

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Contempt Petition No.898 of 2019

Kaliammal

.. Petitioner

Vs.

Dr.Niranjani Mardi, I.A.S.,
The Secretary to Government,
Department of Home (Prison),
Secretariat, Fort St.George,
Chennai-600 009.

.. Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act to punish the respondent for committing Contempt of Court by wilfully disobeying the orders passed in H.C.P.No.1320 of 2018, dated 25.01.2019.

For petitioner : Mr.G.Ravikumar

For respondents : Mr.C.Emilias, Addl. Advocate General assisted by
Mr.R.Prathap Kumar, Addl.P.P.

ORDER

(The Order of the Court was made by R.Subbiah, J)

The present Contempt Petition has been filed alleging violation of the order dated 25.01.2019 passed in H.C.P.No.1320 of 2018, in and by which, this Court passed the following order:

"3. Learned Additional Public Prosecutor submits that the authorities are not able to consider the premature release, since G.O.(Ms)No.64/Home Prison (IV) Department/2018, dated 01.02.2018 informs the ineligibility thereof when the prisoner has been convicted for offence under Section 3 of the Explosive Substance Act.

4. It is seen that the prisoner was convicted for offence under Section 302 r/w. 149 IPC and sentenced to undergo life imprisonment and also convicted for the offence under Section 3 of the Explosive Substance Act and sentenced to undergo ten years rigorous imprisonment and the prisoner has already undergone the sentence.

5. Petitioner has made representations on 14.02.2018 and 02.07.2018 to the respondents informing the application of G.O.(Ms).No.64, Home (Prison-IV) Department, dated 01.02.2018 in the case of her son/convict prisoner and seeking relief thereunder. The said representations have not been considered so far and hence, she has come to this Court with this Habeas Corpus Petition.

6. The petitioner already has undergone to sentence for offence u/s.3 of the Explosive Substances Act. It is understandable if authorities

were to deny relief to the prisoner on the ground that he is undergoing the sentence for an offence, commission of which disentitles him to relief under a Government Order for premature release. Visiting a prisoner with denial of relief on the ground that he stands convicted for an offence the sentence for which already he has undergone, in effect amounts to imposing a dual punishment in respect of one and the same offence. Such is impermissible in law.

7. Since the convict prisoner has already undergone the sentence, this Habeas Corpus Petition shall stand disposed of. The detenu viz., Sakthivel (Convict No.O.J.C.T.18316 housed in Central Prison, Coimbatore), S/o.Palanisamy, aged 37 years is directed to be released forthwith in terms of G.O.Ms.No.64 Home [Prison-IV] Department, dated 01.02.2018 unless his presence is required in any other case."

2. It is now represented by the learned Additional Advocate General appearing for the respondent that challenging the said order of this Court, dated 25.01.2019 in H.C.P.No.1320 of 2018, the State has preferred Special Leave Petition before the Supreme Court and ultimately, when the Special Leave Petition was numbered and leave granted, subsequent to which, Criminal Appeal No.166 of 2020 was heard by the Supreme Court on 24.01.2020, in which, the following order was passed by the Apex Court:

"Leave granted.

The question involved in this appeal, on merits, is covered by the judgment of this Court in the case of The Home Secretary (Prison) & Ors. Vs. H.Nilofer Nisha (Criminal Appeal No(s).144 of 2020, decided on 23.01.2020). In the said judgment, this Court held that the Habeas Corpus petition is not the remedy in favour of the respondent.

In view of the said decision, the impugned order stands quashed. The appeal is allowed.

It is brought to the notice of this Court that the respondent's son has already suffered imprisonment for about 16 years. It is also brought to the notice of this Court that he has already filed two application seeking the benefit of remission under the Remission Rules of the State. If such an application is pending consideration before the concerned authorities of the State Government, the same shall be considered and decided as per Remission Rules of the State as early as possible but not later than the outer limit of three months from today."

3. Resultantly, the son of the petitioner (i.e. accused) will be released as

<https://hcservices.courtserviceindia.org/> per the above direction of the Supreme Court. Hence, nothing survives for

consideration in this Contempt Petition, which is accordingly closed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

cs

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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SMI/27/05/2020

To

- 1)The Secretary to Government
Department of Home(Prison),
Secretariat, Fort St. George,
Chennai – 600 009.

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