

Before M. M. Punchhi, J.

CHANDIGARH ADMINISTRATION,—Petitioner.

versus

GURCHARAN SINGH TOHRA AND OTHERS,—Respondents.

Criminal Revision No. 480 of 1984.

April 5, 1984.

Punjab Jail Manual—Paragraphs 555, 555-A, 558, 559, 559-A, 560 and 560-A—Under trials lodged in a jail—Number of visitors—Interviews with friends and relatives—Court—Whether has power to regulate visitors and their interviews.

Held. that neither the right as given under paragraph 559-A of the Punjab Jail Manual to the unconvicted prisoner can be curtailed nor can the Superintendent of Jail be directed to permit a particular number of persons at the time of the interview by the Court. The matter is left to the discretion of the Superintendent Jail to be regulated in the spirit of the provisions of the Punjab Jail Manual and in particular as stated in paragraphs 555, 555-A, 558, 559, 559-A, 560 and 560-A. The court as such is not a respecter of any person. All what it has is an onerous duty to ensure that during detention of a prisoner, he is not subjected to any torture. The Court could neither fix the number of interviewers nor curtail or enlarge their limit. That is within the domain of jail authorities for which there are built-in safeguards not only in the Punjab Jail Manual but under the Prisons Act, 1894 as well.

(Para 5).

Petition under Section 401 Cr. P. C. for revision of the order of Shri K. C. Gupta, H.C.S., Chief Judicial Magistrate, Chandigarh, dated 28th March, 1984 rejecting the application for review of his own order dated 23rd March, 1984 and affirming his own order dated

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23rd March, 1984 in which he allowed the applicants (accused) to be entitled to two interviews a week with their relatives and friends and permitted 10 persons to meet each of the accused twice a week subject to rule 560 and 560-A.

Anand Swaroop, Senior Advocate, with M. Swaroop Advocate,
for the Petitioner.

G. S. Grewal, Senior Advocate, and H. S. Nagra, Advocate, with
him, for the Respondents.

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) This petition for revision has been filed by the Chandigarh Administration against two orders passed by Shri K. C. Gupta, Chief Judicial Magistrate, Chandigarh; one dated 23rd March, 1984 passed *ex parte* and the other dated 28th March, 1984 passed on refusing to review the earlier *ex parte* order.

(2) In the wake of the incarceration of four Akali leaders Sarvshri Surjit Singh Barnala, Balwant Singh Ramuwalia, Gurcharan Singh Tohra and Randhir Singh Cheema, the respondents herein, who are under-trials under section 188, Indian Penal Code, and section 2 of the Prevention of insult to National Honour Act, 1971, the District Jail Authorities, Burail, Chandigarh, were required to regulate their interviews with their friends and relatives in accordance with the provisions of the Punjab Jail Manual. In working thereof, dissatisfaction was expressed by the respondents to the District and Sessions Judge, Chandigarh, when he went to inspect the jail on 23rd March, 1984 by presenting an application, an extract of which is reproduced below:—

“That the Superintendent does not allow more than two persons to interview the petitioners and the relatives and friends of the petitioners are put to great harassment.

That para 559-A of the Jail Manual does not place any restriction on number of visitors. Even in case of N.S.A., the High Court has allowed 10 persons to meet S. Jagdev Singh Talwandi twice a week.

It is, therefore, requested that necessary instructions may kindly be issued to the Superintendent Jail to allow at

least 10 persons to interview the petitioners twice a week during the trial period."

(3) The learned Sessions Judge marked the application to the Chief Judicial Magistrate, Chandigarh, who on that very day passed an *ex parte* order in the presence of neither party by observing as follows :—

"I have given careful thought to this application. Under Rule 559-A of the Jail Manual, the unconvicted criminal is entitled to two interviews each week with his relatives and friends. So, the applicants (accused) are entitled to two interviews a week with their relatives and friends. Keeping in view the overall situation, I permit 10 persons to meet each of the accused twice a week. However, these interviews shall be subject to rules 560 and 560-A".

The aforesaid order was sought to be reviewed by the Chandigarh Administration. Rejecting the prayer, the learned Chief Judicial Magistrate observed as follows :—

"It is admitted by the Special Public Prosecutor that the accused are important leaders and are popular and many persons come to seek interview with them. Since the under-trials are popular leaders, so the number fixed by this Court that 10 persons are entitled to meet each of the accused every week is not unjust. In fact, by order dated 23rd March, 1984 I had limited the number of persons, who could seek interview with the under-trials. If a large number of persons are coming to seek interview with the under-trials and the Jail Superintendent finds that they are not genuine friends and relatives then certainly the Jail Superintendent could disallow the interview under Rule 560 of the Jail Manual. It is not the case that if 10 genuine friends and relatives have not come for seeking interview then in every case he must allow 10 persons to meet the under-trials. However, if 10 genuine friends and relatives are available for interview then he must allow them. The order made on 23rd March, 1984 is just and fair and equitable. There is no justification to review this order. The spirit of law as expressed in Rule 559-A of the Jail Manual cannot be barred by any arbitrary action."

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(4) The orders of the learned Chief Judicial Magistrate tended to throw open a very wide debate. His power to pass such orders was itself questioned. The strength of paragraph 559-A of the Punjab Jail Manual also needed testing whether it was a statutory provision or a mere executive instruction. The learned counsel for the parties, however, have played cool and have confined their attention to only one point, that is, about the number of persons to be present at the time of bi-weekly interview. Whereas the learned Special Public Prosecutor disputes the assertion of the respondents that only two persons are permitted at the time of such interview, the learned counsel for the respondents asserts that not more than two persons are allowed at each interview, causing frustration to a large number of friends and relatives, which each respondent has. And whereas the Special Public Prosecutor asserted that availability of 10 relatives and friends on the day of the interview enjoins now the Jail Superintendent to grant each respondent their audience to him at the cost of the rights of other under-trial population, due for such facilities under, the Punjab Jail Manual, the learned counsel for the respondents asserted that by curtailing the figure at 10, the order tended to be in favour of the Chandigarh Administration.

(5) I have carefully considered the cross assertions of both sides and I have come to the view that neither the right as given under Paragraph 559-A of the Punjab Jail Manual to the unconvicted prisoner can be curtailed nor can the Superintendent of Jail be directed to permit a particular number of persons at the time of the interview, by the Court. The matter is left to the discretion of the Superintendent Jail to be regulated in the spirit of the provisions of the Punjab Jail Manual and in particular as stated in Paragraphs 555, 555-A, 558, 559, 559-A, 560 and 560-A. The Court as such is not a respecter of any person. All what it has is an onerous duty to ensure that during detention of a prisoner, he is not subjected to any torture. See in this connection *Sunil Batra v. Delhi Administration and others*, (1). The Court, to my mind, could neither fix the number of interviewers nor curtail or enlarge their limit. That is within the domain of jail authorities for which there are built-in safeguards not only in the Punjab Jail Manual but under the Prisons Act, 1894 as well.

(1) AIR 1978 S.C. 1675.

(ii) For the view above taken, this petition is allowed. The impugned orders of the Chief Judicial Magistrate are set aside. The observations aforemade are sufficient guidelines to the jail authorities.

N.K.S.