

Kharkara. Later on, the executing Court ordered the issuance of fresh warrants of actual possession in respect of land measuring 96 kanals 16 marlas, as per list of properties supplied by the decree holders. It appears that this confusion to the executing court arose because in the decree dated 3rd April, 1991, it was not specifically mentioned that it was for possession of 1/2 share in the land measuring 192 kanals 1 marla. However, in view of the stand taken by the learned counsel for the plaintiff-respondent decree holder before me, at the bar, as referred to above, this confusion no longer subsisted and the present decree being a decree for possession in respect of 1/2 share in the total land measuring 192 kanals 1 marla, only warrants for symbolic possession could be issued under Order 21 Rule 35 (2), CPC, and not warrants for actual possession as was done by the executing Court in this case. In my opinion, the learned Executing Court committed an illegality and irregularity in the exercise of its jurisdiction, which requires interference by this Court, in the exercise of its revisional jurisdiction.

(20) The authority AIR 1971 SC, 2324 (supra), relied upon by the learned counsel for the plaintiff-respondent decree holder, in my opinion, would be of no help to the decree holder respondent. In fact, on the facts and circumstances of the present case, it would be clear that this Court has jurisdiction to interfere with the order dated 2nd May, 1998 passed by the executing Court, in the exercise of its revisional jurisdiction.

(21) For the reasons recorded above, the present revision petition is allowed, the order dated 2nd May, 1998 passed by the Executing Court is set aside and while allowing the objection, petition of the objector-petitioners, it is held that warrants of actual possession could not be issued in execution of the decree passed by the Court. There shall however, be no order as to costs.

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**S.C.K.**

*Before T.H.B. Chalapathi, J.*

NIHAL SINGH,—*Petitioner*

*versus*

THE STATE OF PUNJAB & OTHERS,—*Respondents*

CRL. M. No. 11136-M of 1999

9th May, 2000

*Constitution of India, 1950—Arts. 14 & 15(1)—Indian Penal Code, 1860—S. 302—Punjab Jail Manual—Paragraph 576(1)—*

*Equality before law—A life convict for the offence u/s 302 IPC seeking 'B' Class facilities in accordance with paragraph 576-A—Paragraph 576-A classifies convicted prisoners into three categories on the basis of their social status, education or superior mode of living—such classification is not reasonable—There cannot be any discrimination among similarly situated persons—Paragraph 576-A of the Manual quashed being unconstitutional and ultra vires.*

Held that the preamble of the Constitution seeks to secure to all its citizens, justice social, economic and political and equality of status to all. Articles 14 & 15(1) clearly show that there cannot be any discrimination among the persons similarly situated and there cannot be any discrimination on the ground of place of birth. The classification for the purpose of discrimination must be based on reasonable basis and must have nexus to the object sought to be achieved.

(Paras 5 & 6)

Further held, that a convict is convict, a murderer is murderer. There cannot be any difference in the gravity of their offence. A person who is an affluent and influential committing a murder has to be treated in the same manner as a person who is poor committing the same offence. The procedural laws do not prescribe different procedure for the trial of the offenders on the basis of the classification as contained in paragraph 576-A of the Punjab Jail Manual. The place of birth does not necessarily mean location. It also takes in the family in which the citizen was born. In the same locality, one person may be born in poor family and another in a rich family. There cannot be any discrimination between these two persons because one is born in a poor family and another in a rich family. Both have to be treated alike and the laws have to be applied equally. A person who is born in rich family cannot be provided with more protection or more facilities and comforts under law. If different standards are applied to the persons on the basis of their social status, education or mode of living to which they have been accustomed to, it does not mean that all are treated alike. If different treatment is given to the rich and the poor basing on their social status, education or superior mode of living it amounts to saying that all men are created equal except the poor, uneducated and would not enjoy a social status in life, instead of saying that all men whether poor or rich are created equal.

(Para 8)

Further held, that there is no justification for the continuation of the prevailing system of classification of prisoners into class 'A', 'B' and

'C'. Paragraph 576-A of the Punjab Jail Manual is unconstitutional and there cannot be any classification of convicted prisoners on the basis of their social status, education or habit of living to which they have been accustomed to namely the superior mode of living. Accordingly, I quash paragraph 576-A of the Punjab Jail Manual as ultra vires and unconstitutional.

(Para 13)

A.S. Trikha and Mrs. Baljit Khullar, Advocate, *for the petitioners*

G.S. Gill, D.A.G. Punjab for the state of Punjab

### JUDGMENT

*T.H.B. Chalapathi, J*

(1) The petitioner in Criminal Misc. No. 11136-M of 1999 is an under trial prisoner facing trial under Section 302 I.P.C. whereas the petitioner in Criminal Misc. No. 32919-M of 1999 has been sentenced to life imprisonment for the offence under Section 302 I.P.C. by the Court Martial on 4th September, 1989 and the petitioner in Criminal Misc. No. 30288-M of 1999 is a life convict for the offence under Section 302 read with section 34 I.P.C.

(2) The petitioners are seeking that they should be classified as 'B Class' prisoners in view of their social status, education and their superior mode of living to which they have been accustomed to in accordance with paragraph 576-A of the Punjab Jail Manual. Since the constitutionality of the said provision is involved in these petitions, they are disposed of by this common judgment.

(3) Paragraph 576-A of the Punjab Jail Manual reads as follows :—

576-A(1) Convicted persons shall be divided into three classes, namely A, B and C Class 'A' Will contain all prisoners who are :

- (a) non-habitual prisoners of good character.
- (b) by social status, education and habit of life been accustomed to a superior mode of living, and
- (c) have not been convicted of —
  - (i) offences involving elements of cruelty, moral degradation or personal greed ;
  - (ii) serious or premeditated violence ;

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- (iii) serious offences against property ;
  - (iv) offences relating to the possession of explosives, firearms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed.
  - (v) abetment of incitement of offences falling within these sub clauses.

(2) Class 'B' will consist of prisoners who by social status, education or habit of the life have been accustomed to a superior mode of living. Habitual prisoners may be included in this class by order of the Inspector General of Prisons.

(3) Class 'C' will consist of prisoners who are not classified in classes A and B.

(4) Thus the above paragraph classifies the prisoners into Class 'A' Class 'B' and 'C'. In Classes 'A' and 'B' the prisoners are those who have social status, education and habit of life to which they have been accustomed to superior mode of living. The question is whether such a classification of convicts can be said to be constitutional.

(5) Article 14 of the Constitution of India provides 'Equality before law'. According to the said Article the State shall not deny to any person 'Equality' before the law' or equal protection of laws within the territory of India. It has been held by the Supreme Court in *Shrikishan vs. State of Rajasthan (1)* that equal protection means the right of equal treatment in similar circumstances. Thus it is clear that equal treatment must be in the privileges conferred and in the liabilities imposed. Article 15(1) of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The Preamble of the Constitution seeks to secure to all its citizens, Justice, social, economic and political and equality of status to all.

(6) Articles 14 & 15(1) clearly shows that there cannot be any discrimination among the persons similarly situated and there cannot be any discrimination on the ground of place of birth. The classification for the purpose of discrimination must be based on reasonable basis and must have nexus to the object sought to be achieved. In *Jagannath Prasad Sharma vs. The State of Uttar Pradesh and others (2)* it was held by the Apex Court that that equal protection in law does not postulate equal treatment of all persons without discrimination ; it merely

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(1) 1955(2) S.C.C. 531

(2) A.I.R. 1961 S.C. 1245

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guarantees the application of the same laws alike and without discrimination to all persons similarly situated.

(7) In *State of Mysore and another Versus P. Narasinga Rao* (3) it was held by the Supreme Court that the classification can be sustained if it is found on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved.

(8) From a reading of Articles 14 and 15 of the Constitution, it can safely be stated that the persons who are similarly placed or circumstanced are entitled to equal treatment. The question in these petitions that arises is whether the classification of the prisoners into Class 'A', Class 'B' and Class 'C' on the basis of their social status, education or the mode of living to which they have been accustomed to, is reasonable. There cannot be any doubt that a convict is convict, a murderer is murderer. There cannot be any difference in the gravity of their offence. A person who is an affluent and influential committing a murder has to be treated in the same manner as a person who is poor committing the same offence. The procedural laws do not prescribe different procedure for the trial of the offenders on the basis of the classification as contained in paragraph 576-A of the Punjab Jail Manual. The place of birth does not necessarily mean location. It also takes in, in my view, the family in which the citizen was born. In the same locality, one person may be born in poor family and another in a rich family. There cannot be any discrimination between these two persons because one is born in a poor family and another in a rich family. Both have to be treated alike and the laws have to be applied equally. A person who is born in rich family cannot be provided with more protection or more facilities and comforts under law. If different standards are applied to the persons on the basis of their social status, education or mode of living to which they have been accustomed to, it does not mean that all are treated alike. If different treatment is given to the rich and the poor basing on their social status, education or superior mode of living it amounts to saying that all men are created equal except the poor, uneducated and would not enjoy a social status in life, instead of saying that all men whether poor or rich are created equal.

(9) It is useful to extract the observations/recommendations of All India Jail Manual Committee 1957—59.

“65. We have carefully considered the question of division of prisoners. We hope that eventually there would be no such

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division. However, so long as different classes and different modes of living prevail in society, we consider that with a view to avoiding undue hardship and misery, it would be desirable to classify prisoners into two divisions viz. Division A and Division B. As the social stratification gets merged and as the fusion of the social classes becomes more extensive this division may be gradually done away with.”

(10) Likewise, the Justice Mulla Committee Report 1980-83 observed as follows :—

“At present prisoners are classified into A B and C or 1, II, III classes on the basis of their social economic and educational background. We are of the view that such classification of prisoners is not proper. We however recognise that prisoners having a different social or educational background may have to be given certain facilities like accommodation in a cell or dormitory books facilities for continuation of education amenities for writing and pursuing intellectual activities etc.”

(11) In *Rakesh Kaushik vs. B.L. Vig (4)* the Apex Court while disposing of the petition filed by an inmate of Tihar Jail complaining against certain malpractices being allegedly perpetrated there and on noticing the existence of classification which is now under consideration made certain observations and came down with a heavy hand on the prevalence and continuance of such a practice. It is useful to extract the following from the judgment of the Apex Court :—

“We must also stress that the human rights of common prisoners are at a discount and in our Socialist Republic moneyed ‘B’ Class convicts operate to oppress the humbler inmates. Can there be inequality in prison too on the score of social and financial status ? Bank robbers in ‘B’ class because they are rich by robbery and nameless little men in ‘C’ class because they are only common Indian’. Article 14 is suffocated if this classification is permitted.” (para 9)

“17. ‘B’ Class status for prisoners is going by averments in the petition, a pampering process much abused by officials and in a ‘class’ culture, obnoxious to the Constitution. *Equality before the law cannot co-exist with affluent backgrounds being looked after with luxury and solicitude and lowly indigents being treated as paraicha inside the prison.....*” (Emphasis supplied) (Para 17 P 1772).

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(12) The preamble of the Constitution secures to all its citizens "Justice, Social, Economic and Political Equality of status and of opportunity and to promote among them all Fraternity assuring dignity of the individual and the unity and integrity of the nation." Besides the social philosophy now permeating the Indian Republic, the modern concepts of criminology which recognise reformation and rehabilitation as the primary objective of imprisonment, militate against any such archaic practice of categorising prisoners into 'B' and 'C' on the basis of social and economic status.

(13) After considering the various aspects of the classification of the prisoners, I am of the considered opinion that there is no justification for the continuation of the prevailing system of classification of prisoners into class 'A' 'B' and 'C'. I am also of the opinion that paragraph 576-A of the Punjab Jail Manual is unconstitutional and there cannot be any classification of convicted prisoners on the basis of their social status, education or habit of living to which they have been accustomed to, namely the superior mode of living. Accordingly I quash paragraph 576-A of the Punjab Jail Manual as ultra vires and unconstitutional.

(14) The petitions are, accordingly, dismissed.

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**R.N.R.**

*Before V.M. Jain, J.*

M/S SARAS PAPER PACK,—*Petitioner*

versus

SHYAM SUNDER,—*Respondent*

C.R.No. 4201 of 1999

12th July, 2000

*Code of Civil Procedure, 1908—O.XV Rl. 5—Defendant failed to deposit arrears of rent on the first date of hearing and the monthly rent due—Trial Court striking off the defence—No representation of any kind made by defendant—Merely because the defendant had taken some pleas in the suit would not entitle him not to deposit the monthly amount due during the pendency of the suit—Defendant not entitled to further time to deposit the rent—Order of the trial Court justified.*

Held that, the defendant had neither deposited the arrears of rent admitted by him on the first date of hearing nor he had deposited the monthly rent due during the pendency of the suit, whether or not he was admitting any amount to be due. Merely because the defendant