

Lakshmi Narain Vs. the State

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Court : Allahabad

Decided On : Aug-28-1958

Reported in : AIR1959All164; 1959CriLJ283

Judge : A.N. Mulla and ;B.N. Nigam, JJ.

Acts : [Prisons Act, 1894](#) - Sections 3(2) and 52; [Constitution of India](#) - Article 20 and 20(2)

Appeal No. : Criminal Revn. No. 74 of 1958

Appellant : Lakshmi Narain

Respondent : The State

Advocate for Def. : P.N. Chaudhari, Addl. Govt. Adv.

Advocate for Pet/Ap. : H.N. Misra, Adv.

Disposition : Revision dismissed

Judgement :

A.N. Mulla, J.

1. This is a criminal revision filed by head constable Lakshmi Narain who belonged to the armed police. He was sent to jail on the 4th of November, 1957. It seems to us that the applicant along with some other police men wanted to have a redress

of certain grievances and the applicant and his companions went on hunger-strike on the 1st of November, 1957 while they were still outside. When the applicant came to the jail, he continued his hunger strike and in spite of repeated attempts made by the jail authorities to persuade him to take food, he refused to do so.

The jail authorities warned the applicant repeatedly that this is a major offence against jail discipline and the Superintendent of jail also punished him on some occasions in order to persuade him to give up his hunger-strike. These attempts, however, proved unsuccessful and finally the Superintendent of Jail felt that he could not adequately punish the applicant for this continuous breach of jail rules and discipline and so he submitted a report to the Inspector General of Prisons.

The Inspector General of Prisons after perusing the report came to the conclusion that it was a fit case in which the applicant should be prosecuted under Section 52 of the Prisons Act. A complaint was accordingly filed and after a trial before a Magistrate the applicant was convicted under Section 52 of the Prisons Act. The sentence awarded to the applicant was six months' rigorous imprisonment.

2. After his conviction the applicant went up in appeal but his appeal was dismissed. He then filed an application of revision before this Court which came before one of us and as it was considered that some important aspects of interpreting the relevant law were involved, it was ordered to be placed before a Divisional Bench of this Court. It has come before us today in pursuance of that reference.

3. The provision for prosecuting a prisoner under Section 52 of the Prisons Act, if he goes on hunger strike, is made in paragraph 742 of the Jail Manual under Chapter XXVIII. Paragraph 742 runs as follows : --

'Prisoners who go on hunger-strike shall be warned that no request for the redress of any of their alleged grievances shall be considered so long as the strike continues, that hunger-strike is a major jail offence, that a mass hunger-strike amounts to mutiny and that hunger-strikers are liable to be punished either departmentally or by prosecution under Section 52 of the [Prisons Act, 1894](#) (IX of 1894) under which they may be sentenced to imprisonment which may extend to

one year.

A hunger striker should not ordinarily be prosecuted under the Prisons Act without the previous sanction of the Inspector General.'

There is another paragraph in the Jail Manual the relevant part of which we quote at this stage. That paragraph is 806 in Chapter XXX of the Jail Manual.

'In addition to acts declared to be Prison offences under Section 45 of the [Prisons Act, 1894](#) (IX of 1894), the following acts are forbidden, and every prisoner who wilfully commits any of the following acts shall be deemed to have wilfully disobeyed the regulations of the prison and to have committed a prison offence within the meaning of Sub-section (1) of the above section of the acts : --

..... 17. refusing to eat food or the food prescribed by the prison diet scale.'

In view of the two paragraphs quoted above, it can not be doubted that in the interests of maintaining discipline in jails the refusal to take food by a prisoner has been made an offence. One can understand why it has been made an offence for if prisoners refused to take food, it is bound to adversely affect the discipline which has to be maintained in jails and jails are not places where people can have their own choice of food or their own choice in other matters. A prisoner on hunger-strike will attract sympathy from other prisoners and this may lead to acts of indiscipline being committed on a mass scale and may even lead to mutiny.

This obviously cannot be permitted. We are, therefore, satisfied that the act of going on hunger-strike is an offence within the meaning of paragraph 742 of the Jail Manual and it is punishable under Section 52 of the Prisons Act.

4. There are, however, certain other questions which arise in determining the guilt of the applicant in this case. The first fact which should be proved in such cases is that the accused was a prisoner within the definition given under Section 3(2) of the Prisons Act. We are at the moment concerned only with a 'criminal prisoner and this phrase has been defined as follows : --

' 'Criminal prisoner' means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction or by order of a Court Martial.'

The prosecution examined Sri Usmani, the Superintendent of Jail, who deposed that the applicant was an under trial who was admitted to jail on the 4th of November, 1957. This by itself would not have been sufficient to prove that the applicant was a criminal prisoner. In the definition cited above it is clearly mentioned that only that person can be called a criminal prisoner who is admitted to jail on the warrant or order of any court or authority. Obviously if the applicant was admitted to jail on the basis of such a warrant or order, it existed in the papers with the jail authorities and it should have been produced by the prosecution to prove that the applicant was a prisoner.

This warrant of remand to jail custody issued by a competent Magistrate was not exhibited in this case. Under the circumstances it would have been difficult to accept the oral statement of Sri Usmani regarding the contents of a document which was within his possession and which was not placed before the Court. It is not one of those cases where primary evidence could have been dispensed with and secondary evidence was permissible.

We, however, find that a question was put to the applicant when he was examined under Section 342 Criminal Procedure Code and he admitted that he was an undertrial prisoner who was admitted to jail on the 4th of November, 1957. We think that on the basis of this admission made by the applicant we can safely accept that the applicant was a prisoner within the meaning of paragraph 742 of the Jail Manual.

5. The next question to be determined is whether the applicant was on hunger-strike as alleged by the prosecution or he merely refused to take food. It is only when a prisoner goes on hunger-strike that he can be prosecuted under Section 52 of the Prisons Act, and mere refusal to take food even on repeated occasions will not by itself turn this refusal into a hunger-strike.

It is only when this refusal is meant to be used as a weapon for seeking redress of grievances that it assumes the character of hunger-strike. The prosecution produced no evidence on this point but there again the applicant when questioned under Section 342, Gr. P. Code stated that he had given up taking food since the 1st of November, 1957 and he had done so in order that certain grievances should be redressed. In Webster's New International Dictionary volume 1, Second Edition 'hunger strike' has been given the following meaning :

'The action of one especially a prisoner, who refuses to eat anything, or enough to sustain life, so as to obtain compliance with his demands, as for release.'

We are satisfied that on his own admission the applicant repeatedly refused to take food not because of some other reason but because he wanted to seek a redress for his supposed grievances. These grievances need not be related necessarily to the treatment meted out to a prisoner in jail or to a period of time subsequent to his admission in jail.

The refusal of the applicant to take food on the 4th of November, 1957 and the 5th of November, 1957 in jail was, therefore, an act of Hunger-strike and not merely an act of refusal to take food. We are, therefore, satisfied that the applicant was on hunger strike and so his case falls within the orbit of paragraph 742 quoted above.

6. The last question to be decided is whether the applicant could be prosecuted under Section 52 of the Prisons Act because he had continued to remain on hunger-strike. The learned counsel for the applicant contends that the words used in paragraph 742 indicate that the prisoners who go on the hunger-strike can be prosecuted but not those prisoners who were already on hunger-strike before they were admitted to jail and merely continued to remain on hunger strike. We have considered this contention and we have come to the conclusion that in the context the words 'go on hunger strike' include 'remaining on hunger strike.'

It was conceded by the counsel that hunger strike is a continuing act and therefore every fresh act of refusal to take food at the time when food was offered to him would amount to a fresh act of hunger strike. This would amount to his going on hunger strike on that occasion. Every one knows that at least two meals are

provided to a prisoner daily and, therefore, there would be at least two times every day when the offender can be said to have gone on hunger strike.

The words of paragraph 742 do not exclude the operation of its provisions against those who had already started hunger strike outside the jail but who continue it after coming to jail. It is open to a person to go on hunger strike for the State has not made it an offence. It was open to the State to declare an act of hunger strike as an offence within the meaning of Section 309 I. P. C., but the State has not elected to do so.

It can, therefore, safely be held that the act of hunger strike per se does not constitute an offence. If a person is removed to jail merely because he has gone on hunger strike and then after placing him inside the jail the jail authorities prosecute him under Section 52 of the Prisons Act, obviously such a prosecution would be illegal and a conviction cannot be maintained in such circumstances. In such a case the accused would not be a prisoner within the meaning of Section 3(2) of the Prisons Act.

It is true that in common parlance the term 'prisoner' is applied to any one who is deprived of his liberty and detained in prison but for the purpose of the application of the provisions of the Prisons Act the prosecution must prove that this detention was legal as it was sanctioned by a competent authority on the basis of an offence charged against the accused and it was not in violation of Article 20(2) of the [Constitution of India](#). The executive authority cannot be given the option of punishing a citizen for going on hunger strike by shutting him up in jail and turning him into a prisoner.

But for the admission of the applicant himself we would not have accepted that he was a prisoner. The applicant did not challenge the validity of his detention in prison and so we have to accept that he was legally detained. But where a person goes on hunger strike and he has also committed some offence on the basis of which he was rightly sent on a remand warrant to jail custody then it cannot be pleaded by him that because he had started hunger strike earlier he can ignore the rules of jail discipline.

The test is whether the offender was brought to jail because he went on hunger strike or because he committed some offence. If his entry into jail is on the basis of some offence, then this plea is not open to him that as he did not start the hunger strike in jail so he can continue to be on hunger strike and thus commit a breach of the jail discipline rules. What is permitted to a citizen is not permitted to a prisoner.

A citizen is entitled to lead his own life outside the jail so long as he does not commit any offence but a prisoner has to submit to jail rules in the interests of discipline. The prisoners cannot be permitted to turn a jail in a hospital or a forum of agitation whether political or otherwise.

In this case we are satisfied that the applicant was admitted to jail on the basis of an order issued by a proper authority and not because he went on hunger strike. His case, therefore, falls under Section 52 of the Prisons Act for he committed a breach of the rules framed for maintaining discipline in jails.

7. Another contention advanced by the counsel for the applicant was that in the report submitted by the Superintendent of Jail to the Inspector General of Prisons seeking his sanction he has mentioned that repeated warnings and jail punishments were given to the applicant before sanction was sought. The counsel has contended that under paragraph 742 it is not open to the jail authorities to punish the applicant twice first by inflicting those punishments which could be awarded to the applicant by the jail authorities and then by seeking a sanction and prosecuting him under Section 52 of the Prisons Act.

In our opinion this contention is also not maintainable. We have held above that every fresh act of refusal to take food at the time when meals are given to prisoners in jail would constitute a fresh offence. It seems to us that the jail authorities first tried to bring the applicant to reason by awarding only jail punishments, but he persisted in his hunger strike and committed a fresh offence repeatedly.

No punishment was awarded to the applicant for these fresh offences for the jail authorities came to the conclusion that they could not adequately punish him. It was then that they sought the sanction of the Inspector General of Prisons for his

prosecution. We are, therefore, of the opinion that the applicant is not being punished twice for the same offence as contended by his counsel.

8. The trial court sentenced the applicant to six months' rigorous imprisonment.' This, in our opinion, was an extremely severe sentence which was not justified at all, but we find that the applicant has undergone this punishment and so we cannot give him any relief by reducing the sentence awarded to him. No bail application was presented on his behalf either before the appellate court or before this Court.

9. This application of revision is, therefore, dismissed.

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