

K.Sathyavathi. Vs. the Superintendent, and anr.

K.Sathyavathi. Vs. the Superintendent, and anr.

SooperKanoon Citation : sooperkanoon.com/927660

Court : Chennai

Decided On : Jun-13-2012

Judge : K.Chandru, J.

Acts : Central Act 7 of 1980 ; Punjab Police Rules, 1934 ; [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.13802 of 2012 And M.P.No.1 of 2012

Appellant : K.Sathyavathi

Respondent : The Superintendent, and anr.

Advocate for Def. : Mr.M.Dig Vijay Pandian,AGP, Adv.

Advocate for Pet/Ap. : Mr.C.Prakasam, Adv.

Judgement :

Prayer: Petition filed under Article 226 of the [Constitution of India](#) praying for a Writ of Mandamus forbearing the respondents their men or whomsoever acting their on behalf from bringing petitioners husband M. Krishnan who detained under Black Market Act confined in Central Jail Coimbatore with handcuffs and chain as and when he has to be produced before the Magistrate Courts or to be produced before the Advisory Board, High Court, Madras.

ORDER

1. The petitioner is the wife of one M.Krishnan. He has been detained by the Executive Magistrate cum District Collector by an order dated 3.5.2012 under the Central Act 7 of 1980 under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The authority found that the petitioner's husband is a black-marketer and liable to be detained in the Central Prison, Coimbatore. The detention order dated 3.5.2012 is not under challenge in this Writ Petition. On the contrary, the petitioner/wife contends that as and when the petitioner's husband has been taken to any Magisterial Court or before the Advisory Board, he could not be kept in handcuff.

2. When the matter came up on 7.6.2012, this Court found that the question relating to handcuffing of a detenu or a prisoner was considered by the Supreme Court vide judgment in Sunil Batra (II) v. Delhi Admn., reported in 1980 (3) SCC 488. In that view of the matter, this Court directed the respondents not to handcuff the petitioner's husband while he has been taken to the prison house and to the court house without the express permission of the court concerned. The learned Additional Government Pleader was directed to take instructions from the respondents.

3. When the matter came up today, the learned counsel produced a copy of the written instructions issued by the Superintendent of Prisons, Central Prison, Coimbatore stating that as of now, the detenu is not having any pending criminal case to be produced before the courts and the date for taking the detenu to the Advisory Board has not been fixed. In any event the prison authority has not given any direction to handcuff the detenu and the question of handcuff is determined by the escort parties in accordance with law. The Superintendent of Police, Ooty was also requested to observe the judgment of the Supreme Court while escorting the detenu to court and to the Advisory Board regarding the handcuff by a letter sent by the Prison Authorities on 8.6.2012.

4. The Supreme Court vide judgment in Prem Shankar Shukla v. Delhi Admn. Reported in (1980) 3 SCC 526 in paragraph Nos.42 and 43 while dealing with Punjab Police Rules came down heavily upon the administration from handcuffing the prisoner. It is necessary to refer to the paragraphs 42 and 43 and it reads as

follows:

"42. Rule 26.22 read with Rule 26.21-A of the Punjab Police Rules, 1934 draw a distinction between better class under trial prisoners and ordinary under trial prisoners as a basis for determining who should be handcuffed and who should not be. As I have observed, the appropriate principle for a classification should be defined by the need to prevent the prisoner escaping from custody or becoming violent. The social status of a person, his education and habit of life associated with a superior mode of living seem to me to be intended to protect his dignity of person. But that dignity is a dignity which belongs to all, rich and poor, of high social status and low, literate and illiterate. It is the basic assumption that all individuals are entitled to enjoy that dignity that determines the rule that ordinarily no restraint should be imposed except in those cases where there is a reasonable fear of the prisoner attempting to escape or attempting violence. It is abhorrent to envisage a prisoner being handcuffed merely because it is assumed that he does not belong to a better class, that he does not possess the basic dignity pertaining to every individual. Then there is need to guard against a misuse of the power from other motives. It is grossly objectionable that the power given by the law to impose a restraint, either by applying handcuffs or otherwise, should be seen as an opportunity for exposing the accused to public ridicule and humiliation. Nor is the power intended to be used vindictively or by way of punishment. Standing Order 44 and the Instructions on Handcuffs of November 1977, reproduced by my learned Brother, evidence the growing concern at a higher level of the administration over the indiscriminate manner in which handcuffs are being used. To my mind, even those provisions operate somewhat in excess of the object to be subserved by the imposition of handcuffs, having regard to the central principle that only he should be handcuffed who can be reasonably apprehended to attempt an escape or become violent.

43. Now whether handcuffs or other restraint should be imposed on a prisoner is primarily a matter for the decision of the authority responsible for his custody. It is a judgment to be exercised with reference to each individual case. It is for that authority to exercise its discretion, and I am not willing to accept that the primary decision should be that of any other. The matter is one where the circumstances

may change from one moment to another, and inevitably in some cases it may fall to the decision of the escorting authority midway to decide on imposing a restraint on the prisoner. I do not think that any prior decision of an external authority can be reasonably imposed on the exercise of that power. But I do agree that there is room for imposing a supervisory regime over the exercise of that power. One sector of supervisory jurisdiction could appropriately lie with the court trying the accused, and it would be desirable for the custodial authority to inform that court of the circumstances in which, and the justification for imposing a restraint on the body of the accused. It should be for the court concerned to work out the modalities of the procedure requisite for the purpose of enforcing such control"

5. In the light of the above, direction is issued to the respondents to strictly adhere to the directions issued by the Supreme Court in treating the prisoners while being escorted out of prison either to the Magisterial Court or to the Prison house. The writ petition stands disposed of accordingly. No costs. The connected Miscellaneous Petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com