

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27-1-2016

Coram

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.2850 of 2014

P. Reegan

.. Petitioner

Vs.

1. The State of Tamil Nadu,
rep.by its Secretary to Government,
Home Department,
Fort St.George,
Chennai - 600 009.

2. The Superintendent of Central Prison,
Cuddalore District,
Cuddalore.

.. Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Habeas Corpus directing the respondents to produce the detenu Pakkirisamy, Son of Kunchu, aged about 65 years, now confined at Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.N.Thambi Durai,
Additional Public Prosecutor

Reserved on	Pronounced on
20-1-2016	27-1-2016

O R D E R

P.N.PRAKASH, J.

The facts obtaining in this case has been discussed in detail in the order dated 30.11.2015 passed by us, and therefore we deem it appropriate to reproduce the same in order to avoid unnecessary repetition. The order dated 30.11.2015 reads thus,

"It is the case of the petitioner that his father Pakkirisamy, who is a convict prisoner has

completed his term of sentence, despite which he has not been released from incarceration. For better appreciation of the petitioner's claim, it may be relevant to set out the factual matrix of the case.

2. Pakkirisamy [A1], his son Annadurai [A2] and wife Rani [A3] were tried by the learned Additional Sessions Judge, Nagapattinam in S.C.No.155 of 2001 on 10.10.2001 and were convicted and sentenced as follows:

S. No.	Accused	Section of law	Conviction and Sentence
1	Pakkirisamy [A1]	U/s 302 IPC U/s 324 IPC U/s 307 IPC	Imprisonment for life and fine of Rs.1000/- in default three months R.I. Two years R.I. and fine of Rs.500/- in default 3 months R.I. Five years R.I. and fine of Rs.500/- in default 3 months R.I.
2	Annadurai [A2]	U/s 302 IPC	Imprisonment for life and fine of Rs.1000/- in default three months R.I.
3	Rani [A3]	U/s 302 IPC U/s 324 IPC	Imprisonment for life and fine of Rs.1000/- in default three months R.I. Two years R.I. and fine of Rs.500/- in default 3 months R.I.

All the three accused were taken to custody and lodged in prison. Thereafter, they preferred an appeal in Crl.A.No.312 of 2002 before this Court challenging the conviction and sentences, and by order dated 20.01.2003 in Crl.M.P.No.13074 of 2002, their sentences were suspended and were released on bail. Pakkirisamy [A1] furnished sureties and effectively came out from prison on 08.02.2003.

3. Crl.A.No.312 of 2002 was taken up for final hearing by Division Bench of this Court and conviction and sentences were modified as follows:

S. No	Accused	Section of law	Acquittal	Conviction and sentence
1	Pakkirisamy [A1]	U/s 302 IPC U/s 324 IPC U/s 307 IPC	Acquitted	2 years R.I. and fine of Rs.500/- in default 3 months R.I. 5 years R.I. and fine of Rs.500/- in default 3 months R.I. Sentences were directed to run concurrently
2	Annadurai [A2]	U/s 302 IPC		Imprisonment for life and fine of Rs.1000/- in default three months R.I. [Conviction and sentence imposed by the trial Court confirmed]
3	Rani [A3]	U/s 302 IPC U/s 324 IPC	Acquitted	2 years R.I. and fine of Rs.500/- in default 3 months R.I. [Sentence reduced to the period already undergone]

4. It may be relevant to state here that Rani/A3 was lodged in the Women Prison, whereas, Pakkirisamy and Annadurai were lodged in the Men's prison. After the disposal of CrI.A.No.312 of 2002, Pakkirisamy was apprehended by the police and was produced before the learned Chief Judicial Magistrate, Nagapattinam on 31.07.2006 for undergoing the unexpired portion of the sentence. The Remand Warrant of the learned Chief Judicial Magistrate, Nagapattinam reads as follows:

"Conviction and sentence was confirmed as per judgment of High Court, Chennai in CA 312/2002 dated 24.1.2006 and the accused is recommitted to prison to undergo the unexpired portion of sentence."

5. There is a patent error in the above

endorsement, inasmuch as the entire conviction and sentence imposed upon Pakkirisamy/A1 was not confirmed by this Court in CrI.A.No.312 of 2002 as stated above. Thereafter, Pakkirisamy/A1 was lodged in the Central Prison, Cuddalore, as if he was undergoing life sentence.

6. On the filing of this Habeas Corpus Petition, notice was issued to the jail authorities and on 16.10.2014, Pakkirisamy [A1] was released from prison. Thus, it is obvious to us that, Pakkirisamy [A1], who should have been released much earlier, was kept in incarceration beyond the period of sentence that he was liable to suffer and was released only on 16.10.2014 after the filing of this petition.

7. The second respondent is hereby directed to file an affidavit giving the exact number of days Pakkirisamy [A1] was kept in detention, in excess of the period of sentence.

List the case on 08.01.2016."

2. Pursuant to our direction, the Superintendent of Central Prison, Cuddalore has filed an affidavit and also submitted a memo of calculation showing the number of days the Prisoner suffered imprisonment over and above the period of sentence. It may be relevant to extract paragraphs 4 and 5 of the Additional Counter affidavit filed by the Superintendent of Central Prison, Cuddalore, which reads thus,

"4. I submit that on 13.10.2014, a representation had been received from the Convict Pakkirisamy along with the order of the Hon'ble High Court. On perusal, it is found that life sentence of Pakkirisamy, S/o Kunju has been modified to R.I. of five years and also came to know that the recommitment warrant was mistakenly typed. The fact has been immediately brought to the notice of the Chief Judicial Magistrate, Nagapattinam on the same day along with the request of the prisoner to issue a modified order through a special messenger. On receipt of the order of the Chief Judicial Magistrate, Nagapattinam in D.No.1286, dated 15.10.2014 he was released on 16.10.2014 at 09.10 A.M.

5. I submit that any mistake or any delay had not been taken place in the prison authority in this case."

3. From the memo of calculation it is seen that the Prisoner should have been released on 9.3.2010, whereas he was actually released only on 16.10.2014. Thus, it is evident

that the Prisoner has suffered 4 years, 7 months and 7 days in excess of the period of sentence, without any justifiable cause.

4. The learned Counsel appearing for the petitioner relied upon the Judgment of the Supreme Court in Rudul Sah v. State of Bihar (AIR 1983 SC 1086 : (1983) 4 SCC 141), wherein under similar circumstances the Prisoner was awarded compensation, and prayed for similar relief.

5. We gave our anxious consideration to the submissions of the learned Counsel appearing for the petitioner and also gone through the decision in Rudul Sah's Case (supra).

6. In the case before the Supreme Court, the Prisoner suffered 14 years of imprisonment even after he was acquitted by the trial Court in a fulfilled trial. The Supreme Court in paragraph 10 observed as follows:

"10. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the

petitioner's rights. It may have recourse against those officers."

7. In the light of the above pronouncement of the Supreme Court, we are of the view that it will be in the fitness of things if the Government of Tamil Nadu is directed to pay an interim compensation of Rs.2,00,000/- to Pakkirisamy for having suffered illegal detention for a period of four years, seven months and seven days, without prejudice to his right to sue for damages in the Civil Court. Accordingly, we direct the Government of Tamil Nadu, represented by the Chief Secretary to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as interim compensation to Pakkirisamy, within a period of four weeks from the date of receipt of copy of this order and file a compliance report before the Registry of this Court.

This Habeas Corpus Petition is disposed of with the above direction.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vr

To

1. The Secretary to Government,
Home Department, Fort St.George,
Chennai - 600 009.
2. The Superintendent,
Central Prison, Cuddalore.
3. The Chief Secretary,
Government of Tamil Nadu, Fort St.George,
Chennai.
4. The Public Prosecutor, High Court, Madras.

+1 cc to M/s.R.Sankara Subbu, Advocate,SR.5587 (10/5/16)

H.C.P.No.2850 of 2014

SAI (CIO)
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