
(1998) 03 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 274 of 1998

Mohan Bacchu Patil

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Contempt of Courts Act, 1971 — Section 2
Penal Code, 1860 (IPC) — Section 302

Citation : (1998) 4 BomCR 71 : (1998) CriLJ 3845 : (1998) 3 MhLj 58

Hon'ble Judges : T.K. Chandrashekhara Das, J; A.V. Savant, J

Bench : Division Bench

Advocate : M.N. Gavankar, for the Appellant; Ms. P.H. Kantharia, Assistant Public Prosecutor, for the Respondent

Judgement

A.V. Savant, J.—Heard Mr. Gavankar for the petitioner and Ms. Kantharia, A.P.P. for the respondents.

2. Rule. By consent rule is made returnable forthwith and heard both sides.

3. This petition demonstrates the wholly unsatisfactory manner in which the officers at the Thane Central Prison treat, not only the prisoners, but also the orders passed by this Court in respect of the important rights of the prisoners.

4. The petitioner has been convicted by the Thane Sessions Court in Sessions Case No. 300 of 1982 on 29th July, 1983 when he was held guilty of the offence punishable u/s 302 of I.P.C. and sentenced to suffer R.I. for life. Criminal Appeal No. 708 of 1983 was dismissed by this Court on 23rd September, 1986, It is mentioned before us that there was no appeal to the Apex Court.

5. In December, 1997, the State Government took a decision to remit the sentence of the petitioner which was in excess of 22 years of imprisonment. Since the petitioner was under an impression that he had suffered his sentence, he prayed for the details of the remissions which he had earned as also the remissions which he had forfeited on account of his overstaying when he was

granted furlough leave. No documents were furnished to him by the Jail authorities. This resulted in the petitioner filing Cri. Writ Petition No. 138 of 1998 in this Court seeking a direction that a writ of mandamus be issued to the Superintendent of Thane Prison directing him to furnish a copy of the order passed by him in the year 1991 forfeiting the remissions that the petitioner had earned. Prayer (a) of the said petition reads as under ;

"this Honourable Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction ordering and directing Respondent No. 2 to furnish a copy of the order passed by him in the year 1991 forfeiting the earned remissions to the petition."

The said Writ Petition No. 138 of 1998 was heard by a Division Bench of this Court on 9th February, 1998 when the following order was passed disposing of the petition finally.

"Rule. Mr. Shinde waives service for Respondents.

Rule is made absolute in terms of prayer clause (a). Respondents to furnish copy of the order within two weeks from today.

Jail authorities to act on the ordinary copy of this order duly authenticated by the Sheristedar of this Court."

6. It is admitted before us on affidavits filed by Mr. W.M. Gavai, Superintendent of Thane Central Prison and Mr. S. N. Chavan, the Deputy Superintendent that the writ of this Court issued on 9th February, 1998 was received in the Thane Central Prison on 12th February, 1998. Superintendent Mr. Gavai was on leave from 10th to 15th February, 1998 (both days inclusive) during which period Mr. Chavan, Deputy Superintendent was officiating as Superintendent. The writ was addressed to the Superintendent, Thane Central Prison. Rather than perusing the said writ containing a short order quoted above and complying with the same, affidavit of Mr. Gavai states that Mr. Chavan only obtained signature of the prisoner on the copy of the writ received from this Court. Mr. Chavan who was then officiating as the Superintendent, then sent the writ to the Judicial Section of the same Prison for compliance. The Judicial Section sent the records of the prisoner's case to the Superintendent on 23rd February, 1998. By this time Mr. Gavai had resumed duties. He didn't think it necessary to comply with the High Court writ and furnish copy of the order to the petitioner as directed on 9th February, 1998 in Writ Petition No. 138 of 1998. The prisoner was in his own Jail at Thane. Instead, a letter was sent on 24th February, 1998 to the Addl. Registrar of this Court with a copy to the Public Prosecutor, High Court, Mumbai. No copy was ever sent to the petitioner's advocate, Mr. Gavankar whose name appeared on the writ. There was thus not even an attempt to comply with the High Court order dated 9th February, 1998 directing the Superintendent to furnish copy of the order passed by him as far back as in 1991.

7. Present writ petition was filed on 2nd March, 1998 and the prayer is the same

namely to furnish a copy of the order passed against petitioner and furnish him details of the remissions and/or set of to enable him to ascertain the actual imprisonment undergone by him. In short the prayer in this petition is for a direction to comply with the order passed by this Court on 9th February, 1998 in Writ Petition No. 138 of 1998.

8. When this petition came up for hearing before us, we expressed our disapproval at the conduct of the respondents and passed a short order on 12th March, 1998 recording the failure to comply with the mandatory order passed by this Court on 9th February, 1998 in Cri. W.P. No. 138 of 1998. By that date no affidavit was filed explaining the lapses on the part of either the Superintendent or the Deputy Superintendent of Thane Central Prison. We therefore, directed the Superintendent to remain present in this Court on 16th March, 1998 and file affidavit explaining the lapses on his part.

9. Pursuant to the above order, two affidavits were filed, one by Mr. Gavai, Superintendent on 16th March and other by Mr. Chavan, Deputy Superintendent on 20th March, 1998. In the affidavit of Mr. Gavai, he has explained the lapses on the part of Mr. Chavan in not complying with the writ received by him on 12th February, 1998 save and except obtaining signature of the petitioner on the copy of the writ. Mr. Chavan in his own affidavit has only stated that he sent the writ to the Judicial Section for compliance. The papers were received from Judicial Section on 23rd February, 1998 and rather than furnishing the copy to the prisoner who was in the very same prison at Thane, what has been done is that, he sent the copies of the papers to the Additional Registrar of this Court and to the Public Prosecutor on 24th February, 1998. Though the name of the Counsel Mr. Gavankar appearing for the petitioner was very much known to the Jail authorities, no copy of the letter dated 24th February, 1998 addressed to the Addl. Registrar of this Court, was sent to Mr. Gavankar. The direction was to furnish copy of the order passed in 1991 to the prisoner. The prisoner was in their own custody but no copy was supplied to him nor were any documents supplied to the petitioner's advocate Mr. Gavankar who was also appearing in the second writ petition. In the circumstances, it is difficult for us to accept the bald apology repeatedly given in the affidavits of Mr. Gavai and Mr. Chavan. We had, therefore, thought of initiating contempt action against both the officers who were present before us.

10. On 24th March, 1998 we passed a further order expressing our dissatisfaction at the two affidavits which were filed before us, since the documents which were directed to be furnished to the petitioner under order passed by this Court on 9th February, 1998 in Writ Petition No. 138 of 1998 were not annexed to the affidavits. Pursuant to the order passed by us on 24th March, 1998, further affidavit has been filed yesterday by Mr. Gavai in which it is stated that on 24th Feb. 1998, letter was addressed to the Addl. Registrar of this Court with a copy to the Public Prosecutor High Court annexing the copies of the relevant documents. It was pursuant to the order passed by us on 24th March,

1998 that the learned A.P.P. furnished the petitioner's Counsel with a set of the relevant papers.

11. It is true that in the second affidavit of Mr. Gavai he has reiterated his apology by stating that there was oversight and inadvertence on his part and on the part of Mr. Chavan in failing to comply with the writ issued in Writ Petition No. 138 of 1998. In the circumstances, though we are now not inclined to issue Contempt Notice to these two officers, we are of the view that the petitioner must be awarded costs which must be paid by these two officers personally. For getting a copy of the order relating to. his remission passed as far back in 1991, the prisoner had to file two writ petitions in this Court. This reflects very sadly on the State Government and its Jail Administration. The order dated 9th February, 1998 in Writ Petition No. 138 of 1998 was obviously not even read either by Mr. Gavai or by Mr. Chavan. It is a short order of three lines as quoted in para 5 above. The prisoner was very much in their own custody at Thane. Not only the copy was not furnished to him but no attempt was made to send it to the petitioner's advocate Mr. Gavankar despite second petition being filed, notices thereof being served on the respondents and two orders being passed by us in this petition on 12th March and 24th March, 1998. In the circumstances, the least that we should do is to direct Mr. Gavai and Mr. Chavan to personally pay Rs. 500/- each to the petitioner by way of costs of this petition.

12. Accordingly we direct Mr. W.M. Gavai, Superintendent of Thane Central Prison and Mr. S.N. Chavan, Deputy Superintendent of Thane Central Prison to pay Rs. 500/- each to the petitioner towards the costs of this petition within the period of one week from today and report the compliance to this Court. The amounts to be so paid will be credited in the account of the petitioner. We make it clear that the amount of costs is not to be paid out of the State Exchequer and has to be paid personally by the two officers mentioned above who are personally present before us and whom we have heard at length.

13. Ms. Kantharia, the learned A.P.P. on obtaining instructions from the two officers who are present in the Court today, makes a statement that the amount will be credited to the account of the petitioner within period of one week from today. Statement accepted.

14. As far as merits of the petitioner's case regarding the period of remission, the period of imprisonment suffered by him and the date on which he is entitled to be released, we express no opinion in this writ petition. Though Mr. Gavankar sought leave to amend the petition and has included prayer (bb) for the release of the petitioner on the ground that he has suffered full imprisonment, in the light of the affidavits filed before us, we do not think it proper to express any opinion on this contention save and except that the petitioner is free to file separate petition and agitate his grievance in that behalf. Since the two petitions were filed only for the purposes of getting a copy of the order passed against the petitioner in the year 1991, that purpose having been achieved, we give petitioner liberty to file a separate petition for other reliefs.

15. Rule is made absolute in the above terms with order to pay costs as indicated above.

16. Petition allowed.