

(1989) 12 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 10777 of 1989 G

Mrs. Selin Joseph

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Kerala Prisons Rules, 1958 — Rule 452

Citation : (1989) 12 KL CK 0013

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : T.G. Rajendran, for the Appellant; K.R.B. Kaimal, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Chettur Sankaran Nair, J.—Petitioner seeks to quash an order revoking leave (parole) granted to her husband, who stands convicted of the offence of murder. Petitioner's husband, called the "prisoner" hereinafter, is said to have caused the death of an important witness in a case, where he was an accused. The Court of Session found him guilty as charged and sentenced him to imprisonment for life. Within days of that, he was released on sixty days leave under Rule 452 of the Kerala Prisons Rules. The rule postulates granting of leave to well-behaved prisoners, who have served out a certain part of the sentence imposed on them. Apparently, the prisoner had not served out that part of the sentence, when he was paroled.

2. The grant of leave was challenged by O.P. 10026/89 by a near relative of the prisoner who was a witness in the case that lead to prisoner's conviction. Petitioner therein, complained that release of prisoner was improper and that the prisoner had threatened to do away with him and his wife. Letters said to have been written by the prisoner in his own hand from the prison, were produced as exhibits in the said petition. There was an allegation that leave/parole was granted without application of mind and contrary to the recommendations of

police to the effect that release of the prisoner would be a grave security risk. When the writ petition came up for hearing, learned Government Pleader took notice and time for instructions. Eventually, it was submitted that the order was revoked since the Government had realised that they had made a mistake. Learned Government Pleader submits that when the error was noticed, Government corrected their mistake; and I should think the Government acted properly and as it behoves them.

3. According to Petitioner, her husband is innocent and he is a law abiding citizen. He is far from that, according to the findings made by the Court of Session. Whether that finding is correct or not, does not call for consideration in these proceedings. Fact remains, that sixty days leave was granted to the prisoner convicted of murder. Perhaps, a Government servant or an industrial worker would not have found it that easy to get leave, for that long a period.

4. Grant of parole was made without serious or perhaps no thought. That ought not to be. Segregation of offenders is one of the acknowledged norms of criminal justicing system. If crime is rendered inconsequential, justice system itself would invite ridicule, as has been pointed out by the Supreme Court, time and time again. Besides, the aggrieved would lose confidence in the system of criminal justicing, and would seek private vengeance. In situations like that, "guns, fists and knives can take over" the functions of law. Instances have come to judicial notice, where prisoners on parole have been murdered, or have murdered witnesses. Safety of witnesses also could be imperilled. In some cases witnesses may not speak truth regarding matters in their knowledge for fear of reprisals.

5. True, parole system if properly worked could be a very humane dispensation. But indiscriminate grant of parole or leave, can create more problems than it solves. Ordinarily, it is for the Government to decide whether parole or leave should be granted or not. Government, where it considers necessary to exercise its powers, should exercise such powers, but only on wholesome consideration, with due regard to relevant circumstances. Petitioner cannot maintain an action of this nature, nor is she in the position of a next friend. Consideration that govern a case of unlawful detention or habeas corpus do not exist. The detention is lawful and is pursuant to a judicial order. No legally enforceable rights are involved. No grounds are made out for interference to quash the order made by the Government. From the circumstances I am inclined to think that the Government acted properly in revoking the parole.

Petition is dismissed.

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