
(1996) 10 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3500 of 1996

Navkiran Singh

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prisons Act, 1894 — Section 42, 45

Citation : (1997) CriLJ 1624 : (1997) 1 RCR(Criminal) 64

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : P.S. Hundal, for the Appellant; Ramanjit Singh, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—This petition has been filed u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") for quashing the complaint (Annexure PI) filed by "respondent No. 2 i.e. the Superintendent. Security Jail. Nabha. against the petitioner, for an offence u/s 42 of the Prisons Act, 1894 (hereinafter referred to as "the Act") read with the relevant Rules framed thereunder and contained in the Punjab Jail Manual, and pending in the Court of Sub-Division Judicial Magistrate. Nabha.

2. The necessary facts for the disposal of this petition are that the petitioner, a practising Advocate of this Court, visited Nabha Jail on 28-10-1995. He moved an application (Annexure R-1) before the Superintendent Jail. Nabha. (Purported to be under Para 560-A of the Manual) seeking interview with seven detenus including Jasbir Singh named therein. During the course of his interview, the under-trial Jasbir Singh handed over an application (Annexure P.2) to the petitioner, purported to have been written by Dalip Singh and 7 other under-trials lodged in the said Jail, addressed to Hon'ble Chief Justice of this Court seeking relief against the alleged corrupt and uncalled attitude of (he jail officials. On the

basis of this application Writ Petition No. 1153 of 1995, titled as Dalip Singh Versus State of Punjab and another was filed by the petitioner, representing himself as an Advocate/counsel for Dalip Singh petitioner (under-trial). By order dated 9-11-1995, the District & Sessions Judge. Patiala. was directed to hold an enquiry in respect of the allegations contained in Annexure P 2 and to submit a report. On the receipt of the report dated 8-1-1996. which was accepted by the Punjab Government, this Court directed the transfer of the then Superintendent Jail. Nabha, immediately within a month of the orders dated 15-2-1996. In the meanwhile, the Superintendent. Security Jail. Nabha, having received the notice in the aforesaid criminal writ petition, filed the impugned complaint alleging therein that the petitioner was not a counsel for the under-trial Dalip Singh, that no interview was permitted or held to or by the said petitioner with Dalip Singh under trial, and that the petitioner removed the application-Annexure R. 2 in contravention of the provisions of Para 606 of the Punjab Jail Manual and thereby committed an offence punishable u/s 42 of the Act. On the basis of this complaint, the Sub Divisional Judicial Magistrate. Nabha took cognizance of the complaint and summoned the petitioner for 26-2-1996. Hence this petition.

3. It has been stated in the present petition that during his interview, as permitted under the Rules of the Jail Manual, one of his clients Jasbir Singh informed him that another detenu Dalip Singh was on hunger strike with effect from 26-10-1995 and his health was deteriorating day by day. that the cause of hunger strike was that the Storekeeper used to take out a part of the ration to be supplied to the detenu and send the same to the residence of the Superintendent and the Deputy Superintendent Jail of Nabha. and that the said Jasbir Singh handed over the letter/application (Annexure P.2) written by Dalip Singh and some others to him. It has been further stated that the petitioner made a written application to respondent No. 2 for permitting him a meeting with detenu Dalip Singh but the request was turned down. It has been further stated that on the basis of Annexure P. 2 criminal writ petition was filed on which an enquiry was held and respondent No. 2 was ordered to be transferred. It has been alleged that the complaint has been filed with mala fide by respondent No. 2 after coming to know regarding the filing of the criminal writ petition only with a view to put pressure on the petitioner to withdraw the said petition and that no offence u/s 42 of the Act is made out in the facts and circumstances of this case.

4. Notice was given to the respondents. In reply, it has been admitted that the petitioner was permitted to have interview with 7 detenus named in Annexure R. I on 28-10-1995 in accordance with para 560 of Punjab Jail Manual. It has been stated that the petitioner removed the letter/application (Annexure P. 2) without bringing the same into the notice of respondent No. 2, which is a prohibited article and this act on the part of the petitioner is punishable u/s 42 of the Act. The allegations of mala fide have been denied. While referring to the allegations against the jail staff, it has been stated that during the enquiry the allegations were found to be baseless.

5. I have heard the learned counsel for the parties and have gone through the record.

6. The factual position regarding the visit of the petitioner to security Jail, Nabha, on 28-10-1995 and holding interview with 7 detenus including Jasbir Singh are not denied. It is also the admitted case that Jasbir Singh had handed over the letter/application (Annexure P. 2) to the petitioner during the course of his said interview. It is also not disputed that the petitioner is an authorised legal adviser/counsel for Jasbir Singh under-trial/ detinue. The simple question which falls for decision is as to whether the receipt of Annexure P. 2 by the petitioner from Jasbir Singh undertrial amounts to an offence u/s 42 of the Act.

7. It may be stated that Section 42 of the Act provides for penalty for introduction or removal of prohibited articles into or from a prison.

8. Para 606 of the Punjab Jail Manual reads as under:-

"606. List of Prohibited articles :- The articles specified or included in any of the descriptions contained in the list annexed to this rule, shall be deemed to be prohibited articles, within the meaning of Section 42 and clause (12) of Section 45 of the Prisons Act, 1894, unless any such article shall be

(a) introduced into any Jail,

(b) removed from any Jail,

(c) supplied to any prisoner outside the limits of any Jail, or

(d) received, possessed or transferred by any prisoner,

with the permission of the Superintendent or other officer empowered by him in this behalf.

It is not disputed that all books, paper and printed or written matter or materials have been declared prohibited articles. It is also not disputed that with the permission of the Superintendent or other officer empowered by him in this behalf any printed or written paper can be received by a visitor from an under-trial and the same would not constitute an offence u/s 42 of the Act.

9. Chapter XVI of the Punjab Jail Manual contains detailed instructions regarding interview by and with the convicts and under-trial prisoners. According to para 555-A of the Manual, every convicted prisoner and every unconvicted criminal prisoner shall be carefully searched before and after an interview. Para 560 provides that every interview between an unconvicted prisoner and his legal adviser shall take place within sight, but out of hearing, of a jail official. Then para 561 of the Manual provides as under:-

"561. Confidential letters of unconvicted prisoners :- Any bona fide confidential written communication prepared by an unconvicted criminal prisoner as instructions to his legal adviser may be delivered personally to such legal adviser without being previously examined by the Superintendent. For the purpose of

this rule the term legal adviser means a legal practitioner within the meaning of Act XVIII of 1879."

This para declares the written communication of the instructions given personally by an undertrial to his legal adviser to be a privileged document and the same can be so delivered without the same being previously examined by the Superintendent of Jail.

10. Turning to the case in hand, it is not disputed that the petitioner was allowed to have an interview with 7 under-trials including Jasbir Singh who were his clients. As provided in para 555-A of the Manual, it shall be presumed that this interview was allowed after carefully searching Jasbir Singh. As per instructions contained in para 560, this interview was held within the sight of a jail official, whose designation has not been disclosed by the respondents in their reply. But from the circumstances, it becomes evident that the document Annexure P. 2 was handed over by Jasbir Singh to the petitioner within the knowledge and without any objection of the jail official. At the most it can be said that this document (Annexure P. 2) was not a privileged document within the meaning of para 561 of the Manual inasmuch as it was not delivered by Dalip Singh or other under-trial named therein in person to the petitioner. From a bare reading of Annexure P. 2, it is evident that it concerns not only Dalip Singh and 7 other under-trials mentioned therein but it relates to all other convicts and other under-trials kept in the said jail. When this document was handed over by Jasbir Singh to the petitioner within the sight and without any objection of the concerned jail official, it cannot be said that the petitioner removed this document from the jail in contravention of para 606 of the Punjab Jail Manual. Admittedly, the petitioner had filed a criminal writ petition as a counsel for Dalip Singh on the basis of this document, an enquiry was held under the orders of this Court by the District & Sessions Judge, Patiala, into the allegations contained in the said document, and thereafter, as a result of the said enquiry, this Court had directed that the Superintendent, Security Jail, Nabha, be transferred.

11. It is a well-settled law that all penal statutes have to be construed strictly. When it is said that a penal statute must be construed strictly, what it implies is that nothing is to be regarded as within the meaning of the statute which is not within the letter-which is not clearly and intelligibly described in the very words of the statute itself. A penal statute should be so construed that no case should be held to fall within it which does not fall within the reasonable interpretation of the enactment. It is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put on a penal provision, the Court must lean towards that construction which exempts the subject from penalty, rather than the one which imposes penalty.

12. In the case in hand, it is established that the document (Annexure P-2) was handed over by Jasbir Singh to the petitioner within the sight and without any objection by the concerned jail official in whose presence the interview had taken place. The fact that Jasbir Singh had this document with him immediately before

his interview with the petitioner was presumably within the knowledge of the jail authorities since the interview could be permitted only after careful search of Jasbir Singh with the petitioner. Therefore, it cannot be said that the petitioner, had removed the document (Annexure P-2) in contravention of the provision of para 606 of the Punjab Jail Manual or within the meaning of Section 42 of the Act. After giving my careful thought to the facts and circumstances of the case discussed above, I come to the conclusion that no offence u/s 42 of the Act is made out against the petitioner.

13. For the reasons mentioned above, this petition is allowed. The complaint (Annexure P-I) and the consequent summoning order, passed by the sub-Divisional Judicial Magistrate, Nabha, are hereby quashed.