

**Sri Narain and Another Vs. State**

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**Court :** Delhi

**Decided On :** Sep-21-1999

**Reported in :** 1999VIAD(Delhi)295; 2000CriLJ965; 82(1999)DLT490; 1999(51)DRJ313; ILR1999Delhi444; 1999RLR572

**Judge :** Anil Dev Singh and; R.S. Sodhi, JJ.

**Acts :** [Constitution of India](#) - Articles 21, 23 and 24

**Appeal No. :** Cri. Appeal No. 542/98

**Appellant :** Sri Narain and Another

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. Pawan Behl,; Mr. Pandey,; OSD Welfare Department.,;

**Judgement :**

ORDER

**Anil Dev Singh, J.**

1. In the instant case in our order dated January 13, 1999 we noted that both the appellants, Shri Sri Narain and Smt. Savita, who are husband and wife, were in custody on account of being convicted for an offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. and sentenced to undergo life imprisonment.

By the same order we also noted that they have minor children. In such a situation where both the husband and wife are in custody a question arises as to what would happen to their minor children, who may not have any one to look after them in the absence of their incarcerated parents. The question in the context of children being left alone due to incarceration of a single parent was dealt with by one of us in Criminal Misc. (Main) 1642/93 and CrI. Misc. (Main) 2144/93. By the order dated September 6, 1993 in CrI. Misc. (Main) 1642/93 it was observed as follows :-

'In a situation like this, where children of a single parent are left alone due to the incarceration of the parent, it is the bounden duty of the State to provide for such children, who have no one even to wipe their tears, respond to their smiles or to prevent them from taking to wayward life. These children cannot be forgotten and abandoned. If they are being deprived of the hands which feed, protect and love them, it will not be just, fair and reasonable to leave them without securing for them, the basic necessities of life including food, education and shelter. What will happen to the children who see a heartless world around them in which they are not wanted and they do not receive anything from the society except deprivation, should be the concern of the State.

When the only parent is tucked away in jail the State must rehabilitate the children. The State may be totally justified in fettering a person's liberty but at the same time the State must be mindful of the fact that he may have children with none to look after them except him. While punishing such a person by placing him in custody, the blow to the children must be softened. By depriving the parent of his liberty the State is also depriving the Child of the means of his subsistence and sustenance. The State must in such circumstances replenish the said means by providing the bare necessities of life to the child. It is well settled that right to life is a wholesome right which makes life meaningful and complete including life which is to be lived with dignity. In Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others AIR 1981 S.C. 746, the Supreme Court while applying Article 21 of the Constitution to a prisoner held that the right to life would include right to live with all that goes along with it including bare necessities of life. If prisoners have these rights surely their children cannot be worse off than them.

Article 23 of the Constitution prohibits traffic in human beings and beggar and other similar types of forced labour. Contravention of this provision attracts penal punishment. A child whose parent has been packed off to jail will have to fend for himself owing to hunger and poverty. This will compel him to undertake all sorts of work. Even undignified and dehumanising labour can be forced upon him because of impoverishment or application of physical force. If the child is forced into such a situation by the State, it must become a provider for the child.

Again under Article 24 of the Constitution no child below the age of 14 years can be employed to work in any factory or mine or engaged in any other hazardous employment. The child of a detainee, with no one else to look up for help, is liable to be exploited by his employer and any work can be extracted out of him as his will can be easily dominated. Thus the State, which is impervious to the welfare of a separated child, compels him to undertake hazardous jobs. This tyranny on innocent children must end as otherwise the society will be creating frankensteins of which already there is no dearth in the society.

It is a right of the child, guaranteed by Articles 21, 23 and 24, to be looked after, cared for and nourished both with food and knowledge, one for sustaining his body and the other for the enlightenment of his soul.'

2. In order to enforce the rights of the children guaranteed under Articles 21, 23 and 24, in the above said matter it was directed as follows :-

'Accordingly, I direct that the State must take appropriate steps for setting up adequate number of Homes for children in Delhi for looking after the children of the prisoners and detenus, in case there is no one to look after them, and to provide them, with the basic amenities of life like food, shelter, clothing, education and everything which makes life meaningful and worth living. This direction will be applicable to the category of cases specified above. The respondent is directed to formulate a Scheme and to locate funds for implementation of the same.

In order to effectively deal with the situation, it is necessary that the Secretary, Social Welfare Board should appear in the Court on the next date. The office will inform the Secretary, Social Welfare Board, Delhi Administration, Delhi, of this

order through a special messenger.'

3. Pursuant to the above directions, in Criminal Misc. (Main) Nos. 1642/93 and 2144/93, the Secretary, Social Welfare Department, appeared on September 10, 1993. It was pointed out by him that a number of children's homes were being run by the Government and non-governmental organisations. He also stated that the children of the petitioner in Crl. Misc. (Main) 1642/93 could be accommodated in one of the children's homes. He was directed to file a detailed affidavit with regard to the number of children's homes which were being run by the Delhi Administration and NGOs with specific reference to the number of seats in those homes. A notice was also directed to be issued to the President of the Delhi High Court Bar Association to furnish a list of advocates who may be interested in associating themselves with the working of the children's homes. Pursuant to that order, an affidavit dated September 23, 1993 was filed by the Secretary, Social Welfare Department, giving a list of children's homes. On December 15, 1993, the Secretary, Social Welfare Department, again appeared and stated that the children of the prisoners and detenus contemplated by the order dated September 6, 1993 could be accommodated in the institutions listed at Serial Nos. 15 to 21, 25 and 26 of Annexure 'A' to his affidavit dated September 23, 1993. He also agreed that the advocates whose names would be submitted by the Delhi High Court Bar Association will be associated with the working of the aforesaid children homes and they will be nominated on their Boards. It was directed that the members of the Bar who are appointed to the Boards will file their reports every month and the same will be placed before the court so that there is a proper monitoring of the homes, where the children of prisoners could be accommodated. They were also permitted to make their suggestions to effectuate the orders dated September 6, 1993 and September 15, 1993. Besides, the Delhi High Court Bar Association was required to create a cell for receiving requests for lodging such children in the homes which could be forwarded to the advocates nominated on the Boards of the homes and the creation of such a cell was required to be notified for the general information of the members of the Bar and public at large.

4. In the instant case, since both husband and wife were in custody and have minor children, we wanted to be informed by the State as to whether or not the

directions contained in orders dated September 6, 1993 and December 15, 1993 in CrI. Misc. (Main) Nos. 1642/93 and 2144/93 had been complied with. However, at the same time we suspended the sentence of the wife, Smt. Savita, during the pendency of the appeal. While doing so, by order dated January 13, 1999 we observed as follows :-

'Having regard to the fact that both the appellants, husband and wife, are in custody and have minor children, the sentence of wife Savita is suspended during the pendency of the appeal subject.....'

5. On March 15, 1999, learned counsel for the respondent stated that the orders dated September 6, 1993 and December 15, 1993 in Criminal Misc. (Main) Nos. 1642/93 and 2144/93 had been complied with. However, there was no feedback as to whether the advocates, who are appointed pursuant to the above orders and were christened by the Social Welfare Department as visitors' to the juvenile homes, though they were required to be appointed on the boards of these homes, had visited the homes and if they had visited the same what were their reactions about the state of affairs prevalent in those homes. For this purpose we issued notices to the concerned, namely, Ms. Nivedita Sharma, Mr. Ashok Kashyap, Ms. Rekha Anand, Ms. Kusum Sharma, Mr. Viresh Pratap Chaudhary, Mr. Rajiv Awasthi, Mr. Girdhar Govind, Ms. Mukta Gupta, Mr. Anoop Bagai and Mr. S.K. Mittal. It appears that Ms. Kusum Sharma, Mr. Viresh Pratap Chaudhary and Mr. Girdhar Govind are not interested to undertake the work envisaged by the orders dated September 6, 1993 and December 15, 1993 passed in CrI. Misc. (Main) 1642/93 as otherwise they would have appeared before us. Shri Ashok Kashyap, Shri Anoop Bagai, Ms. Rekha Anand, Ms. Mukta Gupta, Ms. Nivedita Sharma and Mr. Rajiv Awasthi appeared before us and candidly admitted that they had not visited the homes. They, however, state that they will be visiting the Homes in future. The net result of the inaction is that the orders dated September 6, 1993 and December 15, 1993 in CrI. Misc. (Main) 1642/93 and the spirit behind them stand defeated. This is more of an expression of our anguish rather than finding fault with any one. For the present it is not necessary for us to go into the reasons for the aforesaid orders remaining mere platitude. Suffice it to say that six years lost in implementing the orders can be made up with extra efforts of those who are

willing to work selflessly for making the human rights of the inmates of the protected homes guaranteed under Articles 21, 23 and 24 of the Constitution meaningful and effective.

6. Mr. K.K. Sud, Advocate, who was present in court when this matter was taken up on August 12, 1999, stated that he was willing to take up the work as envisaged by orders dated September 6, 1993 and December 15, 1993 CrI. Misc. (Main) 1642/93.

7. Keeping in view the larger interests of the inmates of the Homes and having regard to the need for effective implementation of the said orders, so that the children of the parents serving jail terms are looked after properly, we hereby constitute a committee comprising of Mr. K.K. Sud, Mr. Shri Ashok Kashyap, Shri Anoop Bagai, Ms. Rekha Anand, Mr. Pawan Behl, Ms. Mukta Gupta, Ms. Nivedita Sharma and Mr. Rajiv Awasthi Mr. K.K. Sud shall be the Chairman of the Committee. This committee shall visit the homes and file reports by the seventh of each calendar month in this Court. These reports shall cover the following matters pertaining to the Homes and their inmates :-

(1) Health, Hygiene, Sanitation & Cleanliness,

(2) Boarding and lodging,

(3) Clothing,

(4) Bedding,

(5) Building and its upkeeping,

(6) Education and medical.

8. We also direct that the Social Welfare Department shall coordinate with the Committee for the purpose of overseeing the functioning of these Homes so that the Homes function effectively for the purposes for which they were established.

9. List the matter on September 16, 1999.

10. A copy of the order be sent to the Secretary, Social Welfare Department, Delhi Administration, Delhi.

11. A copy of this order be given desti to Mr. K.K. Sud, Advocate under the signatures of Court Master so that there is no further delay in implementing the order.

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