

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

Equivalent citations: AIR 1995 SUPREME COURT 1795, 1995 (3) SCC 214, 1995 AIR SCW 2815, 1995 AIR SCW 2803, 1995 (2) ALL LR 180, 1995 (3) SCR 964, 1995 CRILR(SC MAH GUJ) 299, 1995 (4) JT 483, 1995 (2) ALL CJ 726, (1997) 35 ALLCRIC 641, (1996) SCCRIR 44, (1996) 1 ALLCRILR 26, (1996) 1 EASTCRIC 498, (1995) 2 MADLW(CRI) 507, (1995) 2 CHANDCRIC 55, (1995) 2 CURCRIR 22, (1995) 1 CRICJ 516, 1995 CRILR(SC&MP) 299, 1995 SCC (CRI) 608, (1995) 2 CRIMES 300, (1995) 3 SCJ 162, (1995) 2 SCR 411 (SC), (1995) 2 CURCRIR 128, (1996) 1 CHANDCRIC 83, AIRONLINE 1995 SC 780

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 his 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 an affidavit in support of the writ petition, wherein it was inter alia stated:

That after obtaining the date, the deponent came to his car waiting outside the court premises and advised Mr. Dhanjay 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.

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 disquietening 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 men-tioned 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 Dhanan-jay 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.

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 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.

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 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 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 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 Dawra, 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:

"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 Feteah 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

verify-ing 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 alongwith 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."

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.

(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) scandalised 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 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.

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-zealous- ness 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 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 from 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 detenues."

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 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 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 been 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 comes 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 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 grievous wrong of clearly unredeeming nature, while it was expected from the seniors of the rank of SSP and Addl. SP that they at least would observe the high standards in maintaining impartiality and promote public confidence in the force. The Court expects candour 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.