

(2013) 10 MAD CK 0128

In the Madras High Court

Case No : Writ Petition No. 27521 of 2013 and M.P. No. 1 of 2013

Nagammal

APPELLANT

Vs

State of Puducherry and Others

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 4 MLJ(Cri) 555 : (2014) 2 RCR(Criminal) 250

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; A. Tamilvanan, Government Advocate, for the Respondent

Judgement

K.K. Sasidharan, J.—Whether the State Government is empowered to transfer a prisoner to a prison in another State is the core issue that arises for consideration in this writ petition filed by the mother of a life convict who is now confined at the Special Sub Jail, Karaikal in the Union Territory of Pondicherry. The facts:

The son of the petitioner by name Shankar was convicted and sentenced to undergo life imprisonment. He was originally confined at Central Prison, Pondicherry. Since the prisoner deposed against the jail authorities, he was transferred to a Special Jail at Karaikal. The petitioner was informed that there is a move to transfer her son to a jail at Trichy or Thihar. The petitioner wanted a direction to the State not to transfer the life convict to any place outside the State of Pondicherry.

Submissions:

2. The learned counsel for the petitioner submitted that in case the prisoner is shifted to a place outside the State, it would amount to violation of human rights, inasmuch as the relatives would not be able to meet him. According to the learned counsel, the Trial Court must permit transfer of prisoners. The State has no such power. The learned counsel by placing reliance on Sunil Batra Vs. Delhi

Administration and Others etc., and K. Velambal v. Government of Tamil Nadu (1981) L.W. CrL. 58 : LNIND 1980 MAD 332 : (1981) 1 MLJ (CrL) 218 contended that the transfer would amount to solitary confinement and the same is violative of Article 21 of the Constitution of India.

3. The learned Government Advocate (Pondicherry) submitted that Transfer of Prisoners Act permits such transfer of prisoners from one State to another. According to him, the prisoners have been indulging in violence and even there was an attempt to murder certain convicts by the rival group at the jail. The learned Government Advocate contended that the Government is the proper authority to take a decision in the matter.

Discussion:

4. The son of the petitioner is confined at the Special Prison, Karaikal. The present prayer is to keep him at Karaikal itself without transferring elsewhere.

The Issue:

5. The core question is whether it is open to the State to transfer a prisoner to another State.

6. The Prisons Act 1894 and Prisoners Act, 1900 deal with matters relating to uniform system of prison management in India.

The Statute:

7. The Transfer of Prisoners Act, 1950 was enacted to enable inter-state transfer of prisoners. Section 3 of the Act reads as follows:

Removal of Prisoners from one State to another:--

(1) Where any person is confined in a prison in a State--

(a) Under sentence of death, or

(b) Under or in lieu of, a sentence of imprisonment or imprisonment for life; or

(c) in default of payment of a fine, or

(d) in default of giving security for keeping the peace or for maintaining good behaviour;

the Government of that State may, with the consent of the Government of any other State, by order, provide for the removal of the prisoner from that prison to any prison in the other State.

(2) The officer-in-charge of the prison to which any person is removed under subsection (1) shall receive and detain him so far as may be, according to the exigency of any writ, warrant or order of the Court by which such person has been committed, or until such person is discharged or removed in due course of law.

8. The State is given authority to transfer a prisoner from a prison within the State to another prison in another State. The Government of the transferee State must give its consent for such transfer. In case the proposal made by the transferor State is accepted by the transferee State, Section 3 of Act 29 of 1950 would permit such transfer, notwithstanding the distance involved between two prisons.

Government justification for transfer:

9. The Government of Pondicherry has come up with a contention that most of the crimes are planned at jails and meticulously executed by their gang members who are outside. The Government on account of security threat transferred few prisoners to the Sub Jail at Yanam. The materials available on record shows that the members of a rival gang scaled down the prison wall and after entering inside made an attempt to kill a life convict. The said incident appears to be an eye opener to the State of Pondicherry to take steps to give security to the prisoners.

10. The search conducted by the police at the Central Jail, Pondicherry appears to have resulted in securing large number of mobile phones. The local people and business men have been complaining that they used to get threat calls from convicts demanding payment of mamool to their agents.

11. The Supreme Court in *Sunil Batra (II) v. Delhi Administration* (supra) observed that Article 226 of the Constitution is available to the Prisoner against any action of jail authorities, which is not commensurate with his sentence or does not satisfy the test of Articles 14, 19 and 21 of the Constitution of India. The Supreme Court held:

48. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective. Such infraction will be arbitrary, under Article 14 if it is dependent on unguided discretion, unreasonable, under Article 19 if it is irremediable and unappealable, and unfair, under Article 21 if it violates natural justice.

12. The legality of the power to make interstate transfer was not an issue in *Sunil Batra (II) v. Delhi Administration* (supra). It is true that transfer to a District Prison would give hardship to prisoner. However in case public interest demands such transfer necessarily State must be permitted to exercise the transfer right conferred by Central Act 29 of 1950.

13. The learned counsel for the petitioner relied on the Division Bench judgment

in *K. Velambal v. Government of Tamil Nadu* (supra) in support of his contention that solitary punishment is awardable only by the Court. The transfer of prisoner to a prison situated in another State cannot be characterised as an Act of solitary confinement. There is no need for the permission of the trial court to effect such transfers in view of Section 3 of the Transfer of Prisoners Act, 1950.

14. The Division Bench in *K. Velambal v. Government of Tamil Nadu* (supra) in fact agreed with the contention taken by the State that keeping the prisoners in separate cell, would not amount to solitary confinement. The Division Bench observed:

51. (3) Section 28 of the Prisons Act and Rr. 212 and 213 of the Jail Manual empower the jail Superintendents to segregate the convicted prisoners and keep them in separate cells and restrict their movements for the purpose of maintaining discipline within the prison. Such disciplinary segregation taken by the jail Superintendent in exercise of powers conferred under Rule 213-C for the preservation of internal order and discipline in maintenance of institutional security, cannot be characterised as solitary confinement as contemplated u/s 73 of the I.P.C., nor can it be characterised as cellular confinement or separate confinement which is intended as punishment for prison offences under Sections 46(8) and 46(10) of the Prisons Act. The segregation and restricted movements of the petitioners within the prison is necessitated by the requirement of discipline and security and such an abridgement or limited deprivation of rights of the petitioners within the prison campus is a "statutory" confinement under the authority of S. 28 of the Prisons Act and Rr. 212 and 213 of the Jail Manual and as the curtailment has the backing of law and the procedure prescribed under law, there is no violation of Article 21 of the Constitution of India.

Improvement of law and order in Pondicherry:

15. The Government of Pondicherry appears to have taken several measures to put an end to the Goonda Raj and Katta panchayat and collection of mamool in the State. The complaints regarding break down of law and order has now come down drastically on account of various steps taken by the Pondicherry administration. The report submitted by the District Magistrate in another matter indicates the action taken to detain anti-social elements. There are also materials to suggest that the Government have taken up the law and order issue seriously and the higher officials like the Chief Secretary and Director General of Police have initiated action to restore peace and regain the glory of peaceful pondicherry.

16. The transfer of prisoners to other States is one among the many steps taken by the State administration to preserve law and order. Such actions are in the interest of the prisoners also. The life of the prisoners must be safeguarded by the State inside the jail. The attack on prisoners by entering the jail is a serious act. In case the convicts are responsible for such illegal acts, they cannot be heard to say that transfer to other State is unwarranted.

17. The Supreme Court in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, considered Section 3 of the Transfer of Prisoners Act and indicated that in appropriate cases inter-state transfer of prisoner can be made.

18. The Supreme Court in Kalyan Chandra Sarkar v. Rajesh Ranjan (supra) observed that rights of prisoners are not absolute and they are bound to abide by the Laws and Regulations including the Prison Manual.

23. Therefore, in our opinion, a convict or an undertrial who disobeys the law of the land, cannot contend that it is not permissible to transfer him from one jail to another because the Jail Manual does not provide for it. If the factual situation requires the transfer of the prisoner from one prison to another, be he a convict or an undertrial, courts are not to be a helpless bystander when the rule of law is being challenged with impunity. The arms of law are long enough to remedy the situation even by transferring a prisoner from one prison to another, that is by assuming that the Jail Manual concerned does not provide such a transfer.

19. There is no dispute that the State possess the power to transfer prisoners to other States. Such power, however, must be exercised in larger public interest. The State must consider the case of prisoners individually and a conscious decision should be arrived at, taking an over all view of the matter. The transfer should not be as a matter of course. There should not be a general transfer of prisoners. The State should undertake an exercise to find out the prisoners who are responsible for illegal and violent activities. The State would be justified in transferring such troublemakers to the prisons outside the State.

20. The petitioner has no case that the proposed transfer is a mala fide action. The power of the State alone is under challenge. It is true that the transfer of prisoner to a far off place would prevent the near relatives from visiting him. However such difficulties alone cannot be a reason to prevent the State from exercising its statutory power u/s 3 of the Transfer of Prisoners Act, 1950.

The law:

21. The law is therefore clear that one State is entitled to transfer prisoners from its prison to another prison in another State with the consent of the transferee State.

Conclusion:

22. So long as Section 3 of Central Act 29 of 1950 continue to be in the Statute Book, it is not possible to restrain the Government of Pondicherry from transferring prisoners from Pondicherry to another State. Disposition:

In the upshot, I dismiss the writ petition. Consequently, the connected MP is closed. No costs.