

State of Maharashtra and Others

Vs

Ravikant S. Patil

Criminal Appeal No. 289 of 1990

(S. R. Pandian, K. Jayachandra Reddy JJ)

19.03.1991

JUDGMENT

JAYACHANDRA REDDY, J. –

1. This appeal has been filed by the State of Maharashtra against an order of the High Court of Bombay directing Shri Prakash Chavan, Inspector of Police, Faujdar Chavadi Police Station, Sholapur, respondent 4 before the High Court, to pay an amount of Rs. 10,000 by way of compensation to the respondent herein, an undertrial prisoner, on the ground that the said police officer was guilty of violation of fundamental right of an undertrial prisoner under Article 21 of the Constitution of Indian. It further directed that an entry should be made in his service record. The facts that give rise to this appeal are as follows.

2. One Ganesh Kolekar was murdered on August 2, 1989. During the investigation, the police suspected that the respondent herein was a party to the said murder. He was arrested in Karnataka State and was brought to Sholapur in the early hours of August 17, 1989. A local paper called Tarun Bharat published from Sholapur, carried in its issue of August 17, 1989 a news items which stated that the respondent, an undertrial prisoner, would be taken in a procession or a parade from Faujdar Chavadi Police Station through the main squares of the city for the purpose of investigation. On August 17, 1989, the respondent herein was handcuffed and both his arms were tied by a rope and he was taken through the streets and the same is not in dispute. The respondent herein filed a writ petition seeking a censure of the police officer and to award damages. A Division Bench of the High Court of Bombay having exonerated the Superintendent of Police and other respondents, held that respondent 4 Shri Prakash Chavan, Inspector of Police, who is one of the appellants before us, has subjected the undertrial prisoner to an unwarranted humiliation and indignity which cannot be done to any citizen of Indian and accordingly directed him to pay the compensation and he was also censured as mentioned above.

3. It is submitted before us that the respondent had a long criminal record and that the murder of Ganesh Kolekar was as a result of enmity between the two gangs and the respondent belonged to one gang and the situation required that he should be taken after being handcuffed. The High Court elaborately dealt with this aspect and held that the explanation given by the Inspector of Police is wholly unacceptable. On behalf of the respondent, reliance is placed on some of the decisions of this Court on the aspect of handcuffing and violation of Article 21 of the Constitution of India. In Sunil Batra v. Delhi Administration ((1978) 4 SCC 494 : 1979 SCC (Cri) 155), a Constitution Bench of this Court held that : (SCC p. 568, para 213) "the convicts are not wholly denuded of their fundamental rights... Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed. " In Prem Shankar Shukla v. Delhi Administration ((1980) 3 SCC 526 :

1980 SCC (Cri) 815), this Court observed that : (SCC HN) "To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security. No prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort." In Sunil Gupta v. State of M. P. ((1990) 3 SCC 119 : 1990 SCC (Cri) 440), this Court again reiterated following the principles laid down in Sunil Batra Case ((1978) 4 SCC 494 : 1979 SCC (Cri) 155), and other cases held that handcuffing is an act against all norms of decency and amounts to violation of principle underlying Article 21. This Court also directed the State Government to take appropriate action against the erring officials for having unjustly and unreasonably handcuffed the arrested persons.

4. Having gone through the entire record we are unable to disagree with some of the findings of the High Court regarding the handcuffing and we do not propose to interfere with the order directing the payment of compensation. But we think that Shri Prakash Chavan, Inspector of Police, appellant 2 herein, cannot be made personally liable. He has acted only as an official and even assuming that he has exceeded his limits and thus erred in taking the undertrial prisoner handcuffed, still we do not think that he can be made personally liable. In Rudul Sah v. State of Bihar ((1983) 4 SCC 141 : 1983 SCC (Cri) 798), this Court directed the State to pay compensation to the person illegally detained. The High Court also having noted this decision observed that the court can order payment of compensation either by the State or persons acting on behalf of the State. Having so observed, the High Court, however, held Shri Prakash Chavan, Inspector of Police personally liable and directed him to pay the compensation. We are of the view that in the instant case also a similar order as one passed in Rudul Sah case ((1983) 4 SCC 141 : 1983 SCC (Cri) 798), will meet the ends of justice. Then the High Court has also directed that an entry should be made in his service record to the effect that he was guilty of violation of fundamental right of an undertrial prisoner. So far this direction is concerned, it is submitted that such an adverse entry cannot straightway be made without giving the Inspector of Police, appellant 2 herein, an opportunity of being heard. We find considerable force in this submission and accordingly we modify the order of the High Court as follows.

5. The compensation of Rs. 10,000 as awarded by the High Court, shall be paid by the State of Maharashtra. The concerned authorities may, if they think it necessary, hold an enquiry and then decide whether any further action has to be taken against Shri Prakash Chavan, Inspector of Police. Subject to the above directions, this appeal is disposed of.

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