

(1982) 02 DEL CK 0016

In the Delhi High Court

Case No : Criminal Writ No. 144 of 1981

Surinder Kumar Grover

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 09-02-1982

Acts Referred:

Citation : (1982) CriLJ 922 : (1982) 21 DLT 230 : (1982) 3 DRJ 161 : (1982) ILR Delhi 948 : (1982) RLR 668

Hon'ble Judges : Yogeshwar Dayal, J;D.K. Kapur, J

Bench : Division Bench

Advocate : S.T. Singh, for the Appellant;

Judgement

D.K. Kapur, J.—This petition under Arts. 226, 14 and 21 of the Constitution and also S. 482 of the Cr.P.C. was submitted to this Court from Jail. The petitioner is undergoing imprisonment for life after conviction for an offence under S. 302, Penal Code but his appeal is pending in this High Court. He was treated as a better class i.e. B Class Prisoner, but he has been deprived of these better class facilities for a period of three months as a result of an order passed by the District & Sessions Judge, Delhi, on November 20, 1981. It is against that order that the present petition has been moved.

2. We gave a show cause notice to the State and after considering the reply affidavits and other material brought before us, we issued Rule D.B. and proceeded to hear the learned Standing Counsel.

3. The question we have to decide is whether the petitioner can be deprived of the facilities in the manner adopted in the present case, and we have even to see whether the order is contrary to law.

4. According to the case of the petitioner in the writ petition, he had appeared as the main witness against the Jail Officers in a judicial inquiry ordered by the Supreme Court of India, regarding malpractices involving misappropriation of canteen funds in the jail. The petitioner had also made a complaint about the

misconduct or misbehavior of Shri G. S. Sharma, one of the jail officials, which had resulted in the beating up of the petitioner and the said complaint was also pending. It was the contention of the petitioner that the deprivation of better class facilities is the result of a revengeful motive. We have not examined the matter from this angle but have merely confined ourselves to the legal aspects which arise in this case.

5. The order of the District & Sessions Judge, Delhi, dated November 20, 1981 merely approves the forfeiture of better class facilities. We wonder why the approval of the District & Sessions Judge was at all necessary for the forfeiture and we have been informed that this is the result of certain observations made by the Supreme Court in some of the petitions relating to malpractices in the Tihar Jail. No statutory requirement concerning the approval of the District & Sessions Judge has been brought to our notice. However, the order has been passed in the light of two alleged prison offences committed by the petitioner which have been detailed in Annexure "R-1" and are contained in a register which was produced before us.

6. The two offences and the findings recorded thereon made interesting reading. The first offence is clearly between Surinder Kumar Grover and Shiv Shankar, on the one side, and Bhagwan Dass, on the other, all convicts, in which Bhagwan Dass was said to have sustained minor injuries. The finding recorded on this was that the injuries were inflicted on the petitioner by convict Bhagwan Dass and this had been reported to the police station, Janakpuri. As it was the petitioner who was injured in this incident, we cannot see how it can be treated as an offence by the petitioner specially when the matter has been reported to the police for investigation.

7. In the documents submitted to the District & Sessions Judge, Delhi, the report is that the petitioner provokes and instigates other prisoners to quarrel among themselves. We have been referred to the Punjab Jail Manual which is also being applied by the Tihar Jail. Para 608 of this Manual in Chap. XIX sets out the prison offences declared so by the Prisons Act, 1894. Paragraph 609 details certain acts and states that every prisoner who willfully commits any of those acts will be deemed to have committed a prison offence. One of them is quarrelling with any other prisoner. It so happens that the so-called quarrel mentioned in this connection is already the subject-matter of a complaint by the petitioner who is injured and according to him he was deliberately beaten up. The findings recorded in Register No. 5 do not show that the petitioner committed any offence. So, this could not be a ground for depriving him of better class facilities.

8. Now taking up the second offence, the extract in the register shows that the prisoner in the company of two other prisoners was found loitering in front of the Female Ward at 7-00 p.m. on August 31, 1981. When they saw Shri S. N. Trikha, Deputy Superintendent (I) they ran away to the ward where they were confined. It was reported that this was a prison offence. The finding on this was that the petitioner was of mischievous type and the matter be put up for orders. We have

examined para 609 carefully and learned counsel submits that holding communication with a prisoner of the opposite sex is a prison offence in sub-clause (7) of Para 609. We do not agree that this offence is made out at all by the accusation. However, sub-clause (14) does make loitering about the yards an offence, but there is no finding recorded about this. Regarding this matter the report made to the District & Sessions Judge, Delhi, is quite different. It is :

"On 31-8-81 evening he was trying to approach the gate of the female ward but was intercepted by Deputy Superintendent."

This is not a prison offence at all either under the Act or under Para 609. So, on both these grounds the petitioner could not have been deprived of better class facilities.

9. In addition to these two offences the following words occur in the report to the District & Sessions Judge, Delhi :-

"He was going to be transferred out of Delhi but he managed to stay here making three complaint cases against the staff. Annexure "E" may be seen."

We are unable to see how this can be considered to be a prison offence. The petitioner apparently obtained orders from higher authority concerning his non-transfer from Delhi and in any case, as his appeal was pending in the High Court he was not a prisoner normally to be transferred out of Delhi. We fail to understand how better class facilities could be taken away from the petitioner on any of these three grounds. This leads us to infer that there may be some substance in the petitioner's contention that the prison authorities were annoyed against him for giving evidence against them in the inquiry mentioned earlier.

10. It so happened that by the time we have heard this petition the period of three months has almost expired. So, very little real relief can be given by us. However, we have no hesitation in quashing the order which deprived the petitioner of better class facilities.

11. It may also be mentioned that a mere allegation does not constitute a prison offence and there is a procedure prescribed in the Prisoners Act for finding out whether a prison offence has been committed. There is no finding at all in this case whether the petitioner has committed a prison offence. So, the order is wholly illegal both on the merits as well as on the ground that there is no finding of the commission of an offence. In the result we issue a mandamus directing the respondents to restore the better class facilities to the petitioner forthwith.

12. Petition allowed.