
(1994) 08 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14236-M of 1993

Nachhatar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-08-1994

Acts Referred:

Citation : (1995) 1 AICLR 46 : (1994) 3 RCR(Criminal) 473

Hon'ble Judges : H.S.Bedi, J

Advocate : Ashok Aggarwal, H.S. Nagra, G.S. Grewal, Advocates for appearing Parties

Judgement

H.S. Bedi, J. (Oral)

1. The petitioner Nachhattar Singh was convicted for the murder of Lala Jagat Naryan and had undergone imprisonment in Central Jail Nabha and Sangrur for about 12 years when he was suddenly transferred to the Jodhpur Jail (Rajasthan) vide order dated 25.9.1992. This action of the authority has been challenged in this writ of Habeas Corpus. The case of the petitioner is that no reason had been disclosed by the authorities as to why it had been thought necessary by the authorities for transferring him from his own State to another one.

2. In the reply, the stand of the respondents is that the petitioner was a man of desperate character as evidenced by the fact that he had not been found eligible for premature release during the period of sentence and that Criminal Miscellaneous Application No. 9198M of 1993 filed by him seeking this relief from this Court had already been dismissed.

3. I have heard the learned counsel for the parties and find that the present petition deserves to succeed and order aforesaid needs to be quashed. Section 3 of the Transfer of Prisoners Act provides that any prisoner who is undergoing imprisonment in a State, can be removed therefrom with the previous consent of the Inspector General (Prisons) of the State. This section, however, does not give the reasons or the grounds on which transfer can be made. Mr. Grewal, Senior

Advocate appearing for the petitioner, has, however, urged that these guidelines have been provided by the Supreme Court in *A.K. Roy v. Union of India*, AIR 1982 SC 710 and *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

4. In *A.K. Roy's* case (*supra*) which arose out of a detention under the National Security Act, the Supreme Court observed that the normal rule had to be that a detenu would be kept in detention in a place which was within the environs of his or her ordinary place of residence as keeping a person in detention in a place other than this would make it impossible for his friends and relatives to meet him or for the detenu to claim the advantage of facilities like having his own food. It was also observed that the requirements of administrative convenience, safety and security could justify in a given case the transfer of a detenu to a place other than that where he ordinarily resided, but that could only be by way of an exception and not as a matter of a general rule. It was also observed that even when a detenu was required to be kept in or transferred to a place other than his usual place of residence, he should not be sent to a far off place.

5. In *Sunil Batra's* case (*supra*), which was the case of a convict undergoing a term of imprisonment. The Supreme Court observed that the transfer of prisoner to a distant prison where visits of society or friends or relations could be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, would be punitive in effect and every such affliction or abridgement was an infraction of liberty or life in its wider sense and could not be sustained in term of Article 21 of the Constitution.

6. A reading of the two judgments mentioned above, indicates the fact that in cases of overwhelming administrative exigencies a prisoner may be transferred from his State of residence but in the absence of such reasons such a transfer would be ultra vires Article 21 of the Constitution. It must also be kept in mind that in incarceration in a prison is a punishment, in itself and the transfer to a distant place would make it positively agonising. The matter has to be examined in this background. The only reason given in Memo dated 25.9.92 is that the petitioner was a desperate character and a life convict undergoing imprisonment for committing the murder of Lala Jagat Narayan. The basis for making this assessment is, however, totally lacking. It needs to be highlighted that the petitioner had been confined in the State of Punjab upto 1991/92 and he did not given any cause for offence. In paragraph 3 of the petition it has been specifically averred by the petitioner that his conduct and behaviour while in jail had been excellent and there was absolutely no complaint against him. The reply filed by the respondent on this point is delightfully vague and the averment is that the work and conduct of the convict did not confer a right to remain in a jail of his choice. It is, therefore, apparent that the averments of the petitioner about his conduct in jail have not been denied.

6A. In this view of the matter, there is no material to justify the issuance of the order impugned. It is well settled that even administrative action affecting the rights of parties which is without basis is liable to be struck down. The present

appears to be such a case.

7. Mr. Aggarwal, learned counsel for the State, however, urged that the judgment in A.K. Roy's case (*supra*) is a case of an order of detention whereas the present case pertains to a convict undergoing a sentence after conviction. This argument to my mind has no merit.

8. Mr. Aggarwal, learned counsel for the State has also relied upon observations of this Court in the premature release case of the petitioner which has been dismissed by this Court as already stated above. This argument to my mind is without reason. The principles governing release cannot apply to a case where a prisoner challenges his transfer from one place to the other.

9. For the reasons recorded above, this petition is allowed and order No. 1/50/9130/19764 dated 25.9.1992 is quashed and a direction is issued that the prisoner be shifted to the State of Punjab within a period of three weeks from today.