IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3428 OF 2023
WITH APPLN/1025/2024 IN APPLN/3428/2023

Nara Chandrababu Naidu s/o
Kharjura Naidu,
Age 74 years, Adult Indian Inhabitant,
R/o. Karakatta Road, Undavalli Village,
Tadepalli Mandal, Guntur District,
Andhra Pradesh State ... **Applicant**

VERSUS

1) State of Maharashtra
2) Kishan Gopinathrao Khedkar,
Sr. Jailer Nanded District Prison,
Dharmabad, Maharashtra ... **Respondent**

...

WITH

CRIMINAL APPLICATION NO. 1048 OF 2024

NAKKA ANANDA BABU,
S/o NAGENDRAM,
Age 58 years, Adult Indian Inhabitant
R/o H.No.7-6-350l5, l't Lane,
Santhi Nagar, Guntur, Guntur District,
Andhra Pradesh State – 522002 ... **Applicant**

VERSUS

1) STATE OF MAHARASHTRA
Through police station officer,
Dharmabad Police Station, Dharmabad
Dist:Nanded.

2) KISHAN GOPINATH RAO KHEDKAR,
Sr.Jailor Nanded District Prison,
Dharmabad, Maharashtra. ... **Respondents**

...

Advocates for Applicant : Mr. Sidharth Luthara, Senior Advocate a/w Aayush Kaushik i/b Mr. Satyajit S. Bora, a/w Ms. Pratibha Choudhari
A.P.P. for Respondents/State : Mr. V.K. Kotecha

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 03.05.2024
PRONOUNCED ON : 10.05.2024

JUDGMENT : (PER : MANGESH S. PATIL, J.)

By way of these separate applications under Section 482 of the Code of Criminal Procedure, accused No. 1 and accused no. 16 from Crime No. 67/2010 registered with Dharmabad Police Station District Nanded on 20.7.2010 for the offences punishable under Sections 353, 324, 332, 336, 337, 504, 506 read with Section 109 and Section 34 of the Indian Penal code, are seeking quashment of the crime, the charge-sheet and the criminal case.

2. At the request of the parties, we have heard both these matters simultaneously and finally.

3. The sum and substance of the allegations, as can be discerned are to the effect that both these applicants who are ex Chief Minister and Peoples Representatives along with their associates totalling 66 persons were arrested in connection with Crime No. 64/2010 registered with same police station on 17.07.2010 for the offences punishable under Sections 143, 188 of the Indian Penal Code and 135 of the Maharashtra Police Act. They were produced before the concerned Magistrate at Dharmabad and were remanded to magisterial custody till 19.07.2010.

4. The Collector, Nanded by passing appropriate order notified the Industrial Training Institute, Dharmabad (ITI) and the Government Rest House, Dharmabad as temporary prisons for housing male and female accused respectively. The informant who was serving as a senior jailer in the District Prison at Nanded was appointed as a jailer at the temporary prison at I.T.I. and was assisted by a police officer Mr. S.G. Rathod.

5. The F.I.R. further alleges that since the magisterial custody was to end on 19.07.2010 in a special seating in the I.T.I. Dharmabad itself the Magistrate again remanded them to magisterial custody till 26.07.2010.

6. As per the instructions of the D.I.G. Prisons, Maharashtra State and in view of the security arrangements, the jailer was directed to shift all the prisoners including the applicants to the Central Jail Aurangabad. Accordingly, the Superintendent of Police, Nanded made necessary arrangement and deputed police officers and constables and provided vehicles. Since the applicants and other accused refused to cooperate and started making arguments and started insisting for air conditioned buses to be provided for shifting them, they were confined in the temporary prison during that night.

7. It is then alleged that as per the request of the applicants and other accused, in the next morning on 20.07.2010 air conditioned buses were kept ready by 9 a.m. The District Magistrate Nanded, Superintendent of Police Nanded, Sub Divisional Police Officers and other officers then asked the applicants and the other prisoners to board the buses. However, they refused and thereafter in an arrogant manner hurled abuses in Telgu and English. When the informant-jailer and police constables told them that the buses were ready and requested them to board, the applicant-accused no. 1 refused to do so and declared that if they were forced to board the buses there would be an unrest and conflict between Maharashtra and Telangana and flatly denied to be taken to Aurangabad. He also instigated the other prisoners and all of them in a concerted manner created terrorizing atmosphere, started hurling abuses in Telgu and English and used criminal force and even assaulted these police constables. An attempt was made to snatch the camera, which was video graphing the incident. When the other police staff, which was standing outside heard the commotion. They rushed inside the prison but were assaulted. Their heads were smashed against a

wall. Some were pushed, others were kicked and slapped. Couple of police constables were seriously injured and some police officers and constables also sustained different injuries. Thereafter additional force was called and one by one each of the accused were made to board the bus.

8. It is then alleged that in the meantime even the women prisoners who were housed in the rest house were brought to the I.T.I. but even they hurled abuses and used criminal force against the police party. Some how the police managed to transfer all these accused persons to Aurangabad Central Jail. Mr. Khedkar, Jailor, lodged the report with Dharmabad police station and the crime was registered at around 14:30 hours of 20.07.2010.

9. The learned Senior Advocate Mr. Luthara for the applicants would submit that Crime No. 64/2010 in which the applicants and the other accused persons were remanded to magisterial custody itself was withdrawn under Section 421 of the Code of Criminal Procedure on the same day that is on 20.07.2010 and the Magistrate had passed the order discharging them. However, the machinery could manipulate and falsely implicate these applicants in the present crime being aware about such withdrawal of the prosecution.

10. He would submit that the allegations are false and concocted. No specific and exclusive role is attributed to these two applicants. There is nothing to demonstrate about all the prisoners having shared common intention with these applicants or the latter having abetted the crime. Section 149 of the Indian Penal Code has not been invoked. Merely because the applicants were present that they have been implicated without any material. No exclusive overt act is attributed to either of them. It would be abuse of the process of law to make them face the trial, in the light of **State of Haryana and Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604.**

11. Mr. Luthara would then submit that since the incident had taken place inside a temporary prison, lawfully notified under the relevant provisions, the provisions of the Prisons Act, 1894 (hereinafter 'the Act') and the Rules framed thereunder particularly the Maharashtra Prisons (Punishments) Rules, 1963 (hereinafter 'Punishments Rules') would come into play. He would submit that by virtue of Section 52 of the Act procedure has been contemplated in respect of the prison offences as defined under Section 45. The Superintendent of Prison who has been conferred with a power under Rule 25 of the Punishments Rules to forward the accused prisoners to the Magistrate having jurisdiction. He would submit that Rule 25 of the Punishments Rules which are framed under Section 59(4) of the Act would be relevant and is applicable where the acts committed by the prisoners constitute both, a prison offence and an offence under Indian Penal Code and lays down the steps to be taken. He would submitted that as per Rule 25 of the Punishments Rules only two avenues are available; (1) an enquiry contemplated under Section 45 and 46, (2) making a complaint to the Magistrate by the Superintendent of Prison as contemplated under Section 52 of the Act. The option of filing the F.I.R. by a jailer is no where contemplated. In this regard, he would place reliance upon following decisions :

(1) State of Haryana Vs. Ghaseeta Ram;
(1983) 3 SCC 766
(2) Shalik Maruti Kowe Vs. State of Maharashtra;
2014 SCC OnLine Bom. 4879
(3) Selvam Vs. State of Tamil Nadu;
2014 SCC OnLine Mad 10243.
(4) Sanjay Vs. State of Gujarat
2009 SCC OnLine Guj 7056

12. Mr. Luthara would then submit that a bare reading of Section 4 and 5 of the Code of Criminal Procedure would act as an implied bar for undertaking any investigation into and trying of the offences committed under the special statutes. He would refer to following decisions :

(1) *Dhanraj N. Asawani vs. Amarjeetsingh Mohindersingh Basi; 2023 OnLine SC 991.*

(2) *V. C. Chinnappa Goudar vs. Karnataka State Pollution Control Board; (2015) 14 SCC 535*

13. Mr. Luthara would then submit that whether a particular act is a prison offence or not can only be considered by the Superintendent under Section 52 of the Act and a Magistrate does not have any jurisdiction to embark upon it. However, the Superintendent in the present matter has not undertaken any exercise under Section 52 of the Act and it would go to the root of the investigation and even the power of the Magistrate to take cognizance and undertake a trial in respect of the incident which admittedly has occurred in the temporary prison duly notified. He would submit that in a given case, the criminal law could be set in motion in respect of any such incident but that could only be by way of a complaint under Section 200 of the Code of Criminal Procedure.

14. On facts, he would demonstrate that the prison offences as defined under Section 45 of the Act expressly declares 'any assault' and would submit that even section 353 of the Indian Penal Code in the present fact situation would be covered by Section 45 of the Act. He would strenuously take us through the definitions of '*force*' (Section 349) '*criminal force*' (Section 350) and '*assault*' (Section 351) and the illustrations under Section 351 of the Indian Penal Code to buttress his submissions.

15. Mr. Luthara would, lastly, submit that the F.I.R. has been filed by Mr. Khedkar, who was a Senior Jailer of Nanded District and was not the Superintendent and was not competent to set the criminal law in motion by lodging the F.I.R. He would refer to following decisions :

(1) *Joga Singh Vs. State of Haryana; (1988) 1 RCR (Cri) 145.*

(2) Danial H. Walcott Vs. Superintendent, Nagpur Central Prison; (1972) 74 Bom LR 436

(3) State of U.P. Vs. Singhara Singh & Ors; (1964) 1 Cri.L.J. 263 (2).

16. Mr. Luthara would submit that since it is a matter of prison offence, the maximum punishment being one year of imprisonment, bar under Section 468(2) of the Code of Criminal Procedure would be applicable.

17. Per contra, the learned A.P.P. would submit that there are specific and precise allegations not only in the F.I.R. but even in the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure which ultimately resulted in filing of the charge-sheet and the Magistrate has correctly taken cognizance. Admittedly, the applicants were lodged in a temporary prison, but by sharing common intention and in a concerted manner together with the rest of the accused persons, have assaulted police party while they were being taken to Aurangabad Central Prison. There are injury certificates of several police officials. The applicants are invoking the powers of this Court under Section 482 of the Code of Criminal Procedure and this Court in exercise of such powers cannot undertake a threadbare scrutiny. The purport of enquiry is limited in ascertaining if *prima facie* the facts and circumstances justify drawing of inference regarding commission of crime being charged. He would, therefore, submit that as far as allegations of facts are concerned they clearly make out the crime for which the applicants have been charge-sheeted.

18. The learned A.P.P. would then point out that the stand being taken by the applicants about they having been falsely implicated after the prosecution in 64/2010 was withdrawn under Section 421 of the Code of Criminal Procedure is factually incorrect. He would advert out attention to the copy of the order passed by the learned Magistrate in S.C.C. No. 237/2010 and particularly the time and date placed by the learned

Magistrate below his signature. He would point out that the order was passed on 20.07.2010 at 7.30 hours, whereas; already the incident had taken place and even the F.I.R. was lodged in the afternoon hours of 20.07.2010. He would also point out that even the injury certificates would demonstrate that the injured constables were examined by the concerned Medical Officer of Rural Hospital Dharmabad in the afternoon hours of 20.07.2010.

19. The learned A.P.P. would then submit that certainly Prisons Act is a special statute and provides for certain procedure to be followed and confers power on the Superintendent in the circumstances indicated in Section 52 and Punishments Rules in respect of the prison offences when he is of the opinion that adequate punishments cannot be inflicted therefor and forwarding and requiring the Magistrate to deal with it. However, he would submit that the allegations would reveal that though the incident had taken place in the premises of I.T.I., which was notified as a temporary prison, several police personnel were assaulted, sustained injuries and the aforementioned offences with which they have been charged are clearly the offences under the respective Indian Penal Code sections and are more serious than the prison offences as defined under Section 45 of the Act. He would submit that the Act does not contain specific procedure to be followed in respect of the acts taking place within the prison but which do not constitute prison offences. He would, therefore, submit that the procedure contemplated under the Act could not have been followed in the light of the alleged incident wherein in a concerted manner and by sharing common intention the police personnel were assaulted, may be in the premises of prison with intent to prevent them from taking the applicants and other accused to Aurangabad Central Prison. He would submit that there is no error or illegality in the informant-jailer reporting the matter to police in order to set the criminal law in motion by lodging the F.I.R. and registration of the crime and its investigation undertaken by the police

under the Code of Criminal Procedure. He would, therefore, submit that submission of the learned Senior Advocate Mr. Luthara is not sustainable in law.

20. We have carefully considered the rival submissions and perused the papers.

21. As far as the allegations are concerned, we have no manner of doubt that there is enough material to reveal complicity of both the applicants in commission of the crime. The F.I.R. expressly alleges about the applicant-accused no. 1 having instigated the fellow prisoners and even threatened of there being war between the two states and the incident having taken place in the manner which has been alleged. There are statements of the witnesses also expressly attributing role to these applicants. There are injury certificates of 12 police personnel. Though the injuries are simple, some of them have sustained multiple injuries. When it is a matter of number of prisoners carrying out assault on the police personnel, who were there to escort them to the Aurangabad Central Prison in buses, with a view to deter them from discharging their duty and in the process have caused simple hurt and when the applicants are alleged to have instigated the fellow prisoners, in our considered view, it is well neigh clear that the offence was committed by sharing a common intention and the applicants can even be charged for abetment.

22. Considering the fact that the F.I.R. was lodged promptly and even the injured police personnel were medically examined immediately after occurrence of the incident, there is enough material revealing complicity of the applicants in commission of the crime with which they have been charged and it would not be appropriate to quash the crime and the criminal case under Section 482 of the Code of Criminal Procedure.

23. Now, turning to the major objections of Mr. Luthara, there cannot be a

dispute about the position in law that Chapter X of the Act lays down provisions relating to the offences in relations to prisons. Section 42 provides for penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners. By Section 43 officer of a prison has been conferred with a power to arrest a prisoner for the offence under Section 42. Section 44 requires the Superintendent of the prison to cause a notice in English and vernacular of the acts prohibited under Section 42 and the penalties.

24. Chapter XI of the Act contains the provisions regarding prison offences. Section 45 declares certain acts committed by prisoner to be prison offences and Section 46 provides for the punishment for committing such offences. Section 45 reads as under :

> *"45. **Prison-offences** —The following acts are declared to be prison-offences when committed by a prisoner :—*
>
> *(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence ;*
>
> *(2) any assault or use of criminal force ;*
>
> *(3) the use of insulting or threatening language ;*
>
> *(4) immoral or indecent or disorderly behaviour ;*
>
> *(5) wilfully disabling himself from labour ;*
>
> *(6) contumaciously refusing to work ;*
>
> *(7) filling, cutting, altering or removing handcuffs, fetters or bars without due authority ;*
>
> *(8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment ;*
>
> *(9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment ;*
>
> *(10) wilful damage to prison-property ;*
>
> *(11) tampering with or defacing history-tickets, records or documents ;*
>
> *(12) receiving, possessing or transferring any prohibited article ;*

(13) feigning illness ;

(14) wilfully bringing a false accusation against any officer or prisoner ;

(15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official ; and

(16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

25. Section 48 then provides that the Superintendent of the Prison shall have power to award the punishments provided in Section 46 and 47. Sub section 2 of Section 48 expressly provides that no officer subordinate to the Superintendent shall have power to award any punishments.

26. Section 49 then provides that the punishments contemplated in the Act to be in accordance with these preceding provisions of section 45 to 48.

27. Mr. Luthara would submit that the allegations in the F.I.R. and the statements of witnesses would make out the acts committed by the applicants to be prison offences enlisted in Section 45. Therefore, by virtue of Section 48 it is only the Superintendent of Prison who has the power to impose punishments. He would, therefore, submit that the informant who was merely a senior jailer could not have acted independently and did not have power and could not have set the criminal law in motion by lodging the F.I.R.

28. At the first blush the argument seems attractive. However, it is important to note that the offence registered in the impugned F.I.R. and crime against these applicants are only the offences under the Indian Penal Code. Conspicuous absence of any mention or reference to any prison offence either in the F.I.R. or in the charge-sheet is eloquent enough to discard the submission of Mr. Luthara. Had there been any attempt to

simultaneously invoke the provisions of the Indian Penal Code as well as the prison offences defined under Section 45 of the Act, the submission of Mr. Luthara would have worked for the benefit of the applicants. The impugned crime and the charge-sheet merely seek to attract the provisions of the Indian Penal Code. Therefore, the submission of Mr. Luthara would not be legally tenable to lay emphasis on the provisions contained in Chapter XI and particularly Section 48 which confers power to award punishments for the prison offences on the Superintendent.

29. Contemplating such a conclusion Mr. Luthara would advert our attention to Section 52 of the Act which prescribes procedure on committal of heinous offence. This section reads as under :

> *"**52. Procedure on committal of heinous offence**—If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of any Magistrate of the first class or Presidency Magistrate having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46 :*
>
> *Provided that any such case may be transferred for inquiry and trial by a Chief Presidency Magistrate to any other Presidency Magistrate : and*
>
> *Provided also that no person shall be punished twice for the same offence".*

30. Mr. Luthara would submit that it is only the Superintendent who

forms an opinion that the prison offences being committed by a prisoner frequently cannot be dealt with adequate punishment provided under the Act, he can forward the prisoner to the Court of the District Magistrate or any Magistrate of the First Class having jurisdiction together with a statement of the circumstances and thereafter the Magistrate can undertake an enquiry into and try the prisoner for the charge and sentence him.

31. True it is that the punishments provided for the offences defined under Section 45 are apparently minor like; issuing warning, changing labour to a severe form or hard labour for seven days, loss of privilege, changing the fabric being owned, imposition of handcuffs, imposition of fetters, separate confinement for three months, penal diet, cellular confinement, whipping. Interestingly, even if the Superintendent under Section 52 forwards a prisoner to a Magistrate with a view that he receives more severe punishment, as can be seen the maximum imprisonment to which a prisoner would be liable even if he is tried by a Magistrate would be one year in addition to the punishment provided under Section 48.

32. As can be seen the offences with which the applicants have been charged like Sections 353, 324, 332, 336, 337, 323, 504,506 read with Section 109 and 34 of the Indian Penal Code, would attract a more severe punishment than a Magistrate would otherwise be capable of in the matters of the prisoners forwarded to him under Section 52 of the Act. We are merely pointing out this circumstance to indicate that apart from the fact that, as is observed herein above, the ingredients for constituting the offences with which the applicants have been charged like Sections 353, 324, 332, 336, 337, 323, 504,506 read with Section 109 and 34 of the Indian Penal Code are easily deducible from the charge-sheet, there is no question of they being punished for any prison offences. Section 52 merely enables the Superintendent, under certain circumstances, to forward a prisoner to a Magistrate of the First Class with a view to attract more severe punishment than that is available and can be inflicted under Section 46. The

charge-sheet does not seek to try the applicants for any prison offence. In our considered view, looked at from this angle Section 52 is merely an enabling provision and cannot be considered as either an express or implied bar on the powers of the Magistrate to take cognizance of more serious offences, other than the prison offences committed inside the precincts of the prison nor would the police machinery be barred from registering a cognizable crime committed inside the prison by registering an F.I.R. under Section 154 of the Code of Criminal Procedure. Accepting the submissions of Mr. Luthara would be to read the provisions of the Act as if some immunity is provided to the prisoners in respect of the offences which are not prison offences. This could not have been the intention of the legislature.

33. It is to be borne in mind that considering the list of acts which constitute prison offences contained in Section 45, only few of the acts would be covered by the provisions of the Indian Penal Code like carrying out any assault or use of criminal force or use of insulting or threatening language. Mr. Luthara would, therefore, submit that since clause 2 of Section 45 expressly declares 'any' assault or use of criminal force to be a prison offence, the allegations contained in F.I.R. and the charge-sheet would squarely be covered by this clause 2 of Section 45. He would advert our attention to the definition of 'force' (section 349), 'criminal force' (section 350) , 'assault' (section 351) from the Indian Penal Code.

34. Though some ingredients of Section 353 of the Indian Penal Code would be covered by this clause 2 of Section 45 of the Act, that is not the exclusive and only ingredient of the offence punishable under Section 353 of the Indian Penal Code, which makes any use of force or criminal force against a public servant with intent to prevent him from discharging his public duty. It would be fallacious to say that only because clause 2 of Section 45 uses word *'any'* before the word *'assault'*, the legislature could have contemplated all the offences under the Indian Penal Code irrespective

of any other ingredient, to be covered by that clause. We are merely demonstrating this with reference to Section 353 being charged against the applicants. As far as Section 323, 324 and other sections being invoked against the applicants are concerned, none of the prison offences defined under Section 45 cover the aspect of causing hurt as an ingredient. If this be so, it cannot be said that the provisions of the Act impliedly debar police in registering a cognizable offence and undertaking investigation or would prevent a Magistrate from taking cognizance of the offences committed within the premises of prison which do not constitute prison offences as defined under Section 45.

35. This takes us to the submission of Mr. Luthara whereby he would point out that by virtue of Clause 4 of Section 59 of the Act the State of Maharashtra has promulgated Punishments Rules. He would submit that Section 59 of the Act confers upon the State Government power to make rules by notification in the official gazette consistent with the provisions of the Act and under Clause 4, in respect of declaring the circumstances in which acts constituting both, a prison offence and an offence under the Indian Penal Code, may or may not be dealt with as a prison offence.

36. A bare reading of this Section 59 and its Clause 4 would demonstrate that a State Government could declare certain offences under the Indian Penal Code which are also prison offences to be dealt with as prison offences. It cannot be read to convey a meaning that the offences committed within the prison which are clearly offences under the Indian Penal Code be converted or tried as prison offences irrespective of the fact that the ingredients for constituting the prison offences and that of the offences under Indian Penal Code are merely overlapping to some extent. It will have to be read to mean that if an act which is an offence under the Indian Penal Code is also a prison offence and the ingredients of both are exactly same that the State Government under this enabling provision could lay

down the rules for dealing with such acts committed within a prison.

37. Mr. Luthara would advert our attention to Rule 25 of the Punishments Rules and would submit that these rules having been framed under Clause 4 of Section 59 of the Act, it seeks to provide the steps to be taken by the Superintendent in the circumstances in which the acts which constitute prison offences and offences under the Indian Penal Code. He would submit that as laid down in the proviso, wherever the State legislature intended that the Superintendent should exercise the power under Section 46 he may forward the prisoner to a Magistrate of First Class.

38. Rule 25 of the Punishments Rules reads as under :

> ***"25. Acts constituting both prison offence and offence under Indian Penal Code, how to be dealt with :-***
>
> *Where an act of a prisoner constitutes an offence under section 46 of the Prisons Act, 1894 and also an offence under the Indian Penal Code, the Superintendent may, in his discretion, use his powers under section 46 of the Prisons Act, 1894 and award the punishment or forward the prisoner to a Court of the Magistrate of the First Class having jurisdiction, for trial:*
>
> *Provided that a prisoner committing any of the following offences shall be prosecuted, namely:-*
>
> *(a) Rioting-*
>
> | | |
> |---|---|
> | *Section 147, Indian Penal Code.* | *Rioting.* |
> | *Section 148, Indian Penal Code.* | *Rioting armed with deadly, weapon.* |
> | *Section 152, Indian Penal Code.* | *Assaulting or obstructing a public servant when suppressing riot.* |
>
> *(b) Escape -*
>
> | | |
> |---|---|
> | *Section 222, Indian Penal Code.* | *Intentional omission to apprehend on part of a public servant.* |
> | *Section 223, Indian Penal Code.* | *Escape from confinement or custody negligently suffered by a public servant.* |
> | *Section 224, Indian Penal Code.* | *Resistance or obstruction by a person to his lawful* |

	apprehension.
(c) Offences affecting human body-	
Section 302, Indian Penal Code.	*Murder.*
Section 303, Indian Penal Code.	*Murder by a person under sentence of life imprisonment*
Section 304, Indian Penal Code.	*Culpable homicide not amounting to murder.*
Section 304-A, Indian Penal Code	*Causing death by rash and negligent act.*
Section 309 Indian Penal Code.	*Attempt to commit suicide.*
Section 323, Indian Penal Code.	*Voluntarily causing grievous hurt.*
Section 326, Indian Penal Code.	*Voluntarily causing grievous hurt by dangerous weapon or means.*
d) Any offence triable exclusively by a Court of Sessions.	

39. A conjoint reading of Sections 46 and 52 of the Act and Rule 25 of the Punishments Rules would reveal that the Superintendent has been conferred with a power to inflict punishment under Section 46 for the prison offences defined under Section 45. Section 52 enables him, as is observed earlier, to forward a prisoner to the Magistrate of First Class, who apparently, in the absence of any specific procedure laid down in the Act may have to try the prisoner even for a prison offence and inflict punishment.

40. It is pertinent to note in this context that Rule 24 of the Punishments Rule also would come into play and reads thus :

> *"24 Punishment by Magistrate for prison offence :-*
>
> *Where a prisoner is sent in accordance with the provisions of Section 52 for trial by a Magistrate and the Magistrate declines to act under the said Section, the Superintendent may, subject to these rules, award any*

punishment specified in section 46 which he considers to be expedient and which the prisoner is fit to undergo."

41. A plain reading of Rule 24 would indicate that even if the Superintendent in exercise of the powers under Section 52 forwards a prisoner to a Magistrate, the latter may decline to act under that section. Meaning thereby that it is not mandatory for the Magistrate to try a prisoner forwarded to him by the Superintendent by resorting to Section 52 of the Act. This is for the obvious reason that the Magistrate has not been conferred with independently any jurisdiction and power to conduct a trial for any prison offence.

42. Bearing in mind these logical consequences, a careful reading of Rule 25 would demonstrate that when an act committed by the prisoner constitutes a prison offence punishable under Section 46 and also an offence under Indian Penal Code, the Superintendent may in his discretion either inflict a punishment under Section 46 or forward the prisoner to the Magistrate of First Class for trial. The proviso to Rule 25 expressly mentions that a prisoner committing the offences under the Indian Penal Code enlisted therein should invariably be prosecuted. Though it has not been expressly mentioned and the proviso merely uses the word 'prosecuted' it would be logical to interpret this proviso to mean that prosecution for the offences enlisted therein committed by a prisoner, the Superintendent should invariably take steps for prosecuting the prisoner. Thus, the substantive rule confers a discretion upon the Superintendent as to the manner in which a prisoner committing a prison offence and the same offence under the Indian Penal Code could be dealt with, he cannot undertake any enquiry in respect of the offences enlisted under the proviso. The conspicuous absence of any reference to Section 52 in this Rule 25, in our considered view, is indicative of the intention of the legislature to see to it that if the offences enlisted therein are committed by a prisoner within the precincts of a prison, the only way to deal with them should be always a

prosecution under the Indian Penal Code. This rule cannot be understood as providing for a discretion in the Superintendent and confer him with the power under Section 52 of the Act if a crime is committed under the Indian Penal Code in respect of the sections of the Indian Penal Code mentioned in the proviso. Therefore, according to us, Rule 25 cannot be read as providing for any procedure to be followed by the Superintendent under the Prisons Act or dealing with the offences under the Indian Penal Code, except where those are exactly the offences which are defined as prison offences under Section 45.

43. We, therefore, are unable to accept these submissions of Mr. Luthara laying emphasis on Rule 25 that the informant who was a senior jailer could not have lodged the F.I.R. and the police could not have registered and investigated it. As is mentioned earlier, the offences with which the applicants have been charged *inter alia* include Section 323 of the Indian Penal Code which is incidentally is mentioned in the list of the offences under the Indian Penal Code in the proviso to Rule 25. Again, the rest of the offences with which the applicants are being charged like 353, 324, etc. of the Indian Penal Code are independent offences and cannot be said to be identical to any prison offence defined under Section 45. The Act and the Punishments Rules framed under clause 4 of Section 59 of the Act do not lay down any mechanism or procedure for setting the criminal law in motion in respect of the crimes under the Indian Penal Code committed within the premises of a prison which are neither prison offences nor are the offences similar to the prison offences.

44. It is to be remembered that the whole exercise in comparing the offences which have been made punishable under the special statutes which incidentally are offences under the general law that is Indian Penal Code is to obviate double jeopardy. The issue has bothered the Supreme Court as

well as several High Courts. Interplay between the provisions of two different penal statutes wherein some ingredients of the offences are overlapping has been considered by the Supreme Court and the High Courts in several matters, the recent being **The State Of Uttar Pradesh vs Aman Mittal; (2019) 19 SCC 740.**

45. We need not burden this judgment by elaborating on the point. Suffice for the purpose to observe that the applicants are being charged for the offences punishable under different sections of the Indian Penal Code. Even if some ingredients like use of criminal force is a prison offence under Section 45 of the Act and the offence punishable under Section 353, and as the applicants are being charged for various other offences which are not even similar leave aside the same as the prison offences, since the Act and the Punishments Rules framed there under do not expressly provide for any specific procedure debarring registration of F.I.R. and crime under Section 154 and preventing a Magistrate from taking cognizance thereof in respect of the offences under the Indian Penal Code committed within the premises of a prison, we find no illegality in registration of the crime against the applicants, its investigation by the police and the cognizance taken by the Magistrate. Consequently, even this objection being raised by Mr. Luthara is not legally sustainable.

46. The Applications are rejected.

47. The Criminal Application No. 1025 of 2024 in Criminal Application

No. 3428/2023 is disposed of.

(SHAILESH P. BRAHME, J.) (MANGESH S. PATIL, J.)

49. After pronouncement of the judgment learned Senior Advocate Mr. Luthara requests for extension of the interim order.

50. Interim relief to continue till 08.07.2024.

(SHAILESH P. BRAHME, J.) (MANGESH S. PATIL, J.)

mkd/-