

(2012) 03 MAD CK 0049

In the Madras High Court

Case No : Habeas Corpus Petition No. 1357 of 2011

S. Nalini

APPELLANT

Vs

Superintendent of Prison, Special Prison for Women, Vellore

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Tamil Nadu Prison Rules, 1983 — Rule 297(49), 298

Citation : (2012) CriLJ 2411

Hon'ble Judges : K. Mohan Ram, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : M. Radhakrishnan, for the Appellant; A.N. Thambi Durai, Assistant Public Prosecutor, for the Respondent

Judgement

G.M. Akbar Ali, J.—The petitioner is convicted by the Designated Court No. 1, TADA Act, Chennai in the famous or infamous case of the

former Prime Minister Shri Rajiv Gandhi assassination. She was provided with ""A"" class facility in prison was provided to the petitioner by the

prison authorities based on her educational qualification. Initially the authorities provided such facility and later withdrew the facility on 3-9-2009.

She approached the designated Court for a direction seeking ""A"" class facility and the Court had also passed an order to that effect. She was later

transferred to Special Prison for Women, Puzhal, Chennai on 28-6-2010. However, when she was transferred to Special Prison for Women,

Puzhal, Chennai on 28-6-2010, she was not provided with ""A"" class facility. Now again she has been transferred back to Special Prison for

women at Vellore from 7-9-2011. But the ""A"" class facility is not given to her.

2. She sent a representation on 11-9-2011 and so far the representation has not been considered. Therefore, she has filed the present petition.

3. On notice, the respondent filed a counter inter alia stating as follows :

The petitioner is a life convict undergoing sentence as per the orders of the Apex Court in C.A. No. 1/98. She was treated as ""A"" class convict

from 10-9-99 as per the orders of the Designated Court and such facility was provided to her. Being a life convict, the petitioner requires to follow

the rules and regulations of the Prison. Possessing contraband articles inside the prison is a prison offence under Rule 297 of the Tamil Nadu

Prison Rules 1983. A surprise check was conducted in the lock up cell of the petitioner on 20-4-2010 by the Prison officials in the presence of

Superintendent of Prisons. The petitioner was found in possession of a mobile phone which is one of the prohibited articles inside the prison,

thereby the petitioner has committed the offence and hence she was permanently reduced to ""B"" class from ""A"" class as per Rule No. 302 (b)(7)

of the Tamil Nadu Prison Rules 1983 from 28-5-2010.

4. The petitioner was transferred to Special Prison for Women, Puzhal on 28-6-2010 as per the orders of the Additional Director General of

Police cum Inspector General of Prisons on her own request.

5. The petitioner was again transferred to Special Prison for Women Vellore by order dated 5-9-2011 by the same authority. Since the petitioner

was punished for an offence and permanently reduced to ""B"" class her request was not complied with. The punishment cannot be modified by the

Prison Administration. Therefore, the petition is not maintainable.

6. The petitioner has filed a reply affidavit denying the surprise check and the possession of mobile phone. She would further state that under Rule

303(3) of Tamil Nadu Prison Rule, no prisoner shall be punished unless she/he has been informed of the offence alleged and given proper

opportunity for presenting his/her version.

7. According to the petitioner, the competent authority has not conducted enquiry which is mandatory. Therefore, the reduction of class is against

Rules.

8. On filing of the reply affidavit, the respondent was directed to produce the details of enquiry conducted against the petitioner. The respondent

has filed a detailed reply affidavit enclosing the statement of various officials who were present at the time of surprise check and finding of the fact

of possession of a mobile phone by the petitioner and also the enquiry particulars.

9. At our request, the original file relating to the enquiry was also produced.

10. Mr. M. Radhakrishnan, the learned counsel for the petitioner submitted that the statements, now produced by the authority, was not supplied

to the petitioner and there was no enquiry regarding the alleged offence of possession of a mobile phone at the time of surprise check. The main

contention of the learned counsel for the petitioner is that while awarding a punishment, there shall be an enquiry under Rule 304 of the Tamil Nadu

Prison Rules 1983. The learned counsel pointed out that an opportunity should have been given to the petitioner before passing an order of punishment.

11. The learned counsel pointed out that a perusal of the proceedings of the Superintendent of Prisons would show that not even an explanation of

the detenue had been obtained and no witness has been examined to prove the allegations.

12. The learned counsel pointed out that even in the counter statement the respondent has not stated that a proper enquiry was conducted and an

opportunity was given to the petitioner to the charges made against her before passing an order of punishment.

13. Countering the said argument, the learned Additional Public Prosecutor submitted that the petitioner was found in possession of Prohibited

article viz., mobile phone which is contrary to Rule 298 of Tamil Nadu Prison Rules 1983. The learned counsel submitted that Rule 297 deals with

offences and punishment and possession of a prohibited item is an offence under Rule 297(49) and therefore, it attracted a major punishment under

Rule 302 (b)(7) a permanent reduction from a higher to a lower class.

14. The learned Additional Public Prosecutor pointed out that the enquiry records produced before this Court and also the copy of the extract

would show that there was an enquiry conducted, statements were recorded from various officials and the punishment was imposed.

15. Heard both sides and perused the materials available on the record.

16. Admittedly, the petitioner is the life convict. It is also admitted that she was given an "A" class facility in the prison when she was in Special

Prison for Women at Vellore. According to the respondent, when a surprise check was conducted on 20-4-2010 the petitioner was found in

possession of a mobile phone which is a prohibited article. Since she was in possession of a prohibited article, which is an offence, she was punished by reduction of class from "A" to "B".

17. The learned Additional Public Prosecutor would admit that before awarding a punishment an enquiry shall be conducted by the

Superintendent. The stand taken by the respondent is that a proper enquiry was conducted. Before going into the issues involved it is appropriate

to point out the relevant Rules in the Tamil Nadu Prison Rules, 1983. Rule 297(49) prohibits possession of any contraband articles. Rule 298

enumerates prohibited articles.

18. Though mobile phone is not specifically stated sub-clause (s) would state any other article not specifically permitted. So possession of a mobile

phone, which is a prohibited article, is an offence.

Rule 302 classifies punishment;

(a) minor and (b) major.

The Superintendent of Prisons is empowered to impose either minor or major punishment for any of the offence coming under Rule 297. However,

Rules 303, 304 reads as follows :

303. Awarding punishments:

(1) The Superintendent shall examine any person touching any prison offence and determine thereupon whether to award a minor or major

punishment and his determination shall be noted down while awarding punishment.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his

version of the case. The competent authority shall conduct an enquiry into the case. No prisoner shall be punished except in accordance with the

terms of rules.

(3) No prisoner shall be punished twice for the same offence provided that any security measure such as separate confinement, hand cuffing,

cellular confinement and the like taken for the safe custody of a refractory and dangerous prisoner or for preventing him from committing mischief

or the stoppage of privileges which are otherwise admissible to well behaved prisoners only, shall not be construed as prison punishment for this

purpose.

304. Enquiry before punishment

(1) Prisoners are liable to be punished for prison offences as per rules irrespective of the class in which they are placed.

(2) No prisoner shall be punished for any statement or complaint made to a visitor.

(3) Whenever prisoners are produced before the Superintendent for punishment, the Superintendent shall conduct a thorough enquiry in a fair

manner. It shall not become a mechanical process for the mere awarding of punishments. Enquiry shall be conducted as promptly as possible.

During enquiry, the accused shall be present. Witnesses shall be brought in one at a time.

(4) Every precaution shall be taken to ensure that the enquiry is conducted in an orderly manner. Prisoners shall be thoroughly searched before

being brought before the enquiry officer. Violent prisoners may be properly secured during enquiry.

(5) In case of serious violation of prison discipline, the Superintendent may order the recording of statements of the persons concerned. When the

Superintendent thinks that recording of statement is not necessary, he shall briefly record the salient facts of the case in the appropriate column in

the punishment book in Form No. 15. If a prisoner has committed any infringement of the prison rules through ignorance or excusable

carelessness, the Superintendent, shall admonish him without recording in the said Forms.

(6) The officer, who conducts the preliminary investigation shall present his report and witness if any. The report shall be presented in a language

that is commonly understood in the locality or by the accused. Where necessary and available, an interpreter may be provided. The accused and

his witnesses, if any, shall be heard.

(7) After the Superintendent is satisfied that all relevant facts of the case have come to light, he shall record his decision in the register. After

enquiry, the punishment shall be promptly implemented as per rules.

(8) The punishment awarded to prisoners shall be noted down in the punishment book in Form No. 15. The Jailer shall certify that the punishments

have been carried out. The punishment book shall be placed before the

Superintendent for his perusal as soon as the punishment has been carried out.

19. A conjoint reading of 303 and 304 would go to show that before awarding a punishment, the Superintendent shall conduct a thorough enquiry in a fair manner. It calls for application of principles for natural justice.

20. In H.C.P. No. 1324 of 2010, dated 19-1-2012, a similar question was raised before us. The issue involved was also that of a punishment of reduction from class ""A"" to ""B"" of a prisoner. While passing the order, this Division Bench (judgment by K. Mohanram, J.) had dealt with the enquiry contemplated under Rule 304 and has observed as follows :

21. It has to be seen as to whether the aforesaid rules and procedures have been followed in this case.

22. It has not been stated in the counter affidavit filed by the respondents that a proper enquiry as contemplated in the Rules; was conducted, the details of the allegations made against the detenu was either read over to him or the allegations contained in writing was handed over to him and an opportunity was given to him to explain the same and it has not been stated that any witness was examined in the presence of the detenu, and it has not also been mentioned that the third respondent had examined the detenu before awarding the punishment.

and further held thus:

When the Rules provide that a proper opportunity should be provided to the prisoner and a fair enquiry should be conducted, the third respondent

has not provided a fair opportunity to the detenu and no fair enquiry has been conducted. Further, when Rule 304(3) provides that the enquiry

shall not become a mechanical process for the mere awarding of punishments what has been done by the third respondent is in the guise of

conducting an enquiry he has followed a mechanical process for the mere awarding of punishments. When ""A"" class facilities had been provided to

the detenu by an order of the trial Court, before cancelling the same, the third respondent ought to have strictly followed the procedure

contemplated under Rules 303 and 304 of the Rules, but in our considered view, the said procedure contemplated in the said Rules have not been

strictly followed and therefore, the reduction of ""A"" class facilities to ""B"" class facilities to the detenu cannot be sustained and therefore, the

proceedings of the third respondent, dated 3-7-2010, reducing ""A"" class facilities to ""B"" class facilities permanently to the detenu is set aside. The

detenu shall be provided with ""A"" class facilities as ordered by the Trial Court, in its order. In CrI. M.P. No. 492 of 2005 in CC No. 85 of 2005.

dated 8-11-2005 on the file of the Special (E.C. Act), Court. Salem.

The fact and circumstances of the case dealt in the above HCP 1324 of 2010 squarely applies to the present case.

21. In the counter, the respondent has not stated that he conducted an enquiry under Rule 304 before awarding a punishment under 302 (b)(7).

There is not even a whisper about affording an opportunity to the petitioner. Only on our direction, the respondent has produced the file, which

contains only the stereo types statement of various officials of the prison. The extract would show that a proper enquiry was not conducted in the

presence of the petitioner and the petitioner was not given an opportunity of a fair hearing. Therefore, the punishment imposed by the respondent is

not sustainable and liable to" be set aside.

22. Therefore, the proceedings of the 3rd respondent dated 28-5-2010 reducing to the detenu petitioner the prison facility from ""A"" class to ""B

permanently is set aside. The detenu shall be provided ""A"" class facility as ordered by the Designated Court with immediate effect. In the result

the petition is allowed. The respondent is directed to restore ""A"" class facility to the petitioner in the Special Prison for Women, Vellore with

immediate effect.