

Equivalent citations: 19 (1981) DLT 75

Bench: C Talwar

Harvinder Singh vs The Delhi Administration on 27/8/1980

JUDGMENT

Charanjit Talwar, J.

(1) By this judgment I am disposing of five petitions (Criminal Miscellaneous (Main) No. 271 of 1980, Criminal Miscellaneous (Main) No. 294 of 1980, Criminal Miscellaneous (Main) No. 298 of 1980, Criminal Writ No. 46 of 1980 and Criminal Writ No. 47 of 1980) as the question of law raised therein is common.

(2) In criminal Miscellaneous (Main) No. 271 of 1980 the petitioner Harvinder Singh, who is facing a trial under Section 302, Indian Penal Code, claiming himself to be a 'better class' undertrial seeks directions to the police that he should not be handcuffed while being escorted from the jail to the Courts and back on the dates of hearings. The petitioner seeks a further direction to the police that while being taken from the jail to the hospital for treatment he should not be handcuffed.

(3) Similar directions are sought by petitioner Ghander Mohan in Criminal Miscellaneous (Main) No. 294 of 1980. He also claims to be a 'better class' undertrial. He is facing a number of prosecutions under various offences of the Indian Penal Code.

(4) The petitioner Prem Nath Palta in his petition. Criminal Miscellaneous (Main) No. 298 of 1980, prays for a similar relief. He is being prosecuted for an offence of murder and claims that being a 'better class' undertrial he ought not to be handout Fed while being escorted from jail to Courts or hospital and back.

(5) By two separate Criminal Writ Petitions Nos. 46 and 47 of 1980, the petitioners, Balbir Singh and Ajaib Singh respectively, who are also undertrials in a number of prosecutions pending against them in Delhi Courts, have prayed for similar directions.

(6) It is unfortunate that prisoners and undertrials are forced to approach this Court for such a relief even after the declaration of the law of the country by the Supreme Court that no prisoner can be handcuffed or fettered routinely or merely for the convenience of the police officials escorting them. The duty cast upon the authorities, who have to escort the prisoners, has been laid in very clear terms by their Landlords of the Supreme Court in Writ Petition No. 1079 of 1979, Prem Shankar Shukla v. Delhi Administration, decided on April 29, 1980. It is surprising that the directions not to handcuff the accused/prisoners are not being obeyed. It was held in the concluding portion of that judgment as under :

"We clearly declare and it shall be obeyed from the Inspector General of Police and Inspector General of Prisons to the escort constable and the jail warder that the rule regarding a prisoner in transit between prison house and court house is freedom from handcuffs and the exception under conditions of judicial supervision we have indicated earlier, will be restraints with irons, to be justified before or after. We mandate the judiciary officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other 'irons' treatment and, if he has been, the official concerned shall be asked to explain the action forthwith in the light of this judgment."

(7) After this constitutional mandate it is no longer open to the respondent to take up a plea, as has been done in the counter affidavit of the Commissioner of Police, filed in Criminal Miscellaneous (Main) No. 271 of 1980 that the police is facing great difficulty in transporting accused without handcuffs for lack of availability of constables. It is averred that only about 225 constables out of the strength of 792 constables of Delhi

Armed Police, IIIrd Battalion, which Battalion has been given this assignment, are available for duty to escort the under trials from Tihar Jail to the Courts, and that about 400 accused/under trials have to be produced in various Courts situate at Old Delhi, New Delhi and Shahdara. The remaining constables of this Battalion, it is stated, have been put on various duties of law and order and cannot be spared for this job. In paragraph 14 it is submitted as follows :

"THAT Delhi Police is facing great difficulty in transporting accused without handcuffs to the respective Courts because at least four constables have to be posted on each under trial or convict when he is brought outside the Jail without handcuffs. Chances of escape of under trials and the convicts, when they are not handcuffed have greatly increased."

The difficulties, which the police is facing due to the non-availability of required personnel, must be appreciated by the Delhi Administration, and remedial steps be taken forthwith. The constitutional declaration by the Supreme Court, however, must be obeyed, unless a particular case can be brought within the exception laid down by the Supreme Court. The Exception is as under:

"EVEN in cases where, in extreme circumstances handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Art. 21 the procedure will be unfair and bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval. Otherwise, there is no control over possible arbitrariness in applying handcuffs and fetters. The minions of the Police establishment must make good their security receipts by getting judicial approval. And, once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Art. 21 which insists upon fairness, reason, ableness and justice in the very procedure which authorises stringent deprivation of life and liberty. The ratio in Maneka Gandhi's case and Sunil Batra's case (supra), read in its proper light, leads us to this conclusion."

(8) The petitions are, therefore, to be allowed not because the petitioners are 'better class' under trials but because the handcuffing of a prisoner while being escorted from jail to the Courts or any other place such as the hospitals and back, is not permissible under law unless a case can be brought within the exception quoted above.

(9) The petitioners be informed in jail that their petition have been accepted.