

(1991) 03 PAT CK 0014

In the Patna High Court

Case No : Criminal W.J.C. No. 87 of 1990 (R)

Anjani Kumar Sinha and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Citation : (1991) 03 PAT CK 0014

Final Decision : Allowed

Judgement

Satyabrata Sinha, J.—In this writ petition, the petitioners have prayed for issuance of writ of or in the nature of mandamus condemning the action of Respondent Nos. 3 and 4 in illegally detaining the petitioners on May 25, 1990 and thereafter in roping and handcuffing them before taking the petitionary to Court and keeping them waiting outside the Court in handcuffed condition in full public view on May 26, 1990 in order to humiliate them.

2. The fact of the matter lies in a very narrow compass.

3. The petitioners are Assistant Security Officers of Tata Iron Steel Company Ltd. (hereinafter referred to as "the Company"). Petitioner No. 1 is aged about 35 years and draws a salary of Rs. 5,000 per month, whereas petitioner No. 2 who is aged about 47 years draws a salary of Rs. 6,000 per month. Both the petitioners are Law graduates.

4. It is stated that one Sri A.N. Singh, an ex-employee of the Company superannuated in the year 1979. Despite cessation of his services he continued to occupy a quarter allotted to him by the Company bearing No. L-6/44 at Agrico Main Road. A suit for his eviction was filed by the Company in the Court of the Munsif at Jamshedpur, which was decreed. Execution was levied for executing the said decree viz. Execution Case No. 66 of 1988. In execution of the said decree, the Assistant Nazir of the Civil Court took possession of the said quarter and handed over the same to the representative of the Company on 25-5-1990. At the time of execution, the petitioners and other officers of the Company were

present and upon obtaining delivery of possession of the premises, two security personnel were deputed to guard and protect the said property on behalf of the Company. At the time of execution of the said decree the son of the judgment-debtor, one Ajay Prakash made some protest. Some occurrence also took place in the afternoon of 25-5-1990 leading to the lodging of the First Information Report by Petitioner No. 1 at 7 p.m. on that date That said First Information Report is contained in Annexure 2 to the writ petition. Form a perusal of the said F.I.R. it appears that it was contended therein that although delivery of possession was obtained at about 11.30 a.m. Later in the evening some miscreants came there and threatend the security personnel, whereupon petitioners went there. It was alleged that between 3.30 p.m. the accused person named therein started threatening them by showing pistol. They also started firing and pelting stones upon the petitioners and others, whereupon one Shri V.N. Singh, Assistant Security Officer (petitioner No. 1) informed the Chief of Security of the Company as also the Sidhgora Police Station.

5. Allegedly when the petitioners had gone at Sidhgora Police Station and their statements were being recorded Respondents 3 and 4 informed the petitioners that they were under arrest. The petitioners prayed for enlarging them on bail, but the same was refused. It is alleged that at about 9.15 p.m., First Information Report was lodged by one Ajay Prakash (Annexure-3.) against unknown persons, alleging therein that some persons committed offences punishable under Sections 147, 148,149, 448, 323 and 330 of Indian Penal Code.

6. The petitioners have contended that out of the aforementioned provisions, only Section 380 of Indian Penal Code is non-bailable, by despite the same the petitioners were detained at the police station and at about 2 a.m. on 26-3-1990 they were informed that they were under arrest. Allegedly on 26-5-1990 the petitioners were handcuffed and roped and in that condition brought to the Court of the Additional Chief Judicial Magistrate, Jamshedpur.

7. According to the petitioners, they are educated and respectable persons but despite the same they were made to wait outside the Court of the Additional Chief Judicial Magistrate, Jamshedpur, with handcuffs and in roped condition. In support of this contention, the petitioners have annexed an affidavit of Shri U.N. Singh, Advocate, whiett is contained in Annexure-5 to the writ petition, wherein it has been stated:

1. That on 26-5-1990 in the morning Court at about 7 a.m. I was engaged lawyer in G.R. Case No. 802-A of 1990, vide Sidhgora P.S. Case No. 41 of 1990 to conduct the case and the petition for bail on behalf of Sri Anjam Kumar Sinha and Sri Biswanath, both Assistant Security Officer of TISCO Ltd. in the Court of Judicial Magistrate at Jamshedpur.

2. That when I appeared in the Court of Chief Judicial Magistrate to obtain signature of my both the aforesaid clients on Vakaiainama, I saw them coming under police escort towards the Court of C.J.M. My both the clients namely,

Anjani Kumar Sinha and Bishwanath Singh were handcuffed and tied with rope which was held by the aforesaid escort party.

8. The petitioners have contended in the writ petition that although they were not named in the first information Report and no case for their immediate arrest was made out; they were detained and were also humiliated by the Respondent Nos. 3 and 4 by handcuffing and roping them.

9. Counter-affidavit has been filed on behalf of Respondent Nos. 3 and 4.

In his counter affidavit, Respondent No. 3 has stated that he was a probation officer and as such he had nothing to do with the arrest and detention of the petitioners. However, he was at Sidhgora Police Station where the aforesaid cases were lodged by the petitioners and Ajay Prakash, being Sidhgora P.S. Case No. 40 of 1990 and Sidhgora P.S. No. 41 of 1990 respectively. The Respondent No. 3 stated that he was neither the supervisory officer nor the Investigating Officer in relation to the said matter and thus he had no concern in the matter of arrest and detention of the petitioners. It was, however, contended that the petitioners were arrested by Respondent No. 4.

10. In reply to the said counter-affidavit, the petitioner No. 11 contended that on 24th and 26th May, 1990 Respondent No. 3 was no longer on probation as he had completed his probationary period on 18-3-1990. It has further been contended that although he might not have any jurisdiction in the matter of arrest and detention of the petitioner, but he has exercised his police power and caused illegal detention of the petitioners and caused them to be hand-cuffed and roped.

11. A counter affidavit has also been filed on behalf of Respondent No. 4 wherein inter alia, he alleged that upon receiving information about disturbances in law and order at Main Road, Agrico, he went to the place of occurrence and found that there has been brick-battling in between the TISCO security guards who were about 40 in number on the one hand and a large number of people of the locality who were about 500 in number. Mostly TISCO security guards seeing him fled away and petitioner No. 1 along with one jeep bearing No. BTP 128 was apprehended. The said jeep was sought to be damaged by the mob, but the situation was by Respondent No. 4 and allegedly when the mob intended to assault the TISCO security men, petitioner No. 1 opened blank fire at the mob. It was further stated that before coming to the place of occurrence for obtaining delivery of possession. Respondent No. 4 was not informed. Finding the situation grave he allegedly asked petitioner No. 1 to follow him to the situation grave, he allegedly asked petitioner No. 1 to follow him to alleged that as there was allegation of opening fire and taking law in his hand as against the Petitioner No. 1 and in view of the fact that the mob became furious against him, this answering respondent did not take risk in allowing the petitioners to go out of the police station. It was alleged that the superior officers of the said respondent were also present in the police station and they also did not permit the

petitioners to leave the said police station.

12. In paragraphs 12 and 14 of the counter-affidavit it has been stated as follows:

12. That in connection with paragraphs 19, 20, 26, 27, 28 to 35 and 37, 39, 40 to 42 is stated and submitted that the petitioner and the informant and his associate of Annexure-B both parties were asked to stay in the Police Station and they were sent to the Court with the proper escort party. The petitioners might have shown some sort of gestures for which the escort party might have not taken chance and used hand-cuff etc. for the safest of a discharging their lawful duties as the petitioners were not faithful to law by their acts of opening fire on the innocent public and creating dreadful circumstances in the locality and in such circumstances, the question of humiliating the dignity of the petitioners does not arise.

** ** 14. That in any view of the matter the action taken by this answering respondent in detaining the petitioners in the police station and the allegation of using handcuff by the escort party, if at all, be taken to be true, is lawful and right steps against the petitioners for discharging their official duty and the petitioners are not entitled to any relief for their wrongful acts of taking law in their hands and all the actions which were taken by this Respondent were to avoid the situation around the locality not for humiliate as alleged at all.

13. Before proceeding with the discussions on merits of the case, one disturbing feature must be noted.

14. Notices were issued to Respondent Nos. 3 and 4 in the admission matter by order, dated 5-7-1990, the said notices returned unserved. By another order, dated 16-8-1990 fresh notices upon respondent Nos. 3 and 4 were directed to be issued and Respondent Nos. 3 and 4 were directed to file their show cause and/or file counter-affidavit by 7-9-1990. No instruction was received by the State Counsel from Respondent Nos. 3 and 4. Respondent Nos. 3 and 4 did not appear nor file any show cause. On 19-9-1990 learned Government Advocate submitted that he would try to contact Respondent Nos. 3 and 4 for obtaining instructions in the matter. From an affidavit filed by one Hari Krishna Sirka, dated 21-8-1990, it appears that on 20th August, 1990 he went to the residence of Respondent Nos. 3 and 4 for serving the copies of the orders dated 5-7-1990 and 16-8-1990 passed by this Court, but both of them after seeing the orders of the Hon'ble Court refused to accept it saying that he is not a "Court staff" Respondent No. 3 admitted in his counter-affidavit filed on 12-10-1990 in reply to the affidavit of Sirka that one person came to him with the photostat copies of the aforementioned orders but he did not accept the same since the Xeroxed copies of the order of this Court sought to be served upon him was not accompanied by any covering letter from this Court.

15. A counter-affidavit has been filed by Respondent No. 3 on 16-10-1990, but even on that date the Respondent No. 4 did not file any counter-affidavit. In this situation by an order, dated 16-10-1990 this writ petition was directed to be

heard. A counter-affidavit has been filed by Respondent No. 4 only on 11-12-1990.

16. This attitude on the part of Respondent Nos. 3 and 4 in not accepting the notices and/or in not sending the instructions to the learned Government Advocate is reprehensible. This Court has to adjourn many cases on a number of occasions only because the concerned Government officers do not send instructions to their counsel and, thus, precious time of this Court is unnecessarily wasted. In absence of any counter-affidavit filed on behalf of the State, this Court finds itself impossible to dispose of the matters and they have to be adjourned again and again.

17. Mr. K. Lahiri, learned Counsel appearing on behalf of the petitioners firstly submitted that the arrest of the petitioners was wholly illegal, inasmuch as from the materials on record it is evident that the said Company obtained delivery of possession of the premises in question in the morning and, thus any occurrence which took place in the evening had nothing to do with the obtaining of delivery of possession. Learned Counsel further submitted that from a perusal of the F.I.R. lodged by Shri Ajay Prakash, son of the judgment-debtor, it would be evident that no allegation has been made out therein as against the petitioners.

Learned Counsel further submitted that admittedly petitioner No. 1 had already lodged a F.I.R. which is contained in Annexure-2 to the writ petition wherein the said Ajay Prakash was named as an accused. Learned Counsel submitted that in this situation there was no reasonable ground on the part of Respondent Nos. 3 and 4 for believing that the petitioners were guilty of commission of a cognizable offence.

18. It was further submitted that even when the petitioners were put under arrest, as would be evident from the statement made in paragraph 15 of the writ petition, they were not informed the reason therefore which is contrary to the provision of the Code of Criminal Procedure. Learned Counsel further submitted that the respondents have not even indicated the justification of handcuffing and/or roping of the petitioners, who were neither convicts nor under-trial prisoners but merely suspect and thus the some fixed amounts to violation of their statutory rights contained in various provisions of the Code as also the Bihar Police Manual.

19. Learned Counsel in this connection has relied upon Sections 41 and 49 of the Code of Criminal Procedure and Rules 221(g), 222, 223, 237, 241(b) and (d) and 239 of the Bihar Police Manual. The learned Counsel has further relied upon the decisions of the Supreme Court in Prem Shankar Shukla Vs. Delhi Administration, in Sunil Batra Vs. Delhi Administration and Others etc., , Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, and Sunil Gupta v. State of M.P. 1990 SCC (3) 119.

20. Mr. Narayan Roy, learned Government Advocate, on the other hand submitted that in this case hand-cuffing of the petitioners are not admitted, and

thus the Respondent Nos. 3 and 4 cannot be made personally liable. Learned Counsel further with reference to the statements made in the counter-affidavit filed on behalf of the Respondent No. 4 submitted that the petitioners were merely taken in protective custody and thus it was not a case of arrest.

21. Sections 41(1) and 49 of the Code of Criminal Procedure which reads as follows:

41(1) Any Police Officer may without an order from a Magistrate and without a warrant, arrest any person--

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been no concerned.

** ** 49. The person arrested shall not be subjected to more restraint than is necessary to prevent escape.

22. The State Government, in exercise of its power conferred upon it under the Police Act, framed, rules which are contained in Bihar Police Manual 1, 1978. The provisions of the said Manual provides guideline to the police officers as to how and in what manner they should exercise their powers.

Rules 221(g), 222, 237, 239(ii)(b) and (d) and 241(b) and (d) of the Bihar Police Manual read as follows:

221. (g) As seen as a person is arrested, he shall be informed of grounds of arrest, vide Section 50, Cr. PC when that person is arrested away from his home an intimation should also be sent to his nearest relation in P.M. Form No. 413 after ascertaining the address from him.

222. Definition of Police Custody--Police custody is custody on the authority of the police. Every person who is kept in attendance to answer a charge in such a way that he is practically deprived of his freedom shall be considered as in custody. A Police Officer who without himself arresting a person, directs some of the neighbours to take charge of him, shall be responsible in the same way as if he had made the arrest himself. Requiring a person's attendance by letter and deputing a constable to accompany him with orders to prevent him from speaking to any one amounts to an arrest.

223. (a) The officers should study Sections 171 and 436, Cr. PC carefully. When a person arrested is accused only of bailable offences, he shall be admitted to bail or without sureties in accordance with these sections. The instructions given in Rule 181(f) shall be applicable to the form of bail bond.

(b) When a person is arrested in connection with a bailable offence, he should not be compelled to go to police station to give bail. The officer arresting him should take necessary bail bond from him and release him as per rule where the bail is offered.

241(b) In bailable cases prisoners shall not be hand-cuffed at the time they are despatched, unless they are violent or have previously attempted to escape. They shall not be hand-cuffed enroute, except in emergencies as permitted in P.M., Rule 240(b) and (i) or unless they become violent or attempted to escape. In such cases the order to apply hand-cuffs or a rope shall be given by the senior officer present who shall, if at a police station, enter the reasons in the station diary and in the certificate in P.M. Form No. 43 or in the interior, or en-route, shall report to the facts to the first police station or Court at which he arrives.

** ** (d) The rules in Chapter 18 for the escort of convicts apply generally to the guarding and escorting of persons arrested by the police so far as they are not contradictory to the rules contained in this Chapter, but no one arrested shall be subjected to more restraint than is necessary to prevent his escape.

23. Articles 20 and 21 of the Constitution lay down sufficient safe guard with regard to life and personal liberty of a citizen. Article 21 reads as follows:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

24. In terms of Article 21 of the Constitution, therefore, the executive, save in accordance with law, and in conformity with the provisions thereof is not permitted to encroach upon the personal liberty of citizen. Before a person can be deprived of his personal liberty, the procedure established by law must be strictly followed and must not be departed from to the disadvantage of a citizen.

In the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, Article 21 was construed liberally. It was held with regard to executive actions making encroachment of liberty of a person, judicial review is permissible. It was further held that Article 21 not only imposed limitation upon the executive action but also upon law making also inasmuch as it has been laid down therein that while prescribing procedure for depriving person of his life or personal liberty, it must prescribe which is reasonable, fair and just.

25. In *Kharak Singh Vs. The State of U.P. and Others*, the Supreme Court held:

The content of Article 21 calls for examination. Explaining the scope of the words "life" and "liberty" which occurs in the 5th and 14th Amendments to the U.S. Constitution regarding "No person...shall be deprived of life, liberty or property without due process of law" to quote the material words, on which Article 21 is largely modelled, Field, J. observed:

By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends--to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world.... By the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bounds of a

prisons.

It is true that in Article 21 as contrasted with the 4th and 14th Amendment in the U.S., the word "liberty" is qualified by the word "personal" and therefore, its content is narrower. But the qualifying adjective has been employed in order to avoid overlapping between those elements or incidents of "liberty" like freedom of speech or freedom of movement etc, already dealt with in Article 19(1) and the "liberty" guaranteed by Article 21 and particularly in the context of the difference between the permissible restraints or restrictions which might be imposed by Sub-clauses (2) to (6) of the Article in the several species of liberty dealt with in the several clauses of Articles 19(1). In view of the very limited nature of the question before us it is unnecessary to pause to consider either the precise relationship between the "liberties" in Article 19(1) (a) and (d) on the one hand and that in Article 21 on the other, or the content and significance of the words "procedure established by law" in the latter Article, both of which were the subject of elaborate consideration by this Court in *A.K. Gopalan Vs. The State of Madras*, . In fact, in *Gopalan's* case unanimity of opinion on the question that if there was no enacted law, the freedom guaranteed by Article 21 would be violated, though the learned Judges differed as to whether any and every enacted law satisfied the description or requirement of "a procedure established by law."

26. It is, therefore, clear that Article 21 is of wide import. It, thus embrace within its fold not merely an animal existence, but also liberty which, inter alia, includes the right of privacy. It is now well-settled that life of personal liberty of a citizen can only be deprived of by procedure established by law. It means State-made or enacted law. Such law should not be arbitrary, unfair and unreasonable.

Reference in this connection may also be made to the case of *Francis Coralie Mullin v. The Administration, Union Territory of Delhi* Reported in AIR 1981 SC 746.

27 Sections 41(1)(a) and 49 of the Code of "Criminal Procedure read with Rules 221(g), 223, 237 provide for the procedure as to the conditions for using police power in the case of an arrest of a citizen.

28. There cannot be any doubt that even if the allegations made in the F.I.R. lodged by Ajay Prakash are given face value, which is contained in Annexure-3 to the writ petition, no case for holding reasonable belief that the petitioners were guilty of commission of cognizable offence had been made out. Even if the averment of Respondent No. 3 to the effect that petitioner No. 1 was taken in protective custody is taken to be correct; we fail to understand as to why he had been forwarded to the Court on 26-5-1990. If he was to be taken in protective custody the superior officers were required to be informed thereafter and the petitioners should have been set at liberty as soon as becomes possible for the officers concerned to set them at liberty or to reach them to their residences. Nothing, however, has been stated in the counter-affidavit to justify the

detention of the petitioner No. 2. The petitioners, in any event could have been released, when they have prayed for bail.

29 The statements made in the counter-affidavit by Respondent Nos. 3 and 4 to say the least, are evasive in nature. It does not stand to reason as to why Respondent Nos. 3 and 4 faced up with such serious charges did not produce all the relevant records before this Court. Under the Police Manual, they are required to maintain various records. In such a situation, it was, thus, obligatory on the part of Respondent Nos. 3 and 4 to show that their actions were bona fide. The duty to produce such documents is greater in the case of instrumentalities of the State who are under an obligation to act fairly. See *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, .

30 Hand-cuffing had been held to be violative of Article 21 of the Constitution of India. Even before the decisions of the Supreme Court, relied upon by Mr. Lahiri were pronounced, hand-cuffing of an accused at the first instance was decried by various Courts.

Section 49 of the Code of Criminal Procedure provides that the person arrested shall not be subjected to more restraint that is necessary to prevent escape so are the provisions contained in Rule 241 of the Bihar Police Manual. The breach of the rules entails punishment u/s 220 of the Indian Penal Code as also Section 29 of the Police Act, 1861 (Act V of 1861). It is in this context, restraint on the movement of a person, and hand-cuffing and restraint of personal liberty of a citizen as contained in Rule 239(2)(b) and Rule 241(b)(d) of the Bihar Police Manual should be construed.

31. In the case of *Prem Shankar Shukla Vs. Delhi Administration*, the Supreme Court has observed that hand-cuffing law must meet the demands of Articles 14 19 and 21 of the Constitution. It was held that all laws, all rules, standing orders, instructions and circulars relating to restraint put on a prisoner including hand-cuffing must bow before Part III of the Constitution of India. It was observed that Article 21 in view of the decision of *Smt. Maneka Gandhi (supra)* and followed by *Sunil Batra's case AIR 978 SC 1675* is the sanctuary of human values, prescribes fair procedure and forbids barbarities punitive or processual. It was held "hand-cuffing is prima facie inhuman and, therefore, unreasonably is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to zoological strategies repugnant to Article 21.

32. It was further held: "Insurance against escape does not compulsorily require hand-cuffing. There are other measures whereby an escort can keep safe custody of a detenu without the indignity and cruelty implicit in hand-cuffs or other iron contraptions. Indeed, binding together either the hands or the feet or both has not merely a preventive impact, but also a punitive hurtfulness. Menacles are mayhem on the human person and inflict humiliation on the bearer."

33. The Court proceeded:

Such arbitrary conduct surely claps Article 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Article 19 (See *Sunil Batra Vs. Delhi Administration and Others etc.*, cannot be cut down cruelty by application of hand-cuffs or other hoops. It will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe-keeping. (Underlining are mine for emphasis).

The Supreme Court then considered as to whether in grave offences the accused can be hand-cuffed in hold as follows:

Even in cases where, in extreme circumstances hand-cuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 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 hand-cuffs 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 hand-cuffs and fetters. The minions of the police establishment must make good their security recipes by getting judicial approval.

It further observed:

The clear and present danger of escape "breaking out of the police control is the determinant. And for this there must be clear material, not glib assumption; record of reasons and judicial oversight and summary hearing and direction by the Court where the victim is produced. We do further that paras 26, 22(i)(d)(e) and (f) also, however, perilously near unconstitutionality unless read down as we herein direct.

Pathak, J. as the learned Chief Justice, then he was, while delivering a separate judgment, observed:

Now whether hand-cuffs or other restraint should be imposed on a prisoner is primarily a matter for the decision of the authority responsible for his custody.

It was also held:

But I do agree there is room for imposing a supervisory regime over the exercise of that power. One sector of supervisory jurisdiction could appropriately lie with the Court trying the accused, and it would be desirable for the custodial authority to inform that Court of the circumstances in which, and the justification for, imposing a restraint on the body of the accused. It should be for the Court concerned to work out the modalities of the procedure requisite for the purpose of enforcing such control.

34. In *Sunil Batra Vs. Delhi Administration and Others etc.*, , the Supreme Court again considered the escape of judicial review in relation to the conditions of the prisoner on present system vis-a-vis Article 21 of the Constitution of India. The

Supreme Court observed:

The final penance for prison, injustice is, therefore, more dynamic, for more positive, strategies by going back to the man, the inner man.

Reference in this connection may also be made to Rakesh Kaushik Vs. B.L. Vig, Superintendent, Central Jail, New Delhi and Another, .

35. In the case of Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, the Supreme Court dealt with a case wherein a prisoner came to the Supreme Court with a complaint that he was arrested with malicious intents.

36. In the Sunil Gupta and Others Vs. State of Madhya Pradesh and Others, the Supreme Court, reiterated the ratio rendered in its earlier decision and observed as follows:

The police officers who are the custodian of law and order should have the greatest regard for the personal liberty of citizens and should not float the laws by stooping to such bizarre acts of law-lessness. Custodians of law and order should not become depredators of civil liberties. Their duties are to protect and not abduct.

37. Coming to the case (sic) that delivery of possession of the premises in question had been obtained at 11.30 a.m. There is no doubt that some occurrence took place in the afternoon to leading to lodging First Information Report by the petitioner No. 1 against Ajay Prakash and another being Sidhgora P.S. Case No. 40 of 1990 and another by the said Ajay Prakash as against unknown Security Officers of the Company.

38. The Respondent No. 3 has admitted that he was present in the police station while both the First Information Reports were lodged. He, however, states that he was not concerned with the detention and hand-cuffing of the petitioners. Thus, Respondent No. 4 does not come with a clear statement as to what happened in the police station on 25-5-1990 and 26-5-1990. He, as a respectable police officer, who admittedly is no longer a probationer should have been fair enough to State the truth, the whole truth and nothing but the truth.

39. In paragraph 8 of his counter-affidavit, that Respondent No. 3 states as follows:

From Annexures 2 and 3 it would appear that first Sidhgora P.S. Case No. 40 of 1990 was registered by the petitioner No. 1 and thereafter Sidhgora P.S. Case No. 41 of 1990 was instituted by one Ajay Kumar Singh who was in possession of the quarter in question.

It does not stand to reason as to how he could as to Ajay Kumar Singh was in possession of the quarter in question.

40. In paragraph IS of the writ petition the petitioners stated as follows:

That while the petitioners were in the police station having their statements

recorded as a consequence of the First Information Report lodged by them, they were informed by one Mr. Karan and the Officer in-Charge of the police station Sidhgora, P.S. that they were under arrest, but they could not be told as to what were the offences alleged against them.

In paragraph 11 of the counter-affidavit Respondent No. 3 States as follows:

That regarding the statement made at paragraph 15, it is stated and submitted that I had no jurisdiction to either release or arrest the petitioners and as such no occasion existed for me to inform petitioners that they were under arrest.

41. According to the Respondent No. 3, the matter was within the jurisdiction of the senior officers but he does not say as to whether they were present in the police station on 25th and 26th May, 1990 when the petitioners were detained and hand-cuffed respectively.

42. Respondent No. 4 in paragraph 11 of the counter-affidavit states as follows 2:

It is further stated that the superior officers of this respondent were also present in the P.S. and in presence of the superiors this answering respondent had nothing to do, and on the observation of the incidents and situation at the superior officers also not permitted to relieve the petitioner.

43. Respondent No. 4, therefore, also does not suggest that except Respondent No. 3, any other person was present in the police station and it was at their instance, the petitioner were detained.

The Respondent No. 4, therefore, indicates that Respondent No. 3 was present and it was he who did not permit him to release the petitioner.

44. In this connection it may further be mentioned that Respondent No. 4 stated that the petitioners were arrested in view of the institution of aforementioned Sidhgora P.S. Case No. 41 of 1990. According to the said respondent, the detention of the petitioners was not illegal, as allegedly, they were involved in commission of offences which were not bailable in nature. However, he does not say as to whether the investigation was made by him for the purpose of coming to the conclusions that as to whether the petitioners had any hand in the matter of commission of offence punishable u/s 380 of the Indian Penal Code, inasmuch as admittedly the other offences were bailable in nature.

45. Admittedly, the petitioners were detained at the police station. Nothing has been brought on records to show that even on the basis of purported Sanha entry Nos. 661 and 663 dated 26-5-1990 that in fact, the petitioners were present at the place of occurrence and they were brought at the police station for their safety after being rescued. The Respondent No. 4 has not stated as to how and in what manner he had reasonable apprehension that the petitioners committed any non-bailable offence. As indicated hereinbefore, nothing has been stated in the counter-affidavits in relation to the petitioner No. 2.

46. It may further be mentioned that even in Sidhgora P.S. case No. 41 of 1990

it has not been mentioned that petitioner No. 1 fired from his pistol at the crowd. In such a situation it is not possible to hold that Respondent No, 4 acted bona fide as alleged by him in paragraph 12 of his counter affidavit which has been quoted hereinbefore.

47. The action on the part of the Respondent No. 4 in detaining the petitioners in the police station prima facie appears to be acts of malice which is fortified by the fact that although Respondent No. 4 himself recorded Sidhgora P.S. case No. 40 of 1990 at 19 hours and Sidhgora P.S. case No. 41 of 1990 at 19.35 hours, but did not take into consideration that the petitioner No. 1 in his First Information Report being Sidhgora P.S. case No. 40 of 1990 clearly stated that the delivery of possession was effected at about 10 a.m. It appears strange that although Ajay Prakash the informant of Sidhgora P.S. case No. 41 of 1990 was named in Sidhgora P.S. case No. 40 of 1990 for having allegedly committed an offence u/s 307 of the Penal Code by indulging in firing, he was not arrested.

It also does not stand to reason as to if at about 19 hours when the First Information Report had already been lodged by Petitioner No. 1 how credence was given to the allegation made in Sidhgora P.S. case No. 41 of 1990 to the effect that the informant's house was invaded by the Gunda party of TISCO. In the said First Information Report also the names of the petitioners did not figure nor the informant of the said case identified them at the police station.

It is interesting to note that the forwarding report dated 26-5-1990 which is contained in Annexure 4 to the writ petition, the petitioners were stated to be only suspects in the aforementioned Sidhgora P.S. case No. 41 of 1990. It does not appear from the record that along with the said forwarding report any memorandum of evidence as against the petitioner was annexed.

48. In terms of Section 167(1) of the Code of Criminal Procedure the Officer-in-charge of police station who is making investigation in a case is enjoined with the duty to transmit to the nearest Chief Judicial Magistrate all entries made in the case diary, whenever any person is arrested and detained in custody if in his opinion the investigation cannot be completed within a period of 24 hours as envisaged u/s 57 of the Code of Criminal Procedure and if there are grounds for believing that the accusation or information is well founded.

Sub-section (1) of Section 167 of the Code of Criminal Procedure, therefore, casts a statutory duty upon the investigating officer to forward the entries made in the case diary, comprising of the evidence collected against the persons who have been arrested and detained in custody in connection with the said case.

49. The Andhra Pradesh High Court In Re: Burla Jayarami Reddi and Others, , held that transmission of a copy of the entries in the diary prescribed in Section 172 of the Code of Criminal Procedure is mandatory in terms in Section 167(1) thereof and thus, it is imperative that every person answering the description in the said section should send along with the remand report a copy of the case diary.

Learned Judges observed:

The object of enacting this section is that the entries in the diary afford to the Magistrate information upon which he can decide whether or not the detention of the accused person in custody should be authorised and also to enable him to form an opinion as to whether any further detention is necessary. By not complying with the requirement, the investigating officers render that part of the section which requires the transmission of entries in the case-diary otiose.

Evidently the respondent No. 4 did not comply with the said statutory provisions contained in Section 167(1) of the Code of Criminal Procedure.

50. If the petitioners were not accused of taking law in their own hands by opening fire on the innocent public and creating dreadful circumstances in the locality, it does not stand to reason as to why the escort party might not have to use hand-cuff etc. without his consent and approval. As noticed hereinbefore, neither Respondent. No. 4 nor the escort-party stated the reasons for hand-cuffing and for roping the petitioners at the earliest opportunity in terms of the derision of the Supreme Court in Prem Shankar Shukla's case (supra). Admittedly the provisions of Rule 241 of the Bihar Police Manual were not complied with.

51. It is also interesting to note that even if the petitioner No. 1 was guilty of commission of some overt act on 25-5-1990; how the same can be the basis for roping and hand-cuffing the petitioners on the next date, i.e., on 20-5-1990. Even the minimal requirement of procedural safeguard as contemplated in Rule 241 was not complied with.

52. Further, learned Government Advocate, when questioned, failed to answer as to why even assuming that the petitioners were hand-cuffed on the way by the escort-party because of some overt acts on their part, failed to make any inquiry in this regard, in view of the fact that serious allegations were made personally as against Respondent Nos. 3 and 4, could not give any reply whatsoever. In this situation, we are prima facie of the view that if Respondent No. 4 was not correct in his statements that it was the escorting party who might have put hand-cuffs on the petitioners. An enquiry should have been made by them in this regard the escorting party had also recorded any reason therefor.

53. In this connection it: may be mentioned that the respondents in their counter-affidavit do not deny or dispute the allegations that the petitioners were atleast roped. In any view of the matter, the respondents have not stated as to why the petitioner No. 2 had to be roped and hand-cuffed.

54. Taking all these facts and circumstances of the case, there is no other option but to hold that there was no reasonable cause for the petitioners being detained in police custody nor as there any cause for handcuffing of the petitioners and roping either by Respondent No. 4 or by the escorting party.

55. From the facts as stated hereinbefore it is evident that the Respondents No.

3 and 4 prima facie appear to have indulged not only in suppressio veri but also in suggestio falsi. As public servants it was their duty to place before this Court all relevant facts.

It is unfortunate that although counter-affidavits have been filed months after the incident took place, the Respondent Nos. 3 and 4 sought to justify their actions on untenable grounds and without making any due enquiry in this regard and also by withholding the relevant documents from this Court. These actions on the part of the Respondent Nos. 3 and 4, therefore, must be condemned.

56. The question which now arises for consideration as to what relief the petitioners are entitled to.

57. In Bhim Singh's, case (supra), the Supreme Court observed:

However, the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with immunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah Vs. State of Bihar and Another, and Sebastian M. Hongray v. Union of India AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000 within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh.

58. In Sunil Gupta's case (supra), the Supreme Court directed:

From the discussion made above, we have no compunction in arriving at a conclusion that in the present case, the escort party without any justification and hand-cuffed the petitioners on April 22, 1989 on both occasions i.e., when taking the petitioners 1 and 2 from the prison to the Court and then from the Court to the prison. Hence, we direct the Government of Madhya Pradesh to take appropriate action against the erring escort party for having unjustly and unreasonable hand-cuffing the petitioners 1 and 2 on April 22, 1989 in accordance with law.

As has been pointed out supra, the copies of the photographs produced before

this Court clearly reveal three persons--evidently the petitioners 1 to 3 have been hand-cuffed with leading chains. We are not able to arrive at a correct conclusion as to when, where and under what circumstance this had happened. Therefore, we further direct the Government of Madhya Pradesh to initiate an enquiry in this matter and to take appropriate action against the erring officials.

Lastly, with regard to the prayer of claim for suitable and adequate compensation, we observe that it is open to the petitioners to take appropriate action against the erring officials in accordance with law, if they are so advised, and in that case, the Courts in which the claim is made can examine the claim not being influenced by any observation made in this judgment.

59. Recently, the Supreme Court while granting compensation of Rs. 20,000 in favour of a 12 years old boy Aslam for hand-cuffing him directed that a sum of Rs. 2,000 be deducted from the salary of Constable Chandra Bhushan Pandey of Aligunj Police Station, Lucknow (See The Lawyers November, 1990 page 15.)

60. The power of the Supreme Court and consequently of the High Court to grant compensation to a citizen for gross violation of his fundamental right, i.e. for commission of constitutional torts is no longer *res integra*. See *Rudul Sah Vs. State of Bihar and Another*, and *M.C. Mehta and another Vs. Union of India and others*, .

In *Mentis* case (*supra*), it was held:

The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the Court in a petition under Article 32. The infringement of the fundamental right just be gross and patent, that is, incontrovertible and *ex facie* glaring and either such infringement should be a large scale affecting the fundamental rights of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the Civil Courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of Civil Court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in *Rudul Sah Vs. State of Bihar and Another*, . So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty, was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible the violation was gross and its

magnitude was such as to shock the conscience of the Court and it would have been gravely unjust to the person whose fundamental right was violated to require him to go to the Civil Court for claiming compensation.

61. The petitioners admittedly are educated persons and highly paid security officers of M/s. Tata Iron and Steel Company Ltd, It is not possible in this case to assess the exact quantum of damages they suffered nor it is possible to apportioned the amount of damages payable by each of the respondents.

In this situation, it is directed that the State Government shall pay a sum of Rs. 20,000 to the petitioners by way of exemplary costs.

62. The State Government should, however, hold an inquiry in this regard for fixing individual liabilities of the respondent Nos. 3 and 4 or any other officer (s) or employee (s) and on this basis of such inquiry, the State Government would be entitled to deduct such amount or amounts either from Respondent Nos. 3 and 4 jointly or severally and/or from any other person who may be found actually liable for roping and hand-cuffing the petitioners. This order is being passed keeping in view of the fact that according to Respondent Nos. 3 and 4, the possibility of some other officers and/or persons of the police force being responsible for the matter in question cannot be ruled out. Although, we have held that the fundamental right of the petitioners has grossly been violated, we have refrained from awarding any compensation to the petitioners payable by the Respondent Nos. 3 and 4 keeping in view that they are not in an economically disadvantaged position and as such they are in a position to file a suit for damages.

63. It would thus also be open to the petitioners to file a suit for damages as against the erring officials in accordance with law and in the event thereof the Court concerned may examine the same without in any way being influenced by any observation made in this judgment.

64. This writ petition is, therefore, allowed to the extent as indicated above.

Ravinandan Sahay, J.

65. I agree.