
(2013) 09 MAD CK 0015

In the Madras High Court

Case No : Criminal O.P. No. 22192 of 2013 and M.P. No. 1 of 2013

S. Nalini

APPELLANT

Vs

State and The Superintendent of Police

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 482
Penal Code, 1860 (IPC) — Section 147, 148, 152, 186, 201
Prisons Act, 1894 — Section 42, 45, 45(12), 46, 47

Citation : (2013) 4 MLJ(Cri) 354

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : M. Radhakrishnan, for the Appellant; S. Shanmuga Velayutham, Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

P. Devadass, J.—The sole accused in C.C. No. 70 of 2013 pending on the file of the learned Judicial Magistrate No. I, Vellore came

forward to quash the proceedings in the said calendar case. Originally, in C.C. No. 1 of 1992, petitioner Nalini, was awarded death sentence.

Later, it was commuted to life. Now, the petitioner, as lifer, is lodged in the Special Prison for Women, Vellore.

2. On 20.4.2010, it is alleged that when her cell was searched by Prison Officials, she was found to have a Cell-phone in a bag. When the Officials

tried to seize it, she deterred them from discharging their public duties and also screened the offence committed.

3. On the same day, the Jail Superintendent conducted enquiry, examined witnesses and recorded their statement. On the next day, namely, on

21.4.2010, the Superintendent also made a complaint to the Inspector of Police,

Bagayam Police Station, Vellore. Based on that, a case in Crime

No. 231 of 2010 was registered for offences under Sections 353, 186 and 201 IPC read with Section 42 of the Prison Act, 1894.

4. Ultimately, in the enquiry conducted by the Jail Superintendent, under Rule 302(b)(7), the petitioner was awarded the major punishment of

permanent reduction from higher class to lower class, namely, from "A" Class to "B" Class.

5. In the meanwhile, in Crime No. 231 of 2010, investigation was completed, final report was filed for offences under Sections 353, 186 and 201

IPC read with Section 42 of the Prison Act, 1894. The learned Judicial Magistrate took cognizance thereon. Copies u/s 207 Cr.P.C. were

furnished to the petitioner. Charges were framed. Trial commenced. Some prosecution witnesses were also examined.

6. At this juncture, the accused came forward to quash the entire proceedings in the said case.

7. Mr. M. Radhakrishnan, learned counsel for the petitioner would contend that when commission of prison offences and offences under the Indian

Penal Code have been complained of, as per Rule 301 of the Tamil Nadu Prison Rules, 1983, the Jail Superintendent has the option of either

exercising her power of punishment conferred on her under the Prison Rules or prosecuting the prisoner before the Magistrate. Since in this case,

the Superintendent has already exercised her power of punishment, thereafter, she has no jurisdiction to proceed further before another forum.

Thus, the criminal proceedings instituted and pending before the learned Judicial Magistrate No. I, Vellore in C.C. No. 70 of 2013 is without

jurisdiction.

8. In support of his submission, the learned counsel referred to Sections 42 and 45 of the Prisons Act, 1894, State Prison Rules and the decision

of the Hon"ble Supreme Court in State of Haryana Vs. Ghaseeta Ram, .

9. On the other hand, the learned Public Prosecutor would submit that the petitioner, having committed distinct IPC offences, is being prosecuted

for those offences before a competent judicial forum. Further, the punishment of permanent reduction from "A" class to "B" class awarded to her

on 28.5.2010 has been set aside by a Division Bench of this court on 15.3.2012 in H.C.P. No. 1357 of 2011 filed by the petitioner herself.

Consequently, the entire proceedings of the Jail Superintendent, in which the prisoner was imposed punishment was terminated. Thus, there was no punishment for the offences committed by her. Further, the calendar case pending before the learned Magistrate has gone a long way, namely, examination of witnesses. Further, on facts, the decision cited is distinguishable. Thus, quashing of the criminal proceedings will not arise.

10. In reply, Mr. Radhakrishnan would submit that the focus of the petitioner's case is on the infraction of Rule 301 of the Tamil Nadu Prison

Rules, 1983. It goes to the root of the matter. It shakes the very jurisdiction of the learned Magistrate. In such circumstances, the petitioner has no

other alternative remedy to halt the illegality except invoking the extraordinary jurisdiction of this court u/s 482 Cr.P.C. Practically speaking, it is

not that the petitioner had not suffered any punishment. From 28.5.2010 to 15.3.2012, she suffered the major punishment of permanent reduction

from "A" Class to "B" Class. What is important in a case-law is not the facts, what it decides, the principles and the point of law laid down therein.

11. I have anxiously considered the rival submissions, perused the materials on record, relevant provisions of the Prisons Act and the State Jail

Rules and the decision cited at the Bar.

12. To appreciate the contentions of either side, it would be profitable to note and examine certain provisions of the Prisons Act, 1894 and the

Tamil Nadu Prison Rules, 1983.

13. Section 42 of the Prisons Act, 1894 runs as under:

42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners. - Whoever, contrary to any

rule under Sec. 59 introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or

attempts to supply to any prisoner, outside the limits of a prison any prohibited article,

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison,

to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

14. The next connected provision is Section 45. We shall see the same with sub clauses relevant for our purpose:

45. Prison Offences.-The following acts are declared to be prison offences when committed by a prisoner.

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under Sec. 59 to be a prison offence;

(2) any assault or use of criminal force;

(3) to (11) omitted

(12) receiving, possessing or transferring any prohibited article;

(13) and (14) omitted

(15) Omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt

or preparation to escape, and any attack or preparation for attack upon any prisoner or prison official; and

(16) omitted.

15. u/s 46, for the commission of prison offences, the Jail Superintendent has been empowered to impose various kinds of punishments on the prisoners subject to the restrictions in Sections 47 to 50 of Prisons Act, 1894.

16. As per Section 52, in case of seriousness of the prison offences committed, if the Jail Superintendent is of the view that the prisoner has to be

severely punished, then he can forward the prisoner to the jurisdiction Magistrate to impose higher punishment. Section 52 emphasises that once

the prisoner has been punished by the Superintendent, exercising her power under the Prisons Act, again the prisoner cannot be prosecuted and

punished before a Magistrate. Section 52 incorporates the rule against double jeopardy.

17. Rule 297 of the Tamil Nadu Prison Rules, 1983 has been framed to spelt out prison offences. We shall note it with the sub clauses relevant for our purpose:

297. Acts declared to be prison offence u/s 45 of the Prisons Act, 1894 (Central Act IX of 1894).- The following acts are forbidden and every

prisoner who wilfully commits any of the following acts shall be deemed to have wilfully disobeyed the regulations of the prison, and to have

committed a prison offence within the meaning of section 45 of the Prisons Act, 1894 (Central Act IX of 1894), namely:

(2) Quarrelling with other prisoners, prison officials, visitors and others;

(3) Secreting any article whatever;

(40) Taking part in any attack upon any prisoner or prison official or others;

(42) Refusing or omitting or conniving or disobeying to abide by standards of behaviour, rules, regulations, lawful instructions and orders or

omitting or refusing to perform duties in the manner prescribed;

(44) An offence against law and order and discipline;

(49) Possessing, hiding, smuggling or attempting to smuggle, obtaining, giving or receiving or bartering contraband articles, failing to report to

prison officials about contraband articles;

18. For the purpose of Sections 42 and 45(12) of the Prisons Act, Rule 298 of the State Prison Rules, 1983 list out certain articles as prohibited

articles. Sub Clause (s) of Rule 298 runs as under:

Any other article whatsoever not specially permitted by the prison rules and articles received, possessed or transferred otherwise than by due

authority.

19. Section 59 of the Prisons Act, 1894 confers rule making power to the State Government. In exercise of it, on 16.10.2007, in Rule 298, after

clause (r), clause (rr) has been inserted. It runs as under:

Cell Phone, SIM Card, Mobile battery chargers or any other accessories which are used for communication purpose.

20. Thus, now by the amendment to Rules, keeping Cell Phone in the Cell by the prisoner will amount to keeping prohibited items mentioned in

Rule 298 for the purpose of Sections 42 and 45(12) of the Prisons Act, 1894.

21. From the above provisions of Prisons Act, 1894 and the State Rules framed thereunder, it is seen that to maintain discipline inside the prison,

certain conduct, violations were prescribed as prison offences and power has been given to the Jail Superintendent to impose punishment for those

offences. He has also been given option to refer those cases to jurisdiction Magistrates for infliction of higher punishment, in case if he is of the

opinion that the offences are heinous in nature and severe punishment is required to be imposed. Thus, either one of the mode alone can be opted by the Superintendent and not both.

22. Under Rule 300 of the Tamil Nadu Prison Rules, 1983, for the alleged commission of certain offences inside the prison, the Superintendent has no option except to refer those cases to the Magistrate. Rule 300 runs as under:

300. Reference to Magistrate in certain cases.-When in the opinion of the Superintendent any of the following offences are established, against any prisoner, he shall refer the case to the Magistrate exercising jurisdiction for enquiry in accordance with the Code of Criminal Procedure, 1973

(Central Act 2 of 1974) namely:

(1) Offences punishable under sections 147, 148 and 152 of the Indian Penal Code (Central Act XLV of 1860)

(2) Offences punishable under sections 222, 223 and 224 of the Indian Penal Code (Central Act XLV of 1860)

(3) Offences punishable under sections 304A, 309, 325 and 326 of the Indian Penal Code (Central Act XLV of 1860),

(4) Any offence triable exclusively by the Court of Sessions.

23. It is pertinent here to note that the offences alleged against the petitioner, namely, sections 353, 186 and 201 IPC read with Section 42 of the

Prison Act, 1894 are not included in the said list of offences mentioned in Rule 300.

24. The State Rule also classified the punishment, which the Superintendent can impose on a prisoner as minor and major punishments. Rule 302

of the Tamil Nadu Prison Rules, 1983 deals with classification of punishments. We shall note the sub clauses which are relevant for our purpose:

302. Classification of punishments.-The punishments enumerated in section 46 of the Prisons Act, 1894 (Central Act IX of 1894), shall be

classified into minor and major punishment.

Minor punishment:

(a)(5) Temporary reduction from a higher to a lower class or grade.

Major punishment:

(b)(7) Permanent reduction from a higher to a lower class or grade.

25. The State Rules prescribes procedure to be followed by the Superintendent in

conducting enquiry into the alleged commission of prison offences, mode and extent of punishment.

26. Most important Rule for our purpose is Rule 301. It runs as under:

301. Powers of Superintendent in other cases.-It shall be in the discretion of the Superintendent to determine, with respect to any other act which constitutes both a prison offence and an offence under the Indian Penal Code (Central Act XLV of 1860). Whether he will use his own powers of punishment or move the Magistrate possessing jurisdiction to enquire into it in accordance with the Code of Criminal Procedure, 1973. (Central Act 2 of 1974).

27. When the offences committed inside the prison are prison offences and also offences under Indian Penal Code, Rule 301 gives choice to the Superintendent, either to proceed himself in exercise of the power conferred upon him under the Jail Rules or proceed against the prisoner before the jurisdiction Magistrate. It is only alternative. It is either this or that and not both. Any one of the forum can be chosen and not both.

28. In State of Haryana Vs. Ghaseeta Ram, with regard to commission of certain prison offences, punishment has been imposed on the prisoner by the Court and subsequently punishment has also been imposed by the Jail Superintendent. This was questioned by the prisoner u/s 482 Cr.P.C.

before the Punjab and Haryana High Court. The High Court held that it amounts to double jeopardy. The State took it in appeal to the Hon"ble

Apex Court. In the said case, the provisions of Sections 45, 46 and 52 of the Prisons Act, 1894 and certain Rules in the Punjab jail Manual which

are in pari materia to certain rules in the Tamil Nadu Prison Rules, 1983, which we have already referred to, were examined by the Hon"ble

Supreme Court. Though in GHASEETA RAM, facts differ, but the principles laid down by the Hon"ble Apex Court are required to be noted.

29. In Ghaseeta Ram (supra), in paragraphs 13 and 14 it was held as under:

13. So far as the commission of heinous offences are concerned, Section 52 of the Prisons Act is in pari materia the same as para 627 of the

Manual. An analysis of the two provisions shows that where a prisoner is guilty of commission of any offence against prison discipline which in the

opinion of the Superintendent of Jail is not adequately punishable by infliction of any of the punishments which he has the power under the Act or

the Manual to impose, he may forward the offending prisoner to the Court of the District Magistrate or to any Magistrate of the First Class, having jurisdiction to enquire into and try the offence, together with a statement of the circumstances under which the prisoner was being so forwarded for trial in accordance with law. The trial court upon conviction, may sentence the prisoner to undergo imprisonment in addition to any term for which the prisoner was undergoing imprisonment when he committed such an offence. The trial court may also convict and punish the prisoner for committing various offences referred to in para 610 of the Manual for which he was charged and tried by it. Para 611 of the Manual leaves it to the discretion of the Superintendent of Jail, to determine with respect to any "other act" which constitutes both a prison offence and an offence under the Indian Penal Code, whether he will use his own powers of punishment or forward the prisoner to a competent Magistrate exercising jurisdiction to enquire into the offence in accordance with the Code of Criminal Procedure. The exercise of powers u/s 52 of the Prisons Act or para 627 of the Manual, however, is subject to the proviso that "no person shall be punished twice for the same offence".

14. From an analysis of the provisions of the Prisons Act and the Manual (supra) it follows that where the offence, which is both a prison offence and an offence under the Indian Penal Code, or is otherwise a heinous offence, and is committed by the prisoner after his admission to jail, for which the Superintendent of Jail can impose punishment, which in his opinion is adequate for the said offence, he may proceed to impose the punishment on the prisoner under the Prisons Act and the Manual by following the procedure prescribed therein. But where he is of the opinion that adequate punishment cannot be inflicted by him, as his power to award punishment in that behalf is limited by the Act or the Manual, he shall forward the prisoner to the competent court having jurisdiction to try the offence. Where the Superintendent of Jail, has inflicted punishment, which in his opinion was adequate punishment for the offence, then the prisoner cannot also be forwarded to the Magistrate for trial and be punished for the same offence twice in view of the bar contained in the second proviso to Section 52 of the Prisons Act and para 627 of the Manual.

30. Now, keeping the principles laid down therein by the Hon"ble Apex Court, we shall come to the petitioner's case.

31. Certain prison offences were alleged to have been committed on the morning of 20.4.2010 inside the cell of the petitioner. It is alleged that she was found with a cell phone, she did not allow the jail officials to seize it, deterred them from discharging their public duties, committed act of indiscipline and acted as against jail rules. On the same day, in exercise of the power conferred on her under the State Prison Rules, the Superintendent had conducted enquiry against the petitioner for the commission of said prison offences and witnesses were examined. Ultimately, on 28.5.2010, the Superintendent awarded her the major punishment of permanent reduction of "A" Class to "B" Class.

32. When the prisoner questioned the said punishment in H.C.P. No. 1357 of 2011 before a Division Bench of this Court, the Jail Superintendent filed a reply affidavit, wherein after narrating the details of prison offences committed by the prisoner, in paragraph 19, it is stated as under:

19. Further it is submitted that if the petitioner has been dealt with section 42 of Prison Act 1894, for the prison offence committed by her, a maximum punishment of imprisonment for not exceeding six months (or) to fine not exceeding Rupees Two hundred (or) to both only might have been awarded and that punishment will not affect the petitioner at any way as she is a Life Convict. Therefore she was punished as per rule No. 302(b)(7) of Tamil Nadu Prison Rules, 1983, giving an opportunity for her transformation.

33. Thus, it is seen from the above, the alleged prison offences mentioned in the complaint made by the Jail Superintendent to Bagayam Police

Station which has been registered in Crime No. 231 of 2010 and the enquiry conducted by the Jail Superintendent for the alleged prison offences

are connected. Further, besides prison offences alleged by the Jail Superintendent in her reply affidavit (stated supra), certain other offences under the Indian Penal Code were also alleged to have been committed by the prisoner.

34. As we have already seen, under such circumstances, as per Prison Rule 301, the Superintendent has got option either to exercise her power of

punishment conferred upon her under the Prison Rules or to prosecute the prisoner before a regular court. The Superintendent can have either any

one of the modes and not both. On 20.4.2010 itself, the Superintendent had opted one of the mode, that is to say, she had decided to proceed

against the prisoner in exercise of the power conferred upon her under the Prison Rules. This is also evident from the reply affidavit filed by the Jail

Superintendent filed in HCP No. 1357 of 2011. In pursuance of that, subsequently, punishment was awarded to the petitioner by the Jail

Superintendent on 28.5.2010. Of course, the punishment was not accepted by the Division Bench in HCP No. 1357 of 2011 on 15.3.2012 for

violation of statutory rules. But, the point is exercise of jurisdiction by Jail Superintendent under Rule 301.

35. In this case, it is very clear that on 20.4.2010 itself, the Jail Superintendent has exercised her option to proceed against the prisoner based on

the power conferred on her. Thereafter, again she cannot pursue the other mode, namely, prosecuting the prisoner before a Magistrate. In view of

the option having been already exercised by the Jail Superintendent, the Magistrate has no jurisdiction to proceed further in C.C. No. 70 of 2013.

36. The calendar case has crossed certain stages. Now, it is in the stage of examination of witnesses.

37. Though the power of this court u/s 482 Cr.P.C. is extraordinary in nature, it shall be used sparingly and only under limited circumstances.

Parameters are also provided in the section itself. The inherent power of this Court have been saved u/s 482 Cr.P.C. in the New Code can be

resorted to when there is abuse of process of Court or otherwise to secure ends of justice. This provision is intended to do justice. Already, the

Jail Superintendent has exercised her option under Rule 301. Again, she cannot prosecute the prisoner before another forum. It is abusing the

process of the court. When there is no jurisdiction to proceed with the criminal proceedings, so as to secure the ends of justice, it has to be halted.

38. In the facts and circumstances of the case, efficacious remedy would be invoking the extraordinary power conferred upon this Court u/s 482

Cr.P.C.

39. Thus, on account of the case having crossed certain stages when especially the court has no jurisdiction, this Court should not refuse to

exercise its jurisdiction u/s 482 Cr.P.C. to prevent the abuse of process of court and to secure ends of justice. In view of the fore goings, the entire

proceedings in C.C. No. 70 of 2013 pending on the file of the learned Judicial Magistrate, No. I, Vellore, is quashed. This Criminal Original

petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.