P L D 2017 Lahore 342

Before Sayyed Mazahar Ali Akbar Naqvi, J

AYYAZ AHMAD---Petitioner

Versus

SAQIB NAZIR, SUPERINTENDENT, CENTRAL JAIL---Respondent

Criminal Original No.2191-W of 2016, decided on 20th October, 2016.

Pakistan Prison Rules, 1978---

----R. 197---Contempt of Court Ordinance (IV of 2003), Ss.3 & 5---Constitution of Pakistan, Arts. 4 & 204---Contempt of Court---Medical treatment of prisoner---Petitioner was a convict prisoner and his grievance was that he had not been given medical treatment as prescribed by Medical Specialist---Validity---State was responsible to provide facility of treatment when a person was confined through process of law---Punishing a wrong doer was demand of law but provision of facility of health was a basic necessity, safeguarded under R.197 of Pakistan Prison Rules, 1978---Such facility was also guaranteed under Art. 4 of the Constitution---Health of a prisoner was a primary duty of local administration, hierarchy of jail and finally Government of the Province---High Court depreciated the act of local administration, jail hierarchy as well as government functionaries, who failed to perform their duties and directed the authorities to provide health facility to petitioner in letter and spirit as per Jail Manual---Contempt petition was disposed of accordingly.

Abid Saqi for Petitioner.

Ch. Akbar Ali Kung, Assistant Advocate General Punjab with Rana Abdul Rauf, DIG Prison and Muhammad Abu Bakar, Deputy Superintendent, Central Jail, Faisalabad.

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.---Through this petition, filed under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with Sections 3 and 5 of Contempt of Court Ordinance, 2003, following, prayer has been made:-

> "It is therefore most respectfully prayed that this petition may very graciously be allowed and appropriate proceedings against the respondents for the commission of contempt of this Hon'ble Court may very kindly be initiated in accordance with law.
>
> It is further prayed that the respondent may also kindly be convicted for having committed the contempt of this Hon'ble Court".

2. At the very outset, it has been argued by learned counsel for the petitioner that this Court while dealing with C.M. No.2 of 2016, vide order dated 24.08.2016, issued a direction keeping in view the report submitted by the jail authorities, which is reproduced as under: -

> "The report of the medical board depicts that the petitioner is in need of some specialized treatment. In view of the above, a direction is issued to the Superintendent, Central Jail, Faisalabad, to get him treated from Allied Hospital, Faisalabad, quite in accordance with law. A direction is also issued to the Medical Superintendent, Allied Hospital, Faisalabad, to provide proper facilities for medical treatment to the petitioner as per law".

In pursuance of the direction issued by this Court, as per the comments submitted by the respondent-authority, Dr. Mughees Ather, Gastroenterologist of Allied Hospital, Faisalabad, visited the Jail on 27.09.2016, who examined the petitioner on the same day and prescribed further diagnostic tests to evaluate the disease, the petitioner is suffering from. Subsequent to that, the petitioner was not given the treatment as per advice of the Gastroenterologist and as such instant contempt petition was filed.

3. This Court vide order dated 21.09.2016 sought report and parawise comments from the respondent, which were duly submitted in the Court.

4. During the course of proceedings, it transpired that the petitioner was victimized due to the reason that a political figure from the Punjab, a member of the Provincial Assembly, holding the portfolio of Provincial Minister, is instrumental as such the present petitioner who has already been declared high-profile dangerous criminal, even prior to any conviction from a court of competent jurisdiction. It is further argued by the learned counsel for the petitioner that whole process has been initiated against the petitioner solely due to the intervention of the political figure, otherwise the petitioner is only involved in the instant criminal case on the basis of supplementary statement and he was convicted by the learned trial court to imprisonment for life. As far as other case is concerned, that is offshoot and that has been registered under Arms Ordinance, which is still pending adjudication.

5. As the treatment of the petitioner was being hampered due to notification by which he was declared high-profile dangerous criminal, therefore, this Court deemed it appropriate to issue notice to the DIG Prison, who was the signatory of the notification to declare the petitioner as high profile dangerous criminal, who entered appearance and has stated that the reason for declaring the petitioner as high profile dangerous criminal was that he was recommended by the local administration of Jail. When confronted the circumstances, which prompted the local administration to declare the petitioner as high- profile dangerous criminal, DIG prison could not furnish any legal justification.

6. As the only hindrance, which this Court sensed coming in the way of proper treatment was that as the petitioner was declared as high profile dangerous criminal, therefore, the jail authorities were reluctant to send him for treatment outside the jail premises. This Court directed the DIG Prison to revisit the earlier notification as no

justifiable reasoning has been assigned while declaring him as high profile dangerous criminal, he sought an adjournment for a day, which was granted to him. Today DIG entered appearance and has stated that the petitioner has been de-notified as high-profile dangerous criminal and as such informed the Court that he was sent to Allied Hospital, Faisalabad, for diagnostic tests as per the recommendations of the Gastroenterologist, in pursuance of the order passed by this Court.

7. It is an admitted fact that the petitioner is only involved in one case, whereas, the other case is its offshoot registered under Arms Ordinance. Further, the petitioner is not previous convict, except the recent conviction recorded by the learned trial court for which the appeal is pending before Lahore High Court, Lahore.

8. As far as prayer of the petitioner seeking a direction for his treatment is concerned, undeniably it is the responsibility of the State to provide facility of treatment, when a person is confined through the process of law. Punishing a wrong-doer is demand of law, but provision of facility of health is a basic necessity, which has been safeguarded under Rule 197 of Pakistan Prison Rules, 1978. Further, the same has also been guaranteed under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The same is reproduced as under:-

> **"4. Right of individuals to be dealt with in accordance with law, etc**. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In Particular

> (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
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> (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
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> (c) no person shall be compelled to do that which the law does not require him to do even prior to conviction by a court of competent jurisdiction, if a person is detained in a Jail.

It has been observed by this Court that according to the scheme of law, Sections 167/344, Cr.P.C. fully justify and play a pivotal role to safeguard the rights/facilities to be provided to the prisoner under detention in a manner, which is duly prescribed by law. A Magistrate of the area is under obligation to evaluate and provide safeguard in terms of the aforesaid provision prior to conviction. However, subsequent to that, Rule 395(i) of Prison Rules, 1978, assigns the same duty to the Sessions Judge of the District, who is supposed to visit Jail premises along with Deputy Commissioner/DCO and Medical Superintendent of District Headquarter Hospital to know and evaluate all facilities, including health facility. The sole purpose of their visit once in a month is to provide an opportunity of hearing to the prisoners to know the state of affair in Jail premises. As an abundant caution, Rules 913, 914 and 915 also assign the Sessions

Judge the status of ex-officio visitor of the prisons, entitling him to examine any book, paper and record in the prison, and may interview any prisoner confined therein regarding the treatment of Jail authorities. Under Chapter 27 of Volume III of High Court Rules and Orders, the same supervisory authority has been conferred to the Judges of the superior Court (High Court) by which they are supposed to visit Jail of their Administrative Districts with the same rational to know the condition of prisoners, including health.

All these aspects are taken care in the Universal Declaration of Human Rights under Articles, 3, 5, 9, 10 and 11 and it also refers to International Covenant on Civil and Political Rights. Articles 6, 7, 8, 9, 10, 11, 14 and 15 are glaring examples, where the persons are given right of adequate standard of living, including food and clothing as incorporated in Article 11 of International Covenant on Economic, Social and Cultural Rights. This shows the anxiety of international community to protect the rights of those whose liberty has been curtained by the process of law.

9. In Islam, this concept was introduced 1400 years ago by the Holy Prophet (Peace Be Upon Him). Imam Muhammad Shirazai in his article on the "The Rights of Prisoners According to Islamic Teachings" states the duly of judge by referring to original sources of Islam and states:

> In the book Al-Mabsout the author, Sheikh Al-Tousi, said when the judge assumes office, the first thing he should look at is the affairs of the prisoners in an isolated prison, as prison is a (place of) torment (for the prisoner). There may be cases where someone has served beyond his sentence unnoticed.

He further states

> In Sharae' al-Islam, (the author) Muhaqqiq al-Hilli states (the newly appointed judge must) inquire about the prisoners and prepare a list of the names of the prisoners ...the duty of the judge does not end with issuing the prison sentence, but it is his duty to follow the affairs of the prisoners through his assistants and through government organizations responsible for preparing prisoners to join the community again".

10. While seeking analogy from the above referred statutes, the same has been made part of Prison Rules, 1978 in the spirit of above said teachings resulting into incorporation of Rule 197 of Pakistan Prison Rules, 1978, which has been embodied, and as such it would he beneficial and important for the present purposes therefore, same is reproduced as under:--

> "Rule 197.-- (i) Where it is necessary to remove a convicted prisoner or an under trial prisoner to hospital outside the prison for operative or other special treatment which cannot conveniently be given in the prison itself:
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> (a) The orders of Government shall be obtained through the Inspector-General, in cases in which a convicted or under trial prisoner is to be admitted to the hospital for treatment provided that in, emergent cases the Superintendent of

the prison is authorised to anticipate the sanction of Government and if he does so, he should make an immediate report through the Inspector-General.

(b) In cases in which a convicted or under-trial prisoner is taken to hospital for treatment as an out patient only or for X-ray examination, the Superintendent of the prison is empowered to authorise this visit himself.

(ii) The discretion given to the Superintendent to anticipate the sanction of Government, does not apply to cases in which it is proposed to remove a prisoner to a hospital in another station. In such cases the orders of the Inspector General must be obtained in advance, and the Inspector General will make an immediate report to Government in all cases in which he allows prisoners to be so moved in anticipation of sanction.

(iii) In all cases in which a prisoner is removed to a hospital for the purpose of an operation, the removal should take place as close as possible to the time fixed for operation and the prisoner should be brought back to the prison hospital as soon as this can conveniently be done.

(iv) Prisoners admitted in hospital outside the prison shall always be guarded by the Police.

(v) All expenses incurred by the hospital authorities in connection with the treatment of prisoners from prison will be borne by the Health Department.

Perusal of the aforesaid provision clearly reflects that sanctity is attached to the health of a person irrespective of the fact whether he is confined as a under-trial prisoner or is a convicted by a court of competent jurisdiction, but as far as health of the prisoner is concerned, that seems to be primarily duty of the local administration of Jail, hierarchy of Jail and finally the Government of said Province. But in the instant case, unfortunately the local administration of Jail, hierarchy as well as government functionaries failed to perform their duties, which is deprecated, hence, the prayer of the petitioner is acceded to with a direction to the concerned quarters to provide health facility to the petitioner in letter and spirit as per Jail Manual as referred above.

11. With these observations, this contempt petition stands disposed of.

MH/A-118/L Order accordingly.

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