

JANUARY 11, 1996

[S.C. AGRAWAL AND S. SAGHIR AHMAD, JJ.]

Contempt of Court : Under Trial Prisoners—Handcuffed while being taken from court to jail and jail to court without permission of the Magistrate—In clear disregard of the Law laid down by the Supreme Court—Plea of justification on the basis of Regulation 465 of Madhya Pradesh Police Regulations—Further plea of ignorance of Law—Held, not guilty of contempt of court since written order of Magistrate not obtained conduct held to be violative of the Regulation—Hence disapproved—Contempt of Courts Act, 1971—Madhya Pradesh Police Regulations—Regulation 465.

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Under Trial prisoners produced before judicial Officer in handcuffs—His not taking any action for removal of handcuffs—Allegation that contemner was apprised of Supreme Court judgment—Denied—Unconditional apology tendered by contemner—Held, contemner expected to be aware of Law laid down by Supreme Court—Conduct of contemner was serious lapse on the part of his duties—Hence, strong disapproval recorded—Refresher Course at regular intervals to make the judicial officers aware of the law laid down by Supreme Court and High Court—Especially those connected with the basic human rights of the people—Need for—Emphasis laid

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The writ petitioners brought to the notice of the Supreme Court that some members of the Khedoot Majdoor Chetna Sangath, were arrested and were handcuffed while being taken from jail to court and from court to jail and were also paraded handcuffed through the streets. The court, in view of the judgment in *Prem Shankar Shukla v. Delhi Administration* and in *Sunil Gupta and Ors. v. State of M.P. & Ors.*, wherein the court had strongly disapproved the act of handcuffing of under trial prisoners, in this case, issued *suo motu* contempt notice to the contemnners.

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Contemnners Nos. 1 & 2, the Superintendent of Police and the SDO (Police), stated that they were not present at the spot and were given to understand that accused had attempted to resist the arrest and a large number of members of Sangath had gathered and, therefore, under para 465 of M.P. Police Regulations, handcuffing was essential. They also pleaded

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A ignorance of the law laid down by Supreme Court.

B Contemners Nos. 3, 4 & 5, the inspector, Sub-inspector and Constable, respectively, who were directly involved in the incident, stated that they were not aware of the law laid down by Supreme Court and further justified their act on the basis of para 465 of M.P. Police Regulations.

C It was alleged against contemner No. 6, the SDM, that handcuffing took place in his presence, while he stated that he was on medical leave on the alleged date.

D With regard to contemner No. 7, the Judicial Magistrate, it was alleged that on being apprised about the judgment of the Supreme Court, he had stated that the same did not apply to the case and the police had power to transport the accused as they wished. However, the Contemner stated that no complaint of this case was made to him, nor was he apprised of the Supreme Court judgment and further denied to have made the alleged statement. In support of his statement, he filed affidavit of the advocate of the accused. Contemner further tendered unconditional apology for not having taken immediate action in removing handcuffs in certain cases and submitted that he was a young officer and the lapse was not intentional.

E Disposing of the petition, the Court

F HELD : 1.1. Contempt of court in disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court's order, it also signifies such conduct as tends to bring authority of the court and the administration of law into disrepute. Wilful disregard or disobedience to the court's order presupposes an awareness of the order that has been disregarded or disobeyed. In view of the affidavit filed by contemners No. 1 to 5 stating that they were not aware of the law laid down by this Court, they cannot be punished for the contempt of this Court. [360-E-G]

H *Baradkanta Mishra, Ex. - Commissioner of Endowments v. Bhimsen Dixit*, [1976] 2 SCR 495; *Prem Shankar Shukla v. Delhi Admn.*, [1980] 3 SCR 855 and *Sunil Gupta v. State of M.P.*, [1990] 3 SCC 119, referred to.

1.2. The handcuffing of under trial prisoners cannot be justified under the provisions of Regulation 465 of M.P. Police Regulations in as much as the said regulation requires an express authorisation from the Magistrate/Jail Officer for the purpose of taking the accused to court from jail and from jail to court. As regards the role and responsibility of the contemnners 1 to 5 in the actions involving handcuffing of under trial prisoners, contemnners No. 3 to 5 are directly involved in the incidents of handcuffing because handcuffing was done under their directions or in their presence. Contemnners No. 1 & 2 even though not directly involved in the said incident, since they were not present, are held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the same by not taking stern action against persons found responsible for this illegality. Therefore, the conduct of all the five contemnners No. 1 to 5, is disapproved and it is directed that a note regarding the disapproval of their conduct by this court be placed in their personal files. [360-H; 361-A-C]

2. In view of the statement of contemner No. 6, no responsibility attaches to the contemner in respect of the Incident of handcuffing and notice issued against him is discharged. [362-A]

3. The conduct of Contemner No. 7 of note having taken any action for the removal of handcuffs is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer, who is expected to ensure that the basic human rights of the citizens are not violated. In view of the fact that the contemner is a young judicial officer, punishment is not imposed on him, but his conduct is strongly disapproved and it is directed that a note of this disapproval by this court be kept in the personal file of the contemner. The contemner, being a judicial officer, is expected to be aware of law laid down by this court. In his affidavit also he does not say that he was not aware of the said decision. Apart from that, there were provisions in Regulation 465 of M.P. Police Regulations prescribing the conditions in which under trial prisoners could be handcuffed and they contain the requirement regarding authorisation for the same by the Magistrate. [363-D-F; C-D]

CIVIL ORIGINAL JURISDICTION : Suo Motu Contempt Petition No.
10 of 1996.

IN

A Writ Petition (C) No. 239 of 1993.

(Under Article 32 of the Constitution of India.)

G.L. Sanghi, Prashant Bhushan, Sakesh Kumar, Uma Nath Singh and S.K. Gambhir for the appearing parties.

B The Judgment of the Court was delivered by

S.C. AGRAWAL, J. These contempt proceedings have been initiated in pursuance of the order dated June 4, 1993 passed in Writ Petition No. 239 of 1993, *Khedut Mazdoor Chetna Sangath v. State of Madhya Pradesh & Ors.* The said order dated June 4, 1993 for issuing notices for contempt against the contemnors was passed in the following circumstances.

D Khedut Mazdoor Chetna Sangath (hereinafter referred to as the 'Sangath'), is a registered trade union of tribals of Alirajpur Tehsil in District Jhabua of the State of Madhya Pradesh. It started functioning in October 1985 and has been working for the upliftment of the tribals in the region. It is opposed to the construction of Sardar Sarovar Dam on river Narmada on the ground that the construction of the Dam would be prejudicial to the interests of the tribals residing in the catchment area of the Dam since their lands would be submerged in water and they would be displaced. The members of the Sangath have been agitating against the construction of the Dam. In connection with the said agitation, the members of the Sangath were arrested by the police authorities on various dates in connection with criminal cases registered against them and after their arrest, the arrested persons were handcuffed while being taken from jail to the court and from court to jail or from jail/court to civil hospital and back to jail/court. On some occasions they were paraded while handcuffed through the streets of Alirajpur. In the Writ petition, mention is made of the following incidents of handcuffing of under trial prisoners :

G "17.11.92 & 19.11.92 - Khemla Aujanharria was handcuffed and paraded in Alirajpur.

2.2.93 - Revji was handcuffed and paraded in Alirajpur.

3.2.93 - Ravi Hemadri, Amit Bhatnagar, Khajan, Tilia, Vesta, Bava Kaharia, Bamita were handcuffed and taken from the police station to the hospital and back, and

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- from court to the police station and back. A
- 3.2.93 - Ram Singh and Vanjara were handcuffed and taken from Alirajpur Police Station to Sondwa Police Station.
- 5.2.93 - Ram Singh and Vanjara were handcuffed and paraded on the streets of Alirajpur. B
- 7.2.93 - Rahul Ram and Ashwini Chhatre were handcuffed and paraded on the streets of Alirajpur and were then taken in a truck to Sondwa. C
- 8.2.93 - All the above, as well as Rahul Ram And Ashwini Chhatre were handcuffed and taken into the hospital. Handcuffs were removed during the examination. They were handcuffed again and taken to court and then to the police station, then back to court. D
- 8.2.93 - Motla and Punia were taken through Alirajpur in handcuffs.
- 24.2.93 - Rahul Banerjee was handcuffed and paraded in Alirajpur. E
- 25.2.93 - Rahul Banerjee produced before the Magistrate in handcuffs (Noted by JMFC, Alirajpur in his order). F

The fact about the handcuffing of these aforementioned persons on the dates referred to above was not disputed by the respondents in the said writ petition. Having regard to the decisions of this Court in *Prem Shankar Shukla v. Delhi Administration*, [1980] 3 SCR 855; *Sunil Gupta & Ors. v. State of Madhya Pradesh & Ors.*, [1990] 3 SCC 119, and *Baradakanta Mishra, Ex-Commissioner of Endowments v. Bhimsen Dixit*, [1976] 2 SCR 495, this Court was satisfied that a *prima facie* case is made out for taking action for contempt of Court against persons responsible for the aforementioned acts of handcuffing of under trial prisoners. A direction was, therefore, given by order dated June 4, 1993 to issue notice to the contemnors to show cause why they should not be punished for having committed contempt of this Court. H

A In response to the said notice, affidavits have been filed by the aforementioned contemnors. Before we deal with the explanation offered by the contemnors, it would be necessary to refer to the provisions of Regulation 465 of the M.P. Police Regulations which prescribes as follows :

B "465. Hand-cuffs when Used - Hand-cuffs shall be used only if they are necessary.

The following instructions regulate their use - Instructions regarding the use of Handcuffs :

C (1) When a prisoner has to be taken in custody from a court to a jail or vice-versa, the magistrate or the Jail Officer should give a direction in writing to the Commander of the escort as to whether the prisoner should or should not be hand-cuffed and the escort Commander shall obey that direction, provided that if the direction is not to hand-cuff the prisoner and at any time thereafter the escort Commander has reason to consider it necessary to hand-cuff the prisoner, he should do so, notwithstanding such directions.

D (2) (i) x x x x x x x x x

E (ii) x x x x x x x x x

(3) The escort Commander must, without fail, ask for and obtain orders in writing from the Magistrate or the Jail Officer in regard to hand-cuffing of the prisoners committed to his custody before taking over the prisoner from the Court or jail. Any neglect of these instructions must be dealt with most severely.

F (4) x x x x x x x x x

(5) x x x x x x x x x

G (6) x x x x x x x x x

A. List of prisoners who must be hand-cuffed :

H 1. Every person arrested by a police officer or remanded to custody by a Magistrate on a charge of having committed one of the following

offences shall be hand-cuffed unless by reason of age, sex or infirmity he can easily and securely be kept in custody without hand-cuff :

(a) Offences relating to coin, sections 231 to 254 Indian Penal Code.

(b) Murder and culpable homicide, Section 302 to 304 Indian Penal Code.

(c) Attempt to commit murder and culpable homicide, Sections 307 and 308 Indian Penal Code.

(d) Being a Thug, Section 311 Indian Penal Code.

(e) Robbery, Section 311 Indian Penal Code.

(f) Dacoity, Section 395 Indian Penal Code and all sections relating to dacoity.

(g) Any other offence against property, if the offender has been previously convicted of any offence against property or has been ordered to find security for good behaviour.

(h) Persons accused of an offence punishable under section 148 Indian Penal Code."

In the present case, it is not disputed that provisions of sub-clause (3) Regulation 465 of the M.P. Police Regulations were not complied with inasmuch as no orders were obtained from the concerned Magistrate/Jail Officer by the concerned police personnel with regard to handcuffing of the prisoners while taking them to and from court or jail. Handcuffing of the under trial prisoners has been sought to be justified on the ground that (i) the accused persons attempted to resist the arrest and made attempts to run away; and (ii) a large number of supporters of the Sangath had reached Alirajpur on knowing about the arrest of accused persons and there was strong possibility that they would have attempted to free the accused persons from the police custody. It has also been stated that two cases involving offences under Section 307 IPC had been registered against the accused persons.

In *Prem Shankar Shukla v. Delhi Administration* (supra) this Court has considered the matter of handcuffing of prisoners under trial as well as convicts in the context of the provisions contained in Punjab Police Rule,

A 1934, Krishna Iyer J., speaking for himself and Chinnappa Reddy J., has observed that "handcuffing is prima facie inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary."

Examining the justification offered by the State for this mode of restraint, the learned Judge has said :

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"Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised. To prevent to 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, " (p. 872)

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"Insurance against escape does not compulsorily require handcuffing. 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 Encyclopedia Britannica, Vol. 11 (1973 Edn.) at p. 53 states "handcuffs and fetters are instruments of 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." (pp. 872-73)

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"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 any

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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." (p. 874)

"The conclusion flowing from these considerations is that there must first be 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." (p. 874)

"Merely because the offence is serious, the inference of escape proneness or desperate character does not follow. Many other conditions mentioned in the Police Manual are totally incongruous with what we have stated above and must fall as unlawful. Tangible testimony, documentary or other, or desperate behaviour, geared to making good his escape, alone will be a valid ground for handcuffing and fettering, and even this may be avoided by increasing the strength of the escorts or taking the prisoners in well protected vans." (p. 875)

"The nature of the accusation is not the criterion. The clear and present danger of escape breaking out of the police control is the determinant. And for this there must be clear material not glib assumption, record of reasons and judicial oversight and summary

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A hearing and direction by the court where the victim is produced."
(p. 876)

In *Sunil Gupta & Ors. v. State of Madhya Pradesh & Ors.*, (supra) this Court, while dealing with Regulation 465 of the M.P. Police Regulations, has observed :

B "This Court on several occasions has made weighty pronouncements decriing and severely condemning the conduct of the escort police in handcuffing the prisoners without any justification. In spite of it, it is very unfortunate that the courts have to repeat and re-repeat its disapproval of unjustifiable handcuffing." (p. 128)

C "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." (p. 129)

D That was a case where social activists demanding the appointment of regular teachers in schools located in tribal hamlets had been arrested and were taken to the Court by handcuffing them and this Court expressed its strong disapproval of the said action.

F The position in law with regard to handcuffing of prisoners - convicted or undertrial - has been reiterated in the recent decision in *Citizens for Democracy v. State of Assam & Ors.*, [1995] 3 SCC 743, wherein it has been held :

G "We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or undertrial - while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the

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country or during transport from one jail to another or from jail to court and back.

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.

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.

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.

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

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." (p. 751).

A The justification for handcuffing that has been offered about the under
trial prisoners trying to escape from custody does not stand scrutiny because
the accused were social activists who were agitating for the protection of the
rights of the tribals and at the time of arguments on the bail application of the
accused persons, bail was not opposed by the prosecution on the ground of
B seriousness of the charges against them or the likelihood of their absconding.
It is not disputed that no orders were obtained from the concerned Magistrate
with regard to handcuffing of the prisoners before taking them to court from
jail and to the jail from the court. The handcuffing of the members of the
Sangath who were under trial prisoners, was, therefore, not justified and was
C in clear disregard of the law laid down by this Court in the decisions referred
to above. The question that arise is whether the said actions of the contemnners
in handcuffing the prisoners constitute contempt of this Court. We will first
take up the case of the five police personnel who are contemnners Nos. 1 to
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D Contemner No. 1, M.P. Dwivedi, was Superintendent of Police of
District Jhabwa at the relevant time. He was not personally present in Alirajpur
when the incidents of handcuffing had taken place. He is, therefore, not
directly involved in the said incidents. In the order dated June 4, 1993 it is
stated that notice was being issued to him for the reason that, being over all
E incharge of the police administration in the district, he was responsible to
ensure strict compliance with the directions given by this Court in the matter
of handcuffing of under trial prisoners by police personnel under his charge
and instead of taking action against the police personnel responsible for such
violation, he appears to have approved the said action. In the affidavit filed
F by the contemner in response to the said notice, he has stated that there was
no complaint about handcuffing from any member of the public or from the
affected persons and he had not come across even any press report about
handcuffing and that only on February 26, 1993 Dharmendra Choudhary, SDO
(Police) had informed him about the handcuffings and thereafter he visited
Sondwa Police Station on March 5, 1993 and inquired into the incidents and
G the police case diaries in respect of the incidents of handcuffings which
showed that the accused persons had attempted to resist the arrest and made
attempts to run away and a large number of supporters of the Sangath had
reached Alirajpur on knowing the arrest of the accused persons and there was
a strong possibility that they would have attempted to free the accused
H persons from the police custody. The contemner has further stated that he

called a meeting of all gazetted police officers and station officers on March 23, 1993 and gave strict directions to the effect that handcuffing was to be resorted to only in rare and exceptional situations and they should try to get written orders from concerned Magistrate in accordance with the provisions of M.P. Police Regulations. He has further stated that he was not aware of the decision of this Court in *Prem Shankar Shukla v. Delhi Administration* (supra), but even without knowledge of the said decision and on the basis of M.P. Police Regulations, he had indicated to his subordinate officers that handcuffing was not to be resorted to except in exceptional cases and that this happens to be in accordance with the exceptions given by the judgment of this Court in that case.

Contemner No. 2, Dharmendra Choudhary, was posted as SDO (Police) at Alirajpur at the relevant time. In the affidavit filed on behalf of the petitioners in writ petition No. 239 of 1993 it has been claimed that he was personally present at the time of handcuffings of the under trial prisoners on February 3, 1993. In his affidavit filed in response to the notice issued to him, the contemner has denied this allegation and has stated that his office at Alirajpur is situate far away from Police Station Alirajpur and on February 3, 1993 he was busy with supervision of investigation in heinous offences (Crime No. 6/93 of P.S. Sorwa and Crime No. 8/93 of P.S. Chandpur both under Section 307 I.P.C.). He has also stated that he has no precise knowledge of law laid down by this Court in the matter of handcuffing and that the subordinate officers involved in the incidents had given him to understand that they had handcuffed the under trials prisoners due to prevailing circumstances at the relevant time as recorded in the police case diary and also on the basis of Paragraph 465 of M.P. Police Regulations. According to him, the only lapse that appears on their part was that the respective officials did not take the written orders from the learned judicial Magistrate and they acted as per guidelines mentioned in Police Regulations paragraph 465 of M.P. Police Regulations under title 'the list of prisoners who must be handcuffed.'

Contemner No. 3, S.S. Ansari, was posted as Town Inspector at Police Station Alirajpur at the relevant time. He was admittedly present at the time the incidents of handcuffing took place during the period from February 2, 1993 to February 25, 1993. In his affidavit filed in response to the notice, the contemner has stated that he himself did not participate in the said incidents and that it was the Investigating Officer who was responsible for the

A handcuffing of the accused persons. He has sought to justify the handcuffing on the basis of the entries in the police case diary by the Investigating Officer that the accused persons were likely to escape.

B Contemner No. 4, S.D. Bhargava, was posted as Sub-Inspector of Police/S.O. at Police Station Sondwa, at the relevant time. In his affidavit filed in response to the notice, the contemner had not disputed the incidents of handcuffing during the period from February 2, 1993 to February 25, 1993. He has sought to justify the said action on the basis of Paragraph 465 of M.P. Police Regulations. He has also stated that the said incidents of handcuffings took place due to error of judgment and due to ignorance of law laid by this Court in *Prem Shankar Shukla v. Delhi Administration* (supra).

D Contemner No. 5, Natvar Singh, was posted as Head Constable at Police Station Sondwa at the relevant time. He has been placed under suspension in connection with the incidents of handcuffings which took place on February 8, 1993. In his affidavit filed in response to the notice, the contemner has stated that he had no knowledge of law laid down by this Court with regard to use of handcuffs prior to the institution of these proceedings in this Court and no departmental circular had been issued containing the necessary directions in that regard.

E As laid down by this Court "Contempt of court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute. (See : *Baradakanta Mishra, Ex.-Commissioner of Endowments v. Bhimsen Dixit*, (supra) at p. 499). Wilful disregard or disobedience of the court's order presupposes an awareness of the order that has been disregarded or disobeyed. In view of the affidavits filed by contemnners Nos. 1 to 5 stating that they were not aware of law laid down by this Court in *Prem Shankar Shukla v. Delhi Administration* (supra) and *Sunil Gupta v. State of Madhya Pradesh & Ors.* (supra), we refrain from taking action to punish them for contempt of this Court.

H The handcuffing of the under trial prisoners cannot, however, be justified even under the provisions of Regulation 465 of the M.P. Police Regulations inasmuch as the said regulation requires an express authorisation from the Magistrate/Jail Officer for the purpose of taking him to court from

jail and from jail to court. Admittedly, no such authorisation was obtained in this case. As regards the role and responsibility of contemnors Nos. 1 to 5 in these actions involving handcuffing of under trial prisoners, it may be stated that contemnors Nos. 3 to 5 were directly involved in the said incidents of handcuffing because the handcuffing was done under their directions or in their presence. Contemnors Nos. 1 and 2, even though not directly involved in the said incidents since they were not present, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the same by not taking stern action against persons found responsible for this illegality. We, therefore, record our disapproval of the conduct of all the five contemnors Nos. 1 to 5 in this regard and direct that a note regarding the disapproval of their conduct by this Court be placed in the personal file of all of them.

We are also constrained to say that though nearly 15 years have elapsed since this Court gave its decision in *Prem Shankar Shukla* (supra) no steps have been taken by the concerned authorities in the State of Madhya Pradesh to amend the M.P. Police Regulations so as to bring them in accord with the law laid down by this Court in that case. Nor has any circular been issued laying down the guidelines in the matter of handcuffing of prisoners in the light of the decision of this Court in *Prem Shankar Shukla* (supra). The Chief Secretary to the Government of Madhya Pradesh is, therefore, directed to ensure that suitable steps are taken to amend the M.P. Police Regulations in the light of the law laid down by this Court in *Prem Shankar Shukla* (supra) and proper guidelines are issued for the guidance of the police personnel in this regard. The Law Department and the Police Department of the Government of Madhya Pradesh shall take steps to ensure that the law laid down by this Court in the matter of protection of human rights of citizens as against actions by the police is brought to the notice of all Superintendents of Police in the Districts soon after the decision is given, by issuing necessary circulars in that regard and the responsibility is placed on the Superintendent of Police to ensure compliance with the said circulars by the subordinate police personnel under his charge.

Contemner No. 6, Vinod Kumar, was posted as SDM at Alirajpur at the relevant time. It has been alleged on behalf of the petitioners in the Writ Petition that the incident of handcuffing on February 18, 1993 took place in his presence. In his affidavit filed in response to the notice, the contemner has, however, stated that he was on earned leave from December 31, 1992 to

A February 17, 1993 and on November 18, 1992 he was on medical leave. In view of the said statement, no responsibility attaches to the contemner in respect of the incident of handcuffing on November 18, 1992 and notice issued against him is discharged.

B Contemner No. 7, B.K. Nigam, was posted as Judicial Magistrate First Class, Alirajpur, at the relevant time. In the order dated June 4, 1993 it is stated that the under trial prisoners were produced before him but he did not take any action against handcuffing of those prisoners by the police. In the said order, reference has also been made to the rejoinder affidavit of Dr. C Amita Baviskar filed on June 1, 1993 wherein it is stated that the contemner was apprised about the decisions of this Court and he is reported to have stated that ".....the Supreme Court decision has no application there and that the police has the right to transport the accused as they want, with or without handcuffs". The contemner has filed two affidavits in response to the notice. In the affidavit dated July 31, 1993, he has denied D having made the statement as alleged by Dr. Amita Baviskar in her affidavit dated June 1, 1993 regarding handcuffing of the under trial prisoners and has said that on February 8, 1993, two complaints were made before him by E accused Ravi and Rahul Narsimha Ram about the handcuffing of prisoners and that on these applications he had passed orders on the same day for Incharge of Police Station Alirajpur to submit explanation and that besides these two complaints, no complaint whatsoever, orally or in writing, was made to him regarding handcuffing of the under trial prisoners. In support of F his aforesaid submission, the contemner has also filed the affidavits of Shri Betulla Khan and Shri Girdhari Lal Vani, Advocates who were representing the accused persons before him in those cases and who had appeared in his court on February 8, 1993. In these affidavits the deponents have stated that no decision of this Court was cited before the contemner on that date regard- G ing handcuffing of under trial prisoners and that the contemner did not say to transport the accused as they want, with or without handcuffs. In the second affidavit dated September 18, 1993 the contemner has tendered his unconditional and unqualified apology for the lapse on his part that when under trial prisoners in Crime No. 11/93, 12/93, 17/93 and 19/93 of Police H Station Sondwa, who were agitating against the construction of Sardar Sarovar, were produced in handcuffs in his court, immediate action was not taken by him for the removal of their handcuffs and against the escort party for

bringing them in Court or taking them away from Court in handcuffs. The contemner has submitted that he is a young judicial officer and that the lapse was not intentional.

We have carefully considered the two affidavits of the contemner as well as the affidavits of Shri Betulla Khan and Shri Girdhari Lal Vani, Advocates. We would assume that on February 8, 1993 the contemner did not make the statement about the judgments of this Court having no application there and the police having the right to transport the accused as they want, with or without handcuffs. But the contemner, being a judicial officer, is expected to be aware of law laid down by this Court in *Prem Shankar Shukla v. Delhi Administration* (supra) and *Sunil Gupta & Ors. v. State of Madhya Pradesh & Ors.* (supra). *Prem Shankar Shukla v. Delhi Administration* (supra) was decided in 1980, nearly 13 years earlier. In his affidavits also he does not say that he was not aware of the said decisions. Apart from that, there were provisions in Regulation 465 of the M.P. Police Regulations prescribing the conditions in which under trial prisoners could be handcuffed and they contain the requirement regarding authorisation for the same by the Magistrate. It appears that the contemner was completely insensitive about the serious violations of the human rights of the under trial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field.

In the result, the contempt notices issued against the contemnners are discharged subject to the directions regarding disapproval of the conduct of

- A contemners Nos. 1 to 5 and 7 and directions regarding placing the note of the said disapproval in the personal files of all of them. The contempt proceedings will stand disposed of accordingly. A copy of this order be sent to the Chief Secretary to the Government of Madhya Pradesh and the Registrar, Madhya Pradesh High Court.
- B K.K.T. Petition disposed of.