CASE NO.:
Appeal (crl.) 708 of 2001

PETITIONER:
STATE OF PUNJAB AND ORS.

RESPONDENT:
NIHAL SINGH

DATE OF JUDGMENT: 18/09/2002

BENCH:
R.C. LAHOT1 & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2002 Supp(2) SCR 489

The following Order of the Court was delivered :

Crl. A. No. 708/2001.

The respondent Nihal Singh is a convict under Section 302 IPC sentenced by Court Martial to undergo imprisonment for life and incarcerated in civil jail, Sangruru (Punjab). Nihal Singh filed a writ petition in the High Court of Punjab and Haryana seeking to be classified as Class-B prisoner and being allowed the facilities available to such prisoners in accordance with para 576-A of the Punjab Jail Manual. Punjab Jail Manual is a compilation of statutory provisions, rules and executive instructions, referrable to prison and prisoners, issued from time to time and is meant to guide the jail administration and the jail officers. Para 576-A contemplates classification of convicted persons into 3 categories, namely, Classes A, and C and catalogues the factors which would be relevant for classification and enumerates the benefits and facilities to which the prisoner would be entitled depending on the classification. The petition came up for hearing before a learned Single Judge of the High Court of Punjab & Haryana, who formed an opinion that the classification of prisoners into Classes A, B and C was violative of Articles 14 and 15 (1) of the Constitution, and therefore, declared such classification ultra vires of the Constitution, Consequent upon such declaration the petition filed by the respondent was directed to be dismissed.

It is pertinent to note that the question of vires of 576-A of Punjab Jail Manual was not raised by anyone before the High Court. The High Court also, before formulating its opinion as expressed in the impugned order, did not give any indication of its mind that adjudication upon the constitutional validity of the provision was proposed. None was put on notice. Nobody was afforded an opportunity of bringing on record material relevant for adjudication upon such validity. The Advocate General of the State was not put on notice. The procedure adopted by the High Court while invalidating para 576-A of the Punjab Jail Manual was wholly unsatisfactory and unsustainable.

For the short reason as abovesaid and without expressing any opinion on the merits or otherwise of the finding arrived at by the High Court, the judgment under appeal is set aside. The writ petition filed by the respondent shall stand restored on the file of the High Court for hearing and decision afresh and in accordance with law.

The appeal stands disposed of. Crl. A. No. 709 and 710/2001.

These appeals have been filed by some of the prisoners detained in jails in the State of Haryana putting in issue the judgment dated May 9, 2000

delivered by learned Single Judge of the High Court of Punjab & Haryana in the case of Nihal Singh which has been dealt with and set aside by the abovesaid order in Crl. A. No. 708/2001. The occasion for filing these two appeals by special leave arose because the judgment delivered by the High Court in the case of Nihal Singh was circulated by the State Governments to jail authorities in the States of Punjab and Haryana - both. Acting upon the said judgment the jail authorities in State of Haryana withdrew the facilities extended to the prisoners based upon classification as per para S76-A of Punjab Jail Manual which was adopted for administration of jails in the State of Haryana also. In as much as the judgment of the High Court in the case of Nihal Singh has already been set aside, these appeals have become infructuous and are accordingly disposed of.

JUDIS