Prison, Madurai.

7. Learned Counsel for the Petitioners relied upon a decision in the case of Sunil Batra Vs. Delhi Administration and Others etc., in support of his

contention. It is not disputed that these Petitioners are natives of some place near Madurai Central Prison. It is also not disputed that Madurai

Central Prison is about 350 K.M. away from Central Prison, Cuddalore. It is the grievance of the Petitioner in both the petitions that by transfer of

these Petitioners to Cuddalore Central Prison, their family members, relatives and friends could not see them at all due to long distance and due to

the fact that they are poor. The Petitioners also by such transfer to Cuddalore Central Prison, are deprived of their moral, emotional and

psychological support from their Family members, relatives and friends. The Petitioners are stated to have suffered mentally due to such transfer. In

the decision cited supra, the Supreme Court has observed as follows:

Where the rights of a prisoner either under the Constitution or under other law, are violated the writ power of the court can and should run to his

rescue. There is a warrant for this vigil. The court processes casts the convict into the prison system and the deprivation of his freedom is not blind

penitentiary affliction but a be lighted institutionalisation geared to a social good. The court has a continuing responsibility to ensure that the

constitutional purpose of the deprivation is not defeated by the prison administration...

Visits to prisoners by family and friends are a solace in insulation and only a dehumanised system can deprive vicarious delight in depriving prison

inmates of this humans amenity. Subject, of course to search and discipline and other security criteria the right to society of fellowmen, parents and

other family members cannot be denied in the light of Article 19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften,

not to harden and this will be promoted by more such meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is

the factory. There is no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. Subject to

considerations of security and discipline, liberal visits by family members, close friends and legitimate sellers, are part of the prisoners hit of right

and shall be repeated.

8. Learned Counsel for the Petitioners also submitted that the Petitioners have

undergone a period of nearly one year in the Central Prison at Cuddalore and that it would be sufficient punishment for the alleged offences said to have been committed by them, even if they are true. It is not disputed that the Petitioners were already punished by the jail authorities for the alleged offences. It is not disputed that the members of the Petitioners family are residing at Madurai, i.e. at a distance of 350 K.M. from Cuddalore. In such circumstances, the contention of the learned Counsel for the Petitioners is that these Petitioners are deprived of the visit of their family members and friends. The contention of the learned Counsel for the Petitioners that the Petitioners are now physically and psychologically affected and that if the Petitioners are transferred to Central Prison, Madurai, they would have the moral, emotional and psychological support from their family, is well founded. The ratio decided in the above said decision of the Supreme Court is directly applicable to the facts of the present case. The contention of the learned Additional Public Prosecutor that the order of the Inspector General of Prisons, the first Respondent directing the transfer of the Petitioners to Central Prison at Cuddalore is an order passed within the powers conferred upon him under the abovesaid rule of the prison Manual and that the same cannot be reviewed by this Court, cannot be accepted in view of the ratio decided by the Supreme Court in the abovesaid decision.

9. In the result, the impugned orders of the first Respondent transferring the Petitioners to Central Prison at Cuddalore are quashed and the Respondents are directed to re-transfer the Petitioner in both the petitions from the Central Prison, Cuddalore to the Central Prison Madurai forthwith. The petitions are allowed.