

Prithish Dey Vs. the State

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Court : Kolkata

Decided On : May-30-1950

Reported in : AIR1952Cal319,55CWN140

Judge : Das Gupta and ; Lahiri, JJ.

Acts : [Constitution of India](#) - Article 20; ;Indian Penal Code (IPC) - Sections 114 and 224; ;[Prisons Act, 1894](#) - Sections 12, 46, 51 and 56; ;[Evidence Act, 1872](#) - Section 114

Appeal No. : Criminal Revn. No. 296 of 1950

Appellant : Prithish Dey

Respondent : The State

Advocate for Def. : Nirmal Kumar Sen, ;Deputy Legal Remembrancer and ;Jitendra Mohan Banerjee, Advs.

Advocate for Pet/Ap. : Jyotirmoyee Mitra, Adv.

Judgement :

Das Gupta, J.

1. This Rule was issued on the Chief Presidency Magistrate of Calcutta to show cause why the proceedings pending against the petitioner under Section 224 &

224/114, Penal Code, should not be quashed.

2. These proceedings have been instituted against the petitioner on the allegation that he along with other accused persons attempted to escape from the Presidency Jail on 6-12-1949.

3. It is contended on behalf of the petitioner that he has already been punished by the Superintendent of the Presidency Jail for this alleged offence, & so any fresh trial for the same offence would be against the provisions of Section 20 of the Constitution, & also against the provisions of Section 403 Penal Code. (Sic - Code of Criminal Procedure?)

4. If the petitioner has already been punished for this alleged offence under Sections 224 & 224/114, Penal Code, for which he is now being prosecuted, I have no doubt that the present proceedings would be against the provisions of Section 20 of the Constitution, & would, therefore, be illegal. The question is as to whether we have any thing to show that he has been so punished.

5. Section 45, Prisons Act (Act IX (9) 1894) declares what are prison offences when committed by a prisoner, while Section 48 provides that the superintendent may examine any person touching any such offence & determine thereupon, & punish such offence; the different modes of punishment are detailed therein; the imposition of fetters & confinement in a cell are among the punishments provided. Section 12 of the Act provides for the maintenance of punishment books. Section 51 provides that in the punishment book shall be recorded in respect of every punishment inflicted.

6. The learned Magistrate, before whom the point was taken that the trial could not proceed in accordance with law, appears to have been told that no punishment book is maintained. As this seemed to us to be unbelievable, we directed the Chief Presidency Magistrate to obtain the punishment books maintained in the jail & send them to us. He has sent to us two registers, purporting to be registers kept under S. 12 of the Prisons Act. These do not show that any punishment was inflicted on the present petitioner for any offence under Ss. 224 or 224/114, Penal Code.

7. Miss Mitra has drawn our attention to the rather suspicious character of an entry under serial No. 554, dated 6-1-1950, which records the punishment against the present petitioner. That punishment is for refusing food in sympathy with the hunger strikers & protest of imposing fetters. The punishment inflicted was that interview was stopped for a month. The part of the page where this entry appears, the fact that serial No. 554 is put in after a new serial had started, & three numbers of the new serial, viz., 1, 2 & 3, had already been put, & the way in which the writings of this entry have been squeezed in, - as if somehow they had to be accommodated there, - make us suspect that this entry was really put in at a later date to bring the book in agreement with the history sheet of which a copy had already been supplied. We have no doubt that the authorities concerned will take proper notice of the observations which we have made & will take such steps as they may think proper.

8. We are unable to agree, however, with Miss Mitra that as this entry appears to have been an Interpolation, there is reason to think that though punishment was inflicted on the petitioner for an offence under Sections 224 or 224/114, Penal Code, that punishment has not been entered. The 'act of interpolation certainly indicates that the punishment book is not kept properly, but from that, it would be, in my opinion, an unjustified step to presume that there must have been some punishment inflicted on the petitioner for the offence of attempted escape from custody.

9. Miss Mitra has tried to convince us that the Imposition of fetters & the restriction on the petitioner that he might take exercise in the cell-yard could not have been inflicted, but by way of punishment. With this, however, I am unable to Section 56, Prisons Act, provides that the superintendent may for safe custody put a prisoner in irons. Rule 484 of the Jail Rules requires that previous sanction of the Inspector General of Prisons should be obtained. We do not know whether such sanction has been obtained or not. Nor can I agree that the fact that the petitioner has been allowed to take exercise in the cell-yard shows that he was confined to cell. Miss Mitra herself has stated that there is nothing definite to show that this imposition of fetters & the permission to take exercise in the cell-yard are by way of punishment, but one has asked us to presume this from the fact that these restrictions were

imposed immediately after the alleged commission of the offence. If there was anything to show that the restrictions could not have been imposed by the superintendent except by way of punishment under Section 46, Prisons Act, I might have been inclined to accept Miss Mitra's argument. I am, however, not convinced that the restrictions can not be imposed except by way of punishment. In my opinion, it is not correct to say that the petitioner has already been punished by the superintendent for an offence under Sections 224 & 224/114 Penal Code. Whether the superintendent can so punish or not, it is unnecessary for us to decide in the present case.

10. The provisions of Section 403, Criminal P. C. cannot in any case apply to the facts of the present case.

11. I would discharge this Rule.

12. Let the punishment registers be sent back without delay & our observations thereon be communicated to the Legal Remembrancer for such action as he may consider proper.

Lahiri, J.

13. I agree.

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