

BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA

O. A NO: 106 of 2021/EZ

SISIR KUMAR PANDA ...APPLICANT

-VERSUS -

THE UNION OF INDIA & OTHERS ...RESPONDENTS

**I N D E X**

SR. NO.	PARTICULARS	PAGE NO.	FE E
1.	REJOINDER AFFADIVIT OF THE APPLICANT DATED: 17.05.2022 AND ITS ANNEXURES	01 to 54	

CERTIFIED THAT THE COPIES ARE CORRECT

BY THE APPLICANT

*Done*  
17.05.2022.

THROUGH ADVOCATE

Date: 17.05.2022

BIRANCHI NARAYAN MAHAPATRA

ADVOCATE, ORISSA HIGH COURT

Mob. No: 8984383812

Whats App No: 9438383812

E. Mail: imbiranchi@gmail.com

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**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA**

**O.A No: 106 of 2021/EZ**

Sisir Kumar Panda

...Applicant

-Versus -

The Union of India & Others

...Respondents

**REJOINDER AFFIDAVIT FILED BY THE  
ABOVE NAMED APPLICANT TO THE  
AFFADIVIT DATED: 30.04.2022 OF THE  
RESPONDENT NOS: 8, 10, 13 to 15 MOST  
RESPECTFULLY SHOWETH AS FOLLOWS:-**



-----  
I Sisir Kumar Panda (Applicant), S/O: Late Ram Prasad Panda, aged about 50 years, Advocate by Profession, resident of Nehru Nagar 7<sup>th</sup> Lane, Po/P.S: Gosaninuagaon, Berhampur- 760003, District: Ganjam, State: Odisha do hereby state on solemn affirmation as under:-

1. That I am the Applicant in the aforesaid Case and as such I am fully conversant with the facts and proceedings of the Case.
2. That the facts and proceedings of the O.A No: 106 of 2021/EZ May kindly read as part of this affidavit.
3. That the Collector filed false affidavit dated: 30.04.2022 to mislead this Hon'ble Tribunal and stated at Para-4 of his affidavit that "the common pond is now confined to Plot

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Nos: 1509 (Jalasaya-1) over an area Ac.6.860 Decimal in Khata No: 1375”, which is not based on material on record. Again the Collector is also disclosed that the Plot No: 438 (Jalasaya-1) is covered under the area Ac.0.080 Decimal are not correct and based on the Revenue record. The Applicant obtained the certified Copy vide C.A No: 973/dated: 17.03.2022 from the record room of the Ganjam Collectorate, Chatrapur, in which the area of the Plot No: 1509 (Jalasaya-1) has been recorded measuring Ac.11.500 Decimal and Plot No: 438 (Jalasaya-1) is also recorded measuring Ac.0.386 Decimal and both the Plots area is also again confirmed by the Asst. Settlement officer, Berhampur, Ganjam. Certified true Copy issued by District record room of the Ganjam Collectorate and Settlement office, Berhampur, Ganjam is annexed here to as ANNEXURE-A/24 Series. Therefore, it is evident from the proceeding of the Case that the Collector, Ganjam is completely misleading to this Hon’ble Tribunal by filing false affidavit. In view of this he is liable to be penalized under the law and this Hon’ble Tribunal may kindly pass appropriate order/orders against the Collector, Ganjam for his intentional suppression of facts and misleading information submitting to this Hon’ble Tribunal.



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4. That the Collector-Cum-District Magistrate, Ganjam is also admitted in his **affidavit dated: 30.04.2022 at Para- 5(a), (b), (c), (d), (e), (f)** that all the constructions have been made over the Plot Nos: 1509 (Jalasaya-1) and Plot Nos: 437 (ADI), 438 (Jalasaya-1) and 1510 (ADI) and after change of classification of the Plot No: 1509 (Jalsaya-1) and 438 (Jalasaya-1) has been renumbered as Plot No: 1509/2918, 1509/2638, 1509/3123, 1509/4190, 1509/3030 and 438/4189. It is a settled principle Jalasaya and ADI both the lands are objectionable in nature and the State officials have no authority to change the classification of the objectionable land from Jalasaya/ADI to Patita Kissam. The Collector, Ganjam is also admitted in his **affidavit dated: 30.04.2022 at Para-8** the Revenue Divisional Commissioner, Southern Division, Berhampur, Ganjam was accord necessary permission to change the classification of the Plot Nos: 1509 (Jalasaya-1) and 438 (ADI) to Patita Kissam with reference to the Page No: 96 to 101 under Annexure-A/6 and Annexure-A/21 Series respectively of the O.A). In this connection the orders passed on 05.02.2021 and 01.03.2021 by the Revenue Divisional Commissioner, Southern Division, Berhampur, Ganjam and Collector, Ganjam for change of the Classification of the Plots in question is illegal and violation of the rule of law. They have no authority to pass any order/orders in this regard as per the statutory provision of law and in the line of the Hon'ble Orissa



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High Court orders as well as the Hon'ble Apex Court order/orders. The State Government/Hon'ble Orissa High Court/Hon'ble Apex Court has been imposed restrictions to change of classification of the Jalasay/ADI Plots in question. Thus, the Collector, Ganjam has filed his affidavit dated: 30.04.2022 is completely declare as false/fabricated/ imaginary and got up story as created by him.

5. That the Hon'ble Apex Court observed in the matter of VIJAY SYAL AND ANR-Versus- STATE OF PUNJAB AND ORS decided on 22.05.2003 with reference to the Appeal (civil) No: 812 of 2002 as follows:

*“In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such Matters are either mistaken or lightly taken instead of learning proper lesson.*



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*Signature*  
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*Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice”.*

In view of this the Collector, Ganjam is liable to proceed in the light of the observation of the Hon’ble Apex Court.

6. That the Hon’ble Apex Court observations made in the matter of Chandra Shashi-Versus- Anil Kumar Verma decided on 14<sup>th</sup> November 1994 and in the matter of Dhanajya Sharma-Versus- State of Hariyana and others decided on 2<sup>nd</sup> May 1995 in Writ Petition( Criminal) No: 15 of 1994 is fully applicable to the present Case and the Collector, Ganjam is liable to be proceed under the parameter of the Hon’ble Apex Court and he is intentionally made some baseless/false averments in his affidavit dated: 30.04.2022. It should be curbed with strong hand in the light of the Hon’ble Apex Court observations and it will be deterrents to others and particularly this Hon’ble Tribunal may kindly pass appropriate order/orders against the Collector, Ganjam for the purity of the administration of justice.

7. That the Collector- Cum- District Magistrate, Ganjam has cleverly drafted in his affidavit dated: 30.04.2022 at Para-8 of Page 9 that “In the present Case, the Status of the lands classified as Jalsaya has been changed which have lost their Characteristics being in line with the judgement of the Hon’ble High Court of Orissa in Tapan Das Case. But, surprisingly the



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Collector is remaining silent to the averments made in the Para-14 of the O.A in respect of the Judgement passed by the Hon'ble Orissa High Court. It is a fact that classification could not be changed of the existing water Body as per the observations of the Hon'ble Orissa High Court and this case covered under the parameter of the existing water Body, which is crystal clear from the materials available on record, no body challenge to it.

8. That the Collector, Ganjam also stated in his affidavit dated: 30.04.2022 at Para-9 in connection of the award of the Permanent Lok Adalat (PUS), Ganjam, Berhampur is not in accordance with law. The award passed by the Permanent Lok Adalat (PUS), Ganjam, Berhampur is not challenged before the higher Forum till date by the State Government. So, the award is unchallenged and binding for all. It is evident from the award (Page No: 93 of O.A) is binding for all, the collector has no authority to challenge the award at that stage in this proceeding.
9. That again the Collector-Cum-District Magistrate, Ganjam is repeated that at Para-15 and 18 of his affidavit dated: 30.04.2022 that they have made constructions as per the directions of the Hon'ble Orissa High Court and taken plea that the constructions have been made for the Public Utility services. It is evident from the facts and proceedings that AGULA BANDHA is a existing water Body. The material



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evidence disclosed that the **AGAULA BANDHA is situated area measuring Ac. 18.480** under Gopobandhu Nagar Mouza of Berhampur Tahasil (**Page No: 45 of the O.A.**).

10. That the Collector, Ganjam again stated in his affidavit dated: 30.04.2022 at Para- 11 “No illegal constructions have been made on the AGULA BANDHA or on its Embankment” and again he has admitted at Para-18 “it is humbly submitted that all the constructions as alleged are in nature of Public Utility Services which were constructed in the greater interest of general people in Berhampur Municipal Corporation. This Hon’ble Tribunal may kindly consider the same and pass appropriate orders in the interest of the general public living within the Berhampur Municipal Corporation area. It shows from the affidavit of the Collector, Ganjam that he is playing dual role and speaking double standard to get favorable orders. As a responsible officer of the State the Collector is trying to cover up the illegal acts, which is not permissible in the eye of law and it is liable to be declare as illegal and fix responsibility against the Collector for his dual role in the judicial proceeding. It is a fact that both the Kissam of land i.e. Jalsaya/ADI is under the Exclusive jurisdiction of this Hon’ble Tribunal, which has been already decided in O.A No: 82 of 2015/EZ and accordingly this Hon’ble Tribunal issued direction to the State authorities to remove the illegal encroachments from the Jalsay/ADI (Embankment).



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11. That the Applicant craves the leave of this Hon'ble Tribunal to file further affidavit if necessary for proper adjudication of the Case.

VERIFICATION

I the above named deponent do here by verify that the facts stated above (Para 01 to 11) are true and best of my knowledge, belief and information.

Verified at Berhampur on this the 17<sup>th</sup> day of May, 2022

**IDENTIFIED BY**

*Done*  
17.05.2022

**ADVOCATE**

**DEPONENT**

**(B. N. Mahapatra)**



Dr. K.M. Panigrahy

**NOTARY**

Berhampur (Ganjam)

No. *1280*

Time *11:30*

Place *Berhampur*

**DECLARATION**

The deponent having been identified by Advocate Sr. *B. N. Mahapatra* before me this the *17* day of *May* before the Notary, Berhampur *Berhampur* and explained the deponent who seems perfectly to have understood the contents of the affidavit.

*Dr. K.M. Panigrahy*  
Notary Berhampur (Ganjam)  
Regd. No. 31/2000

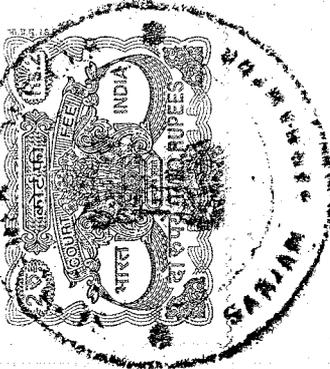
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(୧) ଭୂମୀମାଲିକାଙ୍କ ନାମ

ଭ୍ରାତୃ ଶତ୍ରୀଧାନ

ତହସିଲ ଭୁବନେଶ୍ୱର  
ଥାନା ନମର ୧

ଉଦ୍ଦିଷ୍ଟା ସହକାରୀ ୧



ଜିଲ୍ଲା ଚଢ଼ିଆନ  
ତହସିଲ ନମର

(୨) ଶତ୍ରୀଧାନର କ୍ରମିକ ନମର

୧୩୩୪

(୩) ପ୍ରକାର ନାମ, ପିତାଙ୍କ ନାମ, ଜାତି ଓ ବାସସ୍ଥାନ

କୃଷିକ

(୪) ସ୍ୱତ୍ୱ

(୫) ସ୍ୱତ୍ୱଲିପି ପ୍ରସ୍ତୁତ ହେଉଥିବା ସମୟରେ ପ୍ରକଳିତ

Asst. Settlement Officer (Records) Berhampur

ଖଜଣା  
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ନିଷ୍କାର ସେସ ଓ ଅନ୍ୟାନ୍ୟ  
ସେସ, ଯଦି କିଛି ଥାଏ

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Annexure-A/24 series

(୧୦) ବିଶେଷ ଅନୁସଙ୍ଗ

(୧୧) ଶ୍ରମାଜୀବନଶାଳି ଖଜଣାର ବିବରଣୀ

(୮) ଦେୟ

Certified to be True Copy

Head Clerk  
G.K.M.S., Berhampur (Ganjam)

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(୧୧) ପୁଠ ନମ୍ବର ଓ ଚକର ନାମ (ଯଦି ଥାଏ)	(୧୨) ଜମାଧାରକ ନାମ (ଯଦି ଥାଏ) ଓ ପୁଠ ନମ୍ବର	(୧୩) କିସମ	(୧୪) କିସମର ବିସ୍ତାରିତ ବିବରଣୀ	(୧୫) ଚକର			(୧୬) ମତ୍ତବ୍ୟ
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BY ADVOCATE

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କ: ମତ୍ତବ୍ୟ ବିଭାଗ

MOUZA - Gopabandhu Nagar  
 THANA - Brahimapur

DRAFT KHATIAN  
 TAHASIL - Brahimapur  
 THANA NO. -

DISTRICT - Ganjam  
 TAHASIL NO. -

(1) Name of the Landlord

Odisha Government - I

(2) Serial no. of khatian

1375

(3) Name of the Tenant, father's name, Caste and residence

Reserve

(4) Status

==

(5) Prevaling during Preparation of ROR

(6) Total Saal unit Rent as per Calculation of Khata

(9) Details of Cumulative Rent

(10) Special Incidents

Rent	Rs.	
Water tax	Rs.	
Cess	Rs.	
Water Cess and other Cess if any	Rs.	
Total		_____

Assessed Rent	Rs.	
Water tax	Rs.	
Cess	Rs.	
Water Cess and other Cess if any	Rs.	
Total		_____

Annexure - A / 24 Series. 9

TRUE COPY ATTESTED

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 BY ADVOCATE

Certified Copy seal and  
 Signature of Asst. Settlement  
 Officer (Records) Berhampur

(11) Plot no. and Name of Chaka (if available)	(12) Name of the Genre (if available) and plot no.	(13) Classification	(14) details of classification	(15)		(16) Remarks
				Abadi	Total	
x x x		x x x	x x x	x	xxx	
1509 480/2 Rents	Waterbody I	x x x	Agulabandha	11	500	
x x x	x x x	x x x	x x x	x	xxx	
437 480 malot	Embarkment		Agulabandha	0	148	
438	Waterbody I	x x x	Agulabandha	0	386	
480 Related to	x x x	x x x	x x x	x	xxx	
1527	Waterbody II		Dike/Pond	4	094	4 094 Possession - Fishery Department
480/2 Related to	x x x	x x x	x x x	x	xxx	
x x x						This is the English Version of Draft Khastan of Khatana 1375 of Muzza Gopalbandhwar

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29 3. 2022

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CAN No. 973 dt. 17-03-22

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Schedule I-Form No. 39-A (Revised)

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୧

୧ । ଖତିଆନର ଭୂମିକ ନମ୍ବର

୧୩୭୪

୨ । ପ୍ରକାଶ ନାମ, ପିତାଙ୍କ ନାମ,  
କାନ୍ତି ଓ ବାସସ୍ଥାନ

ବ୍ରହ୍ମପୁର

୩ । ସ୍ୱରୂପ

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୪ । ବେସ					

୬ । ବିଶେଷ ଅନୁସଙ୍ଗ, ଯଦି କିଛି ଥାଏ

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When an instrument is published under the provisions of the O.S. Act, 1958 and O.S. Act, 1959, the Settles and shall take effect from the date of publication from the date of publication by the State

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CU No: 973 dt. 11/03/22

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Application	2	୩
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Paper	2	୩
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 Ganjam Collectorate  
 Ganjam  
 District Collector, Ganjam

11/03/2022  
 6/5/22

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 BY ADVOCATE

8-Nov-22  
 11

DELIVERED: 29.03.2022 C.A No: 973 / dated: 17.03.22.

(Signature of the Applicant)  
Date: 17.05.2022  
Advocate for the Applicant

Series 4/A/24 Series.

A	B	C	D	E	F	G	H	I
---	---	---	---	---	---	---	---	---

Schedule Form No. 39-A (Revised)

Translated version

**KHATIAN**

Mouza/Village: **Gopabandhunagar** Tahasil: **Brahmapur**  
 Thana / Police Station: **Brahmapur** Tahasil Number: **119**  
 Thana / Police Station Number: **75** District: **Ganjam**

Name of the landowner and khewat or khatian number: **Odisha Government 1**

1 | Serial number of Khatian: **1375**

2 | Name of the Tenant, Father's name, Caste and Residence: **Rakhit (Reserve)**

3 | Status: **4 | Demand**

Water rate	Rent	Cess	Nistar Cess	other Cess	Total	5   cumulative return of Rent

6 | Social incidence if any: **Blank space for stamping**

TRUE COPY ATTESTED  
Date: 17.05.2022  
BY Advocate

TRUE COPY ATTESTED  
BY ADVOCATE

13  
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Translated version Annexure-A/24 series.

	A	B	C	D	E	F	G	H	I
1	Plot No. & name of patch	Classification	Detail information of classification and boundary	Hec.	Sq. Mtr.	Acre	Decimil	Remarks	
2	7	8	9	10		11		12	
3	XXX		XXX			XXX			
4	1509	Waterbody I/Pond	Agulabandha			11	500		
5	1527	Waterbody II/Pond				4	94	possession Fishery deptt.	
6	1510	Embakemen t	Agulabandha embakement			0	719		
7	437	Embakemen t	Agulabandha embakement			0	148		
8	438	Waterbody I/Pond	Agulabandha			0	386		
9	XXX		XXX			XXX			
10		Total				17	47		
11	True copy Attested Date: 17.05.22. By Advocate		Date: 17.05.22. Adv. for the Applicant		TRUE COPY ATTESTED BY ADVOCATE		(Signature of the Applicant) Date: 17.05.2022		

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Date: 28.03.22  
Record keeper  
Ganjam Collectorate

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Date: 22.03.2022  
Officer-in-charge of Record Room,  
Ganjam Collectorate  
Chhatrapur.

CASE NO.:  
Appeal (civil) 812 of 2002

PETITIONER:  
VIJAY SYAL AND ANR.

RESPONDENT:  
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT: 22/05/2003

BENCH:  
SHIVARAJ V. PATIL & ARIJIT PASAYAT

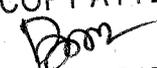
JUDGMENT:  
JUDGMENT

2003 Supp(1) SCR 242

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL J. These appeals are directed against the common judgment and order dated 4.1.2001 passed by the Division Bench of the High Court. The controversy relates to selection/non-selection of candidates to the posts of Assistant District Transport Officer (for short 'ADTO'). The Punjab Subordinate Selection Board advertised 12 posts of ADTOs on 15.5.1995. Out of them, 7 posts were for the general category, 4 for SC/ST and one was reserved for Ex-servicemen. A written test was conducted on 24.3.1996, the result of which was declared on 1.4.1998, declaring 78 persons successful. Out of these 78 persons, 61 belonged to general category, 15 belonged to SC/ST category and 2 belonged to category of Ex-servicemen. Later, on 22.4.1998, 40 more candidates were declared successful by lowering the standard. Out of these 40 candidates, 21 belonged to general category, 13 to SC/ST category and 6 to Ex-servicemen category. Criteria for selection were framed on 22.4.1998; final result was declared on 15.5.1998 and the appointments were made on 18.5.1998. Out of the candidates selected and appointed, 6 were from the general category, 3 were from SC/ST and 1 from Ex-servicemen category. Out of the 78 candidates whose result was declared on 1.4.1998, 4 candidates belonging to general category were selected. However, out of 40 candidates whose result was declared later, 2 candidates belonging to general category were selected. The appellants in these appeals approached the High Court by filing writ petitions for quashing the select list of the candidates published by the authorities in Tribune dated 23.5.1998, for issuing writ of mandamus directing the respondents to consider their claim on the basis of their merit from amongst the candidates originally invited for interview and to issue a writ in the nature of prohibition restraining the respondents from giving effect to the selection made. It may be mentioned here itself that the selected candidates were appointed on 18.5.1998 and having joined the services, they are continuing in service. The High Court considering the rival contentions on their relative merits and after perusing the records did not find any merit in the writ petitions. Consequently, they were dismissed by the impugned common order. Hence, these appeals.

Appellant No. 1 in Civil Appeal No. 812 of 2002 argued his case as party-in-person and submissions were made by the learned counsel on behalf of the other appellants. We may make it clear at the outset that none of the appellants belonged to the category of either SC/ST or Ex-servicemen and their claim is also not against these categories. Hence, we consider it unnecessary to consider the validity of selection of the candidates made in these two categories. In other words, we confine our consideration to the validity of selection of the candidates made in the general category. Mainly, the submissions made on behalf of the appellants were that after declaration of the result of the written examination on 1.4.1998, standard

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could not have been lowered for making other 40 candidates eligible for the purpose of interview; criteria could not have been framed after declaration of result of the written examination; maximum 21 candidates could have been called for interview in the ratio of 1:3 in the general category on the basis of the merit of the written examination whereas out of 78 candidates whose result was declared on 1.4.1998, more than 60 candidates were from the general category. In this regard, reliance was placed on Ashok Kumar Yadav and Ors. v. State of Haryana and Ors., [1985] 4 SCC 417.

Learned Additional Solicitor General and learned senior counsel for the respondents at the outset submitted that they have preliminary objection for the very entertaining of these appeals and considering the contentions advanced on behalf of the appellants on merits having regard to their conduct. According to them, the appellants made deliberate misrepresentation with regard to the allocation of marks stating that 150 marks were for the written test and 100 marks for interview. Further, mala fides were attributed to authorities on the basis of the relation and political influence, which they gave it up before the High Court but again reiterated in the SLPs. According to the learned counsel, these two grounds are good enough to dismiss the appeals by revoking leave granted without examining them on merits. Although, we find justification in these submissions but having heard the parties at length, we consider these appeals on the merits of the contentions as well. On behalf of the respondents, further submissions were made explaining the criteria fixed, in what circumstances, more number of candidates were called for interview and how the selection made was fair and proper. According to them, mere calling more number of candidates for interview did not vitiate the selection made having regard to the facts and circumstances of the case; at any rate, the appellants being lower in merit, even otherwise, could not get any benefit. According to the learned counsel for the respondents, the impugned judgment of the High Court is perfectly valid and justified. They also submitted that pursuant to the selection made, the selected non-official respondents have been continuing in service since May, 1998, i.e., they are continuing in service for about 5 years by now and as such these are not the fit cases for exercise of jurisdiction under Article 136 of the Constitution of India to interfere with the impugned judgment and order.

It is useful to reproduce the chart furnished at the time of hearing indicating names of candidates, their categories, qualification, marks obtained in written test as well as interview and the total marks:

C.A.NO.	Sr.	Name	List* No.	Qualification	Written Test	Inter view	Test	Category	Total
812/02	1.	Umesh Kumar, Appellant	1	12 5	138.5	G		2 (MA-II)	124
	2.	Vijay Kumar, Appellant	1	1 1 5	140.5	G		3 (MA-II)	126
	3.	Karanbir Singh, Resp.4	1	205	148*5	G		1 (Sports)	127
	4.	Gurinderjit Singh, Resp.5		19	146	I		G	127
	5.	Tarlochan Singh, Resp.6	1	75	145.75	G		-----	124 71
	6.	Manjit Singh, Resp. 7	I	20.25	145.25	G		2 (MA-II)	123
	7	Gurcharan Singh. Resp 8	Angrej Singh. Resp .9					8 II	
	G II	G I (NSS)	120 120 22.5					143.5 22.87	142.87
	9.	Sukhwinder Kumar. Res. 101		121	19.37 141.37	SC		I (NSS/NCC)	
	10.	Dhien Singh. Resp. II	II	19.5	140.5	SC		2 (MA)	119
	11.	Karam Singh. Respt 12	1	124	15.75 141.75	SC		2 (MA/LLB)	
	12.	Jaswant Singh, Respt.	13			11		SC	5 (MA=2.

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NCC-3)	114	21.5	140.5				
5986/02	Zulfikar AM, Appl.	5985/02	Gurdeep Singh, Appl	937/02			
Sarpinderjit Singh.	Appl.	1	G I	G 1			G
2 (LLB)	122 122 128	12.25	136.25	14.25	136.25	11.5	
	141.50						

2 (MA)

Not selected but better than all the			Appellants
Ram Nath	1 G	121	21.75 142.75
Paramjit Singh	I G	123	19 142

\*Note - The names of the candidates from among 78 candidates called for interview for the first time are shown as in List-I and names of the candidates from among 40 candidates called for interview are shown as in List-II.

In para 8 of the Writ Petition No. 7349 of 1998 filed by the appellant No. 1 in Civil Appeal No. 812 of 2002, it is averred that he came to know on inquiry that the entire selection had been made in a totally arbitrary and biased manner to help certain selected candidates; respondent No. 8 is the nephew of Shri Jasdev Singh Sandhu, Chairman of the respondent-Board; sister's husband of Harmail Singh, Minister for Public Works in the present Government is one of the selected candidates; Shri Angrej Singh, respondent No. 9 is politically very-well connected and is a close friend of sitting MLA. In order to help these persons who did not come within the first list, second list was issued. In para 10 of the writ petition, it is asserted that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview) which is totally arbitrary. Thus, 40% marks have been allocated for interview as against 12.2%, which are permissible in law. In the replication to the written statement filed, in para 8, it is stated that relationship of respondent No. 8 with Shri Jasdev Singh Sandhu, the Chairman, is concerned, it is fairly conceded that this has been mentioned wrongly but not with mala fide intention. In the impugned judgment, the question of mala fide is not dealt with, obviously, in view of the replication filed by the appellants to the written statement before the High Court as noticed above. In the impugned judgment, the question of allocation of 100 marks for interview were excess, is also not dealt with as it does not appear to have been urged on behalf of the appellants. Criteria for selection were framed on 22.4.1998. The criteria for selection which was produced is Annexure-R-1 in the writ petition before the High Court clearly indicated total marks for selection 240, out of them 200 marks were allocated for competitive test, 15 marks for additional educational, sports and olier qualifications and 25 marks were allocated for interview. The appellants were very much aware of Annexure R-1. The impugned order shows that the grievance of the appellants was in regard to the publication of the criteria, subsequent to declaration of the result of written examination; not that 100 marks allocated for interview were excessive. With all this, it is painful to note that the appellants in Civil Appeal No. 812 of 2002 on page K of List of dates stated that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview) It is further stated that the selection has been made in totally biased manner as the nephew of the Chairman of the respondent-Board, the sister's husband of the Minister for Public Works and a friend of known political families in Punjab, have been appointed. It may be stated here itself that those persons were neither made parties nor any particulars were given touching mala fulcs. At page 34 of SLP in paras K and L, same things are repeated as to the allotment of 100 marks for interview and also mala fides attributed to certain persons to accommodate the private respondents. It is further stated that arbitrarily 100 marks were set apart for interview out of 250 marks in order to help them only and that the entire selection was arbitrary. This is also the state of affairs even with regard to the other appellants in other appeals At the hearing when pointed out, the appellants regretted for the wrong statements and misrepresentation made but added

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that they were not with any mala fide intention. Looking to the background, specific statements made in the replication filed by the appellant before the High court, being aware of the criteria that the marks for interview were only 25, having given up mala fides and having not urged the same before the High Court and taking note that the appellants have sworn affidavits in support of the SLPs that they understood the accompanying synopsis, list of dates and paragraphs contained in Special Leave Petitions and that they were fully conversant with the facts of the case and that the contents of the affidavit were true to their knowledge and nothing material has been concealed there from and no part of it is false, we find it difficult to accept that the statements were made in the SLPs bonafidely. It appears to us that these statements were made in SLPs to get leave and/or interim orders on the ground of excessive marks allocated for interview and mala fides. In our view, this conduct of the appellants is condemnable and we may straightaway say without any hesitation that they have disintitiled themselves for any relief on this score.

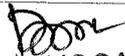
A bench of three learned Judges of this Court in Hari Narain v. Badri Das, [1964] 2 SCR 203 revoked the special leave granted to the appellant and dismissed the appeal for making inaccurate, untrue and misleading statement in SLP observing that "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with application for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

Again in Rajabhai Abdul Rehman.Munshi v. Vasudev Dhanjibhai Mody, [1964] 3 SCR 480, this Court observed that "exercise of the jurisdiction of the Court under Article 136 of the Constitution is discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal."

In the same judgment, Hidayatullah, J. concurring with judgment of Shah J. delivered on behalf of himself and Sarkar J., added that "I have considered the matter carefully. This is not a case of a mere error in the narration of facts or of a bona fide error of judgment which in certain circumstances may be considered to be venial faults. This is a case of being disingenuous with the Court by making out a point of law on a suppositious state of facts, which facts, if told candidly, leave no room for the discussion of law. The appellant has by dissembling in this Court induced it to grant special leave in a case which did not merit it. I agree, therefore, that this leave should be recalled and the appellant, made to pay the costs of this appeal."

Yet again, a bench of three learned Judges of this Court in Udai Chand v. Shanker Lal and Ors., [1978] 2 SCR 809 revoked the special leave and dismissed it after referring to the decisions in Hari Narain and Rajabhai Abdul Rehman Munshi (supra). It was further observed that this Court cannot permit abuses of the process of law and of law courts.

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However, even otherwise we proceed to examine on the merits of the contentions urged on either side at length and with all seriousness.

From the chart extracted above in regard to the marks secured by the appellants and the respondents, it is evident that respondents 4-7 (in general category) were in the first list i.e. they were from out of the 78 candidates. The appellants cannot make grievance as far as these candidates are concerned in the sense that they were in the first list and not in the second list so as to give them advantage. No doubt, respondents 8 and 9 (in general category) were called for interview in the second list out of 40 candidates. Admittedly, the marks secured by these respondents are more than any of the appellants in the general category. It is pointed out that the two candidates namely Ram Nath and Paramjit Singh in general category called in the first list of the interview have secured more marks than all the appellants. Even if the respondents 8 and 9 were to be denied appointment on the ground that they were called for the interview in the second list, the position of the appellants could not improve. One more fact to be kept in mind is that two candidates belonging to Scheduled Castes category having secured higher marks than the appellants could be selected in the general category. Thus, even otherwise, the appellants would not succeed in getting selected for appointments. Merely because 40 more candidates were called for interview without anything more, selection of the candidates does not get vitiated particularly so when malafides were given up and 100 marks were not allocated for interview as wrongly stated by the appellants.

As can be seen from the difference of marks secured by the candidates in interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further marks secured in the interview and the marks secured in written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in interview so as to give an advantage or march to an undeserving candidate of their over others who had shown extraordinary merit in written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to Scheduled Castes were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100 as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria. The High Court in the impugned order has found that the criteria contained in Annexure R-1 filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections.

The appellants heavily relied on a decision of this Court by four learned Judges in Ashok Kumar Yadav's case (supra) in support of their contentions that where there is a composite test consisting of written examination followed by viva voce test, the number of candidates to be called for interview on the basis of marks obtained in the written examination should not exceed twice or at the highest thrice the number of vacancies to be filled; further marks allocated to viva voce test should not be more than 12.2%. The learned counsel for the respondents from the very judgment

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pointed out that it does not advance the case of the appellants having regard to the facts and circumstances of the cases at hand. In the aforementioned case of Yadav, the facts were that in October, 1980, Haryana Public Service Commission (HPSC) invited applications for recruitment to 61 posts in Haryana Civil Service (Executive) and Allied Services. The recruitment was governed by the Punjab Civil Service (Executive Branch) Rules, 1930 as applicable in the State of Haryana. In response to that advertisement issued by HPSC, about 6000 candidates applied for recruitment and appeared at the written examination. Out of them, over 1300 obtained more than 45% marks and were called for interview. HPSC invited all the 1300 and odd candidates for interview and the interviews lasted for almost half a year. Though originally, applications were invited for recruitment to 61 posts, the number of vacancies during the time taken in the written examination and viva voce test rose to 119. It seems there were some candidates who had obtained very high marks at the written examination but owing to securing poor marks in the viva voce test, they could not come within first 119 candidates and consequently they were not selected. Aggrieved by the non-selection, they filed writ petitions in the High Court challenging the validity of the selection. It was contended that the marks given in the viva voce test should be ignored and selection should be made only on the basis of the marks obtained by the candidates at the written examination. The writ petitions were allowed by the Division Bench of the High Court. Hence, the appeals were filed before this Court aggrieved by the judgment of the High Court. The High Court took the view that there was reasonable likelihood of bias vitiating the selection process based on the fact that though only 61 vacant posts were advertised over 1300 candidates representing more than 20 times the number of available vacancies were called for viva voce test. The Division Bench pointed out that in order to have proper balance between the objective assessment of a written examination and the subjective assessment of personality by a viva voce test, the candidates to be called for interview at viva voce test should not exceed twice or at the highest, thrice the number of available vacancies. Since the candidates were called 20 times the number of available vacancies, the High Court held that the selection process was vitiated. This Court disagreed with this conclusion reached by the Division Bench of the High Court. While doing so, this Court observed that HPSC was not right in calling for interview all the 1300 and odd candidates; it was difficult to see how a viva voce test for properly and satisfactorily measuring the personality of a candidate can be carried if over 1300 candidates were to be interviewed for recruitment to a service if viva voce test was to be carried out in a thorough and scientific manner, to arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take anything between 10 to 30 minutes. This Court, while considering the question whether selection made by HPSC after calling 1300 candidates for interview was vitiated on that account, in paragraph 21, held thus:-

"We do not think that the selections made by the Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though on the view taken by us that was not the right course to follow and not more than twice or at the highest thrice, the number of candidates should have been called for interview. Something more than merely calling an unduly large number of candidates for interview must be shown in order to invalidate the selections made. That is why the Division Bench relied on the comparative figures of marks obtained in the written examination and at the viva voce test by the petitioners, the first 16 candidates who topped the list in the written examination and the first 16 candidates topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, and observed that these figures showed that there was reasonable likelihood of arbitrariness and bias having operated in the marking at the viva voce test. Now it is true that some of the petitioners did quite well in the written examination but fared badly in the viva voce test and in fact their performance at the viva voce test appeared to have

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deteriorated in comparison to their performance in the year 1977-78. Equally it is true that out of the first 16 candidates who topped the list in the written examination, 10 secured poor rating in the viva voce test and were knocked out of the reckoning while 2 also got low marks in the viva voce test but just managed to scrape through to come within the range of selection. It is also true that out of the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, 12 could come in the list only on account of high marks obtained by them at the viva voce test, though the marks obtained by them in the written examination were not of sufficiently high order. These figures relied upon by the Division Bench may create a suspicion in one's mind that some element of arbitrariness might have entered the assessment in the viva voce examination. But suspicion cannot take the place of proof and we cannot strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva voce examination might be arbitrary. It is necessary to point out that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indoubtably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness. Moreover, apart from only three candidates, namely Trilok Nath Sharma, Shakuntala Rani and Balbir Singh one of whom belonged to the general category and was related to Shri Raghubar Dayal Gaur and the other two were candidates for the seats reserved for Scheduled Castes and were related to Shri R.C. Marya, there was no other candidate in whom the Chairman or any members of the Haryana Public Service Commission was interested, so that there could be any motive for manipulation of the marks at the viva voce examination. There were of course general allegations of casteism made against the Chairman and the members of the Haryana Public Service Commission, but these allegations were not substantiated by producing any reliable material before the Court. The Chairman and member of the Haryana Public Service Commission in fact belonged to different castes and it was not as if any particular caste was predominant amongst the Chairman and members of the Haryana Public Service Commission so as even to remotely justify an inference that the marks might have been manipulated to favour the candidates of that caste. We do not think that the Division Bench was right in striking down the selections made by the Haryana Public Service Commission on the ground that they were vitiated by arbitrariness or by reasonable likelihood of bias."

In that case the marks allocated for viva voce test came to 22.2% of the total number of marks kept for the competitive examination. This percentage of 33.3% was in the case of Ex-service officers and 22.2% was in the case of other candidates.

As regards the allocation of marks for interview, in paras 23 and 24 of the same judgment it is stated thus:-

"23. This Court speaking through Chinnappa Reddy, J pointed in *Lila Dhar v. State of Rajasthan*, [1982] 1 SCR 320 that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services. But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the Court and the Court would not venture into such exclusive thickets to discover ways out, when the

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matters are more appropriately left" to the wisdom of the experts. It is not for the court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments, where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters by courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.

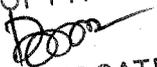
24. It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by viva voce test, much depending on the constitution of the interview board."

Even having found allocation of 22.2% marks for viva voce test were unreasonable and excessive, selection was not upset as stated hereunder:-

"28. But the question which then arises for consideration is as to what is the effect of allocation of such a high percentage of marks for the viva voce test, both in case of ex-service officers and in case of other candidates, on the selections made by the Haryana Public Service Commission. Though we have taken the view that the percentage of marks allocated for the viva voce test in both these cases is excessive, we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years. The candidates selected by the Haryana Public Service Commission have already been appointed to various posts and have been working on these posts since the last about two years. Moreover the Punjab Civil Service (Executive Branch) Rules, 1930 under which 33.3% marks in case of ex-service officers and 22.2% marks in case of other candidates have been allocated for the viva voce test have been in force for almost 50 years and everyone has acted on the basis of these rules. If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardized. We do not therefore propose to set aside the selections made by the Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test."

This Court in Ashok Kumar Yadav's case, aforementioned, found allocation of 12.2% marks for viva voce test was fair and just and in that view directed that marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. Even judged by this standard in the present appeals, the marks allocated for viva voce test being 25 as against total marks of 240 are less than 12.2% i.e. well within the ambit of direction given. In that case, this Court declined to exercise discretion to set aside the selection made by the HPSC after the lapse of 2 years taking note that the selected candidates had already been appointed to various posts.

In All India State Bank Officers' Federation and Ors. v. Union of India and

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Ors., [1997] 9 SCC 151, this Court observed, "there can be no rigid or hard and fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for viva voce or interview which can be regarded as unreasonable will depend on the facts of each case. Decisions of this Court show that no rigid rule, relating to percentage of marks for interview of general universal application can or has been laid down. What the interview or viva voce marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview marks should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection."

This Court in a recent decision in *Jasvinder Singh and Ors. v. State of J&K* and Ors., [2003] 2 SCC 132, after referring to earlier decisions, pointed out that the very observations made in *Ashok Kumar Yadav's* case show that there cannot be any hard and fast rule of universal application for allocating the marks for viva voce vis-a-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases, what ultimately is required to be ensured is as to whether the allocation as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Para 7 of the said judgment reads:-

"7. In *Mehmood Alam Tariq v. State of Rajasthan*, [1988] 3 SCC 241, prescription of 33% as minimum qualifying marks of 60 out of total 180 marks set apart for viva voce examination does not by itself incur any constitutional infirmity. In *Manjeet Singh v. ESI Corpn.*, [1990] 2 SCC 367 this Court held that in the absence of any prescription of qualifying marks for the interview test the same 40% as applicable for written examination was reasonable. In *Anzar Ahmad v. State of Bihar*, [1994] 1 SCC 150 this Court exhaustively reviewed the entire case law on the subject including the one in *Ashok Kumar Yadav* case and upheld a selection method which involved allocation of 50% marks for academic performance and 50 marks for the interview. The very observations in *Ashok Kumar Yadav* case would go to show that there cannot be any hard-and-fast rule of universal application for allocating the marks for viva voce vis-a-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases. What ultimately required to be ensured is as to whether the allocation, as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Judged from the above the Division Bench could not be held to have committed any error in sustaining the allocation of 25 marks (20%) for viva voce as against 100 marks for written examination for selection of candidates in the present case. The learned Single Judge, in our view, has adopted a superficial exercise and proceeded on a misunderstanding of the real ratio of the decision in *Ashok Kumar Yadav* case. Further, the learned Single Judge appears to have applied the ultimate decision in the said case, to the case on hand drawing certain inferences on mere assumptions and surmises or some remote possibilities, without any proper or actual foundation or basis, there for."

The observations made in para 8 of the same judgment in somewhat similar circumstances which have negative impact on the contentions urged on behalf of the appellants are:-

"8. The learned single Judge also seems to have been very much carried away by few instances noticed by him as to the award of higher percentage of marks in viva voce to those who got lower marks in the written test as compared to some who scored higher marks in the written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances can not provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in the written test will or should be presumed to have fared well in the viva voce test and also and the expert opinion about as well as experience in viva voce does not lend credence to any such

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general assumptions, in all circumstances and for all eventualities. That apart, the variation of written test marks of those who were found to have been awarded higher marks in viva voce vis-a-vrs those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case I here was no specific allegation of any mala fides or bias against the Hoard constituted for selection or anyone in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates of all those who have obtained 56 marks in the written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such serious infirmity in law to call for our interference."

In Civil Appeal No. 937 of 2002 the learned counsel for the appellant urged an additional ground that 5 marks fixed for higher educational qualifications were not given to the appellant. According to him the appellant had additional qualifications of M.A. and LL.B.; he ought to have been given additional marks for M.A. as well as LL.B., but only 2 marks were given for both the qualifications together, which affected his chance of selection. It appears that this point was not urged before the High Court and no opportunity was available to the respondents to meet this point. However, during the course of hearing, based on the criteria fixed for selection, it was explained to us by the learned counsel for the respondents that for additional educational qualifications 5 marks were set apart. Out of them maximum marks available to the highest educational qualification of a candidate were to be given and not that marks were to be given to every additional educational qualification. It is better to look at the criteria, which was filed as Annexure R-1 in the writ petition, which is reproduced hereunder: -

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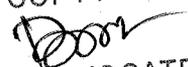
"ANNEXURE R-1

CRITERIA/FORMULA ADOPTED FOR SELECTION OF CANDIDATES FOR THE POST OF NAIB TEHSILDAR BY THE SUBORDINATE SERVICES SELECTION BOARD, PUNJAB

Total marks for selection		240
(i) marks allotted for competitive test		200
(ii) Marks allotted for Additional Educational, sports	15 and other	
Qualifications		
(iii) Marks allotted for interview/ (VIVA-VOCE)	25	
I. A. Marks allotted for Educational Qualification		5
(for additional Qualification)		
(i) Ph.D.	5	
(ii) M.A./M.Sc./M.Tech and other post graduate degrees		
1st Division	3	
2nd Division and		
3rd Division	2	
(iii) LL.B.		2
(iv) Any other qualification	1	

---

Note: The candidate will be given the marks on the basis of his/her highest

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qualification and not on the basis of his/her each qualification lower than this.

II.	B. SPORTS/EXTRA CURRICULAR ACTIVITIES	5	
(i)	Sports		
	International winner		5
	National winner		3
	State winner		2
(ii)	N.C.C.		3
	C Certificate	3	
	B Certificate	2	
	A Certificate		I
(iii)	N.S.S.		
	2		
	One camp	1	
	Two or more camp	2	

III. INTERVIEW

Interview marks of the Board will be 25 and the system for awarding the marks would be same as approved separately for all categories.

Sd/-  
(Jasdev Singh Sandhu) Chairman  
14.1.1999

Sd/-  
(Kulbir Singh Randhawa)  
Member

Sd/-  
(Ashok Loomba)  
Member

Sd/-  
(Parkash Singh Gardhiwal)  
Member

Sd/-  
(Virsa Singh Valioha) Member

Sd/-  
(Jarnail Singh Wahid) Member"

From Annexure R-1 it is clear that total marks for selection were 240. Marks allocated for competitive test were 200, marks allocated for additional educational, sports and other qualifications were 15 and marks allocated for interview (Viva voce) are 25. Marks allocated for educational qualifications are 5 and maximum marks are 5 for Ph.D., for post graduation in first division 3 marks, for second and third divisions 2 marks, for LL.B. 2 marks and any other qualification 1 mark. If the argument of the learned counsel for the appellant is to be accepted, it may result in anomalous situation. Suppose, a candidate, who possesses three additional qualifications including Ph.D., in that event he would be entitled 5 marks for Ph.D. and additional marks for every additional educational qualifications. Then the total marks to be assigned to a candidate for the educational qualifications shall be more than 5 marks. In the case of the appellant, although he had two additional educational qualifications, the maximum marks to which he was entitled for highest qualification were given. Hence he cannot make any grievance. This being the position, we do not find any merit in the contention. Hence it is rejected.

In Civil Appeal No. 5985 of 2002 it was urged that no marks were given to the appellant for additional educational qualifications. It appears that this point also was not raised before the High Court and similarly no opportunity was available to the respondents to meet the point. The learned counsel for the appellant contended that the appellant had additional post graduation qualification and no marks were given to him. It was brought to our notice by showing the original record that in the application form no mention was made about additional post graduation qualification acquired by the appellant and no record or certificate was placed before the authorities at appropriate time to show that the appellant had acquired additional qualifications. Hence the contention has no merit and consequently it is rejected.

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In these appeals, the non-official respondents having been appointed in May, 1998, are continuing in service almost for a period of five years. On this ground as well as looking to the conduct of the appellants in making misrepresentation to this Court and finding no merit in these appeals, we should decline to interfere with the impugned judgment and order. It may be noted that even in the Ashok Kumar Yadav 's case (supra) this Court set aside the judgment of the Division Bench of the High Court by rejecting the challenge to the validity of the selection made by the HPSC.

In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice.

Before we part with these cases, we must observe that the misrepresentation made by the appellants in the SLPs supported by an affidavit require serious action but we refrain from taking any further action in view of the apology and regret expressed by the appellants during the hearing. But, we administer a warning to them to be careful in future and not to make any misrepresentation or false statement before any court and impose cost also.

For the reasons stated and discussion made above, these appeals are dismissed but with cost of Rs.10,000/- (Rs. 5000 to be paid by each of the appellants) in Civil Appeal No. 812 of 2002 and Rs. 5,000 in each one of the remaining appeals to be paid by the appellants which amount shall be deposited with the Legal Aid Committee of the Supreme Court.

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Chandra Shashi vs Anil Kumar Verma on 14 November, 1994

Supreme Court of India

Chandra Shashi vs Anil Kumar Verma on 14 November, 1994

Equivalent citations: 1995 SCC (1) 421, JT 1994 (7) 459

Author: H B.L.

Bench: Hansaria B.L. (J)

PETITIONER:

CHANDRA SHASHI

Vs.

RESPONDENT:

ANIL KUMAR VERMA

DATE OF JUDGMENT 14/11/1994

BENCH:

HANSARIA B.L. (J)

BENCH:

HANSARIA B.L. (J)

KULDIP SINGH (J)

CITATION:

1995 SCC (1) 421                      JT 1994 (7) 459

1994 SCALE (4)944

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.L. HANSARIA, J.- The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

3. These prefatory remarks well project the importance of the point under consideration in this suo motu contempt action taken against respondent Anil Kumar for his having filed a fabricated document to oppose the prayer of his wife seeking transfer of a matrimonial proceeding from Delhi to Unnao. It shall be first required to be seen whether Anil did file a fabricated document and then we shall address ourselves as to whether filing of a forged document with intention to defraud amounts to contempt of court, as this expression has been defined in Section 2 of the Contempt of Courts Act, 1971 (the Act).

4. Insofar as the first aspect is concerned, we entertain no doubt, as the case put by Anil contemner in his show- cause that the Experience Certificate dated 4-3-1993 purportedly from the Principal, V.S.S.M. Inter College, Moti Nagar, Unnao, had been signed by Khem Chandra, the Principal, is not acceptable on the face of the affidavit of the Principal himself, according to whom, the certificate is a "forged and fabricated document". The averments in the show-cause filed by Anil, after issuance of contempt notice, that he had contacted one A.K. Mathur, working as Additional General Manager in Ordnance Factory at Kanpur, who in turn spoke to one V.K. Upadhyay, Manager of the Armapur Gas Agency at Kanpur, who ultimately obtained the certificate, have nothing to commend inasmuch as the contemner has not been successful, despite opportunity having been given, to produce any supporting material either from Shri Mathur or Shri Upadhyay. The further statement in the show-cause that three other teachers of the College used to sign in the name and as Khem Chandra and that Shri Khem Chandra, the Principal himself, signed in different styles has really made the matter worse. These averments made in the show- cause do not merit acceptance and we entertain no doubt that Anil had filed a forged and fabricated document to resist the prayer of his wife to get the matrimonial proceeding transferred on the ground of her poverty i.e. it was done with an oblique motive.

5. The real question is whether filing of the aforesaid forged and fabricated document amounts to contempt. According to Shri Gangull, appearing for Anil Kumar, this does not. Let it be seen whether the contention advanced by Shri Ganguli is tenable.

6. In Section 2(a) of the Act "contempt of court" has been said to mean civil contempt or criminal contempt. The latter expression has been defined in Section 2(c) to mean the publication of a matter which, inter alia, interferes or tends to interfere with due course of any judicial proceeding, or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice.

7. There being no decision of this Court (or for that matter of any High Court) to our knowledge on this point, the same is required to be examined as a matter of first principle. Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court's order, but also to keep the stream of justice clear and pure (which was highlighted more than two and half centuries ago by Lord Hardwicke, L.C. in St. James's Evening Post case) so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples. The purpose of contempt jurisdiction was summarised as below by Lord Morris in Attorney General v. Times Newspapers Ltd.2:

.LM15 "In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted that their authority wanes and is supplanted."

8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that (truth alone triumphs) is an achievable aim there; or (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts.

9. The aforesaid thoughts receive due support from the definition of criminal contempt as given in Section 2(c) of the Act, according to which an act would amount to be so if, inter alia, the same interferes or tends to interfere, or obstructs or tends to obstruct the administration of justice. The word 'interfere', means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty, as stated at p. 255 of Words and Phrases (Permanent Edn.), Vol.

22. As per what has been stated in the aforesaid work at p. 147 of Vol. 29 obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice.

1 (1742) 2 Atk 469; 26 ER 683 2\_ 1974 AC 273, 302; (1973) 3 All ER 54, 66; (1973) 3 WLR Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.

10. A reference to standard textbooks on contempt, to wit, C.J. Miller's Contempt of Court; Oswald's Contempt of Court; and Anthony Arlidge & David Eady's The Law of Contempt would amply bear what has been stated above; and that if a forged and fabricated document is filed, the same may amount to interference with the administration of justice. Of course, for the act to take this colour there is required to be an element of deceit or the knowledge of the statement being forged or fabricated. This is what finds place at pages 399 to 401 (2nd Edn.); page 62 (1993 Reprint); and pages 186 and 188 (1982 Edn.) respectively of the aforesaid treatises.

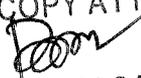
11. These statements are based on some important decided cases. It would be enough for our purpose to note two such decisions, one of which is by the Privy Council and the other by a King's Bench Division.

12. In the Privy Council case titled Moses Amado Taylor, Re<sup>3</sup> which was on appeal from the Supreme Court of Sierra Leone, what had happened was that the appellant, a barrister, who had enrolled as solicitor of the Supreme Court of the said Colony, applied to the Acting Chief Justice for a warrant for the arrest of one Wright on the ground that he was about to leave the settlement, despite his owing some money to his client. This prayer was rejected. Subsequently, an application was made to one of the police magistrates for a warrant for the arrest of the same person upon a criminal charge of assault and a warrant was issued accordingly. As the Acting Chief Justice had earlier refused the warrant, the Supreme Court felt that the entire proceeding initiated by the appellant was an abuse to the process of justice and it was held that the appellant, by initiating the criminal proceedings, was influenced by the intention of defying the Acting Chief Justice who refused the civil warrant of arrest; and being of this view the appellant was held guilty of contempt and his name was ordered to be removed from the roll of barristers and solicitors of the Supreme Court in question, apart from being fined. On appeal being preferred to the Privy Council, it was held that as the evidence did not show any intent to defraud on the part of the appellant no contempt was committed; at the most he had committed an irregularity for which some pecuniary penalty was adequate punishment. The importance of this case for our purpose is that had the Privy Council felt satisfied about intent to defraud, the appeal would have been dismissed and the view taken by the Supreme Court of Sierra Leone that the appellant was guilty of contempt would have been upheld. What emerges from this decision is that if a person does anything to defraud the court, he commits its contempt.

13. The King's Bench judgment was rendered in R. v. Weisz, ex p Hector MacDonald Ltd.<sup>4</sup> Lord Goddard, C.J. (speaking for the Court) held the action of the type, which was one of recovery of money on the basis of 3 1912 AC 347: 81 LJPC 169 : 105 LT 973 : 28 TLR 204, PC 4 (1951) 2 KB 611 : (1951) 2 All ER 408 account stated though there was none, as an abuse of the process of the court but not per se a contempt. It was however added that if the attempt were to deceive by disguising the true nature of the claim, the same would be contempt. On the facts of the case it was found that the solicitor firm had committed contempt as it had endorsed the writ (which was for money won at betting) for a fictitious, though apparently a legal cause of action, as Parliament had ordained that courts are not to be used for realising such monies. The action was, therefore, regarded as an interference with, or distortion of, the course of justice. (A different view was, however, taken insofar as the litigant himself was concerned as he had done nothing to bring a feigned issue before the court.)

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt.

15. Before applying our mind to the question of sentence, we would advert to an offer of unconditional apology tendered by Anil Kumar in his affidavit filed on 29-10-1994. A perusal of the same shows that this was done after the deponent formed an impression, when the matter was

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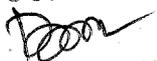
argued in court in his presence on 24th October, 1994 (on which date the judgment was also reserved), that we were of the view that he had committed wrong. The affidavit further states that if he would be punished, his life would "get shattered", as after his divorce proceeding was completed recently he could secure a job and has started his "life afresh". Thus, the apology tendered is not a product of remorse or contrition, which it has to be to merit acceptance, as stated in *M.B. Sanghi v. High Court of Punjab & Haryana*<sup>5</sup> in which case it was also pointed out that an apology merely to protect against rigours of law is no apology. In *Major General B.M. Bhattacharjee v. Russel Estate Corpn.*<sup>6</sup> an "unconditional apology" while trying to justify the act (similar is the position here as would appear from the averments made in paragraph 5 of the aforesaid affidavit) was not accepted. Recently, in *K.A. Mohammed Ali v. C.N. Prasannan*<sup>7</sup>, a belated apology sought was refused.

16. Had the contemner shown real contriteness and regret for the act done, we would have perhaps accepted his apology; but as it cannot be used as a weapon of defence to get purged of the guilt, which precisely the contemner has sought to do as he desires to avoid worldly suffering which would follow if sentenced, we reject his offer and proceed to decide the question of sentence. Let it be first seen whether sentence of fine would meet the ends of justice. In our view, such a sentence would not be conducive to *5 (1991) 3 SCC 600: 1991 SCC (Cri) 897 6 (1993) 2 SCC 533 7 1994 Supp (3) SCC 509 : JT (1994) 6 SC 584* the larger cause of maintenance of purity in the portals of court inasmuch as if a fabricated document with oblique motive can be filed in the Apex Court, a serious view for the same has to be taken to maintain a modicum of fairness in courts below. This apart, the increasing tendency of taking recourse to objectionable means to get a favourable verdict in the courts has to be viewed gravely to deter the large number of persons approaching courts from doing so. Such a tendency is required to be curbed, which requires somewhat deterrent sentence.

17. Keeping in view the above, we award sentence of two weeks' imprisonment to the contemner. We would have indeed awarded a longer period of incarceration because of the gravity of contumacious act fabrication of document to defeat just cause of an adversary and thereby seriously affecting the purity of courts' proceeding but we have refrained from doing so as this is the first occasion in free India when this Court (for that matter may be any court of the country) has felt called upon to send a person like the contemner behind iron bars in exercise of contempt jurisdiction. We have restricted the period of imprisonment to two weeks in the hope that the incarceration of this contemner will work- as eye-opener and no court will henceforth feel constrained and to do so in any other case. We have traversed the untreaded path guardedly, because the assumption of contempt jurisdiction by a court requires zealous and careful movement as the affected party faces a summary trial and the prosecutor himself acts as a judge.

18. The proceeding stands disposed of accordingly.

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Dhananjay Sharma vs State Of Haryana And Ors on 2 May, 1995

Supreme Court of India

Dhananjay Sharma vs State Of Haryana And Ors on 2 May, 1995

Bench: Dr. A.S. Anand, Faizan Uddin

CASE NO.:

Writ Petition (crl.) 15 of 1994

PETITIONER:

DHANANJAY SHARMA

RESPONDENT:

STATE OF HARYANA AND ORS.

DATE OF JUDGMENT: 02/05/1995

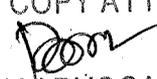
BENCH:

DR. A.S. ANAND & FAIZAN UDDIN

JUDGMENT:

JUDGMENT 1995 (3) SCR 964 The Judgment of the Court were delivered by DR. ANAND, J. On 17.1.1994, Shri Parasmal Rampuria of C.R. Industries Limited filed a petition seeking issuance of a writ of habeas corpus for the release of Dhananjay Sharma from illegal and unauthorised custody of the Haryana Police and for his production in Court. It is alleged in the writ petition that on account of some civil disputes between M/s. Bhanu Iron and Steel Company Limited (in short BISCL) of New Delhi, with a factory at Indore, which is owned by Respondent No. 7, Shri Anoop Bishnoi, son-in-law of Shri Bhajan Lal, Chief Minister of Haryana and M/s. C.R. Industries Limited, a case under Sections 406/420 IPC was got registered by Respondent No. 6 Shri S.K. Kaushik, the Commercial Manager of BISCL, being FIR No. 663/93 at Police Station Sadar, Hissar against Shri Pradeep Rampuria and others. On 17.1.1994, a team of police party, headed by Additional Superintendent of Police, Hissar Shri Sham Lal Goel, respondent No. 4, went to the residence of Shri Pradeep Ram-puria at Diamond Harbour Road, Calcutta, to arrest Shri Pradeep Ram-puria, on the authority of non- bailable warrants of arrest issued against him by the Additional Chief Judicial Magistrate, Hissar. Shri Pradeep Ram-puria was arrested and on 7.1.1994 itself produced before the Chief Judicial Magistrate, Alipore, Calcutta, who released him on bail till 15.1.1994, with a direction to appear before the competent court at Hissar. On 15.1.1994 Shri Dhananjay Sharma, the detenu, who is an employee of M/s. Golden Industries, a sister concern of M/s. CR Industries Limited, along with Shri S.C. Puri, advocate went to Hissar in a taxi (van) bearing registration no. DAE-3668 driven by Sushil Kumar. They appeared in the court of the Addl. CJM Hissar and filed an application seeking exemption from per-sonal appearance of Shri Pradeep Rampuria on medical grounds. After filing the application and obtaining the next date from the court, the detenu, Shri Dhananjay Sharma along with bis lawyer Shri S.C. Puri, left for Delhi in the same taxi car (van) driven by Sushil Kumar. A team of Haryana police officers, riding in six police Gypsy jeeps, way-laid them on Hissar-Delhi road and while, after some arguments Shri S.C. Puri, Advocate, was allowed to go, the detenu and Sushil Kumar alongwith the taxi car were whisked away by the personnel on 15.1.94 and were being illegally detained by the Haryana Police and their whereabouts were not known and that they had not returned to Delhi. Shri S.C. Puri, Advocate filed on affidavit in support of the writ petition, wherein it was inter alia stated:

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That after obtaining the date, the deponent came to his car waiting outside the court premises and advised Mr. Danjay Sharma to direct the driver to take us back immediately to Delhi.

That we hardly travelled one or two kilometers that a number of fully armed police gypsies of Haryana Police appeared at the site and surrounded the Maruti Van in which we were travelling. One of the police officers ordered the driver to show him the papers relating to the vehicle which were handed over to him by the driver. The deponent immediately came down from the van. However, Mr. Sharma and the driver were not allowed to come out of the van and remained surrounded by the fully armed Police Officers. They also wanted the deponent to sit in the Maruti Van or even in their own vehicle to which the deponent resisted strongly. On persistent enquiries from the deponent, one of the police officers had a talk with some of his superiors on wireless set and after completing the conversation, Mr. Dhanjay Sharma and the driver of the said vehicle were taken away by the Armed Police Squad towards city side leaving the deponent on the road. The deponent boarded a three-wheeler and came to a nearby market. The deponent contacted Shri P.P. Malhotra, Senior Advocate and narrated him the whole incident from a shop having STD facility. Thereafter, the deponent boarded a bus and reached Delhi at about 4.30 p.m."

On 18.1.1994 after perusing the affidavit of Shri S.C. Pun and the writ petition, this Court issued notice to the respondents. Miss Indu Malhotra, Advocate, Standing Counsel for the State of Haryana, accepted the notice on behalf of respondents 1 to 5. Copies of the petition and the affidavit had already been handed-over to her by the learned counsel for the petitioner. A direction was issued by us to respondent No. 3 to produce the detenu Dhananjay Sharma and the taxi driver Sushil Kumar, if in detention, in this Court on 19.1.1994. Respondents 3 to 5 were also directed to file an affidavit indicating the circumstances under which they took the detenu and the driver of the taxi car, Sushil Kumar, into custody, as alleged in the petition and in the affidavit of Shri S.C. Puri. Notices by ordinary means were issued to respondents 6 and 7. On 19.1.1994 respondents 3 to 5 filed their affidavits. Shri Sham Lal Goel, Addl. Superintendent of Police, Hissar respondent No. 4 in his affidavit denied the allegations made in the writ petition as well as in the affidavit of Shri S.C. Puri, Advocate. In para 1 of the affidavit he stated:

"That in reply to para No. 1 of the petition it is submitted that neither of the alleged detenues, namely, Shri Dhananjay Sharma or Shri Sushil are/were wanted in any case of Hissar District, nor they were over detained or confined by any police officer/official as alleged, it is also wrong and hence denied that the said alleged detenues are or over were in the unlawful, illegal and unauthorised custody of the official respondents, as alleged."

In paras 2, 3, 4, 9, 10, 13, 14 and 15 (there are no paragraphs numbered as 5 to 8) the details of the case leading to the registration of the FIR against Shri Rampuria and others and the investigation of the case, registered on the statement of S.K. Kaushik, respondent No. 6 were given. It was asserted that the dispute between the parties was not of a civil nature. In para 12 it was admitted that an Advocate had appeared in the court of Addl. CJM, Hissar on 15.1.1994 and had filed an application for exemption from personal appearance of Shri Pradeep Rampuria and that the court had adjourned the case to 12.2.1994. Rest of the allegations were denied.

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Shri Rajinder Singh Inspector, SHO, Police Station Sadar Hissar, respondent No. 5, in his affidavit stated that he had been wrongly implicated in the petition and asserted that the incident as alleged in the writ petition never took place. He went on to say :

"I submit that on the relevant date i.e. 15th Jan., 1994. I was present on duty in the Court of the Addl. CJM in the morning at about 11 am and remained in the court premises till late afternoon. .On the said date the deponent was present in court when the application was filed on behalf of Shri Pradeep Rampuria. The deponent also submitted an Application for the issuance of fresh warrants against Shri Paras Mai Rampuria & Shri Mukharjee since the earlier warrants were only valid till 15.1.1994. At the time of presentation of the application the learned Magistrate directed that photocopies of the FIR & other relevant documents be also filed alongwith the application. Consequently after the departure of the petitioner & his Advocate, the deponent remained within the court premises to prepare the photocopies which were thereafter submitted to the court of the learned Magistrate on the same day. Thereafter the deponent also went to the office of the Asstt. District Attorney in connection with the scrutinising of certain challans. It is consequently submitted that the deponent could not be involved in the incident as alleged in the writ petition nor does he have any knowledge that any other police officer working in the Sadar Hissar Police Station has indulged in such activity."

Respondent No. 3, Shri Anil Davra IPS, Superintendent of Police, in his affidavit asserted:

"That in reply to para No. 1 of the petition it is submitted that neither of the alleged detenues namely Shri Dhananjay Sharma or Sushil are/were wanted in any case of Hissar District, nor they were ever detained or confined by any police officer/official as alleged. It is also wrong & hence denied that the said alleged detenues are or ever were in the unlawful, illegal and unauthorised custody of the official respondents, as alleged."

Thereafter, respondent No. 3 referred to the investigation in connection with the FIR registered at the instance of respondent No. 6 Shri S.K. Kaushik and maintained that the dispute between the parties was not of a civil nature and went on to say:

"It is submitted that the petitioner has levelled these false allegations against the Hissar Police with ulterior motives in order to win the sympathy of this Hon'ble Court. In fact the deponent or any other police officer working under his command have never resorted to any such illegal activities as alleged by the petitioner in this para. The deponent is a staunch believer of rule of law and as such he cannot over think of flouting the rule of law. As already submitted in the proceeding paras of this affidavit neither Sri Dhananjay Sharma nor taxi driver Shri Sushil was ever wanted by the Hissar Police in any criminal case or were they over whisked away by the police personnel of Hissar Police with the help of any police gypsy as alleged."

Thus, respondents 3 to 5 in their affidavits denied the allegations levelled against Haryana Police with regard to the whisking away of Dhananjay Sharma and driver Sushil Kumar on 15.1.94 and their sub-sequent detention, thereby refuting the assertions made in the affidavit of Shri S.C. Puri, Advocate, and the petitioner. Since the allegations made by Shri Puri, Advocate, were of a serious

nature and if true they disclosed a rather disquieting state of affairs, on 19.1.1994, before proceeding further in the matter, we deemed it proper and necessary, in the first instance, to direct the Home Secretary, Government of Haryana, respondent No. 1, through his learned Advocate Shri Kapil Sibal, to have a search made for the detenues Dhananjay Sharma and the taxi driver Sushil Kumar and have them produced in this Court. In the course of our order, we said :

The Home Secretary, Government of Haryana, may if he finds it necessary take assistance from the Delhi Police, and on such request being made the Commissioner of Police, Delhi shall afford all assistance to him. We are issuing the directions in the name of the Home Secretary, Government of Haryana, to avoid any possibility of a plea being raised that respondents No. 3 to 5 are unable to trace out the taxi or the petitioner and Sushil not hailing from areas falling within their jurisdiction in Hissar.

We expect that the needful shall be done and all efforts shall be made to produce Shri Dhananjay Sharma and Shri Sushil Kumar in this Court tomorrow. An affidavit disclosing from where they have been brought and the whereabouts of the taxi as mentioned above shall also be filed on behalf of Respondent No. 1."

On 20.1.1994, inspite of our specific directions (supra) no affidavit was filed by the Home Secretary, respondent No. 1. However, one more affidavit was filed by Shri Anil Davra, Superintendent of Police, respondent No. 3, "on behalf of respondent Nos. 1 to. In the said affidavit it was stated that respondents 3 to 5 with the help of Delhi Police had been able to identify the taxi stand form where taxi No. DEA-3668 operated and that they were also able to ascertain the whereabouts of driver Sushil Kumar and had contacted him. Respondent No. 3 further deposed:

"On enquiries from said taxi driver Shri Sushil Kumar the Delhi Police were told that he returned to Delhi alongwith Shri Dhananjay Sharma from Hissar on 15th January 1994 itself and left them at Daryaganj, New Delhi. The Incharge of the Police Post, Church Mission Road, S.I. Surender Kumar, has assured the presence of said Shri Sushil and the concerned vehicle in the court premises today.

Further I submit that the respondents are still making efforts to trace Shri Dhananjay Sharma but as yet has no information of his whereabouts specially since the police does not have any means of identifying him."

On 20.1.94, Shri Sushil Kumar was produced by the Delhi Police and the detenu Shri Dhananjay Sharma on his own also appeared in the Court. Their statements were recorded on oath.

Shri Dhananjay Sharma in his statement deposed about the manner in which he had been way-laid, along with others and whisked away by the Haryana Police from the Delhi-Hissar Road on 15.1.94. He then stated that the police party took him and Sushil Kumar to the Hissar Police Station where Shri Anil Davra, called them to his room and made enquiries from him regarding the case against Shri Rampuria and others. He further stated that whereas they were kept during the day at the police station on Saturday, during the night intervening Saturday and Sunday, they (Sushil Kumar and himself) were kept in a police 'residential quarter' behind the police station. They were let off on

17.1.1994 at about 6 or 6.30 p.m. and the taxi car was also released. They left Hissar at about 7.30 p.m. and arrived at Delhi at about 11.30 p.m. on 17.1.94. He further stated that the police officers at Hissar had told him before leaving the police station that Shri G.R. Rampuria be told to meet and talk to the police officers, at Hissar. He went on to say that while in the police custody at Hissar, under instructions of Shri Davra, they were provided with food. He went on to depose that since some personnel of Delhi Police had visited his residence the previous evening and had met his sister, leaving directions for him to appear in the court, he had come to the court on his own.

Shri Sushil Kumar taxi driver, in his statement in the court however, gave a totally different version. He admitted that on 15.1.94, he had gone to Hissar alongwith Shri Dhananjay Sharma and Shri S.C. Puri in his taxi to the court of Addl. CJM at Hissar. He then stated that after leaving the court premises, at about 12.00 or 1.00, in the afternoon on 15.1.94, all of them returned to old Delhi, reaching there at about 7 p.m. on 15.1.1994 itself. He denied that he or Shri Dhananjay Sharma were either whisked away or kept in illegal detention by the Hissar Police, as alleged in the petition and in the affidavit of Shri SC Puri, Advocate. He further stated that the Hissar Police had contacted him at the taxi stand and that the Delhi Police had directed him to appear in the court and that he had been brought to the court from the taxi stand by sub-inspector, Surinder Kumar, of Delhi Police.

After recording the statements of M/s. Dhananjay Sharma and Sushil Kumar and going through the affidavits filed by the parties, we found that two diametrically opposite versions had been given and that the truth had not come out and that either of the two versions was false. Both Sushil Kumar and Shri Dhananjay Sharma also filed their affidavits on 22.1.1994. In his affidavit while Shri Sushil Kumar reiterated the statement made by him in Court, Shri Dhananjay Sharma, reiterated his case as disclosed by him in his statement in the Court. He further deposed in the affidavit that when they were whisked away, the police party, was accompanied by "two employees of BISCL, Hissar" and that at the Hissar Police Station. Shri Anil Davra Superintendent of Police alongwith Shri Rajinder Singh SHO and other police officials had questioned him and repeatedly enquired from him about the whereabouts of Shri Pradeep Rampuria. He went on to say that on 17.1.94, when both he and the driver, were in the room of the SHO Hissar, there was a lot of activity and "we were directed to leave the police station immediately at about 6.30 p.m."

Respondent No. 6, Shri S.K. Kaushik and Respondent No. 7, Shri Anoop Bishnoi, who appeared through their counsel, were given an opportunity to file their affidavits in view of the assertions made in the affidavit of Shri Dhananjay Sharma on 22.1.94. Both Shri S.K. Kaushik Respondent No. 6 and Shri Anoop Bishnoi Respondent No. 7 filed their affidavits. Apart from dealing with the dispute between BISCL and M/s. CR Industries in general and with Shri Pradeep Rampuria in particular, (with which case we are not concerned at this stage) it is stated in their affidavits that Shri Dhananjay Sharma or the taxi driver Sushil Kumar were never in their custody and that they had no knowledge about the allegations made in the petition with regard to the incident of 15.1.94. Both Respondent Nos. 6 and 7 further stated that they could say with some amount of responsibility, after making enquiries from their staff, that neither the respondents nor any of the employees of their company were present in the court or at the alleged site along with police on the Hissar-Delhi Road on 15.1.94 as alleged.

TRUE COPY ATTESTED

  
BY ADVOCATE

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On 1.2.94 after scrutinising the affidavits on the record and the statements of Shri Dhananjay Sharma and Shri Sushil Kumar we found that it was not possible to reconcile the two versions. We felt that it was a matter of concern that in the Highest Court of the land, false version by way of affidavits or statements had been made. In our order dated 1.2.94, we observed:

"Though the petition for Habeas Corpus under Article 32 of the Constitution of India, in the facts and circumstances of the case which have come on record, does not survive, as at the time of the return, the detenu was not, on his own showing under any illegal detention and technically, therefore, the writ petition does not survive but keeping in view the developments which have taken place during the proceedings of this case, we cannot let the matters rest there.....

The matter requires to be taken to the logical conclusion. In the womb of every conclusion lies the seed of detection. We have to get the truth detected which lies buried somewhere under the debris of falsehood in this case. Before we proceed further in this matter, it appears appropriate to us that we should have this matter enquired into and get a report as to which of the two versions, above mentioned, is prima facie correct."

We, accordingly, directed the CBI to have the matter enquired into under the supervision of an officer, not below the rank of Superintendent of Police, and submit a report to this Court within seven weeks. We directed that the CBI shall confine the enquiry and its report to find out as to which of the two versions regarding the alleged incident of 15.1.94 on the Hissar- Delhi Road and the subsequent detention of the detenu and Sushil Kumar was correct. We clarified that the CBI would not be required to go into the truthfulness or merits of the criminal case arising out of FIR No. 663/93, Police Station Sadar Hissar but shall restrict its enquiry to the determination of the correctness of the two versions as noticed above.

In obedience to our directions, the CBI conducted an enquiry, recorded evidence, and submitted its report under the signatures of Shri M.L. Sharma, DIC, CBI. Copies of the report and other documents were permitted to be obtained by the parties.

The CBI inter alia in its report submitted :

"Based on the facts and evidence discussed above, the picture emerges that on 15.1.1994, Shri Dhananjay Sharma while travelling back to Delhi after attending the Court of ACJM, Hissar, alongwith Shri S.C. Puri, Advocate, in Taxi No. DAE-3668 (maruti van) driven by Shri Sushil Kumar, was intercepted by Haryana Police near Hissar Cantt., at about 12.30 p.m. Shri S.C. Puri, Advocate, was let off by the Police after 'arguments'. Shri Dhananjay Sharma alongwith Sushil Kumar were taken to Police Station, Sadar and confined there in a quarter behind the Police Station from 15th January, 1994 to 17th January, 1994 afternoon. This is borne out by the statements of Dhananjay Sharma, Sushil Kumar and SC Puri, Advocate. Shri Puri after being let off by the Police, made a call to Shri P.P. Malhotra, Sr. Advocate, Supreme Court of India, New Delhi from a PCO Tel. No. 63318 and thereafter came back to Delhi by bus. This finds support from the printout of PCO No. 63318 as also from the Ticket No. 68648 DN/6-93 which he has produced in the course of enquiry. The plea of ignorance about the incident by Shri Anil Davra, SSP, Hissar, Shri Sham Lal

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Goel, Addl. SP. Hissar and Shri Rajinder Singh, SHO, PS Sadar, Hissar, ex facie does not appear to be correct. The aforesaid three officers have taken special interest in the investigation of case FIR No. 663/93, registered at PS Sadar, Hissar.....

The CBI then concluded :

"According to the enquiry conducted by the CBI, the version given by Shri Dhananjay Sharma and Shri SC Puri, Advocate, in the Supreme Court is prima facie correct. Shri Sushil Kumar, Taxi Driver, has corroborated this version in his statement made to the CBI. Other evidence viz. telephone call by Shri Puri, Advocate on 15.1.94, Bus ticket produced by him, Statement of taxi owner Nazir Hussain, the sketch map drawn by Shri Dhananjay Sharma corroborates the version submitted by them to the Hon'ble Supreme Court." (emphasis supplied) The report of the CBI was accepted by the Court, after hearing learned counsel for the parties.

The report of the CBI, clearly indicates that the version given by respondents 3 to 5 and Shri Sushil Kumar in his first affidavit and in his deposition in this Court is palpably false. The description of the place of detention i.e. the malkhana of the Police Station, and identification of the constables who were guarding the detenues at the police station, by the detenu has satisfied us that the version given by Shri Dhananjay Sharma regarding his illegal detention is correct. The evidence collected by the CBI unmistakably supports the version contained in the affidavit of Shri Puri, Advocate. These three respondents denied the allegations made by Dhananjay Sharma, Shri S.C. Puri, Advocate and the petitioner in the writ petition. It is interesting to note that Shri Anil Davra, respondent No. 3 in his affidavit desposed that he had "examined the records of Police Station Hissar" to find out about the correctness of allegations of detention and came to know that the said allegations were false. Since, the detenu and Sushil Kumar, taxi driver had been illegally detained at the police station no record could have revealed, their detention. Therefore, the exercise conducted by Shri Anil Davra respondent No. 3 of examining the record of the police station was obviously a comaflogue and a cover up. That apart, neither Shri Anil Davra nor Shri Sham Lal goel or Shri Rajinder Singh stated in their affidavits that Dhananjay Sharma had not been called to the office of Shri Anil Davra, respondent No. 3 during the detention of Dhananjay Sharma and the taxi driver nor did respondent No. 3 refute the allegations of Dhananjay Sharma that when he was released form custody he was advised to tell Shri Rampuria to meet the police officials. None of the respondents in the counter affidavit have even stated that they had not seen the detenu in the police station between 15.1.1994 to 17.1.1994. They have remained silent on this aspect. Nothing has been brought to our notice from which the correctness of the contents of the affidavit of Shri Puri or Dhananjay Sharma about the illegal detention may be doubted. From a critical analysis of the material collected by the CBI, as Commissioners of this Court, and hearing learned counsel for the parties, we are of the opinion, that Shri Dhananjay Sharma and Sushil Kumar Taxi Driver were way laid on 15.1.94 on the Hissar Delhi Road which they were returning to Delhi in the taxi along with Shri SC Puri, Advocate and while Shri Puri was let off after some arguments with the police personnel, the detenu and Sushil Kumar taxi driver were illegally detained by respondent 3 to 5 at the Hissar Police Station till 17.1.94. The counters filed by respondents 3 to 5 denying the allegations made by the petitioner and in the affidavit of Shri S.C, Puri are palpably false and incorrect.

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The CBI examined Shri Surinder Kumar S.I., Incharge Police Post Fatehpuri, PS Lahori Gate on 7.4.94, who stated before the CBI that after receiving a wireless message from the North District Control Room for immediate search of Shri Dhananjay Sharma and Shri Sushil Kumar, he made efforts to locate them. He located Shri Sushil Kumar along with vehicle No. DAE-3668 and brought him to Police Outpost Fatehpuri. The information was passed on to his senior officers as well as to the SSP Hissar camping at Haryana Bhavan. Shri Surinder Kumar SI further told the CBI that at about 8.30 p.m. on 19.1.94 Shri S.L. Goel Addl. S.P. Hissar along with Rajinder Singh SHO Police Station Sadar, Hissar, reached police-post and made inquiries from Sushil Kumar separately. They took away Sushil Kumar along with the taxi for producing him in the Supreme Court. Shri Surinder Kumar SI informed his senior officers about it and also made an entry to this effect in the Roznamacha of the Police Station vide Entry No. 22 at 10.10 p.m. on 19.1.94. The Roznamacha entry was checked by the CBI and it tallied with the statement made by Shri Surinder Kumar SI, who also stated before the CBI that on 20.1.94 Shri Sushil Kumar reported to him at the Police-post Church Mission Road and he produced him in the Supreme Court and that Shri Rajinder Singh SHO had met Sushil Kumar in the outpost on 20th morning also. According to the statement of Shri Sushil Kumar, taxi driver, before the CBI, respondents 4 and 5 had pressurised him to make a false statement in this Court and deny the allegations contained in the petition and in the affidavit of Shri S.C. Puri, Advocate, and that he had acted accordingly for fear of the Haryana Police.

The CBI in its report dealt with this aspect of the matter and stated:

"From the enquiry, it also emerges that Sushil Kumar, Driver of Taxi No. DAE-3668 was contacted by the Haryana Police and briefed by them to make a false statement in the Supreme Court on 20.1.1994 denying the incident of way-laying of 15.1.94, Shri Sushil Kumar, originally hailing from U.P. is semi-literate and simple person who has been living in Delhi for the last 6/7 years for making a living. Because of the inconsistent posture adopted by him, he was cautioned to make a correct statement before the CBI. He was firm that he was making a correct statement before the CBI and regrets having made a false statement in the Supreme Court earlier on the advice of Haryana Police. He also agreed to have his statement taperecorded in presence of independent witnesses. This lends assurance to the conclusion that the statement being made by him now is a correct version of facts and this finds corroboration in the statement of Dhananjay Sharma and Shri S.C. Puri, Advocate. Shri Puri, Advocate, is a professional and despite the fact of his having been engaged by the petitioner in the impugned criminal case, he appears to have no axe to grind with any party and as such there appears to be no reason for his making a false statement before the Supreme Court and the CBI. In fact, his version finds support from the statement of Shri P.P. Malhotra, Sr. Advocate.....

However, the version of Shri Dhananjay Sharma that Shri Ishwar Singhal and Shri S.K. Kaushik of M/s. Bhanu Iron and Steel Co. Ltd., were present on 15.1.94 at the time of his way-laying seems to be suspect."

We are of the opinion that the findings of the CBI as noticed above are based upon proper appreciation of evidence and are supported by the material on the record. Since, prima facie, we found that respondents 3 to 5 and Shri Sushil Kumar, taxi driver have made false statements and

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filed false affidavits in this court and have thus committed the offence of perjury, therefore with a view to eradicate the evil of perjury, we put them on notice to show cause as to why they should not be prosecuted for the said offence in a competent court.

As already noticed the affidavit filed by respondent No. 3 on 20.1.94 had been filed "on behalf of respondents 1 to 5". That affidavit as per the report of the CBI and our finding has been found to be false. Respondent No. 1, despite the directions issued by this Court on 19.1.94, had not filed any affidavit. Notices were, therefore, issued to respondents 1 to 5 and Shri Sushil Kumar also to show cause why they should not be punished for having committed contempt of this Court.

Shri Rajinder Singh Yadav SHO respondent No. 5 in his reply to the show cause notice in the contempt proceedings tendered an unconditional and unqualified apology and further deposed :

"In view of what I have stated above, while in no way seeking to diminish my role in the events that have transpired so far, I submit that I have only acted as a diligent subordinate officer of the Haryana Police Department. I unequivocally apologise to this Hon'ble Court for my mistakes and seek leniency and pardon and pray that no further action be taken against me. I undertake to this Hon'ble Court that I shall in future be very careful and cautious and ensure that such events do not recur in my professional life."

It is, thus, seen that respondent No. 5 has taken shelter under the plea that he had "only acted as a diligent subordinate officer of the Haryana Police". Shri Anil Davra SSP, respondent No. 3 who possesses the degrees of LL.B. and LL.M. from the Delhi University and had practised law for about four years before joining the service, in response to the show cause notice in the contempt proceedings also tendered an unqualified apology. He gave an account of his duties during his service career and filed copies of various commendation and appreciation certificates received by him from various quarters. He then went on to say that "the instant case, in my humble submission:

"is just an inadvert mishap of my life resulting into present unsavory situation".

Respondent No. 4 Sham Lal Goel, Additional Superintendent of Police in his affidavit filed on 21.10.1994 in the contempt proceedings first asserted that his role in the investigation of the case was restricted to a period of six days only i.e. from 4.1.1994 to 9.1.1994 and that the Superintendent of Police, Shri Anil Davra, was concerned with the investigation and being his superior officer, he had acted under his directions. He then again stated that "the answering respondent was not connected with the incidents of way laid (sic) and detaining of Sushil Kumar or Dhananjay Sharma in any manner", and that he had no hand in the filing of the affidavit by Respondent No. 3 on 20.1.94. He went on to add:

"On 18.1.94 the answering respondent received a message, to contact Shri Anil Dawra, Superintendent Police of Haryana Bhawan in New Delhi in respect of a Supreme Court case. On this the answering respondent rushed to Delhi and came to know at Haryana Bhawan that Shri Anil Dawra is with the standing counsel. Smt. Indu Malhotra at her residence. The answering respondent thereafter went to the residence-cum-office of Smt Indu Malhotra in the evening where Shri Anil

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Dawra and Rajinder Singh were present. Shri Anil Dawra apprises, the answering respondent about the writ petition in the Supreme Court and instructed him to sign an affidavit, which had already been prepared by the counsel on the instructions of Shri Anil Dawra. Shri Anil Dawra, the Super-intendent of Police said to the answering respondent that he had already verified the facts regarding the writ petition on 17.1.94 by personally visiting the Police Station Sadar Hissar and making enquiries from Thana Staff. The answering respondent was told that his affidavit has also been prepared on the basis of the aforesaid enquiry. It may be noted that this fact is borne out by the statement of Shri Anil Dawra to the CBI. This fact is also written by Shri Anil Dawra in Daily Diary 26 dated 17.1.94 in police station Sadar Hissar in his own hand. The answering respondent therefore signed this affidavit of his on the assurance of the correctness of the facts by Shri Anil Dawra and Shri Rajinder Singh. The answering respondent had perused the concerned papers and the case diaries shown to him by Shri Rajinder Singh."

Shri A.N. Mathur, IAS, Commissioner and Secretary to Government of Haryana, Home Department, respondent No. 1 in response to the notice in the contempt proceedings filed his affidavit on 21.10.94 in which he expressed his regret and tendered an unqualified apology for all that had transpired in this Court in this case. He thereafter proceeded to give an explanation "for the purpose of showing that if any lapse has occurred, it could either be on account of a bonafide misunderstanding or on account of deficiencies in the system which are being rectified to ensure that they do not recur". Respondent No. 1 then stated that the order of the Court dated 19.1.94 was received by him by Fax for the first time on 20.1.94 and that he had then contested Shri Kalyan Rudra, the then Director General of Police, Haryana, and discussed the matter with him on telephone. He also wrote a D.O. letter to Shri Rudra and that after 20.1.94, he had asked the Legal Department and the senior counsel as to whether any further action was required to be taken by him and in particular whether in view of the fact that the detenues had appeared before the court on 20.1.94, any affidavit was required to be filed by him and that he was "advised by senior counsel that on his reading of the order no affidavit needed to be filed by him as the State had not produced the detenues". Respondent No. 1 then explained the procedure which was being followed by the State of Haryana in connection with petitions for habeas corpus and stated that :

"Although the State of Haryana is impleaded in criminal writs in the name of Home Secretary, the practice so far has been that in matter which are directly within the knowledge of the local police, it is they who depose an affidavit on behalf of the State. The system was evolved since it obviates a lot of delay which would necessarily occur in information being passed from one centre to another. It is for this reason that the officers directly dealing with the matter and who are themselves a part of the law enforcement agency directly depose about the facts in their direct knowledge. Keeping in view the facts which have transpired in the present case, it has now been decided to create an independent cell at the police headquarters in Chandigarh as well as in the Home Department (who would report to the Home Secretary) to monitor all cases where writs of habeas corpus are sought by citizens either from the High Court or from this Hon'ble Court."

Shri Kalyan Rudra, IPS, the then Director General of Police, respondent No. 2, in his affidavit filed on 20.10.94 in response to the show cause notice after tendering his unconditional apology corroborated the averments contained in the affidavit filed by respondent No. 1 in all material

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particulars. Both the affidavits were, however, silent about the contents of the affidavit filed by respondent No. 3 "on behalf of respondents 1 to 5" on 20.1.94. Both respondents 1 and 2 were directed by us to explain their stand vis-a-vis the contents of the affidavit filed by Shri Davra, respondent No. 3 on 20.1.94 on behalf of respondents 1 to 5, which has been found by us to be incorrect.

Further affidavits were therefore filed by both, respondents 1 and 2, to explain their position vis-a-vis the affidavit filed by respondent No. 3 on 20.1.94 on behalf of "respondents 1 to 5". In his affidavit Shri A.N. Mathur, respondent No. 1, stated that he had not seen the affidavit of Shri Anil Dawra dated 20.1.94, before the same had been filed in this Court and that he came to know about the said affidavit subsequently and saw the copy of the affidavit for the first time only on 21.1.94. He went on to state that after going through that affidavit, which he had no occasion to see before it was filed as well as perusing the report and the evidence marshalled by the CBI he had no reason to differ from the opinion given by the CBI, and went on to specifically say:

"As regards that part of the affidavit where Anil Dawra has suggested that Shri Dhananjay Sharma and Shri Sushil Kumar were not in the custody of the Haryana Police, the CBI has prima facie for otherwise and I have no reason to differ from the view expressed by the CBI."

Shri Kalyan Rudra, IPS, respondent No. 2 also in his additional affidavit besides once again tendering unqualified apology stated that he had not seen the affidavit of Shri Anil Dawra before it was filed in this Court on 20.1.94 and that it was only upon a request made by him, that the copy of the affidavit was later on sent to him at Chandigarh. He then went on to refer to some of the evidence recorded by the CBI and its report and stated :

"I am to state that I have not conducted any enquiry, nor examined any witnesses or documents, in this case. I have, however, no reason whatsoever to differ from the prima facie conclusions arrived at by the CBI on the basis of the oral and documentary evidence marshalled by them."

Respondent No. 2 thereafter dealt specifically with the statement made by Shri Dawra in his affidavit dated 19.1.94 and 20.1.94 denying the allegations made in the petition and deposed:

"The CBI enquiries on the other hand have shown that this version does not appear to be correct. I would, therefore, respectfully submit that this part of the affidavit of Shri Dawra, which is contrary to facts found through examination of witnesses and other enquiries by the CBI, is not accepted by me."

In his affidavit dated 21.10.94, in the proceedings for perjury, Shri Anil Dawra respondent No. 3, once again denied the allegations contained in the petition regarding the way-laying and detention of the petitioner and Sushil Kumar and then went on to say that the allegations "had not been proved even from the evidence recorded by the CBI", Explaining the contents of his affidavit dated 20.1.94, he stated that the same had been filed "on the basis of the relevant record and as per legal advice and sanction". He asserted that:

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"the deponent did not pressurise or induce Sushil Kumar directly or indirectly to give any false statement".

We are at a loss to understand as to how respondent No. 3 could have deposed about the facts in his affidavit "as per legal advice and sanction". Since, we have already held the affidavit filed by respondent No. 3 on 19.1.94 and 20.1.94 to be false, we need not detain ourselves to make any further observations in that behalf.

Shri Sushil Kumar, taxi driver, in his affidavit filed on 18.10.94, after tendering his unqualified apology and reiterating that he had earlier also tendered his unconditional apology at the hearing through his counsel and sought pardon from this Court and placing himself at the mercy of the Court went on to depose:

The deponent reiterates that the false statement and subsequently the supporting false affidavit made on 20.1.94 and 22.1.94 respectively were made on account of fear as the deponent along with the petitioner had been detained at Hissar for two days i.e. 15.1.94 to 17.1.94. Thereafter the deponent was approached by the respondents No. 4 and 5 at the Fetej Puri Police Chowki on 19.1.94, where the deponent was brought, so as to appear on the next day before this Hon'ble Court. At that point of time the deponent was told to state before this Hon'ble Court that he had not been detained at Hissar on 15th January 1994 or thereafter. Out of fear of the police the deponent made a false statement before this Hon'ble Court on 20.1.94 that he had not been detained at Hissar on the said date."

Shri Sham Lal Goel, respondent No. 4, in his reply affidavit in proceedings for perjury inter alia stated :

That the conclusion of the CBI report attributing the charge that Shri Sushil Kumar was taken away from the Police Post, Church Mission Road, Fatehpuri, Delhi by the answering respondent and SHO Rajinder Singh is erroneous. The true facts in this regard are revealed by Shri Sushil Kumar himself in the statement before the CBI, as well as in his statement through counsel before this Hon'ble Court during the course of hearing that he was not taken away anywhere by the answering respondent on 19.1.94. Shri Sushil Kumar has stated in unequivocal terms that Shri Rajinder Singh SHO alone had tutored him to make a false statement before the court on the 19.1.94 and again on the morning of 20.1.94. The answering respondent had visited the Police Post, Church Mission Road, Fatehpuri, Delhi under the orders of Shri Anil Dawra, Superintendent of Police only to verify that Shri Sushil Kumar has been traced out so that his presence before the Court on 20.1.94 had been ensured. After verifying the facts, the answering respondent conveyed the facts to the Superintendent of Police Shri Anil Dawra. Thereafter the answering respondent returned to his room in Haryana Bhawan, where he was staying separately and he had no communication either with the Superintendent of Police or the SHO during that night. The answering respondent has not influenced or tried to influence Sushil Kumar in any manner to make a false statement. The answering respondent has unfortunately been bracketed along with respondents 3 and 5 only because of his being a subordinate to Shri Anil Dawra and happened to be present at Haryana Bhawan New Delhi on the night of 19th January 1994, on the direction of Shri Anil Dawra."

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Rajinder Singh SHO respondent No. 5 also apart from tendering an unqualified apology denied the allegation that he had tutored Sushil Kumar or induced him to file a false affidavit or make a false statement in this Court.

We have minutely considered the affidavits referred to above and the report of the CB1. The evidence of Shri Surinder Kumar S.I. of Delhi Police, which is supported by the Roznamacha entries of the Police Station and the statement of Shri Sushil Kumar as recorded by the CBI and his affidavit in Court establish that respondents 4 and 5 had pressurised Shri Sushil Kumar to give false evidence in this Court and that both of them have, thus, tampered with the evidence during the pendency of the proceedings in this Court. The denial of respondents 4 and 5 to have tutored Shri Sushil Kumar carries no conviction and does not appeal to us. The denial is, obviously, false.

After carefully perusing the material on the record, including the evidence both documentary and oral as recorded by the CBI and hearing learned counsel for the parties, the following irresistible conclusions there-fore arise:

- (a) That the detenu Dhananjay Sharma, driver Sushil Kumar and Shri S.C. Puri, Advocate, were way-laid by the Haryana Police on the Hissar-Delhi road on 15.1.94, though they were not wanted in any case by the Hissar Police.
- (b) That while Sh. S.C. Puri, Advocate was allowed to leave after some arguments, the police personnel took Dhananjay Sharma and Sushil Kumar to the police station and detained them there till the evening of 17th January 1994, Neither respondent 6 or 7 nor any of their employees was present with the police on 15.1.94 when Dhananjay Sharma and others were way laid on the Hissar-Delhi border. The affidavit filed by Shri S.C. Puri, Advocate contains a true and correct account of the incident.
- (c) That respondents 3 to 5 were taking 'special interest in the investigation of case FIR No. 663/93 registered at the Police Station Sadar, Hissar' on the complaint of respondent No. 6.
- (d) That the affidavit filed in reply to the habeas corpus petition by respondent No. 3 on behalf of respondents 1 to 5 on 20.1.1994 denying the allegations is false.
- (e) That the affidavits filed by respondents 3 to 5 denying the way-laying of the detenu and others on 15.1.94 and their subsequent detention at the police station are false.
- (f) That the affidavit filed by respondent No. 3 on 20.1.94 on behalf of respondents 1 to 5 was filed by him without the express knowledge of respondents 1 and 2 and both of them had not seen the said affidavit till its copy was supplied to them by the counsel for the State of Haryana.
- (g) That both the statements made by Sushil Kumar driver in the court on 20.1.94 and his affidavit dated 22.1.1994 supporting the version of respondents 3 to 5 are false.

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(h) That respondents 4 and 5 had met Sushil Kumar driver at Delhi and pressurised him to give a tutored false version in this Court.

(i) That the false statement and affidavit were made by Sushil Kumar on being tutored by respondents 4 and 5 and on account of the fear of the Hissar Police on 20.1.94 and 22.1.94 respectively.

(j) That respondents 6 and 7 are not concerned either with the filing of the false affidavits by respondent No. 3 to 5 or for tutoring of Sushil Kumar, by respondents 4 and 5, to make a false statement and file a false affidavit in this Court.

(k) That respondents 1 and 2 did not file any reply to the rule nisi and inspite of the directions issued by this Court on 19.1.94 respondent No. 1 did not file any reply affidavit and dealt with the case in a rather causal manner.

The question, therefore, which now requires our consideration is as to what action, is required to be taken against the respondents.

Section 2(c) of the Contempt of Courts Act 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of Law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In Chandra Shashi v. Anil Kumar Verma, [1995] 1 SCC 421, the respondent produced a false and fabricated certificate to defeat the

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claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Han-saria, J. speaking for the Bench observed :

"the stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

The actions of respondents 3 to 5 in filing false affidavits and denying that the detenu and Sushil Kumar had been whisked away and detained illegally in their custody between 15th January 1994 and 17th of January 1994 is not only reprehensible and condemnable but also requires to be dealt with rather sternly. The belated apologies offered by them, though still maintaining that the detenu and Sushil Kumar had not been detained by them, even in the face of the evidence recorded by the CBI, as commissioner of this Court, and its report are not apologies of a truly repentent person but made obviously with a view to escape punishment. Had respondents 3 to 5 been sincere in their apologies and had they realised their mistake, there was no reason why respondents 4 and 5 should have subsequently indulged in acts which have the effect of aggravating their contumacious conduct. During the pendency of the proceedings in this Court, as already observed, respondent No. 4 Sham Lal Goel and respondent No. 5 Rajinder Singh, SHO 'tutored' Sushil Kumar taxi driver and 'forced' him to make a false statement and filed a false affidavit in this court and to falsely assert that he had never been way laid by the Haryana Police and that the story of detention as put forward by Shri Dhananjay Sharma and Shri S.C. Puri, Advocate, was false. Subsequently, not only before the CBI but also in this Court Sushil Kumar realised his mistake and gave the correct version of the occurrence and also disclosed as to how and why he had made the false statement. It is a matter not only of regret and concern but also causes us great anguish to notice that the police officials, respondents 4 and 5, should have indulged in tutoring Sushil Kumar and forced him to give false evidence while proceedings were pending in this Court. They have aggravated their contumacious acts. Their action was deliberate and an attempt to over reach the due process of law without compunction. Their action is an affront to the Majesty of Law. Under the circumstances, the question of accepting their belated apology for which a very strong plea was made by their learned counsel, Mr. R.K. Jain, Mr. Natarajan and Mr. Lalit does not arise and we have no hesitation whatsoever in rejecting the belated apologies tendered by respondents 3 to 5, which we do not find to be genuine, bonafide or expression of true repentance.

From the facts set out above and the findings recorded by the CBI, respondents 3 to 5 have, thus committed a grave contempt of this Court by not only interfering with the due course of justice but also making calculated and deliberate attempts to obstruct the administration of justice.

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Besides respondents 4 and 5, as already noticed, have aggravated their contumacious acts by tampering with the evidence during the pendency of proceedings in this court. They have deflected the course of judicial proceedings. Both of them, therefore, deserve to be punished properly not only for the wrong done by them but also to give a proper signal and deter others from indulging in similar type of activities. In our opinion, the interest of public justice demands a deterrent sentence to be imposed upon them.

Though, respondent No. 3 was present in Haryana Bhavan on 19.1.94 and 20.1.94, but there is no material on the record to show that he was also a party to the tampering of evidence of Shri Sushil Kumar. Indeed, he must have been kept informed by his subordinates but in the absence of any positive material on the record, we cannot fasten the liability on him for forcing Shri Sushil Kumar to give false evidence in this Court.

We, sentence respondent No. 3 to suffer simple imprisonment for a period of two months for committing contempt of court by filing false affidavits denying the allegations made in the writ petition and in the affidavit of Shri S.C. Puri.

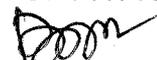
So far as respondents 4 and 5 are concerned, instead of showing any real contriteness and regret for their wrongful action of filing false affidavits in this Court they have compounded their offence by tutoring Shri Sushil Kumar to give false evidence in this Court and have tampered with the evidence during the pendency of proceedings in this Court, we, therefore, sentence each one of them to suffer simple imprisonment for a period of three months each and to pay a fine of Rs. 1500 each and in default to further undergo simple imprisonment for fifteen days each.

So far as respondents 6 and 7 are concerned, there is no material to show that they are either responsible for the filing of the false affidavits by respondents 3 to 5 or for tampering of evidence during the pendency of proceedings in this Court. May be respondents 3 to 5, acted in the objectionable and high-handed manner to way lay and detain Shri Dhananjay Sharma and Shri Sushil Kumar during the investigation of the case FIR No. 663/93 registered on the statement of respondent No. 6 at P.S. Sadar, Hissar, to please someone but this is only in the realm of suspicion and it cannot be said with any amount of certainty whether it was over-zealousness on the part of respondents 3 to 5 during the investigation of the case or they were trying to prove themselves 'to be more loyal than the king' or were acting under any extraneous pressure. We are satisfied that neither respondents 6 and 7 nor any of their employees was present with the police on 15.1.94 on the Hissar-Delhi Road.

But be that as it may, respondent 6 and 7 cannot be held responsible for or privy to the actions of respondents 3 to 5 and they cannot be said to have committed any contempt of this Court. The rule against them is accordingly discharged.

So far as respondent No. 1 Mr. A.N. Mathur, Commissioner and Secretary to the Government of Haryana, Home Department is concerned, he did not file any counter affidavit to the rule nisi issued by this Court. Even in response to the specific directions of this Court dated 19.1.94, he chose not to file a counter affidavit. Complaints regarding detention of citizens cannot be permitted to be treated

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in such a casual manner by the State. Whenever a question is raised regarding the illegal detention of a citizen in a writ of Habeas Corpus and the court issues the rule nisi, a duty is cast on the State, through its functionaries and particularly those who are arrayed as respondents to the writ petition, to satisfy the court that the detention of the citizen was legal and in conformity not only with the mandatory requirements of the law but also with the requirements implicit in Article 22(5) of the Constitution of India. It is obligatory on the part of the respondent State to place before the Court all relevant facts relating to the impugned detention truly, clearly and with utmost fairness through an affidavit. An affidavit in reply is required to be filed by the respondents not as a mere formality but to truly assist the court in drawing permissible inferences from the rival contentions. The right of personal liberty of a citizen is all too precious and no one can be permitted to interfere with it except in accordance with the procedure established by law. The State owes an obligation to the courts to place all relevant facts before the court in all cases where interference is alleged by a citizen with his fundamental rights. Respondents 1 and 2 were, therefore, under a legal obligation to inform this Court of the facts regarding the alleged detention of Shri Dhananjay Sharma and Shri Sushil Kumar, since notice had been issued to them in the writ petition. Even after this Court gave specific directions to respondent No. 1 to file an affidavit about the steps taken by the State to trace and produce the detainees in the Court, he failed to file the affidavit. We cannot but disapprove the manner in which respondent No. 1 acted even after being apprised of the directions of this court to file his counter affidavit. In his affidavit dated 21.10.94 filed in response to the notice to show cause in the contempt proceedings, respondent No. 1 stated :

"After 20th January, 1994, I made further enquiries from our legal department including Senior Counsel as to whether, any further action was required to be taken by me in this matter and in particular whether in view of the fact that detainees had appeared before the Hon'ble Court on 20th January, 1994. My understanding of the Order of this Hon'ble Court was that I should trace out the detainees and inform this Court on affidavit as to the location form where they were found. Since Mr. Dhananjay Sharma himself appeared in Court while Sushil Kumar had been produced by the Delhi Police, and was not produced by the Haryana Police/Govern-ment. I had a bonafide and genuine doubt as to what precise course of action was to be adopted by me. On this, I was advised by Senior Counsel that on his reading of the order no affidavit needed to be filed by me as the State had not "produced" the detainees."

We do not think that there was any scope for not understanding the import of our order dated 19.1.94, wherein a specific direction had been given to respondent No. 1 to file his affidavit. Admittedly, the Haryana Police officials respondent Nos. 4 and 5 had traced the taxi and had met Sushil Kumar before he was produced in Court. Respondent No. 1 was therefore duty bound to place this information before the court and to obey the directions of this Court and file his affidavit. We fail to understand why any advice was required by him from a senior counsel as to whether or not to comply with the order of this Court. The directions of this Court are meant to be complied with and punctually obeyed by all concerned. We have no reason to doubt that a senior IAS Officer of the status of the Home Secretary of a State would not be aware of the provisions of Article 144 of the Constitution which mandates that "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". These authorities are legally obliged not only to act in aid of the Supreme Court for the enforcement of the law declared by the Supreme Court but also in aid of all

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its orders, decrees or directions. Respondents No. 1, by not filing the reply affidavit acted in a casual manner.

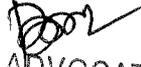
Respondent No. 1 in his affidavit dated 21.10.94 has detailed the system and procedure which was being followed by the State Government of Haryana in cases of complaints of detention by the citizens. He deposed that the procedure hithertofore being followed had been that the local police authorities file affidavits in courts even where the State Government is impleaded in the name of the Home Secretary and the officers directly dealing with the matters, file affidavits depose about the facts in response to the rule nisi. He has then averred that a decision has now been taken by the State to create an independent Cell at the Police Headquarters at Chandigarh as well as in the Home Department to monitor all cases where writs of Habeas Corpus are sought by citizens either from the High Court, or from this Court so that without delay the requisite information can be placed before the courts by the appropriate authority and no lapses occur on the part of the State in that behalf in future. Respondent No. 1 has then stated in his affidavit:

"I respectfully reiterate that my actions in the present case have been purely motivated by my bonafide understanding of situation and also on advice received by me. They have not at all emanated from any sense of casualness as, I submit with great respect, that as Home Secretary I would never ever be casual in relation to matters pending in this Hon'ble Court or in any other court.

I respectfully once again tender my unqualified apology for any lapse that might have Occurred and respectfully pray that the notice for contempt may be discharged."

In his further affidavit dated 10.11.94 which was filed in continuation of the affidavit dated 21.10.94, Respondent No. 1 has stated that he had not seen the affidavit filed by respondent No. 3 on 20.1.94 before it was tendered in this court and that he had not even seen the affidavit filed by respondent No. 3 on 19.1.94 or on 20.1.94 and that after carefully perusing the affidavit filed by respondent No. 3 on 20.1.94 and the report of the CBI, he found no reason to differ from the opinion given by the CBI, on the basis of the oral and documentary evidence, that Dhananjay Sharma and Sushil Kumar had been way laid on 15.1.94 and kept in illegal detention from the afternoon of 15.1.94 to 17.1.94 by the Hissar Police. Mr. Gopal Subramaniam, learned senior counsel appearing for Respondent No. 1 very frankly conceded that there was lapse on the part of the Home Secretary in not filing the affidavit in response to the rule nisi and the directions given by this Court but he submitted that the lapse had occurred on account of a wrong understanding of the import of the order of the Court and faulty advice given to him. He submitted that Respondent No. 1 was truly sorry for his lapses and requested for his apology to be accepted.

From a consideration of the material on the record, we find that respondent No. 1 appears to have followed a faulty system, which was prevailing in the State of Haryana in cases involving detention of the citizens in the matter of filing of counter affidavit in petitions for habeas corpus and on a wrong understanding of the import of the order of this Court. We are, however, satisfied that the unqualified apology tendered by him is genuine and an expression of real contriteness and repentance. Therefore, while cautioning him to be careful in future, we accept his unqualified

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apology and the contempt proceedings initiated against him are allowed to rest here. The rule issued against him is discharged. We hope that such lapses shall not occur in the future, since the system, we have been assured, has now been revamped.

So far as respondent No. 2 is concerned, he also failed to appreciate his obligations and did not file a counter affidavit although notice was issued to him also in the habeas corpus petition. While dealing with the case of respondent No. 1, we have highlighted the obligations of the State and its functionaries, when a rule nisi is issued by a court in a habeas corpus petition and those observations apply to him also and we need not repeat the same. Respondent No. 2 has also filed two affidavits and in each one of them he has explained the steps taken by him after he was apprised of the pendency of the writ petition in this Court. He has corroborated the version given by Respondent No. 1 in his affidavit. After giving the explanation, he has also tendered an unqualified apology. It appears to us that respondent No. 2 is also truly respondent for the lapses committed by him and the unqualified apology tendered by him is genuine and bonafide and not made with a view to escape punishment. We, therefore, accept his unqualified apology and discharge the rule against him though warning him to be careful and not to be casual in such like matters in future.

So far as Shri Sushil Kumar taxi driver is concerned, he on his own showing has made a false statement in this Court. He has also filed a false affidavit. He has on his own showing, thus, committed a grave contempt of this Court, besides committing perjury. However, he disclosed the correct facts to the CBI and reiterated the same subsequently in this Court through his affidavit. He has placed himself at the mercy of the court, after tendering an unconditional and unqualified apology, which has been reiterated at the bar both by him personally and through his Advocate Shri Ranjit Kumar. From the report of the CBI and the other material on the record, we are satisfied that the false statements made by him in this court, both orally and through his affidavit, were not voluntary and that he was acting under pressure of respondents 4 and 5. It is, however, no defence for him to say that he so acted on account of the fear of the police of Haryana and that he had been 'tutored' by respondents 4 and 5 to make a false statement and file a false affidavit in this Court. He should have known better. Though, we are of the opinion that he is now repentant but he cannot be allowed to go scot free for the falsehood indulged into by him in this Court and for his attempt to poison the stream of justice. However, taking the mitigating circumstances also into consideration, we sentence him to one days' simple imprisonment and to a fine of Rs. 1000 and in default to further undergo fifteen days simple imprisonment, for committing contempt of this Court.

Since, from the report of the CBI and our own independent appraisal of the evidence recorded by the CBI, we have come to the conclusion that Shri Dhananjay Sharma and Sushil Kumar had been illegally detained by respondents 3 to 5 from the afternoon of 15.1.94 to 17.1.94, the State must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indivisible fundamental right of personal liberty without any authority of law in an absolutely high-handed manner. We would have been, therefore, inclined to direct the State Government of Haryana to compensate Dhananjay Sharma and Sushil Kumar but since Sushil Kumar has indulged in falsehood in this Court and Shri Dhananjay Sharma, has also exaggerated the incident by stating that on 15.1.94 when he was way laid along with Sushil Kumar and Shri S.C. Puri, Advocate, two employees of respondents 6 and 7 were also present with the

police party, which version has not been found to be correct by the CBI, they both have disintitiled themselves from receiving any compensation, as monetary amends for the wrong done by respondents 3 to 5, in detaining them. We, therefore do not direct the payment of any compensation to them.

Since, we have held respondents 3 to 5 and Sushil Kumar Taxi Driver, guilty of committing contempt of this Court and have punished them in the manner indicated above, we. drop the proceedings in so far as commission of perjury is concerned.

FAIZAN UDDIN, J. I have had the advantage of reading the judgment written by my learned brother Dr. Anand, J., and I entirely endorse what has been said by him, the orders passed and the directions given by my learned brother. Learned brother has in his judgment elaborately set out the relevant facts in details as well as the circumstances under which the unfortunate situation has been brought about by the concerned police officials and in fact it is not necessary for me to add anything further. But with profound respect to my learned brother I propose to express a few concurring observations of my own as I cannot remain without expressing my anguish and grave displeasure on the undesirable conduct with which the said police officials have projected themselves. It is perhaps one of the most unpleasant episode in the history of the force which has bene exposed in the portals of the highest court of land which has plunged the members of the force and its reputation to a new low probably out of a frenetic zeal to please some one best known to the officials concerned.

In the present case before us it appears the concerned police officials deliberately clogged their mind and shut their eyes to the realities and the fact that the primary duties and function of the members of the police force is to prevent and detect the crime, to take such measures to ensure the safety of the life, property and liberty of the citizens and accord such protection in that behalf as may be necessary and thereby serve the community and at the same time obey the orders issued to them by the competent authorities with regard to prevention of commission of offences and public nuisance etc. It was this object for which the police force was conceived and it was this purpose for which it exists. But to our dismay, it is distressing to note that quite often when every morning one opens the newspapers and goes through its various columns, one feels very much anguished and depressed in reading reports of custodial rapes and deaths, kidnapping, abduction and faked police encounters and all sorts of other offences and lawlessness by the police personnel, of which countless glaring and concrete examples are not lacking.

It is in common knowledge that in recent times our administrative system is passing through a most practical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy. It would, indeed, be a sad day if the general public starts entertaining an impression that the police force does not exist for the protection of society's benefits but it operates mainly for its own benefit and. once such an impression conies to prevail, it would lead to disastrous consequences.

In the instant case before us as noticed and high-lighted by my learned brother at the Bench, we express our grave displeasure over the whole episode. The police officials, respondents Nos. 3 to 5

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Dhananjay Sharma vs State Of Haryana And Ors on 2 May, 1995

herein, namely, the Superintendent of Police Hissar Shri Anil Davra, Addl. Superintendent of Police Hissar Shri Sham Lal Goel and SHO Hissar Shri Rajendra Singh, totally misdirected themselves by not allowing the truth to come out before this Court. They had the audacity to make false affidavits in the apex Court to cover up their illegal acts. It is a matter of concern that even senior police officials of the status of SSP and DSP should not realise their obligations to the courts and indulge in blatant falsehood with a view to mislead the court. We cannot but strongly condemn this attitude on their part. Not only this but the respondents Nos. 4 and 5 even went to the extent of forcing the Taxi Driver Sushil Kumar to make a false affidavit and false statement on oath before this Court by denying the allegations contained in the petition, with a view to misguide this Court and hamper the course of justice. They had not only chosen a wrong path for themselves, contrary to the principles of the institution to which they belong, but they also tried to detract the Taxi driver from divulging the truth to mislead this Court which was concerned with the liberty of a citizen. They went on to reiterate their false stand till after the CBI enquiry report was received and wisdom dawned upon them to tender apology only when they found themselves in a tight corner and had no way out to escape. In such circumstances, by no stretch of imagination, it can be said to be a real repentance of what they have done.

By indulging in such disruptionary manner as indicated herein above by my learned brother in the preceding paragraphs, the respondents Nos. 3 to 5 acted in most irresponsible manner giving an impression that they were not the defenders of truth and protectors of the citizens but violators of the law and justice and thereby defaced the name of the force to which they belong. They acted with gross impropriety and intentionally committed serious and greivous wrong of clearly unredeeming nature, while it was expected from the seniors of the rank of SSP and Addl. SP that they atleast would observe the high standards in maintaining impartiality and promote public confidence in the force. The Court expects condour and frankness from the parties to the litigation before it. We cannot allow the court proceedings to be trifled with. In the facts and circumstances of the case respondent Nos. 3 to 5 do deserve the punishment awarded to them to serve as a deterrent to others in future.

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*Doon*  
BY ADVOCATE