

**1 THE HIGH COURT OF MADHYA PRADESH  
WP No.13057/2020  
Arun Sharma vs. State of M.P. & Ors.**

**Gwalior, Dated : 20/10/2020**

Shri Suresh Agrawal, Counsel for the petitioners.

Shri Abhishek Singh Bhadoriya, Panel Lawyer for the State.

Shri D.P. Singh, Counsel for the respondents No.4 and 5.

None for the respondent no.3, though served

Heard through Video Conferencing.

The respondents no. 1 and 2 have filed their return. The same are not on record. The respondents no. 4 and 5 have also filed their return, but the same are not on record.

Office to verify and upload the same.

It is submitted by the counsel for the State that a circular has been issued in the year 2014 regarding sharing of information with media and the uncovered faces of an accused can be shared with the media subject to various restrictions as mentioned in the circular itself.

It is further submitted that Sub Inspector Dinesh Rajput had wrongly arrested the petitioner therefore, a news was published in the newspaper with the photograph of the Sub Inspector that he has been placed under suspension.

In the previous compliance report, it was disclosed by the respondents, that suspension order of said Sub-Inspector was revoked after fourteen days, and he has been transferred out of the jurisdiction

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of Police Station Bahodapur, but has not placed the copy of his new posting on record.

Thus, one thing is clear that just after fourteen days, the suspension of the said Sub Inspector was revoked on 28-8-2020, whereas the punishment order was passed on 14-10-2020 i.e. just only two days prior to filing of first compliance report, whereas the notices of this petition were issued on 8-9-2020. The punishment order has also been placed on record in which it is mentioned that gross negligence has been committed by the Sub-Inspector and Constable. The respondents have not clarified as to what prompted the revocation of suspension of the Sub Inspector who had grossly violated the privacy of the petitioner by projecting him as a hard core criminal in the newspaper with his uncovered face. Further, the respondents had given due publicity of suspension of the Sub Inspector but thereafter they did not give any publicity to the revocation of his suspension order in order to inform the general public, that even after committing such serious lapse, the suspension of the guilty officer was revoked. It is submitted by the counsel for the respondents that the concerning Sub Inspector was saddled with the punishment of fine of Rs.5000/. However, the return filed by the respondents is completely silent about the fact as to whether violation of the rights and privacy of an innocent citizen of the country by

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publishing his photograph with uncovered face and projecting him as hard core criminal as well as tarnishing his reputation, is a normal mistake or is a serious misconduct. Further, the return is completely silent on the question of payment of compensation under Article 21 of the Constitution of India. Therefore, the respondents no. 1 to 2 are directed to clarify the following aspects.

- (I) Whether gross violation of rights and privacy of an innocent citizen of India and tarnishing his reputation is a minor mistake or serious misconduct?
- (II) Why due publicity of revocation of suspension of the Sub Inspector was not given in the newspaper thereby informing the general public that even in a case of gross violation of rights and privacy of an innocent person, a police officer can get away very easily?
- (III) Furthermore, once the respondents have already admitted that they have grossly violated the rights and privacy of an innocent person, still then the return is completely silent on the question of payment of compensation under Article 21 of the Constitution of India?
- (IV) Whether any enquiry into the allegations made against the respondents no. 4 and 5 was made or not and if so, its conclusion.
- (V) It is mentioned in the punishment order dated 14-10-2020, that although the petitioner was not arrested, but he was detained in police station.

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Whether detention of a person in a police station without his formal arrest was permissible, because according to the respondents no. 1 and 2, the petitioner was detained as a person with similar name was wanted in a criminal case which was registered in the year 2011.

(VI) It has also been mentioned in the suspension order, that the news pertaining to the detention and photographs of the petitioner were uploaded on Social Media. The respondents no.1 and 2 are further directed to clarify that which law permits them to upload the photographs of an accused on Social Media?

So far as the circular relied upon by the respondents no. 1 to 2 is concerned, an important question of law arises that “whether the State Govt. by issuing an executive instruction, can violate the Fundamental Rights of an accused as enshrined under Article 21 of the Constitution of India, by getting their uncovered faces published in the News paper or in any other form of media or by parading them in Society etc.”

The Supreme Court in the case of **Mehmood Nayyar Azam Vs. State of Chhattisgarh** reported in (2012) 8 SCC 1 has held as under :

**19.** We have referred to the aforesaid paragraphs of *D.K. Basu case* to highlight that this Court has emphasised on the concept of mental agony when a

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person is confined within the four walls of police station or lock-up. Mental agony stands in contradistinction to infliction of physical pain. In the said case, the two-Judge Bench referred to Article 5 of the Universal Declaration of Human Rights, 1948 which provides that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Thereafter, the Bench adverted to Article 21 and proceeded to state that the expression "life or personal liberty" has been held to include the right to live with human dignity and thus, it would also include within itself a guarantee against torture and assault by the State or its functionaries. Reference was made to Article 20(3) of the Constitution which postulates that a person accused of an offence shall not be compelled to be a witness against himself.

**20.** It is worthy to note that in *D.K. Basu*, the concern shown by this Court in *Joginder Kumar v. State of U.P.* was taken note of. In *Joginder Kumar case* this Court voiced its concern regarding complaints of violation of human rights during and after arrest. It is apt to quote a passage from the same: (*Joginder Kumar case*, SCC pp. 263-64, paras 8-9)

"8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider...."

**21.** After referring to *Joginder Kumar*, A.S. Anand, J. (as His Lordship then was), dealing with the various facets of Article 21 in *D.K. Basu case*, stated that any

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form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilised nation can permit that to happen, for a citizen does not shed off his fundamental right to life, the moment a policeman arrests him. The right to life of a citizen cannot be put in abeyance on his arrest. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

\* \* \* \*

**25.** It needs no special emphasis to state that when an accused is in custody, his fundamental rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and a fortiori, it includes the right to live with human dignity and all that goes along with it. It has been so stated in *Francis Coralie Mullin v. UT of Delhi* and *D.K. Basu*.

**26.** In *Kharak Singh v. State of U.P.* this Court approved the observations of Field, J. in *Munn v. Illinois*: (*Kharak Singh case*, AIR p. 1301, para 15)

“15. ... ‘... By the term ‘life’ as here [Article 21] used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.’ (L Ed p. 90)”

**27.** It is apposite to note that inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience.

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**28.** In *Arvinder Singh Bagga v. State of U.P.* it has been opined that torture is not merely physical but may even consist of mental and psychological torture calculated to create fright to submit to the demands of the police.

**29.** At this stage, it is seemly to refer to the decisions of some of the authorities relating to a man's reputation which forms a facet of right to life as engrafted under Article 21 of the Constitution.

**30.** In *Kiran Bedi v. Committee of Inquiry* this Court reproduced an observation from the decision in *D.F. Marion v. Davis*: (*Kiran Bedi case*, SCC p. 515, para 25)

"25. ... 'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.'"

**31.** In *Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* it has been ruled that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

**32.** In *Selvi v. State of Karnataka*, while dealing with the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the brain electrical activation profile test for the purpose of improving investigation efforts in criminal cases, a three-Judge Bench opined that the compulsory administration of the impugned techniques constitutes "cruel, inhuman or degrading treatment" in the context of Article 21. Thereafter, the Bench adverted to what is the popular perception of torture and proceeded to state as follows: (SCC p. 376, para 244)

"244. ... The popular perceptions of terms such as 'torture' and 'cruel, inhuman or degrading treatment' are associated with gory images of blood-letting and broken bones. However, we must recognise that a forcible intrusion into a person's mental processes is also an affront to human dignity and liberty, often with grave and

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long-lasting consequences. [A similar conclusion has been made in the following paper: Marcy Strauss, ‘Criminal Defence in the Age of Terrorism — Torture’.]”

**33.** After so stating, the Bench in its conclusion recorded as follows: (*Selvi case*, SCC p. 382, para 263)

“263. ... We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to ‘cruel, inhuman or degrading treatment’ with regard to the language of evolving international human rights norms.”

**34.** Recently in *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, although in a different context, while dealing with the aspect of reputation, this Court has observed as follows: (SCC p. 307, para 55)

“55. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.”

**35.** We have referred to these paragraphs to understand how with the efflux of time, the concept of mental torture has been understood throughout the world, regard being had to the essential conception of human dignity.

**36††.** From the aforesaid discussion, there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon “the laws of a nation form the most instructive portion of its history”. The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When

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citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. That is why, an investigator of a crime is required to possess the qualities of patience and perseverance as has been stated in *Nandini Satpathy v. P.L. Dani*.

**37.** In *Delhi Judicial Service Assn. v. State of Gujarat*, while dealing with the role of police, this Court condemned the excessive use of force by the police and observed as follows: (SCC pp. 454-55, para 39)

“39. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens’ life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police ... [and it] must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.”

**38.** It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police

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officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. We may hasten to add that a balance has to be struck and, in this context, we may fruitfully quote a passage from *D.K. Basu*: (SCC pp. 434-35, para 33)

“33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual’s right to personal liberty. ... The action of the State, however, must be ‘right, just and fair’. Using any form of *torture* for extracting any kind of information would neither be ‘right nor just nor fair’ and, therefore, would be impermissible, being offensive to Article 21. Such a crime suspect must be interrogated — indeed subjected to sustained and scientific interrogation — determined in accordance with the provisions of law. He cannot, however, be *tortured or subjected to third-degree methods or eliminated* with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons, etc. His constitutional right cannot be abridged [except] in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal.”

(emphasis in original)

Accordingly, the Counsel for the State prays for and is granted a week's time to file a detailed return.

In view of the importance of question which has arisen for consideration, this Court think it apposite to request the Advocate

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General to address this Court. Further, Shri Naval K. Gupta, Senior Advocate and Shri Prashant Sharma, Advocate are appointed as *Amicus curiae* to assist the Court.

The Registry is directed to supply a complete set of petition along with returns filed by the respondents to Shri Naval K. Gupta, Senior Advocate and Shri Prashant Sharma, Advocate.

List this case on **2.11.2020**.

**(G.S. Ahluwalia)  
Judge**

(alok)