
(2014) 06 MAD CK 0320
In the Madras High Court
Case No : Writ Petition No. 19510 of 2003

G. Sarala

APPELLANT

Vs

Home Secretary

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 176, 46, 49
Madras Prohibition Act, 1937 — Section 4(1)(i), 4(1A)(ii)
Penal Code, 1860 (IPC) — Section 186, 220
Prisoners (Attendance in Courts) Act, 1955 — Section 9(2)(e)

Citation : (2014) 3 MLJ(Cri) 161

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Judgement

S. Manikumar, J.—Alleging that the husband of the petitioner, taken to custody, was brutally beaten by some police constable, attached to Paratharami Police Station, Vellore District and later, died in the hospital, wife has filed this writ petition, for a Mandamus, directing the respondents to pay compensation of Rs. 7,00,000/-. In the supporting affidavit, the petitioner has submitted that on 09.08.1998, at 11.00 A.M., under the guise of enquiry, some police constables attached to Paratharami Police Station, took her husband. He was beaten in the presence of village people and thereafter, produced before the Judicial Magistrate and remanded to Sub-Jail, Gudiyatham. On 10.08.1998, when she went to Gudiyatham for engaging a counsel to move a bail application, she was informed that her husband was taken to the Government Hospital, Gudiyatham. She went to the hospital by 3.00 P.M., and saw her husband in the hospital surrounded by policemen. He was badly injured and weak. He informed her that he was brutally beaten by Paratharami Policemen and Jailwarden. According to the petitioner, even in her presence, he was beaten. On the next day, i.e., on 11.08.1998, when she went to the hospital, she was not allowed to see him. On 12.08.1998, two constables came to her house, and informed that, her husband was not in a stable mind. When she went to the hospital, he was already dead. She

immediately lodged a complaint on 13.08.1998 to the Deputy Superintendent of Police and Tahsildar of Gudiyatham. After the post-mortem, body was handed over to her. But the postmortem report was not given. She received a letter from one of the co-prisoners, by name N. Ganesan, locked up in sub-jail, stating that he had witnessed the brutal attack, by policemen. Thereafter, she made a complaint to the Police, but no action was taken. Even the Executive Magistrate has not conducted any inquest on the dead body, though a case in Cr. No. 434 of 1998 under Section 176 Cr.P.C., was registered. A detailed representation was given to the Superintendent of Police, Vellore. As there was no action, she filed Crl. O.P. No. 5189 of 1999, in this Court, seeking for a direction, directing the Inspector of Police, Gudiyatham Town Police Station, to investigate the case, and file a charge sheet. According to the petitioner, her husband was murdered by Policemen. She has filed a complaint to the National Human Rights Commission, New Delhi on 29.08.2001. Thereafter, she gave representations to the Home Secretary, Government of Tamil Nadu, on 06.03.2000, 05.09.2000, 07.04.2001 and 08.11.2002 respectively, requesting them to pay compensation. In the abovesaid circumstances, she has filed this writ petition.

2. As no counter affidavit was filed, the learned Additional Government Pleader was directed to produce the files.

3. Records produced by the learned Additional Government Pleader shows that a case under Sections 4(1)(i) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act, has been registered in Crime No. 224 of 1998 on 09.08.1998 against Mr. Govindaraj, husband of the writ petitioner and that he had been sent to the Judicial custody and lodged in Sub Jail, Gudiyatham, at 18.30 hours on 09.08.1998. Deceased Govindaraj was lodged in Cell No. 5 in Sub Jail, Gudiyatham. Due to ill-ness, he had been taken to Gudiyatham Government Hospital, at 11.45 on 10.08.1998. Subsequently, he died on 12.08.1998. Intimation of death at 01.00 PM has been received by the Superintendent, Sub Jail, Gudiyatham, Vellore District. Thereafter, a case in Crime No. 434 of 1998 under Section 176 of Cr.P.C. has been registered at 16.00 hours on the file of Gudiyatham Town Police Station. Along with the intimation, the police has also received Death Report, which reads as follows:

From

The Duty Medical Officer

To

The Jail Superintendent of Police, Sub Jail, Gudiyatham.

Sir,

This is to inform you that Mr. Govindaraj, 30/M, S/o. Duraisamy, Varadharamipalli, Gudiyatham (TK), was admitted for NYD Vomiting, was referred to GPH, Vellore, at 10.30 A.M., but patient collapsed and died at 01.00 P.M. during preparation to shift the patient to GPH, Vellore. Kindly, arrange for

the process. Body kept in the mortuary.

Thanking you,

Yours sincerely, Duty Medical Officer.

4. On receipt of the intimation, the Superintendent, Sub Jail, Gudiyatham, has sent a letter dated 12.08.1998 to the Sub Inspector of Police, Gudiyatham Town Police Station, to take further action. Matter has also been referred to the Sub Divisional Magistrate and the Revenue Divisional Officer, Gudiyatham, Vellore District. The abovesaid authority vide letter dated 12.08.1998 has requested the Medical Officer, Government Hospital, Gudiyatham, to constitute a Team of Doctors to conduct a post-mortem and also to send the viscera for chemical examination and submit their report. During his physical examination, the Sub Divisional Magistrate and the Revenue Divisional Officer, Vellore District, has noticed old cut injuries, at 3 places in the right leg and in the left leg, there was a sign of handcuff. Except the above, the authority has recorded that he has not noticed any fresh injuries. Inquest has been done from 04.30 P.M. to 04.55. P.M. on 12.08.1998, by the Sub Divisional Magistrate and the Revenue Divisional Officer, Gudiyatham, Vellore District.

5. On the complaint of the torture and death, the Revenue Divisional Officer, has conducted an enquiry. He has examined one Mr. S. Vijayakumar, an inpatient, during the relevant period. According to deponent, on 10.08.1998, about 04.30 P.M., the deceased Govindaraj was admitted in the bed next to him. The deceased was given Glucose and thereafter, he slept. On the next day, he was talking about arrack and created lot of problems. Therefore, he was chained in the Cot by the Police. Throughout the day and night, he was shouting. The next day, he was given bread and milk. Govindaraj took the same. After some time, he behaved aggressively and bitten the witness Vijayakumar in the shoulder, and on seeing this, many patients were scared. At 01.00 P.M., he got down with anger from the cot and fell down. Everybody thought that he was sleeping. But, the Doctor who examined, declared him dead. According to PW 1-S. Vijayakumar, neither the Doctors nor the policemen tortured the deceased. The Sub Divisional Magistrate and the Revenue Divisional Officer, Gudiyatham, Vellore District, has examined 4 co-prisoners. According to them, the deceased Govindaraj was lodged in Cell No. 5, Sub-Jail, Gudiyatham. On the next day, i.e., 10.08.1998, he was trembling. He could not drink porridge. The Jail Superintendent made him to drink and sent him to Government Hospital. According to the 4 co-prisoners, they were examined by the Sub Divisional Magistrate and the Revenue Divisional Officer, Gudiyatham, Vellore District and that the deceased was not tortured by the jailers. Mr. R. Munirathnam, Jail Superintendent, Sub-Jail, Gudiyatham, has deposed that the deceased was received as a remand prisoner at 06.30 P.M. on 09.08.1998 in Crime No. 224 of 1998 under Sections 4(1)(i) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act. On 10.08.1998, when he was given porridge, he was shivering. He could not drink. The jailer took him separately, and gave porridge. Considering his condition, along with one Mr. Ramasamy, Constable, he sent the

remand prisoner, to Gudiyatham Hospital, by an auto rickshaw. The Duty Doctor, on examination, found him that there was dryness in the tongue, low blood pressure and vomiting and hence, admitted the remand prisoner, in the hospital. It is also the version of the Jail Superintendent, that subsequently, when he saw the prisoner in the hospital, Glucose was administered and that he was in a good condition. He requested Varadharamipalli police to give protection to the prisoner. According to him, Govindaraj, remand prisoner, was sent to the hospital at 11.45 A.M., on 10.08.1998 and during the period of detention in Jail, he was not tortured by any of the jail personnel/Constables/Co-prisoners. However, the relatives of the remand prisoner have raised serious doubts that only due to torture, and injuries in the head, the prisoner died in the hospital.

6. Files further disclose that the Civil Assistant Surgeon, Government Hospital, Gudiyatham, has sent a letter dated 22.01.1999 to the Sub Collector, Vellore and it is extracted hereunder:

From

K. Komaleeswari, M.D., G.H. Hospital.

To

The Sub Collector, Vellore.

Sir,

The following particulars, I am submitting regarding the pt. named Mr. Govindaraj.

Ward Doctor on 12.08.1998 Dr. K. Komaleeswari S/N. - Mrs. Andal Admit for vomiting. Treatment given IV Fluids Inj. Ranitidine Inj. Pa..... Inj. Decadron on 12.09.1998 at 09.50 A.M.

On examination, Patient was under disorientation with altered behavior.

Delirious and aggressive

.....referred to psychiatric O.P.

GPH, Vellore.

Cause of death acute encephalopathy

Cardio respiratory arrest at 01.00 P.M. on 12.08.1998.

Civil Assistant Surgeon, Government Hospital, Gudiyattam, N.A.

Encl:One letter from Mr. Vijayakumar was in the ward on 12.08.1998.

14/08/1998

7. Post-mortem report dated 13.08.1998 indicates that on receipt of requisition, at 06.30 P.M. on 12.08.1998 from the Revenue Divisional Officer, Vellore, post-

mortem has been conducted and the report is extracted as follows:

POST-MORTEM CERTIFICATE

No. 289 Final Opinion P.M. No. 77/98 dt. 13.8.98

Regarding the body of a Male/Female aged about 30 years named Govindaraj. Requisition received at 6.30 P.M. 12.8.98 on from the R.D.O. Vellore of Vellore with his letter No. 434/98 dated 12.8.98. Body incharge of Police Constable No. 2865 named Renganathan.

Identification Marks:-

3/A BM below the Rt. clavicular region.

The body was first seen by the undersigned at 10.45 A.M. on 13.8.98.

Its condition then was cold RM+ in all the limbs.

Post-Mortem Commenced at 10.45 A.M./P.M. on 13.8.98.

Appearances found on Post-Mortem____

P.M. No. 77/98 Expert opinion from the Professor & H.O.D. Dept. of Forensic Medicine, Chengalpattu Medical College and Ref. No. 180/98 & BL No. 57/98 dated 12/8/98 & 20.8.98.

Hyoid Bone intact

The scrotal tissues of testis decomposed.

Unsuitable for Histopathological examination.

Viscera Analysis: Tex H. No. 256/98 dt. 27.8.98 from the Asst. Director & Asst. Chemical Examiner to Govt., Regional Forensic Science Lab, Vellore-4.

- 1) Stomach contents 2) intestine and contents 3) Liver 4) Kidney
- 5) Blood 6) Preservative

The above six articles were examined but any poisonous substance was not detected in

Final Opinion:

The deceased would have died about 21-22 hrs prior to PM & the death would have occurred due to Encephalopathy.

(Based on the history and clinical finding, the case sheet of the deceased admitted on 10.8.98 (I.P. No. 10606)

Opinion as to Cause of death:-

- a) Reserved pending report of_____
- b) The deceased would appear to have died of_____

Station:Name:

Date:Rank:

P.M. No. 77/98 dt. 30.11.98

Final opinion forwarded

To

The R.D.O. Vellore - 9.

8. Analysing the evidence recorded, with the post-mortem report, the Sub Divisional Magistrate and the Revenue Divisional Officer, Vellore District, has submitted a report, dated 29.01.1999 to the District Collector, Vellore District stating that the death occurred due to encephalopathy. Subsequently, when the report was forwarded to the Government, certain doubts have been raised by the Deputy Secretary to the Government, Public (Law & Order-A) Department, Chennai. On the objections of the wife and the mother of the remand prisoner, the Government have sought for details, as to the physical condition of Govindaraj, when he was lodged in Sub-Jail. After some correspondence, the District Collector, Vellore District, has replied to the Government that the death was due to the abovesaid reason and except an injury in the left leg, there was no other external injuries. In his report, he has submitted that the entire post-mortem has been videographed and that he would produce the same, if required. He has reiterated the reasons for the cause of death. Files further disclose that alleging torture and death, another complaint has also been given to the Chairman, National Human Rights Commission, New Delhi and on receipt of notice dated 10.05.2000, from the Commission, a detailed reply in No. 2294/L & O-A/2000-2001, dated 02.01.2001, has been sent to the Assistant Registrar, National Human Rights Commission (Law Division), New Delhi.

9. Earlier, on examination of the report of the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District and Postmortem Report, dated 12.08.1998, the District Collector, Vellore District has opined that the report may be accepted. By Circulation, the Government have closed further action regarding the death of Govindaraj, husband of the writ petitioner. Accordingly, the Government have issued a letter, dated 24.04.2000, as hereunder:

10. Perusal of the records, obtained from the office of the Sub Divisional Magistrate and the Revenue Divisional Officer, Vellore District and the details of Post-mortem report, this Court is of the view that after an enquiry, the Revenue Divisional Officer, Vellore District, has submitted a report.

11. However, files do not disclose as to whether the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District, had enquired the nurses and the duty Doctors, who attended the patient, remand prisoner, on 10.08.1998 to 12.08.1998 respectively to ascertain, as to what was the condition and behavior of the prisoner, warranting cuffing. Except the Hospital records extracted supra,

and the letter of the Medical officer, dated 22.01.1999, no documents are available in the file indicating the actual physical condition of the prisoner. However, it is the opinion of the Doctor that the death was due to encephalopathy.

12. As per the version of one of the witnesses, inpatient the prisoner had taken bread and milk in the morning, and after some time, he behaved in an uncontrollable manner and in that situation, this Court is of the view that the Doctors could have even administered sedative in permissible limits, to control his activities. Who handcuffed the prisoner, whether the matter was reported to the higher authorities, whether any orders have been obtained from the concerned Magistrate, when he was handcuffed, how many policemen was posted for escort, who chained him to the cot, all those details are conspicuously absent in the file. There is nothing to indicate that the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District, has conducted any enquiry or even summoned the records from the police or Jail authorities. If one of the witnesses, inmate in the hospital has given a statement to the effect that the police chained the deceased, the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District, ought to have examined the concerned Constable or Constables, as to why, the prisoner was chained. From the letter stated to have been given by the inmate in the hospital, it could be deduced that one C. Ramachandran, police constable, was present on duty, he has not been examined. There is no document in the files, as to whether, the physical condition of the prisoner, was aggressive and reported by the escort police to the Doctors, or the Superior police authorities. The Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District, who conducted the enquiry, has failed to examine the police, for reasons, best known to him. It is one thing to draw a conclusion as to the cause of death on the basis of the opinion of the Doctors. But, it is an admitted fact that prior to death, the prisoner was chained to cot. Who did this? and why the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District, has failed to examine the policemen, there is no answer in the file. If according to the Doctor, the prisoner was delirious and aggressive on 12.09.1998, at 09.50, the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District, has failed to enquire the duty doctor, as to whether, chaining is the only option to stop the aggressive behavior.

13. Indisputably, no orders have been obtained from the jurisdictional Magistrate, before whom the deceased was remanded. Taking it for granted that the deceased was a chronic alcoholic, who had symptoms of vomiting and shivering, on the next day morning, i.e., at 11.45 on 10.08.1998, when he was admitted in the Government Hospital, Gudiyatham, even then, this Court is of the view that appropriate orders ought to have been obtained from the concerned Judicial Magistrate, which is apparently, not done in this case.

14. Immobilisation by handcuffing or chaining is a violation of human right and violation of Article 21 of the Constitution of India. For the reasons best known to

the Sub Divisional Magistrate and Revenue Divisional Officer, Vellore District, all the policemen involved in chaining the prisoner, have been left scot free and he has merely accepted the report of the Doctors, as to the cause of death. Death might have occurred due to encephalopathy but, on the facts and circumstances of the case, this Court is of the view that there is a violation of human rights. In this context, this Court deems it fit to consider few Judgments of the Apex Court.

(i) In *Prem Shankar Shukla Vs. Delhi Administration*, , the Supreme Court, at Paragraphs 23 to 27, 30, 38 to 43, held as follows:

22. Handcuffing is prima facie inhuman and, therefore, unreasonable, 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 Art. 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised. To prevent the escape of an under-trial is in public interest, reasonable, just and cannot, by itself, be castigated But to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture. Where then do we draw the humane line and how far do the rules err in print and praxis?

23. 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 handcuffs 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. Manacles are mayhem on the human person and inflict humiliation on the bearer. The Encyclopaedia Britannica, Vol. II (1973 Edn.) at p. 53 states "handcuffs and fetters are instruments for securing the hands or feet of prisoners under arrest, or as a means of punishment." The three components of "irons" forced on the human person must be distinctly understood. Firstly, to handcuff is to hoop harshly. Further, to handcuff is to punish humiliatingly and to vulgarise the viewers also. Iron straps are insult and pain writ large, animalising victim and keeper. Since there are other ways of ensuring security, it can be laid down as a rule that handcuffs or other fetters shall not be forced on the person of an under-trial prisoner ordinarily. The latest police instructions produced before us hearteningly reflect this view. We lay down as necessarily implicit in Arts. 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Art. 14 on the face. The criminal freedom of movement which even a detainee is entitled to under Art. 19 (see *Sunil Batra, supra*) cannot be cut down cruelly by application of handcuffs 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 circumstance so hostile to

safe-keeping.

24. Once we make it a constitutional mandate that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort-and we declare that to be the law-the distinction between classes of prisoners becomes constitutionally obsolete. Apart from the fact that economic and social importance cannot be the basis for classifying prisoners for purposes of handcuffs or otherwise, how can we assume that a rich criminal or under-trial is any different from a poor or pariah convict or under-trial in the matter of security risk? An affluent in custody may be as dangerous or desperate as an indigent, if not more. He may be more prone to be rescued than an ordinary person. We hold that it is arbitrary and irrational to classify, prisoners for purposes of handcuffs, into "B" class and ordinary class. No one shall be fettered in any form based on superior class differentia, as the law treats them equally. It is brutalising to handcuff a person in public and so is unreasonable to do so. Of course, the police escort will find it comfortable to fetter their charges and be at ease but that is not a relevant consideration.

25. The only circumstance which validates incapacitation by irons-an extreme measure-is that otherwise there is no other reasonable way of preventing his escape, in the given circumstances. Securing the prisoner being a necessity of judicial trial, the State must take steps in this behalf. But even here, the policeman's easy assumption or scary apprehension or subjective satisfaction of likely escape if fetters are not fitted on the prisoner is not enough. The heavy deprivation of personal liberty must be justifiable as reasonable restriction in the circumstances. Ignominy, inhumanity and affliction, implicit in chains and shackles are permissible, as not unreasonable, only if every other less cruel means is fraught with risks or beyond availability. So it is that to be consistent with Arts. 14 and 19 handcuffs must be the last refuge, not the routine regimen. If a few more guards will suffice, then no handcuffs. If a close watch by armed policemen will do, then no handcuffs. If alternative measures may be provided, then no iron bondage. This is the legal norm.

26. Functional compulsions of security must reach that dismal degree that no alternative will work except manacles. We must realise that our Fundamental Rights are heavily loaded in favour of personal liberty even in prison, and so, the traditional approaches without reverence for the worth of the human person are obsolete, although they die hard. Discipline can be exaggerated by prison keepers; dangerousness can be physically worked up by escorts and sadistic disposition, where higher awareness of constitutional rights is absent, may overpower the values of dignity and humanity. We regret to observe that cruel and unusual treatment has an unhappy appeal to jail keepers and escorting officers, which must be countered by strict directions to keep to the parameters of the constitution. The conclusion flowing from these considerations is that there must first be a well-grounded basis for drawing a strong inference that the prisoner is likely to jump jail or break out of custody or play the vanishing trick. The belief in

this behalf must be based on antecedents which must be recorded and proneness to violence must be authentic. Vague surmises or general averments that the under-trial is a crook or desperado, rowdy or maniac, cannot suffice. In short, save in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit-the onus of proof of which is on him who puts the person under irons-the police escort will be committing personal assault or mayhem if he handcuffs or fetters his charge. It is disgusting to see the mechanical way in which callous policemen, cavalier fashion, handcuff prisoner in their charge, indifferently keeping them company assured by the thought that the detainee is under "iron" restraint.

27. Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material, sufficiently stringent, to satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control. It is hard to imagine such situations. We must repeat that it is unconscionable, indeed, outrageous, to make the strange classification between better class prisoners and ordinary prisoners in the matter of handcuffing. This elitist concept has no basis except that on the assumption the ordinary Indian is a sub-citizen and freedoms under Part III of the constitution are the privilege of the upper sector of society.

.....

30. 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 recipes 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, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty. The ratio in Maneka Gandhis case and Sunil Batra's case (supra), read in its proper light, leads us to this conclusion.

.....

38. 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 hand-cuffs 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 judicial officer before when 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.

Pathak, J: I have read the judgment of my learned brother Krishna Iyer with considerable interest but I should like to set forth my own views shortly.

40. It is an axiom of the criminal law that a person alleged to have committed an offence is liable to arrest. In making an arrest, declares s. 46 of the Code of Criminal Procedure, "the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action." If there is forcible resistance to the endeavour to arrest or an attempt to evade the arrest, the law allows the police officer or other person to use all means necessary to effect the arrest. Simultaneously, s. 49 provides that the person arrested must "not be subjected to more restraint than is necessary to prevent his escape." The two sections define the parameters of the power envisaged by the Code in the matter of arrest. And s. 46, in particular, foreshadows the central principle controlling the power to impose restraint on the person of a prisoner while in continued custody. Restraint may be imposed where it is reasonably apprehended that the prisoner will attempt to escape, and it should not be more than is necessary to prevent him from escaping. Viewed in the light of the law laid down by this Court in *Sunil Batra Vs. Delhi Administration and Others etc.*, that a person in custody is not wholly denuded of his fundamental rights, the limitations following from that principle acquire a profound significance. The power to restrain, and the degree of restraint to be employed, are not for arbitrary exercise. An arbitrary exercise of that power infringes the fundamental rights of the person in custody. And a malicious use of that power can bring s. 220 of the Indian Penal Code into play. Too often is it forgotten that if a police officer is vested with the power to restrain a person by hand-cuffing him or otherwise there is a simultaneous restraint by the law on the police officer as to the exercise of that power.

41. Whether a person should be physically restrained and, if so, what should be the degree of restraint, is a matter which affects the person in custody so long as he remains in custody. Consistent with the fundamental rights of such person the restraint can be imposed, if at all, to a degree no greater than is necessary for preventing his escape. To prevent his escape is the object of imposing the restraint, and that object defines at once the bounds of that power. The principle is of significant relevance in the present case. The petitioner complains that he is unnecessarily handcuffed when escorted from the jail house to the court building, where he is being tried for criminal offences, and back from the court building to the jail house. He contends that there is no reason why he should be handcuffed. On behalf of the respondent it is pointed out by the Superintendent Central Jail, Tihar, where the petitioner is detained, that the police authorities take charge of prisoners from the main gate of the jail for the purpose of escorting them to the court building and back, and that the jail authorities have

no control during such custody over the manner in which the prisoners are treated. S. 9(2)(e) of the Prisoners (Attendance in Courts) Act, 1955 empowers the State Government to make rules providing for the escort of persons confined in a prison to and from courts in which their attendance is required and for their custody during the period of such attendance. The Punjab Police Rules, 1934 contain Rule 26.22 which classifies those cases in which handcuffs may be applied. The classification has been attempted some what broadly, but it seems to me that some of the clauses of Rule 26.22, particularly clauses (a) to (c), appear to presume that in every instance covered by any of those clauses the accused will attempt to escape. It is difficult to sustain the classification attempted by those clauses. The rule, I think, should be that the authority responsible for the prisoners custody should consider the case of each prisoner individually and decide whether the prisoner is a person who having regard to his circumstances, general conduct, behavior and character will attempt to escape or disturb the peace by becoming violent. That is the basic criterion, and all provisions relating to the imposition of restraint must be guided by it. In the ultimate analysis it is that guiding principle which must determine in each individual case whether a restraint should be imposed and to what degree.

42. Rule 26.22 read with rule 26.21-A of the Punjab Police Rules, 1934 draw a distinction between "better class" under-trial prisoners and "ordinary" under-trial prisoner 35 a basis for determining who should be handcuffed and who should not be. As I have observed, the appropriate principle for a classification should be defined by the need to prevent the prisoner escaping from custody or becoming violent. The social status of a person, his education and habit of life associated with superior mode of living seem to me to be intended to protect his dignity of person. But that dignity is a dignity which belongs to all, rich and poor, of high social status and low, literate and illiterate. It is the basic assumption that all individuals are entitled to enjoy that dignity that determines the rule that ordinarily no restraint should be imposed except in those cases where there is a reasonable fear of the prisoner attempting to escape or attempting violence. It is abhorrent to envisage a prisoner being handcuffed merely because it is assumed that he does not belong to "a better class", that he does not possess the basic dignity pertaining to every individual. Then there is need to guard against a misuse of the power from other motives. It is grossly objectionable that the power given by the law to impose a restraint, either by applying handcuffs or otherwise, should be seen as an opportunity for exposing the accused to public ridicule and humiliation. Nor is the power intended to be used vindictively or by way of punishment. Standing order 44 and the Instructions on Handcuffs of November, 1977, reproduced by my learned brother, evidence the growing concern at a higher level of the administration over the indiscriminate manner in which handcuffs are being used. To my mind, even those provisions operate somewhat in excess of the object to be sub-served by the imposition of handcuffs, having regard to the central principle that only he should be handcuffed who can be reasonably apprehended to attempt an escape or become

violent.

43. Now whether handcuffs or other restraint should be imposed on a prisoner is primarily a matter for the decision of the authority responsible for his custody. It is a judgment to be exercised with reference to each individual case. It is for that authority to exercise its discretion, and I am not willing to accept that the primary decision should be that of any other. The matter is one where the circumstances may change from one moment to another, and inevitably in some cases it may fall to the decision of the escorting authority midway to decide on imposing a restraint on the prisoner. I do not think that any prior decision of an external authority can be reasonably imposed on the exercise of that power. But I do agree that 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.

(ii) In *Sunil Gupta and Others Vs. State of Madhya Pradesh and Others*, , the Supreme Court held that,

23. Coming to the case on hand, we are satisfied that the petitioners are educated persons and selflessly devoting their service to the public cause. They are not the persons who have got tendency to escape from the jail custody. In fact, the petitioners 1 and 2 even refused to come out on bail, but chose to continue in prison for a public cause. The offence for which they were tried and convicted under Section 186 of Indian Penal Code is only a bailable offence. Even assuming that they objected public servants in discharge of their public functions during the "dharna" or raised any slogan inside or outside the Court, that would not be sufficient cause to handcuff them. Further, there was no reason for handcuffing them while taking them to Court from jail on 22.4.89. One should not lose sight of the fact that when a person is remanded by a judicial order by a competent Court, that person comes within the judicial custody of the Court. Therefore, the taking of a person from a prison to the Court or back from Court to the prison by the escort party is only under the judicial orders of the Court. Therefore, even if extreme circumstances necessitate the escort party to bind the prisoners in fetters, the escort party should record the reasons for doing so in writing and intimate the Court so that the Court considering the circumstances either approve or disapprove the action of the escort party and issue necessary directions. It is most painful to note that the petitioners 1 and 2 who staged a "dharna" for public cause and voluntarily submitted themselves for arrest and who had no tendency to escape had been subjected to humiliation by being handcuffed which act of the escort party is against all norms of decency and which is in utter violation of the principle underlying Article 21 of the Constitution of India. So we strongly condemn this

kind of conduct of the escort party arbitrarily and unreasonably humiliating the citizens of the country with obvious motive of pleasing "some-one".

24. 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 had handcuffed the petitioners on 22.4.1989 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 unreasonably handcuffing the petitioners 1 and 2 on 22.4.89 in accordance with law.

(iii) In *Citizen for Democracy through its President Vs. State of Assam and others*, , the Supreme Court held that,

15. We have elaborately narrated the facts of the present case. We are of the view that there is no basis whatsoever for drawing an inference that the seven detainees who were lodged inside the ward of a hospital were likely to escape from custody. The antecedents of the detainees are not known. There is nothing on the record to show that they are prone to violence. General averments that the detainees are hard-core activists of ULFA and that they are accused of terrorists and disruptive activities, murder, extortion, holding and smuggling of arms and ammunition are not sufficient to place them under fetters and ropes while lodged in a closed ward of the hospital as patients. Security guards were posted outside the ward. It is not disputed that while in jail the detainees were not handcuffed. They cannot be in a worst condition while in hospital under treatment as patients. In any case to safe guard any attempt to escape, extra armed guards can be deployed around the ward of the hospital where the detainees are lodged. The handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is, the least we can say, inhuman and in utter violation of the human rights guaranteed to an individual under the International Law and the law of the land. We are, therefore, of the view that the action of the respondents was wholly unjustified and against law. We direct that the detainees - in case they are still in hospital - be relieved from the fetters and the ropes with immediate effect.

16. We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or under-trial-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 hand-cuffing 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 so 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 guide-lines 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 apart from other penal consequences under law.

15. On the facts and circumstance of the case, it cannot be said that there was no enquiry at all by the Executive Magistrate, but, at the same time, by cuffing the left leg of the prisoner to the cot and immobilizing him on 11.08.1998, without appropriate orders from the concerned Magistrate, there is a violation of the Judgments of the Supreme Court and Human Rights and therefore, this Court is inclined to direct the government to pay compensation of Rs. 2,50,000/- to the petitioner, with interest at the 7.5% per annum, from the date of claim, till the date of realisation, within a period of two (2) weeks, from the date of receipt of a copy of this order. In the result, the Writ Petition is allowed. No costs.