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W.P.No.28801 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2023

PRONOUNCED ON : 06.02.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.28801 of 2022

Mohammed Mahaboob Ali

...

Petitioner

Vs.

1.Deputy Inspector General of Prisons
Coimbatore Range,
Gandhipuram, Coimbatore.

2.Superintendent of Prisons,
Officer of Superintendent of Prisons,
Central Prison, Gandhipuram,
Coimbatore.

3.The Inspector of Police,
C2, Race Course Police Station,
Coimbatore City,
Crime No.456/2022.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in Letter No.19778/தகு5/2022 dated 17.10.2022 issued by the second respondent and the order contemplated in the impugned letter and quashing the same and consequently directing the respondents to reinstate the privileges suspended vide the order contemplated in the impugned letter dated 17.10.2022.



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W.P.No.28801 of 2022

For Petitioner : Mr.S.Veeraraghavan
For Respondents : Mr.S.Santhosh
Government Advocate (Crl. Side)

ORDER

This Writ Petition is filed to call for the records in letter No.19778/தகு5/2022, dated 17.10.2022, issued by the second respondent and the order contemplated in the impugned letter and quash the same and consequently, direct the respondents to reinstate the privileges suspended vide the order contemplated in the impugned letter dated 17.10.2022.

2.The learned counsel for the petitioner submitted that the petitioner's son was arrested by the Deputy Superintendent of Police, Crime Branch, Erode North District, on 26.07.2022, on the suspicion of committing offences under the Unlawful Activities Prevention Act. Following the registration of Crime No.355 of 2022, his son was taken to Central Prison, Coimbatore. He is confined from 27.07.2022. The bail application filed by his son was dismissed and the appeal filed against the dismissal was also dismissed. The petitioner was allowed to visit his son with usual restrictions. On 12.10.2022, when the petitioner visited his son, he complained to him stating that he was verbally and physically abused by the prison police. The prison police, who



W.P.No.28801 of 2022

was standing nearby, yelled at him and dragged him inside. When the petitioner visited next day, he was not allowed to see his son. On 15.10.2022, he read the news that another FIR has been registered against his son in crime No.456 of 2022, on the file of the third respondent, alleging that his son abused Second Grade Police Constable P.Rahul with filthy language and made death threat at about 12 p.m. on 12.10.2022. His son has not committed any such crime alleged in crime Nos.355 & 456 of 2022. The petitioner received a reply dated 17.10.2022, for his letter dated 14.10.2022, stating that his son violated prison rules and a case has been registered against him and that the second respondent ordered to suspend the personal visit and other prison privileges for next three months. Challenging this letter, this petition is filed.

3.The learned counsel for the petitioner relied on the judgment of this Court in ***P.Nedumaran Vs. The State of Tamil Nadu dated 14.08.2001***, for the proposition that the right of a person to have visitation from their friends is a right forming part of right to life. The relevant portion of the judgment is extracted hereunder:

12. In the light of these clear pronouncements and



the law declared, and testing these impugned rules on the touchstone of Articles 21 and 14 of the Constitution of India, it has to be held that the amended rules impugned in these writ petitions are arbitrary, illegal and unconstitutional. The respondents have failed to take note of the clear pronouncement of the law declared by the Supreme Court in respect of the right of prisoners to have a visitation from their friends, which is said to be a right forming part of the right to life.

13. The deprivation of the right of visit by a friend to the prisoner is unconstitutional. Similarly, the deprivation of the right of a friend to visit a prisoner is unreasonable and arbitrary. The safety of the prisoners and the officers in jail can be taken care of by adopting appropriate safeguards available under the Prison Manual. Instances of violations of the facility cannot be a ground to deprive this right by altogether taking away the provision. It is no longer a facility or a privilege; it is now elevated to the level of a fundamental right to a prisoner to have an access to his relatives or friends and similarly, the right of a relative or friend of a prisoner to interview him.

Then, he relied on the judgment in ***S.Nalini Vs. State rep by the***



W.P.No.28801 of 2022

Inspector of Police, Bagayam Police Station, Vellore and one another, in

Crl.O.P.No.22192 of 2013, dated 11.09.2013 for the proposition that the registration of criminal complaint and imposition of punishment would amount to double jeopardy. The relevant portion of the judgment is extracted hereunder:

38.Though the power of this court under [Section 482](#) Cr.P.C is extraordinary in nature, it shall be used sparingly and only under limited circumstances. Parameters are also provided in the section itself. The inherent power of this Court have been saved under [section 482](#) Cr.P.C in the New Code can be resorted to when there is abuse of process of Court or otherwise to secure ends of justice. This provision is intended to do justice. Already, the Jail Superintendent has exercised her option under Rule 301. Again, she cannot prosecute the prisoner before another forum. It is abusing the process of the court. When there is no jurisdiction to proceed with the criminal proceedings, so as to secure the ends of justice, it has to be halted.

39.In the facts and circumstances of the case, efficacious remedy would be invoking the extraordinary power conferred upon this Court under [Section 482](#) Cr.P.C.



W.P.No.28801 of 2022

40.Thus, on account of the case having crossed certain stages when especially the court has no jurisdiction, this Court should not refuse to exercise its jurisdiction under [Section 482](#) Cr.P.C to prevent the abuse of process of court and to secure ends of justice.

41.In view of the foregoing, the entire proceedings in C.C.No.70 of 2013 pending on the file of the learned Judicial Magistrate, No.I, Vellore, is quashed. This Criminal Original petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

4.Per contra, the learned Government Advocate (Crl.Side) opposed this petition on the ground that petitioner's son Asif Mustaheen, while he was detained in crime No.355 of 2022, has committed another offence in the prison and therefore, a case in crime No.456 of 2022 for the offences under Sections 294 (b), 323, 506 (2) & 353 IPC was registered by the Race Course Police Station, Coimbatore. It is alleged in the FIR that petitioner's son Asif Mustaheen had abused the jail constable P.Rahul, at about 12 p.m. on 12.10.2022 and made death threat by pushing him down in interview room. Other jail constables prevented the further incident and petitioner's son was produced before the jail in-charge. Even in his presence, Asif Mustaheen had made death threat against P.Rahul. Therefore, as per the powers under the



W.P.No.28801 of 2022

Prisons Act, 1894 (hereinafter referred to as the Act) and the Tamil Nadu Prisons Rules, 1983 (hereinafter referred to as the Rules), the privilege for visitation rights was cancelled for three months to Asif Mustaheen. He produced the order of this Court, passed in ***H.C.P.No.574 of 2013 and M.P.No.1 of 2013 dated 08.09.2014*** for the proposition that the registration of criminal complaint and imposition of penalty under the Act, cannot always be considered as double jeopardy for the reason that in this case, there is only FIR was registered and no final report is filed so far. The case may even end in acquittal. The order passed in ***Crl.O.P.No.22192 of 2013, dated 11.09.2013*** was not accepted for not having enunciated the correct position of law in the bench judgment of this Court in ***H.C.P.No.574 of 2013 and M.P.No.1 of 2013 dated 08.09.2014***. The privileges of visitation rights is not an absolute right, but subject to the conditions made in the Prison Act and the Rules. In the case before hand, prisoner Asif Mustaheen had violated the Act and the Rules by committing offences inside the prison and therefore, rightly his visitation rights was cancelled for three months. It is observed in this judgment as follows:

15. To say that the Superintendent does not have the power to lodge a FIR in respect of offences not enumerated



in Rule 300 (1) to (4) that took place inside the prison, would lead to absurd results. For example, in the Book of "Crime in India", S.M.Edwardes Printwell Publication authored in 1924, an interesting case is reported:

"A remarkable case of false coining occurred in Nagpur. The official staff of the Central Jail suddenly became aware that one of their prisoners was gaily counterfeiting four-anna and two-anna pieces inside the jail. He was promptly prosecuted and was sentenced to a term of rigorous imprisonment; but on appeal the Sessions Judge quashed the conviction, as he found it impossible to believe that the prisoner could have counterfeited coin in the presence of so many prisoners and under the nose of the jail staff. Against the acquittal of the prisoner by the Sessions Judge the Local Government made a further appeal, which resulted in the original finding and sentence being restored. One can hardly imagine the possibility of a long-term convict in, say, Maidstone Jail calmly counterfeiting sixpenny and threepenny bits, and it seems possible that jail supervision and discipline in India are sometimes of a more dolce far niente type than is usual in England. If the average Indian peasant and small trader were less gullible and more alert, a good deal of false coining and note-forgery would automatically cease."

If a prisoner in India counterfeits Srilankan coin, he will have to be prosecuted under [Section 231](#) I.P.C., which is a cognizable and non bailable offence triable by



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W.P.No.28801 of 2022

Magistrate of I Class. Can the Superintendent merely impose upon him a penalty under Rule 302 of the Prison Rules and not inform the Police? If a conspiracy to commit theft is worked out by prisoners with the help of their accomplices outside the prison, can the Superintendent of Prison sweep it under the carpet by merely inflicting a nominal penalty under Rule 302 of the Prison Rules and not inform the police? Definitely not. The law is not intended to lead to absurd results. In this case, the prisoner is alleged to be in possession of Ganja which is a cognizable offence under the [NDPS Act](#), for which the law should have to take its own course and neither Rule 301 of the Tamil Nadu Prison Rules nor [Section 52](#) of the Prisons Act would come to the rescue of the prisoner.

In the result, the Habeas Corpus Petition is dismissed. Consequently, connected miscellaneous petition is closed.

5.Considered the rival submissions and perused the records.

6.Section 40 of the Act deals with visits to civil and unconvicted criminal prisoners. It reads as follows:



W.P.No.28801 of 2022

40. Visits to civil and unconvicted criminal prisoners.—Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

7. Section 45 of the Act deals with prison offences and it defines 16 offences as prison offences. Section 46 of the Act deals with punishment for prison offences. Therefore, for the prison offences committed, a prisoner is liable to be punished. In the case before hand, it is claimed that Asif Mustahen committed prison offences under Section 45 (1) and 45 (4). It reads as follows:

45. Prison-offences.—*The following acts are declared to be prison-offences when committed by a prisoner:—*

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 18 [59] to be a prison-offence;

(2)

(3)

(4) immoral or indecent or disorderly behaviour;



W.P.No.28801 of 2022

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13) ...

(14)

(15)

(16)

Therefore, as per rule 302 (4), visitation rights for three months was cancelled.

8.Rule 297, deals with prison offences. It has a list of 62 prison offences. Rule 302 deals with classification of punishment for prison offences as minor and major punishment.

9.Rule 303 deals with awarding of punishment. It reads as follows:

303. Awarding punishments.—



W.P.No.28801 of 2022

(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.

10.Rule 304 requires an enquiry before punishment. It reads as follows:



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.

Combined reading of Rules 303 and 304 makes it clear that before



W.P.No.28801 of 2022

punishment is imposed for committing prison offences, thorough and fair enquiry should be conducted, giving opportunity to the prisoner to give evidence and produce his side of the case. In case of serious violations of procedures, statements have to be recorded, otherwise, salient facts of the case would be recorded in the appropriate column in Form No.15.

11.Despite giving sufficient opportunity to the respondents to produce the records relating to the enquiry conducted under Rule 304, respondents 1 & 2 have not produced the records relating to the enquiry before imposing the punishment or atleast copy of the punishment book in Form No.15. What is produced before this Court is only a communication sent to the prisoner Asif Mustaheen stating that in view of the commission of prison offences, complaint was registered under sections 45 (1) & 45 (4) of the Act and punishment of cancellation of the prison privileges was imposed under Rule 303 & 304 of the Tamil Nadu Prison Rules, 1983. This order does not indicate whether an enquiry as contemplated under Rule 304 was conducted before imposing the punishment. In the absence of production of any material in support of the conduct of the enquiry, as per Rule 304, it has to be concluded that no enquiry was conducted as per Rule 304 and therefore, the



W.P.No.28801 of 2022

cancellation of prison privileges ordered by the Superintendent of Prisons, Coimbatore is against law and procedural rules and is liable to be set aside and accordingly, set aside. In consequence thereof, the order referred in letter No.19778/தகு5/2022, dated 17.10.2022, issued by the second respondent is liable to be quashed and accordingly quashed. The respondents are directed to restore all the eligible prison privileges to Asif Mustaheen.

12.Accordingly, this Writ Petition is allowed. No Costs.

06.02.2023

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order



W.P.No.28801 of 2022

To:

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1. Deputy Inspector General of Prisons
Coimbatore Range,
Gandhipuram,
Coimbatore.

2. Superintendent of Prisons,
Officer of Superintendent of Prisons,
Central Prison, Gandhipuram,
Coimbatore.

3. The Inspector of Police,
C2, Race Course Police Station,
Coimbatore City,
Crime No.456/2022.

4. The Public Prosecutor,
High Court of Madras.



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W.P.No.28801 of 2022

G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
W.P.No.28801 of 2022

06.02.2023