

PHOOL KUMARI

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v.

OFFICE OF THE SUPERINTENDENT CENTRAL JAIL,  
TIHAR, NEW DELHI AND ANR.  
(Criminal Appeal No.1186 of 2012)

AUGUST 09, 2012

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**[P. SATHASIVAM AND RANJAN GOGOI, JJ.]**

*Prisoners: Employment of - Payment of wages - Conviction of appellant u/ss.323, 342, 307 read with s.34, IPC and rigorous imprisonment (RI) for 10 years - Sentence reduced by High Court to 5 years - Appellant remaining in jail from 24.03.2007 to 23.12.2010 i.e., for a period of 3 years and 10 months after grant of remission - During this period, she was allotted work in Medical Inspection (MI) room as 'Sewadar' (Assistant) for assisting the Doctors in OPD of Jail and also taking care of the cleanliness of the said room till her release - In 2009, claim made by appellant through her husband for payment of wages for the work done during her custody in prison - Claim rejected - Complaint before the visiting Judge, Additional Sessions Judge (ASJ) for release of wages also rejected - Petition u/s.482, Cr.P.C. before High Court for quashing the order passed by the visiting Judge (ASJ) and also for the release of her wages - High Court disposing of the petition taking note of the fact that the appellant was already released from jail and relying upon the affidavit filed on behalf of the DIG (Prisons) stating therein that the appellant performed soft labour work during her period in jail and whenever the appellant was given hard labour work, she had drawn wages for that period - On appeal, held: It was definite case of jail authorities that for the work done, the appellant-convict was paid wages as per the circulars/orders applicable to her and in this regard ledger containing her signatures was produced - Contra stand of appellant-convict that she did not*

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- A put her signatures as shown in the ledger - In view of the conflicting stand by both the sides and assertion of the appellant about her signature and certain entries in the Ledger, in order to do substantial justice, the appellant is permitted to make a fresh representation to the visiting Judge
- B giving all the details about the work done during the period of custody within a period of 4 weeks - On receipt of representation, the visiting Judge would inspect and peruse the Ledgers/documents with the assistance of the jail authorities in the presence of the appellant duly assisted by
- C Supreme Court Legal Services Committee and pass an order within a period of 3 months thereafter - The said decision would be communicated to the appellant and the respondent-Jail Authorities - In the ultimate inquiry, if it is found that the appellant is entitled to any amount in addition to the amount already settled as wages, the same shall be paid within a
- D period of 4 weeks thereafter.

Sentence/sentencing: Types of Imprisonment - Held: s.53 of the IPC defines 5 kinds of punishment which includes punishment for life and two other kinds of imprisonment i.e.,

E rigorous and simple imprisonment - Rigorous imprisonment is one which is required by law to be completed with hard labour - A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work - But the Jail officer who requires a prisoner sentenced to

F rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the court - The undertrials are not required to work in Jail - Delhi Prisons Act, 2000 - s.36 - Penal Code, 1860 - s.53.

- G State of Gujarat & Anr. vs. Hon'ble High Court of Gujarat (1998) 7 SCC 392 - relied on.

Delhi Prisons (Transfer of Prisoners, Labour and Jail Industry, Food, Clothings and Sanitation) Rules, 1988:

- H r.43 - Classification of Labour - Held: r.43 classifies

PHOOL KUMARI v. OFFICE OF THE SUPERINTENDENT 953  
CENTRAL JAIL, TIHAR, NEW DELHI

*labour into three classes, namely, Hard Labour, Medium Labour and Light Labour - Hard Labour is further divided into three categories; skilled, semi-skilled and unskilled - The Inspector General may, with the sanction of the Delhi Administration from time to time, prescribe the description of works to be carried out and the tasks to be fixed for labour in respect of each class - Since the Delhi Jail Manual does not give detailed description as to what kind of work/task will fall under which category of labour, the Jail Authorities rely upon the Punjab Jail Manual framed under the Prisons Act, 1894 for determining the same - Prisons Act, 1894.*

*r.45 - Convicts - Work given to male and female convicts - Distinction between - Held: Under r.45, female convicts shall not, in any case, exceed two third of the maximum task for hard labour and medium labour, respectively, prescribed in respect of adult male convicts.*

*Delhi Prisons Act, 2000:*

*Chapter VII - Employment of Prisoners - Held: s.35 of the Act deals with employment of criminal prisoners - Sub-section (1) states that a criminal prisoner desiring to be employed on labour, may be employed with the permission of the Superintendent, subject to such restrictions as may be prescribed in the rules made under this Act - Sub-section (2) states that no criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency, with the sanction in writing of the Superintendent be kept to labour for more than 8 hours in a day - Sub-sections (3) and (4) deal with medical examination and check-up and the placement of criminal prisoners on work based on their health - The Office of the Director General (Prisons), Prison Headquarters, Tihar, New Delhi, released Standing Order 38 bearing No.F.10(7832)/CJ/Legal/2012/2626 dated 24.05.2012 laying down rules relating to the employment of convicts for the guidance of the prison staff in accordance with the provisions mentioned in the Delhi Jail Manual - Delhi*

A *Prisons (Definition) Rules, 1988 - r.2(k).*

B *Wages paid to prisoners - Determination of - Tihar Jail, Delhi - Held: The rate of wages provided to convicts in Tihar Jail is prepared by a Wage Fixation Committee constituted by Government of NCT of Delhi - The Committee decides wages keeping in view the present economic scenario, minimum wages notified by the Govt. of Delhi for workers, the expenses on the upkeep of a prisoner and deduction towards the Welfare Fund - The scale of wages paid to prisoners in various States is also taken into consideration - The Committee also considers the criteria for wages as prescribed in Model Prison Manual for the superintendence and management of prisons in India formulated by the Bureau of Police Research and Development (BPR&D), Ministry of Home Affairs, Government of India.*

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**Case Law Reference:**

**(1998) 7 SCC 392**                      **relied on**                      **Para 9**

E **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1186 of 2012.**

From the Judgment and Order dated 19.05.2011 of the High Court of Delhi at New Delhi in Criminal Misc. Case No. 2243 of 2010.

F Prachi Bajpai for the Appellant.

Sidharth Luthra, ASG, T.A. Khan, Sidharth Dave, Amit Kumar, B.V. Balram Das, Anil Katiyar for the Respondents.

G The Order of the Court was delivered by

**P. SATHASIVAM, J. 1.** Leave granted.

2. This appeal is directed against the final order dated 19.05.2011 passed by the High Court of Delhi at New Delhi in

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PHOOL KUMARI v. OFFICE OF THE SUPERINTENDENT 955  
CENTRAL JAIL, TIHAR, NEW DELHI [P. SATHASIVAM, J.]

Criminal Misc. Case No. 2243 of 2010 whereby the High Court A  
disposed of the petition filed by the appellant herein.

**3. Brief facts:**

(i) The appellant was convicted by the trial Court in case B  
FIR No. 487 of 1995 under Sections 323, 342, 307 read with  
Section 34 of the Indian Penal Code, 1860 (in short 'IPC') and  
sentenced to rigorous imprisonment (RI) for 10 years and,  
thereafter, the High Court, in an appeal filed by the appellant,  
reduced the period of sentence to 5 years. The appellant C  
remained in Tihar Central Jail, New Delhi from 24.03.2007 to  
23.12.2010 i.e., for a period of 3 years and 10 months after  
grant of remission. During this period, she was allotted work  
in Medical Inspection (MI) room as 'Sewadar' (Assistant) for  
assisting the Doctors in OPD of Jail No. 6. Apart from that, she  
was also taking care of the cleanliness of the said room till her D  
release.

(ii) In the year 2009, the appellant, through her husband,  
filed an application before the Superintendent of Jail for the  
payment of wages for the work done during her custody in  
prison but the same was rejected. Aggrieved by the same, he E  
filed a complaint before the visiting Judge, Additional Sessions  
Judge (ASJ) for the release of wages for the work done by his  
wife. After perusing the documents on record, by order dated  
08.04.2010, the visiting Judge (ASJ) rejected the said F  
complaint.

(iii) Aggrieved by the said order, the appellant filed a  
petition under Section 482 of the Code of Criminal Procedure,  
1973 (in short 'the Code') before the High Court of Delhi for  
quashing the order dated 08.04.2010, passed by the visiting G  
Judge (ASJ) and also prayed for the release of her wages. The  
High Court, by impugned order dated 19.05.2011, disposed  
of the petition taking note of the fact that the appellant has  
already been released from jail and relying upon the affidavit

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A filed on behalf of the DIG (Prisons) stating therein that the prisoners who perform hard labour are given the wages and the appellant performed soft labour work during her period in jail and whenever the appellant was given hard labour work, she had drawn wages for that period.

B (iv) Challenging the said order, the appellant has filed this appeal by way of special leave before this Court.

C 4. Heard Ms. Prachi Bajpai, learned counsel for the appellant and Mr. Sidharth Luthra, learned Additional Solicitor General for the respondents.

D 5. Ms. Prachi Bajpai, learned counsel for the appellant, after taking us through the entire materials including the impugned order of the High Court, submitted that inasmuch as the convicts working in M.I. Room of another Jail were getting payments for the same work, the appellant was denied and paid wages only for few months which aspect has not been considered by the High Court. According to the learned counsel, the Jail Authorities and the High Court failed to appreciate that the appellant was throughout engaged in M.I. room for assisting doctors in OPD and was taking care of the cleanliness till her release, hence, she is entitled for wages in terms of various Government Orders for the said period.

F 6. On the other hand, Mr. Sidharth Luthra, learned ASG after placing relevant circulars/instructions/orders applicable to various types of prisoners, their eligibility, entitlement of wages for their work and details about the work done and wages paid to the appellant submitted that she was paid as per the rules and she is not entitled to any further amount.

G 7. We have considered the rival submissions and perused all the relevant materials. In order to understand the case better, it is useful to refer certain relevant provisions applicable to the prisoners in Delhi.

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## Types of Imprisonment

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Section 53 of the IPC defines 5 kinds of punishment which includes punishment for life and two other kinds of imprisonment i.e., rigorous and simple imprisonment. Rigorous imprisonment is one which is required by law to be completed with hard labour. Section 36 of the Delhi Prisons Act, 2000 prescribes that the convicts sentenced to simple imprisonment shall be employed only so long as they desire but cannot be punished for neglect of work.

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A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. But the Jail officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the court. [Vide *State of Gujarat & Anr. vs. Hon'ble High Court of Gujarat*, (1998) 7 SCC 392].

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Thus, while a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced to rigorous imprisonment is required by law to undergo hard labour. The undertrials are not required to work in Jail.

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## Classification of Labour

Rule 43 of the Delhi Prisons (Transfer of Prisoners, Labour and Jail Industry, Food, Clothings and Sanitation) Rules, 1988 (in short 'the Delhi Prisons Rules') classifies labour into three classes, namely, Hard Labour, Medium Labour and Light Labour. Hard Labour is further divided into three categories; skilled, semi-skilled and unskilled. The Inspector General may, with the sanction of the Delhi Administration from time to time, prescribe the description of works to be carried out and the tasks to be fixed for labour in respect of each class. It is brought to our notice that since the Delhi Jail Manual does not give detailed description as to what kind of work/task will fall under which category of labour, the Jail Authorities rely upon the

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A Punjab Jail Manual framed under the Prisons Act, 1894 for determining the same.

**Distinction between work given to male and female convicts:**

B Under Rule 45 of the Delhi Prisons Rules, female convicts shall not, in any case, exceed two third of the maximum task for hard labour and medium labour, respectively, prescribed in respect of adult male convicts.

**C Employment of Prisoners**

Chapter VII of the Delhi Prisons Act, 2000, deals with the "Employment of Prisoners". Under Rule 2(k) of the Delhi Prisons (Definition) Rules, 1988, a convict is described as a  
D Criminal prisoner.

Section 35 of the Delhi Prisons Act, 2000 deals with employment of criminal prisoners. Sub-section (1) states that a criminal prisoner desiring to be employed on labour, may be employed with the permission of the Superintendent, subject  
E to such restrictions as may be prescribed in the rules made under this Act.

Sub-section (2) states that no criminal prisoner sentenced to labour or employed on labour at his own desire shall, except  
F on an emergency, with the sanction in writing of the Superintendent be kept to labour for more than 8 hours in a day.

Sub-sections (3) and (4) deal with medical examination and check-up and the placement of criminal prisoners on work  
G based on their health.

The Office of the Director General (Prisons), Prison Headquarters, Tihar, New Delhi, released Standing Order 38 bearing No.F.10(7832)/CJ/Legal/2012/2626 dated 24.05.2012  
H laying down rules relating to the employment of convicts for the

PHOOL KUMARI v. OFFICE OF THE SUPERINTENDENT 959  
CENTRAL JAIL, TIHAR, NEW DELHI [P. SATHASIVAM, J.]

guidance of the prison staff in accordance with the provisions mentioned in the Delhi Jail Manual.

**Determination of wages:**

The rate of wages provided to convicts in Tihar Jail is prepared by a Wage Fixation Committee constituted by the Principal Secretary (Home), Government of NCT of Delhi. The said Committee comprises of: (i) DIG (Prisons) as Chairperson, (ii) Dy. Secretary (Finance expenditure) and (iii) Deputy Commissioner of Labour as Members.

The Committee decides wages keeping in view the present economic scenario, minimum wages notified by the Govt. of Delhi for workers, the expenses on the upkeep of a prisoner and deduction towards the Welfare Fund. The scale of wages paid to prisoners in various States was also taken into consideration.

The Committee also considers the criteria for wages as prescribed in Model Prison Manual for the superintendence and management of prisons in India formulated by the Bureau of Police Research and Development (BPR&D), Ministry of Home Affairs, Government of India. It also takes into consideration the rate of minimum wages notified by the Delhi Govt. in the notification dated 18.03.2011 which is as under:-

Category	Rates w.e.f. 01.02.2010 (Rupees)	Revised rates from 01.02.2011	
		Per month	(Per day)
Unskilled	5278.00	6084.00	234.00
Semi-skilled	5850.00	6734.00	259.00
Skilled	6448.00	7410.00	285.00

The office of the Director General (Prisons), Prison

- A Headquarters, Tihar, New Delhi, released Standing Order - 10 bearing No. PS/DG(P)/2011/902-911 dated 27.07.2011 regarding the revision of wages to the convicts. The following is the latest wage structure for the prisoners.

B	Remuneration Wages	Wages credited to the Welfare Fund	Net Payable
	Unskilled - 70.00	18.00	52.00
C	Semi-skilled - 81.00	20.00	61.00
	Skilled - 99.00	25.00	74.00

#### Details of the appellant relating to her custody

- D The appellant was convicted by the trial Court in case FIR No. 487 of 1995 under Sections 323, 342, 307 read with Section 34 IPC and sentenced to RI for 10 years. Thereafter, the High Court of Delhi reduced the sentence of the appellant to RI for 5 years. The appellant was admitted in jail on 24.03.2007 and subsequently released on 23.12.2010. The
- E total period undergone by the appellant in custody is 3 years 10 months after grant of remission. During this period, the appellant was assigned work in MI room as Sewadar which includes assisting Doctors in OPD and 'Mulhiza' and for additional labour allotted to her, she was paid wages at Rs. 44
- F for 8 hours.

8. By placing relevant certificates/orders/statement of accounts, learned ASG has brought to our notice that the appellant was allotted hard labour for the period w.e.f. September, 2009 to March, 2010 and the wages were duly paid
- G to her in accordance with the rates prevalent for the aforementioned period. In support of the above claim, he also produced a copy of the Jail Account Ledger Statement relating to the wages prevalent at that time. In addition to the above information, learned ASG has also placed the relevant accounts
- H relating to payment of wages duly acknowledged by the

appellant. On the other hand, Ms. Prachi Bajpai, learned counsel for the appellant, while accepting various circulars/orders issued by the Government/Jail Authorities, strongly denied the claim that the appellant had been paid wages for the whole period she worked. In other words, according to the counsel, except for the period October-December, 2009 and January, 2010 for her work in M.I. room, she was not paid for any other period. It is also the stand of the counsel for the appellant that even for the said period, the appellant was paid only due to the interim orders passed by the High Court. Learned counsel for the appellant also refuted the claim of signatures in the Ledger produced by learned ASG during the course of hearing. She also pointed out that the appellant-convict did not put her signature as shown in the Ledger which was produced before this Court. She also pointed out that except for the above mentioned period, she was not paid any amount, though according to her, she attended all kinds of work in M.I. room. She also pointed out that the stand taken by the Jail Authorities before the visiting Judge (ASJ), High Court and before this Court is contradictory in nature and cannot be accepted. Finally, learned counsel for the appellant asserted that the stand of the Jail Authorities that the appellant had been paid all her wages is blatantly wrong and not acceptable.

9. In the earlier part of our order, we have highlighted various provisions applicable to convicts in prison, particularly, in Tihar Jail. It is the simple case of the appellant that during her actual custody, viz., 3 years 10 months, she was assigned work in M.I. room as Sewadar (Assistant) which includes assisting Doctors in OPD and 'Mulhiza' and additional labour was also allotted to her and except for the above mentioned period, she was not paid any wages. On the other hand, it is the definite case of the jail authorities that for the work done, the convict had been paid wages as per the circulars/orders applicable to her.

10. In view of the conflicting stand taken by both the sides

- A and assertion of the appellant about her signature and certain entries in the Ledger, in order to do substantial justice, we permit the appellant to make a fresh representation to the visiting Judge giving all the details about the work done during the period of custody within a period of 4 weeks from today.
- B On receipt of the representation, we direct the visiting Judge to inspect and peruse the Ledgers/documents with the assistance of the jail authorities in the presence of the appellant duly assisted by Supreme Court Legal Services Committee, preferably, Ms. Prachi Bajpai, and pass an order within a period of 3 months thereafter. The said decision has to be communicated to the appellant and the respondent-Jail Authorities. In the ultimate inquiry, if it is found that the appellant is entitled to any amount in addition to the amount already settled as wages, the same shall be paid within a period of 4 weeks thereafter. It is further made clear that except highlighting the grievance of the appellant and various circulars/orders of the Jail Authorities, we have not expressed anything on the merits of the claim of either party.

E 11. The appeal is disposed of with the above direction.

B.B.B.

Appeal disposed of.