

Sant Bir

Vs

State of Bihar

Writ Petition (Criminal) No. 1052 of 1982

(P. N. Bhagwati, A. P. Sen JJ)

24.08.1982

ORDER

BHAGWATI, J. -

1. This is yet another case from the State of Bihar where we find that a prisoner who became sane almost sixteen years ago is still confined to jail and has not been able to breathe the fresh air of freedom. The petitioner was sentenced to imprisonment for life for an offence under Section 302 of the Indian Penal Code on February 28, 1949 by the Sessions Judge, Gaya and he was sent to Gaya Central Jail to serve his term of imprisonment. It appears that the mental condition of the petitioner was not stable and the Government of Bihar in its Judicial Department therefore directed the Superintendent, Central Jail, Gaya to watch the petitioner's mental condition and submit a report to the State Government after six months. We do not know whether any such report in regard to the mental condition of the petitioner was submitted by the Superintendent, Gaya Central Jail to the State Government, but the record shows that on November 20, 1951 the petitioner was transferred from Gaya Central Jail to Hazaribagh Central Jail for confinement as criminal lunatic under the orders of the Inspector-General of Prisons, Bihar. The half-yearly reports in regard to the mental condition of the petitioner were sent to the State Government from time to time up to September 10, 1955 and these reports showed that the petitioner was still insane. We do not know whether any reports about the mental condition of the petitioner were sent after September 10, 1955 nor do we have any information in regard to his mental condition subsequent to that date. But about 11 years later we find from the medical history sheet of the petitioner that he was reported harmless and was found behaving normally since December 23, 1966. What was the date on which this entry was made in the medical history sheet does not appear from the record but obviously it must be subsequent to December 23, 1966. It appears that this report was communicated by the Superintendent, Hazaribagh Central Jail to the State Government in the Law Department and though, through this report the State Government in the Law Department was informed that as a result of the medical examination the petitioner was found harmless and was behaving normally, no action was taken by the Law Department for the purpose of securing release of the petitioner from the jail.

2. Thereafter on February 11, 1969, the petitioner was again examined by the Ist Assistant Superintendent, Ranchi Mansik Arogyashala, Kanke and the medical report made by this Officer showed that the petitioner was fully recovered and was free from any symptoms since December 23, 1966 and was fit for discharge. This medical report was sent by the Superintendent, Hazaribagh Central Jail to the State Government in the Law Department and it was stated that the petitioner was for discharge "in the care of his guardian or surety" and that necessary orders should be passed in that behalf. Now on receipt of this intimation, the State Government in its Law Department

should have immediately directed release of the petitioner since he was certified to be fit for discharge. But instead of doing so, the State Government directed the Superintendent, Hazaribagh Central Jail by its letter dated April 7, 1969 to keep the petitioner in safe custody as a criminal lunatic for three years and to send regular medical reports for consideration. We fail to see how the State Government could possibly ask the Superintendent, Hazaribagh Central Jail to keep the petitioner in custody for a period of three years when the petitioner was already declared to have fully recovered and was fit for discharge. This is clearly symptomatic of the utter callousness and indifference on the part of the officers of the State Government dealing with this matter.

3. The State Government in the Law Department then addressed a communication dated September 15, 1971 to the Superintendent, Hazaribagh Central Jail asking him to send an up-to-date report in regard to the mental condition of the petitioner as also to inform the State Government whether anybody has ready "to take surety of the lunatic" or not and if there was anyone ready to do so, then to obtain a written application from him and to forward it to the State Government. It is again not possible to understand as to why the State Government should have insisted on a surety before releasing the petitioner from the jail when the petitioner was found to be completely recovered and perfectly fit for discharge and there was absolutely no warrant or justification in law to detain him. It appears that pursuant to the above communication received from the State Government, the Superintendent, Hazaribagh Central Jail addressed a letter dated March 11, 1972 to the father of the petitioner asking him whether he was ready to stand surety for the petitioner but no reply was received and this fact was reported by the Superintendent to the State Government on April 22, 1972. The result was that the petitioner continued to rot in jail for a further period of 10 years, though he was fully recovered and there was no reason or justification to continue his detention in the jail. It is shocking to our conscience that a perfectly sane person should have been incarcerated within the walls of a prison for almost 16 years without any justification in law whatsoever. If this had been a solitary case, it could perhaps have been explained away by offering some excuse, though I do not see how any excuse can be valid when it involves imprisonment of an individual for almost 16 years without any authority of law. But we find from the decision given by this Court on May 11, 1982 in Writ Petition (Criminal) No. 73 of 1982 (Miss Veena Sethi v. State of Bihar ((1982) 2 SCC 583 : 1982 SCC (Cri) 511) that several other prisoners who had become sane long years ago were also detained in prison in the State of Bihar as criminal lunatics for years and they continued to rot in jail until they were released by this Court.

4. But the suffering of the petitioner does not end here. He was examined by Dr. A.K. Prasad, Mental Specialist of Mansik Arogyashala, Kanke on January 24, 1982 and the medical opinion given by Dr. A.K. Prasad was as under :

He is calm, quiet, well-behaved and respectful to others. He is well oriented and talks relevantly and coherently. No hallucination and delusion. His memory and judgment are normal. Insight is present and he is fit to be removed from this place.

The record shows that instead of releasing the petitioner from the jail on the basis of this medical opinion, the father of the petitioner was once again tried to be contracted by addressing a letter but the record does not show whether any such letter was in fact addressed and what was the result of such effort. However, the fact remains that the petitioner continued to remain in the jail until May 8, 1982 when once again he was subjected to medical examination by Dr. A.K. Prasad and this time also the medical opinion was the same namely, that the petitioner was "mentally fit" and it was clearly stated in the medical report that he should be removed from the jail. This medical opinion though given on May 8, 1982 was not sent to the State Government until July 30, 1982 and it seems

that the decision of the State Government was being awaited at the time when the writ petition was heard by us.

5. The story narrated by us above makes very sad and distressing reading. Have we lost all respect for the dignity of the individual and the worth of the human person so nobly enshrined in our Constitution that we are prepared to forget a person once he is sent to jail and we do not care to enquire whether he is continued to be detained in the jail according to law or not. It should be a matter of shame for the society as well as the administration to detain a person in jail for over 16 years without authority of law. We would therefore direct that the petitioner should be released from jail and set at liberty forthwith. The State Government will provide to the petitioner at the time of release necessary funds for the purpose of meeting the expenses of his journey to his native place as also maintenance for a period of one week.

6. We may point out that the petitioner has been able to obtain this relief from us because his case was brought before us by the Free Legal Aid Committee, Hazaribagh. But we cannot rule out the possibility that there may be many more prisoners in the jails in Bihar who are continuing to be detained as criminal lunatics though they have become sane long ago. Free Legal Aid Committee, Hazaribagh rendering yeomen service in the field of legal support for the poor, but even so it cannot reach all cases where persons are being detained as criminal lunatics though they have become perfectly sane and are fit for discharge. We would therefore direct the State Government to file in court a statement setting out the names and particulars of persons who are detained as lunatics in the various prisons in the State of Bihar, whether after conviction or otherwise. The statement shall be filed by the State Government within six weeks from today and a copy thereof shall be supplied to the learned Advocate appearing on behalf of the petitioner. We would also direct the State Government to make an annual census as on October 31 of each year of under-trial persons who are in jail for a period of more than 18 months without committal proceedings or trial having commenced before the magistrate or in case of commitment, before the court of sessions. Such census list shall be filed by the State Government with the Registrar of the High Court of Patna on or before December 31 of each year. We would request the High Court to ensure that such census list is filed by the State Government on or before December 31 in each year and if it is not so filed, the High Court will take necessary action in that behalf. The High Court will also scrutinise such census list in order to satisfy itself that there are no under-trial prisoners who are detained in jail for more than 18 months without their trial having been commenced, either before the magistrate or the court of sessions, and if there are such under-trial prisoners, the High Court will take steps for the purpose of expediting the trial of such under-trial prisoners.

7. Whilst making this Order we may make it clear that we are not finally disposing of this writ petition, because the question would still remain to be considered whether the petitioner is entitled to compensation from the State for his illegal detention in contravention of Article 21 of the Constitution. That is a question which we shall proceed to consider at the next hearing of the writ petition. There is an identical question pending before this Court in W.P. (Criminal) No. 73 of 1982 and it would therefore be convenient to heat the present writ petition along with that writ petition. We accordingly direct that both writ petitions may be placed on board on September 6, 1982 for direction in regard to the next date of hearing.

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