Khatri And Others vs State Of Bihar & Ors on 19 December, 1980

Equivalent citations: 1981 SCR (2) 408, 1981 SCC (1) 627, AIRONLINE 1980 SC 102, 1981 CRI. L. J. 470, (1981) 2 SCR 408 (SC) 1981 CRILR(SC MAH GUJ) 66, 1981 CRILR(SC MAH GUJ) 66

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, A.P. Sen

PETITIONER:
KHATRI AND OTHERS

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT19/12/1980

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SEN, A.P. (J)

CITATION:
1981 SCR (2) 408 1981 SCC (1) 627

ACT:
Right to free legal services to a person accused of an offence-Duty of the State explained Constitution of India, Articles 21 and 22.

HEADNOTE:
Expressing displeasure over disregard of the decision of the Supreme Court by the State of Bihar, the Court
^
HELD: (1) The right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in the guarantee of Article 21and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. The State should provide free legal aid to an accused person who

is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. It cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative liability. [412C-D, F-G]

Hussainara Khatoon v State of Bihar [1979] 3 S.C.R. 532, reiterated.

Rhem v. Malcolm, 377 F. Supp. 995; Jackson v. Bishop 404 F. Supp. 2d, 571, quoted with approval.

(2) The State is under a constitutional obligation to provide free legal services not only at the stage of trial but also at the stage when the accused is first produced before the magistrate as also when he is remanded from time to time. [413C-D]

(3) But even this right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The magistrate or the sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Unless he is not willing to take advantage, every other State in the country should make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation. The only qualification would be that the offence charged against the accused is such that on conviction it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State. [413D, E-F, H, 414A-B]

409

(4) The State and its police authorities should see to it that the constitutional, and legal requirement to produce an arrested person before a judicial magistrate within 24 hours of the arrest is scrupulously observed. [414C-D]

(5) The provision inhibiting detention without remand is a very healthy provision which enables the magistrates to keep check over the police investigation and it is necessary that the magistrates should try to enforce this requirement and where it is found to be disobeyed come down heavily upon the police.[414F-G]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 5670 of 1980. (Under Article 32 of the Constitution) Mrs. K. Hingorani and Miss Rekha Tiwari for the Petitioner.

K. G. Bhagat and D. Goburdhan for the Respondent. The Order of the Court was delivered by BHAGWATI, J.- This case has now come before us after service of notice on the State of Bihar. When this case was taken up for hearing by us on 2nd December, 1980, we expressed our displeasure that the State of Bihar had not chosen to appear in answer to the notice, but this expression of displeasure was made by us on the assumption that the notice was served on the State of Bihar. We are however informed by Mr. K. G. Bhagat, learned advocate, appearing on behalf of the State of Bihar that the notice of the writ petition was served upon the State only on 6th December, 1980 and that is the reason why it was not possible for the State to appear before us on 2nd December, 1980. We accept this explanation offered by Mr. K. G. Bhagat and exonerate the State of Bihar from remissness in appearing before the Court on 2nd December, 1980.

The State has filed before us a counter affidavit sworn by Tarkeshwar Parshad, Under Secretary, Home (Police) Department of the State Government giving various particulars required by us by our order dated 2nd December, 1980. We have also before us the counter affidavit filed by Jitendra Narain Singh, Assistant Jailer, Bhagalpur Central Jail, on behalf of the State and this affidavit gives certain other particulars required by us. The State has also in addition to these particulars, filed statements giving various particulars in regard to the blinded prisoners drawn from the records of the judicial magistrates dealing with their cases. The District and Sessions Judge has also addressed a letter to the Registrar (Judicial) of this Court stating that for the reasons given in his letter, no inspection of the Bhagalpur Central Jail has been carried out by the District and Sessions Judge in the year 1980. The Registrar (Judicial) has also furnished to us copies of the statements of the blinded prisoners and B. L. Das, former Superintendent of the Bhagalpur Central Jail, recorded by him pursuant to the order of this Court dated 1st December, 1980. Full and detailed arguments have been advanced before us on the basis of the particulars contained in these documents, but we do not, at this stage, propose to deal with the arguments in regard to each of the blinded prisoners and we shall examine only the broad contentions advanced before us, leaving the arguments in regard to each specific blinded prisoner to be dealt with at a later stage when the writ petition again comes up for hearing.

Before we deal with the main contentions urged before us on behalf of the parties, we must dispose of one serious question which raises a rather difficult problem and which has to be resolved with some immediacy. The problem is not so much a legal problem as a human one and it arises because the blinded prisoners who are under-going treatment in the Rajendra Prashad Ophthalmic Institute, New Delhi are likely to be discharged from that Institute since their vision is so totally impaired that it is not possible to restore it by any medical or surgical treatment, and the question is wherever they can go. Mrs. Hingorani, on behalf of the blinded prisoners, expressed the apprehension that it may not be safe for them to go back to Bhagalpur, particularly when investigation into the offences of blinding was still in progress and some arrangement should, therefore, be made for housing them in New Delhi at the cost of the State. We cannot definitely state that the apprehension expressed by

Mrs. Hingorani is totally unfounded nor can we say at the present stage that it is justified, but we feel that at least until the next date of hearing, it would be desirable not to send the blinded prisoners back to Bhagalpur. We would, therefore, suggest that the blinded prisoners who are discharged from the Rajendra Parshad Ophthalmic Institute, New Delhi should be kept in the Home which is being run by the Blind Relief Association of Delhi on the Lal Bahadur Shastri Marg, New Delhi and the State of Bihar should bear the cost of their boarding and lodging in that Home. We hope and trust and, in fact, we would strongly recommend that the Blind Relief Association of Delhi will accept these blinded prisoners in the Home run by them and look after them until the next hearing of the petition. The State of Bihar will pay by way of advance or otherwise as may be required the costs, charges and expenses of maintaining the blinded prisoners in such Home The other question raised by Mrs. Hingorani on behalf of the blinded prisoners was whether the State was liable to pay compensation to the blinded prisoners for violation of their Fundamental Right under Article 21 of the Constitution. She contended that the blinded prisoners were deprived of their eye sight by the Police Officers who were Government servant acting on behalf of the State and since this constituted a violation of the constitutional right under Article 21, the State was liable to pay compensation to the blinded prisoners. The liability to compensate a person deprived of his life or personal liberty otherwise than in accordance with procedure established by law was, according to Mrs. Hingorani, implicit in Article 21. Mr. K. G. Bhagat on behalf of the State, however, contended that it was not yet established that the blinding of the prisoners was done by the Police and that the investigation was in progress and he further urged that even if blinding was done by the police and there was violation of the constitutional right enshrined in Article 21, the State could not be held liable to pay compensation to the persons wronged. These rival arguments raised a question of great constitutional importance as to what relief can a court give for violation of the constitutional right guaranteed in Article 21. The court can certainly injunct the State from depriving a person of his life or personal liberty except in accordance with procedure established by law, but if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation ? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious Fundamental Right to life and personal liberty. These were the issues raised before us on the contention of Mrs. Hingorani, and to our mind, they are issues of the gravest constitutional importance involving as they do, the exploration of a new dimension of the right to life and personal liberty. We, therefore, intimated to the counsel appearing on behalf of the parties that we would hear detailed arguments on these issues at the next hearing of the writ petition and proceed to lay down the correct implications of the constitutional right in Article 21 in the light of the dynamic constitutional jurisprudence which we are evolving in this Court.

That takes us to one other important issue which arises in this case. It is clear from the particulars supplied by the State from the records of the various judicial magistrates dealing with the blinded prisoners from time to time that, neither at the time when the blinded prisoners were produced for the first time before the judicial magistrate nor at the time when the remand orders were passed, was any legal representation available to most of the blinded prisoners. The records of the judicial magistrates show that no legal representation was provided to the blinded prisoners, because none of them asked for it nor did the judicial magistrates enquire from the blinded prisoners produced before them either initially or at the time of remand whether they wanted any legal representation at

State cost. The only excuse for not providing legal representation to the blinded prisoners at the cost of the State was that none of the blinded prisoners asked for it. The result was that barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyers and save a few who were released on bail, and that too after being in jail for quite some time, the rest of them continued to languish in jail. It is difficult to understand how this state of affairs could be permitted to continue despite the decision of this Court in Hussainara Khatonn's case. This Court has pointed out in Hussainara Khatoon's case (supra) which was decided as far back as 9th March, 1979 that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. It is unfortunate that though this Court declared the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this disregard of the decision of the highest court in the land by many of the States despite the constitutional declaration in Article 141 that the law declared by this Court shall be binding through-out the territory of India. Mr. K. G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to an indigent accused but he suggested that the State might find it difficulty to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigenous and whatever is necessary for his purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in Rhem v. Malcolm. "The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty" and to quote the words of Justice Blackmum in Jackson vs. Bishop, 404 F. Supp. 2d, 571: "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations." Moreover, this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.

But even this right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There

is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The magistrate or the sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Unfortunately, the judicial magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no legal representation was asked for by the blinded prisoners and hence none was provided. We would, therefore, direct the magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to take advantage every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation. The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.

There are two other irregularities appearing from the record to which we think it is necessary to refer. In the first place in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of their arrest as required by Art. 22 of the Constitution. We do not wish to express any definite opinion in regard to this irregularity which prima facie appears to have occurred in a few cases, but we would strongly urge upon the State and its police authorities to see that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. It is also clear from the particulars furnished to us from the records of the Judicial Magistrates that in some cases particularly those relating to Patel Sahu, Raman Bind, Shaligram Singh and a few others the accused persons were not produced before the Judicial Magistrates subsequent to their first production and they continued to remain in jail without any remand orders being passed by the Judicial Magistrates. This was plainly contrary to law. It is difficult to understand how the State continued to detain these accused persons in jail without any remand orders. We hope and trust that the State, Government will inquire as to why this irregularity was allowed to be perpetrated and will see to it that in future no such violations of the law are permitted to be committed by the administrators of the law. The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police.

We also cannot help expressing our unhappiness at the lack of concern shown by the judicial magistrates in not enquiring from the blinded prisoners, when they were first produced before the

judicial magistrates and thereafter from time to time for the purpose of remand, as to how they had received injuries in the eyes. It is true that most of the blinded prisoners have said in their statements before the Registrar that they were not actually produced before the judicial magistrates at any time, but we cannot, without further inquiry in that behalf, accept the ex parte statement of the blinded prisoners. Their statements may be true or may not be true; it is a matter which may require investigation. But one thing is clear that in the case of almost all the blinded prisoners, the forwarding report sent by the Police Officer In Charge stated that the accused had sustained injuries and yet the judicial magistrates did not care to enquire as to how injuries had been caused. This can give rise only to two inferences; either the blinded prisoners were not physically produced before the judicial magistrates and the judicial magistrates mechanically signed the orders of remand or they did not bother to enquire even if they found that the prisoners before them had received injuries in the eyes. It is also regrettable that no inspection of the Central Jail, Bhagalpur was carried out by the District & Sessions Judge at any time during the year 1980. We would request the High Court to look into these matters closely and ensure that such remissness on the part of the judicial officers does not occur in the future.

We would also like to advert to one more matter before we close and that is rather a serious matter. It appears from the record that one blinded prisoner by the name of Umesh Yadav sent a petition to the District and Sessions Judge, Bhagalpur, on 30th July, 1980 complaining that he had been blinded by Shri B. K. Sharma, District Superintendent of Police and since he had no money to prosecute this police officer, he should be provided a lawyer at Government expense so that he might be able to bring the police atrocities before the court and seek justice. Ten other blinded prisoners also made a similar petition and all these petitions were forwarded to the District & Sessions Judge on 30th July, 1980. The District & Sessions Judge by his letter dated 5th August, 1980, addressed to the Superintendent of the Bhagalpur Central Jail stated that there was no provision in the Code of Criminal Procedure under which legal assistance could be provided to the blinded prisoners who had made a petition to him and that he had forwarded their petitions to the chief judicial magistrate for necessary action. The Chief Judicial Magistrate also expressed his inability to do anything in the matter. It appears that the Superintendent of the Bhagalpur Central Jail also sent the petitions of these blinded prisoners to the Inspector General of Prisons, Patna on 30th July, 1980 with a request that this matter should be brought to the notice of the State Government. The Inspector General of Prisons, forwarded these petitions to the Home Department. The Inspector General of Prisons was also informed by three blinded prisoners on 9th September 1980 when he visited the Banka Jail that they had been blinded by the police and the Inspector General of Prisons observed in his inspection note that it would be necessary to place the matter before the Government so that the police atrocities may be stopped. The facts disclose a very disturbing state of affairs. In the first place we find it difficult to appreciate why the Chief Judicial Magistrate to whom the petitions of these blinded prisoners had been. forwarded by the District & Sessions Judge did not act upon the complaint contained in these petitions and either take cognizance of the offence revealed in these petitions or order investigation by the higher police officers. The information appearing in these petitions disclosed very serious offences alleged to have been committed by the Police and the Chief Judicial Magistrate should not have nonchalantly ignored these petitions and expressed his inability to do anything in the matter. But apart from that, one thing is certain that within a few days after 30th July 80 the Home Department did come to

know from the Inspector General of Prisons that according to the blinded prisoners who had sent their petitions, they had been blinded by the Police, and from the inspection note of the Inspector General of Police it would seem reasonable to assume that he must have brought the matter to the notice of the Government. We should like to know from the Inspector General of Prisons as to who was the individual or which was the department of the State Government to whose notice he brought this matter and what steps did the State Government take on receipt of the petitions of the blinded prisoners forwarded by the Inspector General of Prisons as also on the matter being brought to their attention by the Inspector General of Prisons as observed by him in his inspection note. We should like the State Government to inform us clearly and precisely as to what steps they took after 30th July, 1980 to bring the guilty to book and to stop recurrence of such atrocities. We want to have this information because we should like to satisfy ourselves whether the blindings which took place in October 1980 could have been prevented by the State Government by taking appropriate steps on receipt of information in regard to the complaint of the blinded prisoners from the Inspector General of Prisons.

We would direct the State Government to furnish us full and detailed particulars in this behalf before the next hearing of the writ petition.

The writ petition will now be taken up for further hearing on 6th January, 1981.

S.R. Petition adjourned.