



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2015

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

W.P (MD) No.15128 of 2015

and

M.P. (MD) No.1 of 2015

S.S.Mary

: Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai.

2.The Inspector General of Prisons,
CMDA Tower - II,
No.1, Gandhi Irwin Road, Egmore, Chennai.

3.The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli

: Respondents.

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order passed by the 3rd respondent vide his proceedings No.1124/ThaKul/2015 signed on 13.05.2015 and quash the same and consequently direct the 1st respondent to classify the petitioner's husband by name K.Samuvel S/o.Kolipitchai, (Life convict No.1124), who is presently confined at Central Prison, Palayamkottai, Tirunelveli as an "A" Class Prisoner on the basis of petitioner's representation, dated 29.04.2015.

For Petitioner : Mr.R.Anand

For Respondent : Mr.N.Manoharan,

Special Government Pleader

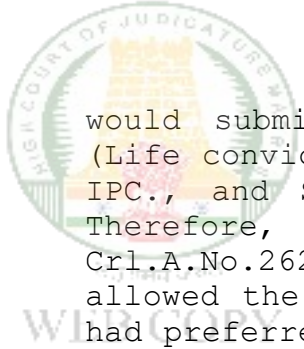
O R D E R

Mr.N.Manoharan, learned Special Government Pleader, takes notice for the Respondents. By consent, the Writ Petition itself is taken up for final disposal.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the Respondents.

3. The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order passed by the 3rd respondent, vide his proceedings No.1124/ThaKul/2015, signed on 13.05.2015 and quash the same and consequently, direct the 1st respondent to classify the petitioner's husband by name K.Samuvel S/o.Kolipitchai, (Life convict No.1124), who is presently confined at Central Prison, Palayamkottai, Tirunelveli as an "A" Class Prisoner, on the basis of petitioner's representation, dated 29.04.2015.

4. Mr.R.Anand, the learned counsel appearing for the petitioner



would submit that the petitioner's husband K.Samuvel S/o.Kolipitchai, (Life convict No.1124), has convicted for an offence under Section 302 of IPC., and Section 25 of the Indian Arms Act, in S.C.No.212 of 1990. Therefore, the petitioner had preferred an appeal before this Court in Crl.A.No.262 of 1991, and this Court vide Judgment, dated 06.12.2000, allowed the appeal and acquitted the accused. Against which, the State had preferred an appeal before the Hon'ble Supreme Court in C.A.No.755 of 2001 and the same was allowed, by setting aside the Judgment of this Court in Crl.A.No.262 of 1991.

5. At this juncture, the petitioner, who is the wife of the life convict, has made a representation, dated 29.04.2015, to the 3rd respondent for treating her husband / life convict, as 'A' class prisoner. Pursuant to her representation, the 3rd respondent has passed an order on 13.05.2015, rejecting the request of the petitioner by stating that, as per Rule 226 of Tamil Nadu Prison Rules, 1983, only the Court alone is having the power with regard to the classification, as an 'A' class prisoner. Therefore, the petitioner wants to quash the order of the 3rd respondent and also seeking a direction to the respondents 1 and 2, to consider her representation, and pass an appropriate orders, in accordance with Rule 227 of the Tamil Nadu Prison Rules, 1983, and prayed for an order.

6. Furthermore, the learned counsel appearing for the petitioner, assailing the correctness of the impugned order of the 3rd respondent, dated 13.05.2015 would submit that the 3rd respondent has no authority and as per the said Rule 227, only the 3rd respondent ought to have forwarded the said representation to the Government, and on receipt of the same, the Government has to pass an order. But, without jurisdiction this 3rd respondent has passed the impugned order and therefore, the same is liable to be set aside.

7. Resisting the same, Mr.N.Manoharan, the learned Special Government Pleader appearing for the respondents would submit that the 3rd respondent has already disposed of the representation of the petitioner and nothing is pending before him. Hence, he prayed for dismissal of the writ petition.

8. On perusal of the record would reveal that the petitioner's husband K.Samuvel, who is a life convict, presently confined at Central Prison, Palayamkottai, Tirunelveli, has given a representation to the 3rd respondent, for treating her husband/life convict, as an "A" Class Prisoner. At this juncture, it is appropriate to consider the provisions of the Tamil Nadu Prison Rules, 1983. Rule 225 deals with the classes of prisoners and Rule 226 deals with the classification by the Courts. Admittedly, the Court has not classified the petitioner's husband / life convict, as an 'A' class prisoner. Rule 227 of the Tamil Nadu Prison Rules, 1983, is usefully extracted hereunder:-

"227. Petition to Government for Classification:- The Government may also action a reference from the Superintendent of the prison on a petition from the prisoner. The Superintendent shall forward the petition through the Inspector-General to the Government. The Government may also act suo-motu or on a representation by



the prisoner's relatives and friends. Except as provided under the rule 226, the Superintendents shall place every convicted prisoner in class B."

9. A bare reading of the said Rule 227, would reveal that only the Superintendent of Prison, on a representation from prisoner's relatives and friends, shall forward the same, through the Inspector- General, to the Government and the Government has to pass an order on the same, in accordance with rules. In such circumstances, I am of the considered view that the 3rd respondent has passed the impugned order on 13.02.2007, without any jurisdiction, since he is not a competent authority to pass such an order. Hence, the order passed by the 3rd respondent, dated 13.05.2015, is liable to be set aside.

10. In the result, the Writ Petition is allowed and the impugned order, dated 13.05.2015, passed by the 3rd respondent is hereby set aside. Since the petitioner has already given a representation to the 3rd respondent, the 3rd respondent is directed to forward the same to the Government, through the Inspector-General of Prisoner and on receipt of the same, the first respondent is directed to consider the representation of the petitioner, and pass appropriate orders on the same, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/TURE COPY/

Sub Assistant Registrar

MPK

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai.
- 2.The Inspector General of Prisons,
CMDA Tower - II, No.1, Gandhi Irwin Road,
Egmore, Chennai.
- 3.The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli

+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 56127

Order made in
W.P (MD) No.15128 of 2015
Dated:-
22.09.2015