

Vishwa Nath Vs. State

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Court : Delhi

Decided On : Sep-06-1978

Reported in : 15(1979)DLT19

Judge : R.N. Aggarwal, J.

Acts : Punjab Police Rules, 1918 - Rule 26

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 430 of 1978

Appellant : Vishwa Nath

Respondent : State

Advocate for Pet/Ap. : S.N. Mehta, Adv

Judgement :

R.N. Aggarwal, J.

(1) This is a petition by Vishwa Nath Verma through jail. The petitioner is being tried in the court of Shri D.R. Khanna, Additional Sessions Judge for an offence punishable under Section 302 of the Indian Penal Code. It is stated by the petitioner that the prosecution evidence is being recorded.

(2) The complaint of the petitioner is that when he is escorted from the jail to the Court and taken back, he is handcuffed and this is a great physical and mental

torture to him. The petitioner alleges that he was a permanent Government servant and had been working in the Ministry of External Affairs and that he is also a graduate from the Punjab University and he has been classed as a better class prisoner and, therefore, he should not be handcuffed.

(3) Rule 26.21A of the Punjab Police Rules Vol. III Chapter 26 divides the under trial prisoners into two classes (i) ordinary ; and (ii) better class. Those under trial prisoners who are accustomed to better standard of living can be classified as better class prisoners.

(4) Rule 26.22 of the Punjab Police Rules Vol. III Chapter 26 lays down the conditions in which handcuffs are to be used. The said rule reads as under :--

'26.22.CONDITIONS In Which Handcuffs Are To Be Used (L) Every male person falling within the following category, who has to be escorted in police custody, and whether under police arrest, remand or trial, shall, provided that he appears to be in health and not incapable of offering effective resistance by reason of age, be carefully handcuffed on arrest and before removal from any building from which he may be taken after arrest :-

(A) Persons accused of a non-bailable offence punishable with any sentence exceeding in severity a term of three years' imprisonment,.

(B) Persons accused of an offence punishable under section 148 or 226, Indian Penal Code.

(C) Persons accused of, and previously convicted of, such an offence as to bring the case under section 75, Indian Penal Code.

(D) Desperate Characters.

(E) Persons who are violent, disorderly or obstructive or acting in a manner calculated to provoke popular demonstration.

(F) Persons who are likely to attempt to escape or to commit suicide or to be the object of an attempt at rescue. This rule shall apply whether the prisoners are escorted by road or in a vehicle.

(2) Better class under trial prisoners must only be handcuffed when this is regarded as necessary for safe custody when a better class prisoner is handcuffed for reasons other than those contained in (a), (b) and (e) of sub-rule (1) the officer responsible shall enter in the Station Daily Dairy or other appropriate record his reasons for considering the use of handcuffs necessary.'

(5) From Rule 26-22 of Punjab Police Rules, Vol Iii, Ch. 26, it is clear that a better class under-trial prisoner can only be handcuffed when it is regarded as necessary for his safe custody and when such better class prisoner is handcuffed for reasons other than those contained in (a), (b) and (e) of sub-rule (1), the officer responsible has to record reasons in the Station Daily Dairy for considering the necessity of the use of the handcuffs. As already stated, the petitioner is facing trial for a non-bailable offence; his case would fall in category (a) of sub-rule (1). therefore, there will be no need for the officer responsible escorting the petitioner from the jail to the court to record the reasons for considering the necessity of the use of handcuffs. But a better class under-trial prisoner can only be handcuffed when it is regarded as necessary for safe custody.

(6) Rule 19 of Chapter 27 of the High Court Rules and Orders Volume Iii provides the conditions in which handcuffs, fetters and other restraints can be used on under-trial prisoners while being escorted from the Judicial lock-up to the Court and back. Rule 19 read as under :-

'XIX.-UNDER-TRIAL prisoners are to be subjected to no further restraint than is necessary for their safe custody, and shall not ordinarily be confined in fetters or placed under mechanical bodily restraint. Provided that the officer in-charge may, with the permission in writing of the Magistrate having control over the lock-up, have recourse to fetters or other necessary mechanical bodily restraint in the case of any under-trial prisoner who is violent or turbulent, or who is considered to be otherwise dangerous. Under trial prisoners while being escorted to and from Court by the Police should not be handcuffed, unless there is a reasonable expectation that such prisoners will use violence, or that an attempt will be made to rescue him.'

(7) It is clear from Rule 19 of ch. 27 of High Court Rule and Orders, Vol. Iii, that an undertrial prisoner, while being escorted to and from the Court by the police is not to be handcuffed unless there is a reasonable expectation that such a prisoner will use violence or that an attempt will be made to rescue him; fetters or any 'other mechanical restraint can be made use of if the under-trial prisoner is violent or turbulent or who is considered to be otherwise dangerous, but this can be done only with the permission, in writing, of the Magistrate.

(8) I direct that the officer concerned while escorting the petitioner from Jail to the Court and from the Court back to the Jail shall bear in mind the above rules before considering the necessity of hand-cuffing the petitioner. The petitioner is informed of the order in jail. A copy of my order be also sent to the Superintendent of Jail and Shri D. R. Khanna, Additional Sessions Judge. The petition is disposed of accordingly.