

(1995) 09 MAD CK 0046

In the Madras High Court

Case No : H.C.P. No's. 1124 to 1126 of 1995

S. Balamurugan

APPELLANT

Vs

The Inspector General of Prisons and another

RESPONDENT

Date of Decision : 08-09-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (1996) CriLJ 1779

Hon'ble Judges : K.A. Thanikkachalam, J; Jayarama Chouta, J

Bench : Division Bench

Advocate : S. Govindarajan, for the Appellant; P. Govindarajan, for the Respondent

Judgement

Thanikkachalam, J.—S. Balamurugan, M. Natarajan and Ramar alias Ramaswamy, the petitioners in these habeas corpus petition, have

filed these petitions under Article 226 of the Constitution of India, praying for a declaration that their detention in the Central Prison, Cuddalore is

illegal and to direct their retransfer to Central Prison, Palayamkottai.

2. The brief facts are as follows :- The petitioners are life convicts serving their term of sentence, after their appeals before the High Court were

dismissed. The petitioners were originally lodged in the Central Prison, Palayamkottai. The petitioner in H.C.P. No. 1194 of 1995 had undergone

8 years of imprisonment at Central Prison, Palayamkottai i.e. from 16-7-1986 to 18-4-1994 and then transferred to Central Prison, Cuddalore

on 19-4-1994 and again on 2-1-1995, he was transferred back to Palayamkottai and once again re-transferred to Cuddalore Prison on 5-2-1995

against his consent and will. Likewise, the petitioner in H.C.P. No. 1135 of 1995 had undergone ten years of imprisonment in the Central Prison,

Palayamkottai i.e. from 16-1-1985 to 1-4-1995 and on 2-4-1995 he was transferred to Central Prison, Cuddalore. The petitioner in H.C.P.

No. 1126 of 1995 was in Central Prison, Palayamkottai from 30-9-1986 to 6-12-1989 and then transferred to Central Prison, Coimbatore on

7-12-1989 and was there till 16-9-1993 and then transferred back to Central Prison, Palayamkottai on 17-9-1993 and again retransferred to

Central Prison, Cuddalore, on 3-4-1995. The further common allegations of the petitioners are, that their oral representations to the jail authorities,

to send them back to Central Prison, Palayamkottai, were of no avail, that the central Prison at Cuddalore is 550 K.Ms. away from their native

place, that it is very difficult for their family members and close friends to spend for such travel to meet the petitioners at Cuddalore, as they were

very poor, that their detention at Cuddalore Prison is against law and the spirit and direction of the Supreme Court in the case of Sunil Batra Vs.

Delhi Administration and Others etc., . According to the petitioners, they have been transferred to the Central Prison, Cuddalore, without their

consent and that they have no other alternative efficacious remedy available to them and hence, they have filed these petitions.

3. The 2nd respondent, in his counter-affidavit, has stated that the petitioner in HCP No. 1134 of 1995 was a habitual prison offender and he had

committed four offences inside the prison, the details of which are given in a separate sheet appended to the counter affidavit. Likewise, the

petitioner in H.C.P. 1125/95 had committed four offences inside the prison and the petitioner in H.P.C. 1126 of 1995 had committed six offences,

while he was in the Central Prison at Palayamkottai and at Coimbatore. According to the respective counter-affidavits, the details of such offences

were enquired into by the jail authorities in their presence and they were later on recorded in their respective history tickets. The counter affidavit

further proceeds to state that the petitioner in H.C.P. No. 1126 of 1995 indulged in instigating other prisoners to commit prison offences such as

destroying of art gallery, using filthy language against the prison authorities and their family members. Therefore, on the proposal of the

Superintendent of the Central Prison, Palayamkottai, the petitioners were transferred by the Inspector General of Prisons and such transfer to other

prisons is not at all a punishment, but only to correct the prisoners and also in the interest of maintaining discipline amongst the prisoners. It is also

stated that the petitioner in H.C.P. No. 1126 of 1995 committed similar offences in the Central Prison at Coimbatore and so he was re-transferred

to Palayamkottai and in that prison, he again started indulging in such activities and so, he was transferred to Central Prison, Cuddalore. According

to the 2nd Respondent, as regards the petitioner in H.C.P. No. 1124 of 1995 is concerned, he was re-transferred to Central Prison,

Palayamkottai on 2-1-1995 for a period of one month for interview purposes and after the expiry of that period, he was re-transferred back to

Central Prison, Cuddalore and such transfer of prisoners from one prison to another is not against law; but in fact, they are as per the instruction

contained in the Jail Manual to correct such prisoners, who indulge in prison offences, that the petitioners, during the visit of the Inspector General

of Prison, gave representations to him for their re-transfer to Palayamkottai Central Jail and they are under consideration and that there are

executive instructions as well, whereunder, if such prisoners show good improvement in their character for a period of three years, their cases are

liable for consideration for re-transfer to their parent prisons, but in these cases, that period has not yet been over and that therefore, the 2nd

respondent prayed for the dismissal of these petitions.

4. We have heard learned counsel for the petitioners in these petitions and the learned Public Prosecutor for the respondents.

5. The fact remains that the three petitioners herein are life convicts and they are undergoing their sentences. Initially they were lodged in the

Central Prison at Palayamkottai and since they had indulged in prison offences, they were transferred to the Central Prison, Cuddalore, now which

is having a correctional institution therein. The petitioners have not disputed the statement made in the counter-affidavit of the 2nd respondent that

they had committed prison offences, as stated in the counter-affidavits. But their contention is that their native place is 5.50 K.Ms. away from the

Central Prison, Cuddalore and it is very difficult for their family members and relations to go all the way to Cuddalore to meet them, as they are all

very poor. According to the petitioners, they are also likely to give advices and instructions to their family members relating to the administration of

their home affairs. All the reasons given by the petitioners can be accepted only if they did not involve themselves in offences inside the prison, like

the one, instigating other prisoners to damage Art Gallery, using filthy language against the prison authorities and their family members, etc., It is

also seen that in respect of these prison offences, enquiries were conducted in the presence of the petitioners and they have been recorded in their

respective history tickets. It is also seen that on the basis of the recommendations made by the Superintendent, Central Prison, Palayamkottai,

under sub-rule (1) of Rule 5 of the Tamil nadu Prison Manual, Volume II, the Inspector General of Prisons had transferred the petitioners to the

Central Prison, Cuddalore, where there is a correctional Institution to correct such prisoners and according to Rule 568 of the Tamil-nadu Prison

Manual, Volume II, such transfer to any other prison for custody and treatment in a suitable institution, is in accordance with the classification of the

procedures and the respondents have also admitted that if such prisoners show good improvement in a period of three years in their character,

their cases would be considered for re-transfer of such prisoners to parent prisons. However, in order to support his contention, learned counsel

for the petitioners relied upon a decision of the Supreme Court in the case of Sunil Batra Vs. Delhi Administration and Others etc., wherein the

Supreme Court has held that "where the rights of a prisoner either under the Constitution or under other law, are violated, the writ power of the

Court can and should run to his rescue. There is a warrant for this vigil. 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, etc. may be punitive in effect and a every such affliction or abridgement is an infraction of liberty or

life in its wider sense and cannot be sustained unless Article 21 is satisfied. Visit to prisoners by family members and friends are a solace in

insulation, and only a demumanised system can drive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to

search and discipline and other security criteria, the right to society of fellomen parents and other family members cannot be denied in the light of

Art. 19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such

meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory : There is no reason why the right to be

visited under reasonable restrictions, should not claim current constitutional status. Subject to considerations of security and discipline, liberal visits

by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected.

Learned counsel also relied upon a decision of this Court in *Ayyasamy, M. v. Inspector General of Prisons* 1993 Mad LW (Cri) 481, wherein, this

Court, relying upon the decision of the Supreme Court in *Sunil Batra's* case (supra) held as under :

"It is not disputed that the petitioners were already punished by the jail authorities for the alleged offences. It is not disputed that the members of

the petitioners' family are residing at Madurai, i.e. at a distance of 350 K.Ms. from Cuddalore. In such circumstances, the contention of the

learned counsel for the petitioners is that these petitioners are deprived of the visit of their family members and friends. The contention of the

learned counsel for the petitioners that the petitioners are now physically and psychologically affected and that if the petitioners are transferred to

Central Prison, Madurai, they would have the moral, emotional and psychological support from their family, is well founded,

6. On the other hand, learned Public Prosecutor relied upon the decision of the Supreme Court in *David Patrick Ward and Another Vs. Union of*

India (UOI) and Others, and in the case of *Mrs Geetinder Kaur Vs. State of Punjab and Others*, . In the later case, a three Judges Bench of the

Supreme Court has held that the place of detention is a matter for the administrative choice of the detaining authority (in that case under the

National Security Act) and a Court would be justified in interfering with the decision only if it was in violation of any specific provision of the law or

was vitiated by arbitrary considerations and mala fides.

7. We have gone through the decisions cited before us. In the case on hand, the only contention urged by the learned counsel for the petitioners is

that the Central Prison at Cuddalore, is far away from the native place of the petitioners, that the family members and relations of the petitioners,

who are very poor, cannot afford to go over to Cuddalore to meet the petitioners to seek his advice, opinion and suggestions in the family affairs

now and then and that therefore, the petitioners may be transferred back to Central Prison, Palayamkottai, which is nearer to their native place.

But, we have to see the facts of the case. The petitioners, who are undergoing their sentences, indulged in jail offences, like misbehaving with the jail authorities and their family and instigating other prisoners to revolt, etc. Only with a view to correct such prisoners, there is a correctional Institute at the Central Prison, Cuddalore and on the recommendations of the Superintendent of the Central Prison, Palayamkottai, the Inspector General of Prison, transferred the petitioners and the petitioner in H.C.P. No. 1126 of 1995, even after his transfer to the Central Prison, Coimbatore, did not stop his activities and he had committed four offences there and so, he was transferred back to Palayamkottai and as he again started committing such offences, he was re-transferred to Cuddalore Central Prison. Further, it is also seen that the petitioner in H.C.P. No. 1124 of 1995 was transferred to the Central Prison, at Cuddalore on 19-4-1994 and on 2-1-1995 he was sent back to Central Prison, Palayamkottai for the purposes of interview and after the cessation of the interview period, again sent back to Central Prison, Cuddalore on 6-2-1995. Thus, the petitioner in H.P.C. No. 1124 of 1995 was given an opportunity to meet his family members and relations some time after he was sent to Central Prison, Cuddalore. It is also seen that such transfer of the petitioners to other prisons had been necessitated only because of their misbehaviour and indulging in jail offences. Further, according to the respondents, Central Prison, Cuddalore, is meant for correcting such habitual prison offenders. In the counter-affidavit, it is also stated that there are executive instructions to consider the cases of such prisoners, who show improvement in their behaviour and conduct in a period of three years for re-transfer to their parent prisons. In such circumstances, we are of the view that this is not a fit case wherein the ratio laid down by the Supreme Court in Sunil Batra Vs. Delhi Administration and Others etc., can be applied, followed by this Court in Ayyamamy's case 1993 Mad L.W. (Cri) 481 (Mad)(supra). Therefore, following the decision of the Supreme Court by three learned Judges in Mrs Geetinder Kaur Vs. State of Punjab and Others, we hold that the petitioners are not entitled to the relief sought for in these petitions and they are dismissed.

8. Petitions dismissed.