

(2013) 10 KAR CK 0276

In the Karnataka High Court

Case No : Writ Petition No. 3401 of 2008 (GM-POLICE)

Deepak and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Karnataka Prevention of Destruction and Loss of Property Act, 1981 — Section 2(1)
Penal Code, 1860 (IPC) — Section 109, 143, 147, 148, 427

Citation : (2014) 3 AKR 428 : (2014) ILR (Kar) 118 : (2013) 6 KarLJ 506

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Sanjay S. Katageri, for the Appellant; K. Vidyavathi, Additional Government Advocate and Sri Srikant Sattigeri, for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioners have prayed for a writ in the nature of certiorari to quash the order dated 28-12-2007 in CC No. 584 of 2007 passed by JMFC, IV Court at Belgaum insofar as it relates to not initiating proceedings or action against respondents 5 to 7 and not awarding any compensation, for a writ of mandamus to initiate appropriate action against respondents 5 to 7 and for payment of compensation of Rs. 20,000/- and more to each of the petitioners for violation of their fundamental rights. On 26-10-2006 the driver of the bus bearing No. KA-22-F-909 by name Suresh Antakannavar lodged a complaint with respondent 6-Police against the petitioners and the same came to be registered in Crime No. 62 of 2006 for the offences punishable under Sections 143, 147, 341, 307, 353, 427 and 109 read with Section 149 of Indian Penal Code, 1860 and Section 2(1) of the Karnataka Prevention of Destruction and Loss of Property Act, 1981. In the complaint it is alleged that the petitioners/accused caused damage to the bus by throwing stones, injury to a passenger and assaulted the driver. On the same day respondent 6-Police arrested the petitioners and produced them before the jurisdictional Magistrate on 27-10-2006 at 12.30 a.m. with remand application. Accordingly the jurisdictional Magistrate remanded the petitioners to judicial

custody and directed respondent 6-Police to give explanation for the delay in producing the accused before the Court. Again on 24-11-2006 the petitioners were produced before the jurisdictional Magistrate with handcuff with remand application. The jurisdictional Magistrate extended the judicial custody upto 7-12-2006 and directed the Investigation Officer to submit explanation with regard to handcuffing of the petitioners. Respondent 7 submitted explanation on 13-10-2007 as per Annexure-E inter alia contending that the petitioners tried to escape and therefore they were handcuffed. It is further stated that before producing the petitioners before the Court, when respondent 7 tried to remove the handcuffs, petitioners suddenly entered the Court Hall and there was no intentional lapse on their part. To this explanation petitioners filed their objections denying the explanation given by respondent 7. After hearing both the parties the jurisdictional Magistrate passed the impugned order on 28-12-2007 holding that "it is established by the admission of escort party that the accused were brought to the Court with handcuffs from the Central Prison. Therefore the fact that the accused were brought from the jail to the Court in handcuff is amply proved". The jurisdictional Magistrate rejected the prayer of the petitioners for payment of compensation, holding an enquiry and reserved liberty to the petitioners to work out their remedy before the appropriate forum. Hence, this writ petition.

2. Learned Counsel for the petitioners filed a memo dated 19-9-2013 reporting the death of petitioner 2. No steps are taken and as such the petition is abated insofar as petitioner 2 is concerned.

3. Heard arguments on both the side and perused the entire writ papers.

4. It is necessary at this stage to notice the law laid down by the Supreme Court in the case of Citizen for Democracy through its President Vs. State of Assam and others, , where in the Court gave the following directions in the matter of handcuffing of the accused:

16. We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner--Convicted or undertrial--While lodged in a Jail anywhere in the country or while transporting or in transit from one Jail to another or from jail to Court and back. The police and the Jail Authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back.

17. Where the Police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the

Magistrate may grant permission to handcuff the prisoner.

18. In all the cases where a person arrested by Police, is produced before the Magistrate and remand--Judicial or non-judicial--Is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

19. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the Police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

20. Where a person is arrested by the Police without warrant the Police Officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

21. We direct all ranks of Police and the prison authorities to meticulously obey the above mentioned directions. Any violation of any of the directions issued by us by any rank of Police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act, 1971 apart from other penal consequences under law.....

5. In the instant case it is not in dispute that the petitioners were produced in handcuff before the jurisdictional Magistrate on 24-11-2006. It is not the case of respondent-Police that the petitioners are habitual offenders, having record of antecedents in jumping the jail or bail conditions and prone to violence. In the remand application there is no whisper with regard to petitioners' attempt to escape from the custody. Even in the jail records there is no mention in this regard. Therefore the finding of the jurisdictional Magistrate in the impugned order that the accused were brought from the jail to the Court with handcuff is amply proved is supported by evidence on record and the same is in accordance with law. This finding of the jurisdictional Magistrate in the impugned order is not questioned by the respondents and as such the same had become final and binding on the parties.

6. The fact that the respondents brought the petitioners from the jail to the Court in handcuff is in clear violation of the directions issued by the Supreme Court in several cases including the directions issued in President, Citizen for Democracy's case. Therefore there is violation of human rights and damage to the dignity and honour of the petitioners. In similar circumstances the Supreme Court in the case of D.K. Basu Vs. State of West Bengal, , held as under:

26. One of us (namely, Dr. A.S. Anand, J.,) speaking for the Court went on to observe: (State of Madhya Pradesh v. Shyam Sunder Trivedi, 1995 AIR SCW 2793)

The Trial Court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a "could not care less" attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used, at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in Police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the Police that no harm would come to them, if an old prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts, must not lose sight of the fact that death in Police custody is perhaps one of the worst kind of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society".

This Court then suggested:

The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of Law has prevailed".

This Court in the case of Syed Shabbir Hussain and Others Vs. State of Karnataka and Others, , held as under:

That the respondent 6 has virtually interfered with the liberty of the petitioners and thereby caused damage to their reputation in handcuffing and parading in the open streets. Therefore I am of the considered view that it is a fit case to award compensation in favour of the petitioners.

The Supreme Court in the case of Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, , held as under:

11. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the S.H.O., Lal Singh and as such she is entitled to get the damages for the death of her son. It is well-settled now that the State is responsible for the tortious acts of its employees. The respondent 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for

the death of her son due to bearing by the S.H.O. of Anand Parbat Police Station, Sri Lal Singh".

The Supreme Court in the case of State of Maharashtra and Others Vs. Ravikant S. Patil, , held:

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 Sri 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 Vs. State of Bihar and Another, , 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 Sri 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's case, 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.

7. Keeping in view the law declared by this Court and the Apex Court in the decisions referred to supra I am of the considered opinion that in the facts and circumstances of this case it is amply proved that the respondent-Police by handcuffing the petitioners violated the directions issued by the Supreme Court, caused damage to the dignity and honour of the petitioners and as such they are liable to pay compensation to the petitioners. Further it is admitted that it is respondent 7 who brought the petitioners handcuffed from the jail to the Court. Respondent 7 is an employee of the Government of Karnataka. Therefore the State Government is liable to pay compensation to the petitioners. In the facts and circumstances of this case payment of compensation of Rs. 5,000/- to each of the petitioners will meet the ends of justice. For the reasons stated above, the following:

ORDER

(i) Writ petition is partly allowed.

(ii) The impugned order dated 28-12-2007 in CC No. 584 of 2007 passed by JMFC, IV Court at Belgaum is modified directing respondent-State Government to pay a sum of Rs. 5,000/- as compensation to each of the petitioners except

deceased petitioner 2.

(iii) The respondent-authorities may hold an enquiry and take action against respondent 7 if they think it necessary. Ordered accordingly.