
(2013) 03 JH CK 0016

In the Jharkhand High Court

Case No : I.A. No. 1105 of 2013 in Cr. Appeal (DB) No. 1088 of 2012

Mahadev Gope and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 4 AJR 219 : (2013) 2 JLJR 388

Hon'ble Judges : S. Chandrashekhar, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Judgement

Dhirubhai Naranbhai Patel, J.—This Interlocutory Application has been preferred for condonation of delay of 3430 days in preferring the criminal appeal from Central Jail, Hazaribagh. This applicant (original applicant) was in jail since last several years and it has been stated in the interlocutory application that because of the poor economic condition, he was not in a position to prefer appeal. On an earlier date of hearing i.e. on 04.03.2013, a detailed order was passed by this Court, calling all the Superintendents of the Central Jails in the State of Jharkhand. There are five Central Jails in the State of Jharkhand, namely,

(I) Birsa Munda Central Jail, Hotwar, Ranchi;

(ii) Central Jail, Palamau;

(iii) Central Jail, Dumka;

(iii) Central Jail, Ghaghidih, East Singhbhum, Jamshedpur; and

(v) Central Jail, Hazaribagh.

These are the Central Jails situated in five separate districts. The Superintendents of the five Central Jails, namely, Mr. D.K. Pradhan (Birsa Munda Central Jail, Hotwar, Ranchi), Mr. Uday Kumar Kushwaha (Central Jail, Palamau), Mrs. Rupam Prasad (Central Jail, Dumka), Mrs. Olive Grace Kullu (Central Jail, Ghaghidih, East Singhbhum, Jamshedpur) and Md. Mashudul Hassan (Central

Jail, Hazaribagh) have appeared in Court today with certain registers, maintained by the Jails.

2. We have perused the registers which they have brought before this Court. On perusal of these registers, which have been produced by the Superintendents of all Central Jails, we find that they have not maintained such registers properly. We are not satisfied with the record maintained by the Central Jails, especially on the point whether the convict has actually preferred the criminal appeal or not. All these registers have been perused with the help of Superintendents of Central Jails, Mr. R. Mukhopadhyay, learned S.C. II and with the help of A.P.Ps. and looking at these registers, we find that the State of Jharkhand has not properly mentioned the details about the criminal appeal number, which has been preferred by the convict. It is not sufficient for Superintendents of Central Jails to record in the register that the convict is going to prefer an appeal from outside. What is required to be pointed out in the register is whether the convict, has actually preferred an appeal or not. There is a vast difference between these two phraseology and there is a deep Vally between the two. To prefer an appeal through a lawyer, who is outside the jail or through Pairvkar, who is outside the jail, is a wish of the convict, but, sometimes actually there is no appeal preferred by these outside persons and we have come across several convicts, who could not prefer their criminal appeal, even after one decade of conviction. Some facts about these types of matters, were highlighted in the order dated 04.03.2013 and this matter is no exception to this. There is a delay of 3430 days means more than 9 years and 5 months. The man is convicted and sentenced for life imprisonment and the Superintendent of the concerned jail has not taken any care to this type of convict. The duty of the superintendent of jail never comes to an end by just mentioning that "upon asking the convict, it is stated that appeal will be preferred by the private lawyer". This is an entry in the register maintained by the Jail Authority. This answer of the convict should have been reviewed by the superintendent of the jail after some reasonable period, because, it is the statutory duty of the State to provide legal aid. Access to justice makes the convict equal in comparison with the rich man or the powerful person. Article 14 of the Constitution guarantees the right of equality and it is the duty of the State to make such types of convicts equal with others i.e. equal with those who are preferring appeal promptly. State has failed to perform its duty in providing equal opportunity in law or equal protection of law as guaranteed under Article 14 of the Constitution of India. Superintendent of jail is in a Loco Parentis position. If in a family a child is not eating food, always father or mother will supply the food or fulfill his or her need by hook or by crook. Similarly, if any convict is not ready to take a legal aid at the cost of the government and if his wish is that he will prefer appeal through private lawyer and no such appeal is filed then, after a reasonable time, it is the duty of the superintendent of the concerned jail to write a letter to the Legal Services Authorities. It is not out of place to mention here that in every Central Jail, there is a legal aid clinic. Normally, the legal aid clinic is being used by the persons,

who are in jail as a convict or as an under-trial prisoner. This is a very limited use of the legal aid clinic. In a broader sense, even this type of legal aid clinics can also be used by the Superintendent of Central Jail. They should have informed the lawyers, who are attending the legal aid clinic in the jail, who are normally appointed by the Jharkhand State Legal Services Authorities (hereinafter referred to as for the sake of brevity, "JHALSA") that few persons/convicts though earlier wanted to prefer appeal through private lawyers, but, they for any reason whatsoever, have not preferred any appeal, and therefore, the legal aid should be provided promptly. This should have been informed by the superintendent of the Central Jail at the legal aid clinic in their own Central jail or they should have written a letter to the JHALSA directly. We have come across several entries in the registers maintained in the Central Jails that the convicts are in the jail since years, but, they do not have certified copy of the conviction order. Perhaps, this may also be the reason for not preferring the appeal. This is also no reason in the eye of law. Even, in absence of certified copy, a letter could have been written by the Superintendent of the Central Jail to JHALSA and, in turn, JHALSA will get the certified copy from the concerned trial court through the panel of Advocates appointed by JHALSA. It ought to be kept in mind by the state authorities that there is not a single justifiable reason for the superintendent of Central jails why the appeal has not been preferred by the convicts after their conviction and even if the convicts say that they do not want to prefer appeal, it is a pious duty of the superintendent of the Central jail, because he is in a loco parentis position and it is also a constitutional duty of the said authority to provide free legal aid to those, who are in jail. It is not a discretion of the superintendent of Central jails, but it is his statutory and constitutional duty to provide the same, and therefore, the excuses which we have heard from the aforesaid Superintendents that sometimes convicts are not ready to prefer appeal, is no reason at all not to provide legal aid. In several Criminal Appeals, preferred from Jail, there are orders which have been passed for suspension of sentence u/s 389 Cr.P.C., looking to the evidences on record. In one such Cr. Appeal No. 1129 of 2012, which was preferred from jail for grant of legal aid, there is an order of suspension of sentence u/s 389 Cr.P.C. This type of benefit of suspension of sentence could not be given to the accused, as there is no appeal preferred because no legal aid has been provided to them. We are not at all satisfied with the oral explanation of the Superintendents of the Central Jails nor we are satisfied with the maintenance of data in their registers, especially, about the grant of legal aid and especially about the fact whether actually Criminal Appeal has been preferred or not. Even today also, the Central Jail Superintendents are seeking time to verify whether there are convicts in their respective Jails, who have not preferred Criminal Appeals. They themselves are not sure. This is what is stated by each and every Superintendents of the aforesaid Central Jails and they are seeking one week's time.

3. As has been stated in the order dated 04.03.2013, when this Court visited the Central Jail, Ranchi, which is also known as Birsa Munda Central Jail, in the

month of August, 2012, the answer given by Jail Superintendent was that there is not a single convict, who has not preferred an appeal, but, within a week or ten days" time, approximately 130 letters have been received from the Jail, namely, Birsa Munda Central Jail, that all these 130 convicts want to prefer appeal and their convictions were of the years 1999, 2000, 2001, etc. This cannot be tolerated. We have no time to go to each and every Central Jail and other District Jails. We have no time to verify this type of cases of convicts, who have not preferred Criminal Appeals, due to poverty, by visiting each and every Central Jails, District Jails and Sub-Jails. One example of Central Jail, Ranchi, is enough. Looking to the registers, which are presented before us today, from the respective Superintendents of the Central Jails and looking to the hesitation on the part of the Superintendents of the Central Jails that they are not sure even today before this Court that each and every convict has preferred a criminal appeal. This answer is alarming.

4. We, therefore, appoint the following five Committees for five Central Jails in the State of Jharkhand for getting a report, whether any convict, in these five Central Jails, has not preferred appeal due to poverty and poor economic conditions:

(i) For Birsa Munda Central Jail, Hotwar, Ranchi, the following is the Committee constituted of the Lawyers, who will visit this jail and will verify the aforesaid aspects of the matter for grant of legal aid and for enhancement of access to justice:

(i) Mr. Atanu Banerjee

(ii) Ms. Amrita Banerjee

(iii) Mr. Yogesh Modi

(ii) For Lok Nayak Jai Prakash Narayan Central Jail, Hazaribagh, the following is the Committee constituted of the Lawyers, who will visit this jail and will verify the aforesaid aspects of the matter for grant of legal aid and for enhancement of access to justice:

(i) Mrs. Rashmi Kumar

(ii) Mr. Ramit Satender

(iii) Mrs. Sweta Singh

(iii) For Central Jail, Dumka, the following is the Committee constituted of the Lawyers, who will visit this jail and will verify the aforesaid aspects of the matter for grant of legal aid and for enhancement of access to justice:

(i) Dr. H. Waris

(ii) Mr. Rajesh Kumar Mahtha

(iii) Ms. Priya Shrestha

(iv) For Central Jail, Palamau, the following is the Committee constituted of the Lawyers, who will visit this jail and will verify the aforesaid aspects of the matter for grant of legal aid and for enhancement of access to justice:

(i) Mr. Manoj Tandon

(ii) Ms. Bakshi Bibha

(iii) Mr. Deepak Kumar Bharti

(v) For Central Jail, Ghaghidih, East Singhbhum, Jamshedpur, the following is the Committee constituted of the Lawyers, who will visit this jail and will verify the aforesaid aspects of the matter for grant of legal aid and for enhancement of access to justice:

(i) Mr. Ravi Prakash

(ii) Ms. Nalini Jha

(iii) Mr. Rahul Saboo

(vi) All the above Committee members are the Lawyers of the panel of JHALSA. They shall be provided vehicle by JHALSA. They shall visit the respective Central Jails, as stated hereinabove and Advocate at Sr. No. 1 in every Committee shall fix the date and time for the visit and they will intimate in advance to JHALSA, so that the vehicle shall be provided to them jointly.

(vii) We hereby direct the said authorities of jail that these Committees shall be allowed to enter the Jails and these Committee members will be allowed to have conversation with the convicts, so that they may find out whether they are in need of legal aid or not. They will also be entitled to verify the registers maintained by the Superintendents of the Central Jails and the jail authority shall cooperate with these Committees. In each Committee, the Lawyer at Sl. No. 1 will be the head of the said Committee. He will communicate to JHALSA as well to Mr. R. Mukhopadhyay learned S.C. II, so that he may, in turn, inform the concerned jail authorities about their entry and exit and for verification of the aforesaid documents and for conversation directly with the jail inmates.

5. We also direct that this visit shall be conducted on or before the next date of hearing and they shall give their report to this Court separately in writing with their suggestions about their observations. The report shall have at least the following data:

(a) The date and time of visit;

(b) The type of registers verified by them;

(c) The jail inmates with whom they have talked, especially those who are awarded life imprisonment or more than 10 years' imprisonment;

(d) In each Committee, there is a female advocate, who shall visit the female

ward also;

(e) Their observations in the jail, about kitchen, library, dispensary or medical facility etc.;

(f) These Committees will also get suggestions from the Superintendents of the concerned Central Jails for proper and necessary maintenance of the record, especially for providing legal aid, because, today in the open Court also clearly these Superintendents of the Central Jails have several suggestions like appeal number should be there in the register, days for which the provisional bail/temporary bail/suspension of sentence for temporary" period. This detail should be mentioned in the register and there should also be a column if the accused is not surrendering in time;

(g) These Committees will also point out in the report about the female convicts or under-trials in the jail with children below the age of six years;

(h) These Committees shall also point out in the report, if there is any convict, who is ailing since long and if answer is yes, the type and nature of ailment;

(i) These Committees shall also point out, is there any physically handicapped convict in the jail, if answer is yes, with name, the Sessions Trial/Trial court number, etc.;

(j) These Committees shall also have conversation with the jail doctor about the separate registers, which are maintained for convicts/under-trials, who are ill;

(k) These Committees shall also visit medical clinic. They will specially ask the jail doctor, is there any mentally ill convict in their jail or not;

(l) These Committees shall also verify the nature of the food supplied to them;

(m) These Committees shall also find out the positions of the senior citizens, especially those who are ailing and accurately the figures of female convicts/under-trials, senior citizens, ailing persons in the jail, handicapped persons, etc, shall be reflected in the report upon proper verification of the registers maintained by the jail authorities with special reference to the fact that since how long they are in jail.

(n) Maximum capacity of the Jail to keep the convicts and under-trial prisoners.

(o) Actual number of convicts and under-trial prisoners in the Jail, so that one can easily find out whether the Jail is over-crowded.

6. These are the minimum requirements of the report to be given by the Committees to this Court on or before the next date of hearing. The Committee can also point out, other relevant and noticeable facts about the Jail.

7. If these Committees are not in a position to return on the same day, then, we hereby direct the State authorities to provide these Committee members adequate lodging and boarding facilities in the government guest house or such

other accommodation, and female advocate shall be given a separate room, who is a member of the Committee.

8. These Committees will be entitled for reimbursement of any actual expenditure of typing, etc. upon presentation of the vouchers to JHALSA.

9. Copy of this order shall be given to the counsels of the parties to this Interlocutory Application as well as to the Advocates of the Committees. The matter is adjourned for 20th March, 2013.