

State Of Maharashtra And Ors. vs Ravikant S. Patil on 19 March, 1991

Equivalent citations: 1991ACJ888, 1991(1)CRIMES810(SC), JT1991(5)SC442, (1991)99PLR690, 1991(1)SCALE486, (1991)2SCC373, 1991(2)UJ188(SC), 1991 AIR SCW 871, 1991 (2) SCC 373, (1991) MAD LJ(CRI) 463, (1991) 2 MAHLR 464, (1991) 1 PUN LR 690, (1991) SC CR R 644, 1991 UJ(SC) 2 188, 1991 CRILR(SC MAH GUJ) 261, 1991 ALLAPPCAS (CRI) 125, (1991) 2 ACJ 888, 1991 APLJ(CRI) 245, (1992) 1 CHANDCRIC 72, (1991) 1 CRIMES 810, (1991) 2 CURLJ(CCR) 169, (1991) 5 JT 442 (SC), 1991 SCC (CRI) 656, 44 (1991) DLT 17 (SN)(SC)

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Bench: S.R. Pandian

JUDGMENT

K. 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, the fourth respondent 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 India. 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 2nd August, 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 17th August, 1989. A local paper called Tarun Bharat published from Sholapur, carried in its issue of 17th August, 1989 a news item 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 17th August, 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 the 4th respondent 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 India and accordingly directed him to pay the compensation and he was also censured as mentioned above.

3. It is submitted before as 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 and Anr. v. Delhi Administration and Ors.*, a Constitution Bench of this Court held that "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*, this Court observed that "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 and Ors. v. State of Madhya Pradesh and Ors.* (1980) 3 SCC 119, this Court again reiterated following the principles laid down in *Sunil Batra's case*¹ and other cases held that handcuffing is an act against all norms of decency and amounts to violation of principles 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, 2nd appellant 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 prisoners handcuffed, still we do not think that he can be made personally liable. In *Radul Sah v. State of Bihar and Anr.*, 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 *Radul Sah's case*⁴, 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, 2nd appellant 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.