Sheoraj vs A.P. Batra And Anr. on 1 June, 1955

Equivalent citations: AIR1955ALL638, 1955CRILJ1451, AIR 1955 ALLAHABAD 638

JUDGMENT

Desai, J.

1. I agree with ray brother Chowdhry that the Deputy Superintendent of Police is guilty of contempt of the Courts of the Judicial Magistrate and the District Magistrate, Fatehpur. Since it is a serious matter to find a Deputy Superintendent of Police guilty of contempt of Court, I would like to give my reasons for doing so. It is not necessary to repeat the facts which have been stated by my learned brother in his judgment.

2. The case against the opposite party (I am for the present dealing with the case against the Deputy Superintendent alone) is contained in the affidavit filed by Sheoraj in this Court on the basis of which these proceedings have been initiated. When the opposite party appeared in Court in response to the notice, it was brought to our notice by Sri P. C. Chaturvedi, who had filed the application for contempt proceedings, that Sheoraj had been won over by the opposite party and did not appear to give him further instructions.

We summoned Sheoraj to appear personally and recorded his statement on oath. He disowned the application for contempt proceedings and the affidavit said to have been sworn by him in support of it. He also denied that the opposite party or anyone else ever threatened him or forced him to withdraw the complaint filed by him, or that he ever kept him in wrongful, confinement.

If his statement made in Court is believed, it would mean that the opposite party has not committed any contempt. Since all the evidence against the opposite party is contained in the affidavit sworn by Sheoraj and Sheoraj's own deposition in Court is a complete retraction, it was contended, and contended most vehemently, by Shri S. S. Dhawan that there is no evidence on the basis of which the opposite party can be adjudged guilty of contempt of Court.

He made it clear that he did not contend that the affidavit should be disbelieved because it is counter-balanced by the counter-affidavit filed by the opposite party; his contention is that while the affidavit was sufficient for the initiation of proceedings against the opposite party, it is not sufficient for finding him guilty of contempt.

He treats the affidavit as if it were a plaint verified on oath; unless a plaint verified on oath is filed in Court, no summons would issue to the defendant; but once a summons is issued and the defendant appears in Court and files a written statement, verified on oath, denying the allegations in the plaint,

the plaint cannot be treated as evidence and the suit cannot be decreed merely on its basis.

If the suit is to be decreed, there must be evidence produced in Court in accordance with the provisions of the Evidence Act. So it was argued that the affidavit in support of the application cannot take the place of evidence, If me allegations made in the affidavit were not denied by the opposite party in his counter-affidavit, he might have been liable to be found guilty of contempt on the basis of the affidavit.

But here the allegations have been denied in the counter-affidavit and, therefore, it was argued, there must be evidence produced under the Evidence Act before the opposite party can be held guilty. Reference was made to Section 1, Evidence Act, laying down that the Act "applies to all judicial proceedings in or before any Court, including Courts martial.....but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator."

It was contended that the present proceedings are judicial proceedings governed by the Evidence Act, and that under the Evidence Act there must be evidence to justify a finding of guilt. The Evidence Act does not make affidavits evidence. It was also contended that nobody can be convicted on the basis "of an affidavit which is nothing but an ex parte evidence, and that to convict a person on the basis of an affidavit would he against the procedure established by law and infringement of Article 21 of the Constitution. I have no hesitation in repelling the contentions, of Sri S. S. Dhawan.

3. Contempt proceedings are governed neither by the Code of Criminal Procedure nor by the Code of Civil Procedure. In -- 'Sukhdev Singh v. Judges of the Pepsu High Court', AIR' 1954 SC 186 (A), it was pointed out by the Supreme Court that the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of record, that the Code of Criminal Procedure does not apply in matters of contempt triable by a High Court, that it can deal with contempt summarily and adopt its own procedure, and that all that is required is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.

Reference may also be made to -- 'State v. Padma Kant Malviya', AIR 1954 All 523 (FB) (B), to which I was a party. Law of evidence is a part of the law of procedure; if the contempt proceedings are not governed by any particular procedure, it follows that they are not governed by aay particular law of evidence. Even if contempt proceedings are judicial proceedings within the meaning of Section 1, Evidence Act, they are outside the scope of Section 1 and have always been treated as such.

Contempt proceedings are usually, decided on the basis of affidavits and not a single authority was brought to our notice in which it was held that this cannot be done legally or that contempt must be proved against the alleged contemner in accordance with the provisions of the Evidence Act. Were it illegal to find a person guilty of contempt on the strength of affidavits alone, there must necessarily have been judicial pronouncement to that effect, and the absence of any such judicial pronouncement shows that it is not illegal.

The Evidence Act does not permit a person to be convicted without any evidence even if he has committed the offence in the presence of the Court trying him; but it is well-known that a person guilty of direct contempt, that is contempt in the presence of the Court, can be punished instantly without any evidence being recorded; if any authorities are needed reference may be made to -- 'In the matter of Terry', (1888) 128 US 289 (C); -- 'In the matter of Savin', (1889) 131 US' 267 (D); -- 'Cooke v. United States', (1925) 267 US 517 (E) and -- 'Re William Oliver',. (1948) 333 US 257 (F). In the ease of S. Terry (A), Harlan J. observed that:

> "For a direct contempt committed in the face of the Court, at least one of a superior jurisdiction, the offender may, in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof that its actual knowledge, of what occurred."

See also Halsbury's Laws of England, Vol. VIII, paragraph 67. It is therefore not true to say that contempt must be proved in the manner laid down in the Evidence Act; the Court undoubtedly has to, be satisfied that contempt has been committed, but is competent to adopt its own procedure for deriving satisfaction.

It stands to reason that when the law does not prescribe the manner in which contempt should be brought to the notice of the Court, and when it has not even defined what contempt is, there cannot be any law as to the onus of proof, or the method of proof, in contempt proceedings. It is stated in --Oswald's Contempt of Court, 3rd edition, page 212 that:

> "In cases of criminal contempt the facts are proved by affidavit." This statement is approved of in Halsbury's Laws of England, Volume 8, "Contempt of Court", paragraph 63, where it is said that to found an application for criminal contempt the facts constituting the alleged contempt most be proved by affidavit. The word "proved" is significant; it shows that the affidavit is meant to supply the proof for final orders being passed on the application for contempt.
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> The contempt said to have been committed by the opposite party is criminal contempt and it can be proved by affidavit. It is stated in 17 Corpus Juris Seeundum "Contempt", para 84, that it has been held that a conviction for contempt based on affidavit is not a deprivation of the accused person's constitutional privilege to meet his witnesses face to face, and that affidavits on which a warrant is issued in contempt proceedings are admissible in evidence on the bearing.
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> Since the Evidence Act expressly does not apply to affidavits, proving a fact by an affidavit is not barred; if a fact is allowed to be proved by an affidavit, it can be proved by an affidavit notwithstanding the provisions of the Evidence Act. It is laid down in Rule 12(1) of Chapter IX of the Rules of Court, 1952, that an application praying that a person be punished for contempt "shall set out in the form of a narrative the material facts and circumstances and shall be supported by an affidavit."

I do not think this rule merely prescribes the form or contents of an application and that an affidavit is required to accompany an application simply to make it in order so that a notice may be issued. Since no procedure is prescribed even in the Rules of Court for contempt proceedings, there is no justification for saying that the affidavit is required simply to enable a notice of the application to be issued; really there is no warrant for dividing the proceedings into two parts, (1) relating to issue of notice, and (2) relating to the final hearing.

There is no reason for saying that the affidavit is not meant to be used for passing final orders on the application for contempt proceedings. Under Rule 12(2) the Court is empowered to call for an affidavit in any other matter coming up before it; there is no reason to think that this power is to be exercised by the Court only for the purpose of taking a preliminary step and not for the purpose of passing final Orders in the matter.

If the affidavit required under Rule 12(2) can be used to support the final orders passed in a case, the affidavit required under Rule 12(1) also can be used to support the final orders in contempt proceedings, because the affidavits mentioned in the two provisions are intended to be used for identical purposes.

Under Rule 13 any person opposing the grant of an application or showing cause against a rule may file a counter-affidavit. There may arise a question of issue of a notice or taking any other preliminary step on an application, but there cannot arise any question of issue of a notice or of taking a preliminary step when the opposite party appears in Court and denies the allegations of the applicant.

Therefore the argument that any affidavit is required under the Rules simply to enable the Court to issue a notice or take any other preliminary step, is not available in respect of a counter-affidavit; the counter-affidavit must necessarily be for the purpose of supplying evidence in proof of the facts formed in it. As regards the use that can be made, there is no distinction between an affidavit and a counter-affidavit; if one can be used for a particular purpose, the other also can be used for the same purpose.

If an affidavit were not to be treated as evidence, there would have been no necessity of a counter-affidavit. I am of the opinion that the purpose for which an affidavit is required under Rule 12(1) -is the same as that for which an affidavit is required under Halsbury's Laws of England, Vol. 8, "Contempt of Court", para 63; the words "shall be supported" are used in the same sense in which the words "to found an application for contempt" are used.

The rule thus allows contempt to be proved through an affidavit. Since the practice in this country, in England and in America has always been that contempt can be proved through an affidavit, that is the procedure established by law and holding a person guilty of contempt on the basis of an affidavit only docs not infringe his constitutional right under Article 21.

4. The statements made by Sheoraj, Matauwa, Ram Das, Ram Dhani and Gahroo before us are ail unconvincing, self-conflicting and full of inherent improbabilities. Sheoraj and Ram Das told

palpable lies when they denied having made any statement before the Magistrate on 29-6-54. Sheoraj went to the length of denying that even his and Ram Das's thumb-impressions were taken, on any paper.

In the next breath he had to admit that they were taken and that they were taken inside the Court room. Sheoraj was medically examined on 28-6-54 at 11-15 A.M. at his own request. But he had the audacity to state in Court that he was not injured at all, that he showed to the doctor a tumour that he had from before on the left side of back, and that he feigned to feel pain whenever the doctor touched his body.

Then the statement made by him about sending an application through an unknown constable to the Court on 5-7-54 is a fantastic story. That he paid Rs. 6/- to the constable is a lie, because there is no explanation for the amount of Rs. 6/-; no court-fee is required on an application to a Superintendent of Police, and an application to a Magistrate requires a court-fee stamp of only one rupee. No attempt was made to trace out the constable; if there were any truth in the story of Sheoraj, the constable could have been traced out and produced in Court to support it.

The application that was actually taken by the constable to the Magistrate did not bear any court-fee label. Two of the applications have been traced, but not the third that was given to the constable. The statement of Sheoraj that he made the applications of his own accord and that he did not meet-the opposite party and that no advice was given to him in the matter of making the applications by him or the Superintendent of Police is falsified by the counter-affidavits of both the opposite parties (vide para 2(xx)).

Evidently Sheoraj in his over-zeal to avoid an admission of any contact between him and the opposite parties, denied even that contact which was admitted by them. His demeanour in the witness box did not create any favourable impression in our minds; he seemed to have been tutored so much that he did not even pause to hear the questions put to him in cross-examination in full and answered them even before they were completed.

He did not give a satisfactory reason for his approaching, the opposite party with his so-called grievance on July 4 or 5, 1954. If the case of the opposite parties is true, he must have known the opposite party because he had gone to his village on 26-6-54 and interrogated him. He would not have had any need of asking Chedu Thakur about the address of the Deputy Superintendent of Police.

He falsely denied knowing Ram Nath of Mohamraadpur, who had made the application to the District Magistrate on 3-7-54. Once he said that he does not know even Mohammadpur, but had to admit in the next breath that he knows one Mohammadpur. Though there was nothing to suggest that there were two Mohammadpurs, He tried to make-out that Ram Nath belongs to another Mohammadpur.

His statement that he complained to the opposite party on. July 3, that police constables used to harass him, would not let him sleep in peace and used to take him to the police station either is a lie

or goes against the opposite party himself. S. I. Baqar Husain had been relieved of the investigation on June 28 and was transferred from the police station on June 29; therefore no constable would have harassed Sheoraj on behalf of the sub-inspector and if he was still harassed it only means that he was harassed by police constables working on behalf of the opposite party.

Of course he would not go and complain against them to the opposite party. But really he did not go to him at all to complain against the police. Since he was bent upon telling lies, he could not tell a consistent story. He forgot while giving evidence in Court that he could not have been harassed by the sub-inspector or any constable working on his behalf after Tune 28, and in any case after June 29.

He had no satisfactory explanation for voluntarily going to the opposite party on July 3 and invented on the spur of the moment the explanation which does not make any scnse Finally, the whole story told by him about what happened at Allahabad and his disowning the present application for contempt is a tissue of lies. I am not prepared to believe for a moment that Sri P. C. Chaturvedi, an Advocate of this Court, got filed this application without even meeting Sheoraj and was a party to a fraudulent application being presented in Court.

I have not the slightest doubt that the statement made by Sheoraj before us is false; on the other hand, there is nothing to suggest that the affidavit made by him is false. I cannot believe that at the instance of a pleader, a clerk of the Magistrate took down an absolutely false statement of Ram Das even in the presence of the Magistrate. Ram Das admitted that when the statement was being written down, he knew that it was about a robbery committed upon Sheoraj, but he did not tell the clerk or the Magistrate that it was not his statement. He did not offer a satisfactory explanation for remaining quiet for a month.

5. I am not prepared to accept the evidence of the opposite parties and Sheoraj, etc. that no robbery was committed by Ram Manohar Girdhari, and Bhura on 25-7-54, that Ram Manohar was not arrested with Bhura, that Ram Manohar was arrested by Matauwa, Ram Dhani, Budhi, Jagrup, Surajpal and Inderpal on 24-6-1954 and taken to the police station on 25-6-1954 at 9 A.M. and that no confessions were made by Ram Manohar and Bhura at the police station. There was nothing improbable in the report taken down at the police station on 25-6-1954 at sunset. S. I. Baqar Husain had taken charge of the police station on 8-6-19.54 on his transfer from Allahabad to Fatehpur district. He did not know Ram Manohar and Girdhari. He had, therefore, no reason whatsoever'to get them falsely implicated by Sheoraj in his report. Ram Manohar was an absconder; there were several cases pending against him including one under Section 457, I. P. C., in which he had been released on bail.

The Station Officer had no interest in any of these cases. Two warrants of arrest were issued for his arrest and they were received back at the police station on 25-6-1954 at 4 P.M. with a report that they could not bo executed. An entry about the same was made in the general diary. I am totally at a loss to know why the Station Officer should have wrong fully confined Ram Manohar in the lock up from the morning and made a false report at 4 P.M. that the warrants could not be executed.

No explanation whatsoever has been offered for this conduct of the Station Officer. He could not know that some report of a serious offence such as a robbery, would be made in the near future in which Ram Manohar could be falsely implicated. Ram Manohar could not be falsely implicated in every report of a serious offence. Further, when there were several cases pending against him and when the sub-inspector did not even know him, there was no reason for him to implicate him in a false case and to keep him in illegal detention with that object.

On the other hand he would have tried to take Credit for arresting him himself. The story told by Matauwa and Ram Dhani in Court is full of improbabilities and does not sound convincing at all. Ram Dhani claimed to be interested in getting Ram Manohar arrested because some, relations of his had stood surety for his attendance in Court. He said that he was told by his relation to catch Ram Manohar wherever he got him.

Ram Dhani sought the assistance of Matauwa. Both Rani Dhani and Matauwa were co-accused with Ram Manohar in the case under Section 457, I. P. C. It is strange that Ram Dhani does not even know the name of his relation who had stood surety for Ram Manohar and that Ram Manohar was arrested by the very persons who were being prosecuted with him in the case, I am not at all satisfied that Matauwa and Ram Dhani had any interest in arresting him.

Then though he is said to have been arrested at noon at a place only nine miles from the police station, he was not taken at once to the police station, but was detained in the village for no good reason and taken to the police station next day by 9 A.M. Even the Chowkidar is said, to have kept watch over him at night. Matauwa made a mess of his statement when he was cross-examined about the circumstances in which Ram Manohar was arrested; he was unable to give a coherent account of the circumstances.

Ram Manohar had injuries when he was taken to the police station; so had Bhura. It was natural for their being beaten by Sheoraj, etc. on their being caught while committing the robbery. The fact that Ram Manohar had injuries is highly significant; it supports the report made against him by Sheoraj. Matauwa and Ram Dhani had to admit that Ram Manohar had injuries when, he was taken to the police station and said that they had beaten him after arresting him.

There was no occasion for them to beat him; they had absolutely no enmity against him and, on the other hand,, were being tried along with him in the case under Section 457, I. P. C. Ram Dhani's statement about the circumstances in which Ram Manohar was arrested conflicts with that of Matauwa, The story told by Matauwa, etc. about the circumstances attending the arrest of Ram Manohar must be rejected as false.

There being nothing against the story told in the report of Sheoraj about the same matter, it must be accepted as true. Whatever may be said about the Station Officer's having a reason to get Ram Manohar implicated in a false report, nothing can be said about his having a motive for getting Girdhari implicated in a false report. There is absolutely nothing to explain why he should get Girdhari falsely involved.

He did not know him also. The story that Sheo raj told now in Court about the occurrence of 25-6-54 receives some corroboration from Gahroo, who is related to him, and Ram Das. According to them only a theft of some chattel of Sheoraj wag committed by Bhura in the afternoon and he was taken to the police station at 3 P.M. and a report of simple theft was dictated by Sheoraj against Bhura.

The report was actually taken down at 9 P.M.; there was no reason for the Station Officer to write out the report at 9 P.M. if it was dictated at 3 P.M. It has not been explained why he should not have taken down the report for six hours. Gahroo stated that he, Sheoraj, etc. remained at the police station from 3 P.M. to midnight or 1 A.M.; there is no explanation for this long stay at the police station, particularly when Gahroo denied that the Station Officer recorded his statement at the police station.

The Station Officer's case is that the report was made at 9 P. M. and that he at once took down the statements of Sheoraj, Gahroo, Sukhdeo and Madho Chowkider, and the two arrested persons, Ram Manohar and Bhura. That would explain, why Sheoraj, Gahroo, etc., were detained at the police station up to midnight or I A. M. The statement of the Station Officer that Ram Manohar and Bhura both confessed having committed the robbery, that Ram Manohar confessed to dacoities, some of which were not even registered at the police station, and that in one-dacoity he implicated Ram Dhani, Matauwa and others, seems to be correct.

He made a report for the confession of Ram Manohar being recorded by a Magistrate; he would not have made it if actually Ram Manohar had made no confession and was not expected to make any before a Magistrate. I do not understand how the Station Officer who had been at the police station for only eighteen days could have thought out a false confession in respect of dacoities which were not even registered at the police station; there was absolutely nothing to be gained by him by that act.

I, therefore, accept his statement that Ram Manohar did confess and Ram Manohar's confession supports the report taken down at the police station.

6. Nothing that the opposite party did between 25-6-54 and 29-6-54 amounts to contempt of Court; the simple reason is that so far there were no proceedings in Court, the report of Sheoraj being under investigation, and there is no allegation that he did anything amounting to interference with the natural course of justice.

But it has great significance, as showing what the opposite party intended to do and was capable of doing and has great value in persuading the Court to believe th'e allegations of Sheoraj in his affidavit as to what was done to him on and after 2-7-54.

7. The complaint was filed by Sheoraj on 29-6-1954 through Sri Faiyaz Husain Rizvi Vakil in the Court of the Judicial Officer Sri Babu Ram Dube, who immediately recorded the statement of Sheoraj under Section 200 and the statement of his witness Ram-das under Section 202, Criminal P. C., and issued processes against the three accused for 12-7-1954.

The opposite party seems to have got himself interested in the complaint of Sheoraj through Sri Babu Lal Vakil of Fatehpur, who is admittedly related to Ramdhani, In a report made by the opposite party to the Superintendent of Police about the conduct of S. I. Baqar Husain in the matter of taking down the report of Sheoraj the opposite party admitted having met Sri Babu Lal.

The report made by the opposite party is not before us, but S. I. Baqar Husain has deposed that the report contains this admission of the opposite party. S. I. Baqar Husain bas proved the admission of the opposite party and not merely given hearsay evidence, which would not be admissible if the strict provisions of the Evidence Act applied.

What the opposite party stated in the report is his admission and this is what is proved by S. I. Baqar Husain whose statement bas not been challenged by the opposite party. Since Ramdhani and his relations were implicated in the confession by Ram Manohar, Sri Babu Lal met the opposite party and presumably induced him to take action to have Ram Manohar dissociated from the report of Sheo-

raj and to prevent his confession being recorded by any Magistrate.

Sheo Raj in his affidavit only alleged that the opposite party for reasons known to himself adopted a strange attitude from the very beginning. He did not explain specifically why he did so. The name of Sri Babulal is not mentioned anywhere in the affidavit. But these facts are certainly no reason for our disbelieving the statement of S. I. Baqar Husain that it was Sri Babu Lal who was instrumental in persuading the opposite party to adopt a strange attitude towards the investigation into the report of Sheoraj from the very next day.

I do not see any substance in the contention ot Sri S. S. Dhawan that this Court cannot take cognizance of the allegation made against Sri Babu Lal without his being a party to these proceedings, or be'ing examined as a witness. The Court is not proceeding at all against Sri Babu Lal and if there are two persons who are parties to a wrong, it is not the law that no enquiry can be made into the wrong committed by one person unless the other person also is a party or has been examined as a witness.

The Court is obligated to refer to the part played by Sri Babu Lal because without doing it it cannot refer to the corresponding part played by the opposite party. It is true that the Court is not in possession of any facts explaining what hold Sri Babu Lal or has over the opposite party. But it can still believe that the opposite party acted as he did because of some inducement by Sri Babu Lal.

The most important reason is that there was no other reason for his acting as he did. It was the most unusual thing for a Dy. Superintendent of Police to interfere with the investigation by a Station Officer into a report of only a petty robbery on the very next day of the report.

It was very easy for the opposite party and also the superintendent of Police to plead before us that it is a part of their routine duty to supervise investigations in reports of grave offences like murder, dacoity, robbery etc., and that it is the practice for gazetted officers to interrogate persons

immediately on their arrest because it has been found that without such supervision there would be a risk of a defective investigation, or victimization of innocent persons.

It is certainly the duty of superior officers like a Dy. Superintendent of Police or a Superintendent of Police to supervise investigations by Station Officers into reports of murder and dacoity, but the report of Sheoraj which was of a very petty robbery was not such a report as would call for supervision of its investigation. Further the supervision of every investigation starts when a special report of the crime is received by the superior police officer; it is not known on what date the special report, if any was sent, was received by the opposite party.

I should mention here that neither of the two opposite parties had the courage to come into the witness-box and to face cross-examination. If their conduct were innocent which could bear scrutiny, they had nothing to be afraid of and would have offered themselves for any searching' enquiry into their conduct, The opposite party Has not explained at all how on 26-6-1954 he knew that a report of robbery had been made against Ram Manohar etc. The first purcha of the case diary was received in the office of the Superintendent of Police several days later and the only order passed on it was "File". It is certainly strange that the opposite party simply on account of statements" supposed to have been made to him by the two under-trials concluded that the report made by Sheoraj was wrongly taken down by the Station Officer; he had not met or talked to any one else such as Sheoraj etc. That a Police Officer should, without any scrutiny, accept the bare statement of a person accused of a crime, is certainly unusual and I am not prepared to say that the opposite party formed the opinion that he did simply on the basis of the statements made by the under-trials; his ears must have been poisoned earlier.

There is no record kept by the opposite party of the statements supposed to have been made by the under-trials. When they alleged that the station officer took down an incorrect report he should have taken down their statements. He says that he brought the matter to the notice of the other opposite party and that the latter directed him to make further enquiries; there is however nothing in writing about these matters.

I do not know why the opposite party volunteered to make the enquiry himself unless he wanted it to result in a particular way. The matter was not so important and normally the Circle Inspector would have been asked to enquire into the conduct of the station officer. The under-trials had been already remanded to jail custody by the Magistrate for 14 days; still the opposite party took the unusual step of getting them remanded to police custody for 48 hours.

The Magistrate had also warned the under-trials that they were not bound to make a confession and ordered them to be put before him on 28-6-1954 for recording confessions. These facts were concealed by the Public Proseputor who, admittedly at the instance of the opposite party, applied not to the judicial magistrate but to another magistrate that the under-trials were required by the police for further investigation and therefore should be remanded to police custody.

It is unfortunate that this magistrate, who was no less than the Additional District Magistrate, failed to perform the duty of satisfying himself that the detention of the under-trials in the police custody

was necessary. Actually it was not necessary at all; they were not required to be taken to any place; they had already been interrogated by the opposite party and if any further interrogation was necessary it could be done inside the jail.

The remand to police custody was obtained obviously for an oblique motive. That is why the material facts that the judicial Magistrate had already granted remand for 14 days and had already ordered the under-trials to be put up before him on 28-6-1954 were concealed. It was the opposite party who on the Additional District Magistrate's sanctioning the remand to police custody, ordered the under-trials to be kept in the lock up of Kotwali Police station.

The allegation of the opposite party that S. I. Baqar Husain confessed to him on 27-6-1954 that the report was wrongly taken down and that the under-trials had not made any confession is denied by S. I. Baqar Hasain and I am not prepared to accept the allegation of the opposite party. I do not know why S. I. Baqar Husain so readily confessed having fabricated a false report and a false case diary.

Had he 'really confessed, it was the duty of both the opposite parties to take severe action against him. Had they been so mindful of their duties, as they pose to be, they would not have failed to take immediate action against him for concocting a false case and preparing false records which was certainly not a matter to be condoned.

I think the Sub-Inspector would have justifiably been dismissed for what he had done according to his alleged confession. The opposite party did not 'have in his possession clinching evidence with which he could confront the Sub-Inspector. The Sub Inspector was not taken unawares when he was told that, his investigation was not honest. He had been called by the opposite party for the express purpose of explaining his conduct and so he must have gone prepared to maintain his position.

The opposite party claims to have taken only Bhura to the spot on 27-6-1954 and to have interrogated Sheoraj and others about the robbery. Neither was the presence of Bhura necessary on the spot nor was anything lawful done as regards the other under-trials which could not have been done inside the jail. It is clear that there was really no reason for the opposite party's getting the under-trials remanded to police-custody even for 48 hours and still when he did it, he must have done it with an evil design.

There is no record maintained by him of the statements supposed to have been made by Sheoraj etc., on 27-6-1954; I do not understand what kind of supervision over the investigation he was exer cising when he was not reducing to writing anything.

I seriously doubt if he even went to the spot on 27-6- 1954.

The investigation into the report of Sheoraj was taken away from S. I. Baqar Husain and entrusted to the second officer on 28-6-1954. . The Superintendent of police further transferred S. I. Baqar Husain from Police Station Khaga to the Police Lines, Fatehpur. The under-trials were not put up before the Judicial Magistrate on 28-6-1954; his order of 26-6-1954 was flouted by the opposite

party.

On 28-6-1954, the second officer wrote to the opposite party that the under-trials should be remanded for three days more to police custody because the investigation was incomplete. The opposite party ordered the Public Prosecutor to manage to get the remand to police custody for three days. The use of the word "Manage" is indicative of the manner in which the opposite party's mind worked.

The Public Prosecutor reported to the Additional District Magistrate that under special circumstances the under-trials be remanded to" police custody for three days, more and the Additional District Magistrate readily obliged without considering at all whether remand to police custody was required.

There is no doubt that the Additional District Magistrate abused his power of granting remand to police custody. I should point out here that the opposite party kept him completely in the dark about the whole matter and also about the report of S. I. Baqar Husain that the under-trials were prepared to confess before a magistrate. Really very tittle investigation was being done agaiast the under trials.

Moreover all the material witnesses, namely, Sheoraj, Ramdas, Gahroo, Mahadeo and Sahdeo had been examined. What was being done now was an enquiry against S. I. Baqar Husain and for this purpose the under-trials could not possibly be remanded to police custody. Ultimately the under-trials reached jail on 30-6-1954 or 1-7-1954.

They were produced before the Judicial Magistrate on 2-7-1954 for their confessions being recorded but they refused. On 14-7-1954 the Second Officer obtained remand against Ram Manohar though there was said to be no case against him and on 27-7-1954 he and Bhura were both released under Section 169 even though there was a clear case of theft against Bhura.

It was the opposite party who approved of the final report against both the under-trials. It seems that while they were in police custody they were tutored to make certain statements and that Bhura was rewarded for his yielding to the pressure of the opposite party by being released under Section 169, Criminal P. C., though on his own confession he was guilty of theft.

The submission of the report under Section 169 to the Judicial Magistrate who had already taken cognizance of the complaint of Sheoraj on 29-6-1954 was itself a contempt of his court because it undoubtedly interfered with the natural course of justice in the complaint case.

While the Judicial Magistrate was trying the complaint case the police could not without committing contempt of his court tell him that the complaint case was false. They were bound to let the complaint case take its natural course and nothing what is contained in Section 173 of the Code could justify their interfering with it.

When the Magistrate had already taken cognizance there could not arise any question of a report being made to him under Section 173 of the Code. He could not take cognizance of the offence again and he could not throw out the complaint on the basis of the police report. That contempt is, however, not the subject matter of enquiry in these proceedings.

But I have dealt with the matter in some detail in order to show that the opposite party had no regard for the law.

8. It is stated by Sheoraj in his affidavit that he was unlawfully arrested on 2-7-1954 and that undue pressure was exerted, upon him in order to make him withdraw the complaint case. Naturally the opposite parties denied the allegation; they could not be expected to admit it.

But the circumstances, both antecedent and subsequent, show that there is considerable truth in the allegation of Sheoraj, notwithstanding his retraction in court. The exertion of undue pressure was quite consistent with the opposite party's design. His effort to spoil the investigation would nave been rendered futile if Sheoraj was left free to prosecute his complaint case.

Not only that but his dishonest activities would have been exposed in court. So Sheoraj was kept in unlawful confinment on July 2 and 3 and was released after his thumb-impressions were taken on some blank papers and he was warned not to proceed with his complaint. On 3-7-1954 Ram Nath a relation of Sheoraj made a complaint of the wrongful confinement.

It was mentioned in it that he was wrongfully detained in the office of the opposite party and that he was being forced to withdraw the complaint. There is no reason to disbelieve the complaint of Ram Nath. It was repeatedly argued by Shri S. S. Dhawan that it was S. I. Baqar Husain who was at the back of the complaint of Shepraj of 29-6-1954, of the complaint of Ram Nath of 3-7-1954, and also of the present application of Sheoraj for contempt.

It may be conceded that some of the allegations made in the complaints of Sheoraj and Ram Nath are based on information received from the Sub-Inspector. But the Sub-Inspector did nothing wrong, at least nothing illegal, in giving information to Sheoraj and Ram Nath. Merely because he passed on information to them or even induced them to make the complaints it cannot be said that the complaints are false. He had no control over Sheoraj and Ram Nath and I do not think they would have gone out of their wav to make false allegations and false allegations of a very serious nature against the opposite parties if there were ho basis for them.

After all it is not an easy matter for any one to make a false complaint that the Superintendent of Police and Dy. Superintendent of Police have committed contempt of court by unlawfully detaining him. by taking thumb-impressions on blank papers, by forcing and threatening him to withdraw the case and by getting the case withdrawn through an application forged on blank paper. Sheoraj would not have made himself a pawn in the hands of S. I. Baqar Husain who might be bearing a grudge against the opposite parties.

The application that the Judicial Magistrate received on 5-7-1954 was undoubtedly a forgery and was sent to the Judicial Magistrate through a constable by the opposite party. I accept the statement contained in the affidavit that the thumb-impressions were taken on some blank sheets of paper. There is the endorsement of the Judicial Magistrate himself that the application was received in his court in a closed "Kaidak' and through a police constable.

I accept Sheoraj's statement contained in the affidavit that the application was written out on the blank papers on which his thumb-impressions were taken by the opposite party and was sent by him with a constable to the Court. His subsequent statement in court is not at all convincing. I do not believe that there was any occasion for his sending the application through a constable whose name even he did not know. He could not have got hold of a Kaidak in which the application could have been sent.

The very fact that the application did not bear a court-fee stamp, as it should have, shows that it was sent not by Sheoraj but by the opposite party who seems to have been under the impression that any application sent by him does not require to bear a court-fee stamp. The application purports to have been scribed by "R. Salmi." It is not known if there is a man named R. Sahai and if he scribed the application; the prosecution could not examine evidence to prove that it was not scribed by R. Sahai but the opposite party could prove that it was scribed by R. Sahai at the instance of Sheoraj.

However no R. Sahai has been produced in Court. The opposite parties did not ask Sheoraj in cross-examination who R. Sahai is, who had scribed his application. The constable who took it could have been traced out by the opposite party and examined to prove that he had been entrusted by Sheoraj with the application; but it was not done; In the application of 3-7-1954 Sheoraj did not say a word about his and Ram Das's statements recorded under Sections 200 and 202, Criminal P. C. Had he got the application written out he must have explained how his and Ram Das's statements came to be recorded in court.

The opposite party not being well versed in law might not nave known anything about the statements and therefore in the forged application did not offer any explanation for them. The statement in the application that Sheoraj and Ram Das were taken by a constable to village Budhwan to see Girdhari is obviously a false statement. The Station Officer had no reason whatsover to get Girdhari implicated in a false report. Girdhari's name must have been given by Sheoraj when dictating the report. If he gave his name, there was no need of his being taken to village Budhwan to see him.

There is nothing to support the statement in the application that Sri Faiyaz Husain Vakil himself got the complaint written out and obtained the thumb-impression of Sheoraj on it. I do not think the pleader would have taken so much risk even at the instance of the Station Officer. I cannot believe that the statements recorded by the Magistrate under Sections 200 and 202 were not recorded by him and were not made by Sheoraj and Ram Das.

If they made the statements the complaint also must have been dictated by Sheoraj and he must have known what it contained; otherwise his statement under Section 200 would not have tallied

with it. There is no doubt that the application of 5-7-1954 contains falsehood. There was no reason for Sheoraj himself to withdraw the complaint case even if he wanted to withdraw it, he need not have told so many lies and falsely accused the Station Officer and Sri Faiyaz Husain Vakil.

I am, therefore, convinced that the application was not made by Sheoraj, that it was forged by the opposite party on blank papers on which his thumb impresssions were taken on 3-7-1954 and was sent by him through a constable to the" court to make sure that it reached the Court. Evidently the opposite party knew that Sheoraj himself would not take it to court. This is the grossest form o contempt committed by the opposite party.

Whatever may be the truth about the complaint of 29-6-1954 whether it be true or false, once a magistrate had taken cognizance of it the opposite party had no right whatsoever to interfere with the natural course of justice by sending a forged application for its withdrawal. The complaint was filed by Sheoraj himself, I have no doubt about it, but even if it had not been filed by him the opposite party committed contempt by sending to the court a forged application for its withdrawal.

The complaint purported to be in the name of Sheoraj and had to take its natural course; any unauthorised interference with it would be contempt. Obstructing justice amounts to contempt of court land is to be understood in a wide sense. Sri S. S. Dhawan takes his stand upon the statement made by Sheoraj in court that he had filed no complaint on 29-6-1954. He argues that if Sheoraj filed no complaint it was impossible for the opposite party to commit contempt in respect of it.

What Sheoraj deposed is neither necessarily true nor conclusive; and if one were to be concludr ed by his statement, his other statement that the oposite parties did not threaten or force him itself would have been enough to exonerate them and there Would have been no necessity of any inquiry into, or discussion of, facts.

9. When the application of 3-7-1954 reached the Judicial Magistrate he ordered Sheoraj to be present. Sheoraj did not appear in court on two dates but his counsel Sri Faiyaz Husain was present. On 30-7-1954 Ram Das made an application dated 29-7-1954 giving the other version of the occurrence of 25-6-1954 and exculpating Ram Manohar and the Magistrate kept the application jn the record. Sri Faiyaz Husain challenged the genuineness of the application and asked the Magistrate to send his orderly to see the place where Ram Das got it scrib ed.

It seems that the Magistrate sent his orderly, who returned and informed him that Ram Das had taken him to the office of the Superintendent of Police's reader. This means that the application was scribed in the office of the Superintendent of Police. On 31-7-1954 Sri Faiyaz Husain requested the Magistrate in writing to make a note of the fact but the Magistrate ordered that no note would be made.

It is enough that he did not say that the contents of Sri Faiyaz Husain's application were wrong. There is no doubt that somebody in the office of the opposite parties committed contempt of Court again by persuading, if not compelling, Ram Das to write out a false application and take it to court. Ram Das was no party to the complaint; he was only a witness and had no locus standi to make any

application. All that he bad to do was to refrain from giving evidence at all, or to state the truth, when summoned as a prosecution witness.

Still when he made the application, he must have been prevailed upon by the opposite party to make the application. Sheoraj was again, absent on 13-8-1954. On 24-8-1954 Ram Manohar and Bhura got the case transferred from the Court of the Judicial Magistrate to that of the District Magistrate. Really there was no reason for transfer and I am surprised that the District Magistrate thought fit to transfer the case to his own file at the instance of the accused. On 31-8-1954 he discharged the accused on the basis of an application (supported by an affidavit) by Sheoraj of 25-8-1954.

10. The purpose behind the application of 25-8-1954 was to throw overboard the contempt proceedings started on Sheoraj's application of 15-7-1954. Just as for throwing overboard the proceedings started on his complaint of 29-6-1954 the application of 3-7-1954 was forged, so also this application was brought into existence to throw overboard the contempt proceedings; from the similarity of the means adopted it can reasonably be inferred that both the applications are the work of the same person.

It seems that the opposite party was anxious to see that Sheoraj adhered to the application and, therefore, got an affidavit from him in support of the application. Affidavits are usually not filed in support of applications presented in Courts of Magistrates. It is difficult to believe all the allegations made in the application. There is no allegation of Sheoraj's being kept in wrongful confinement or under duress, and it he remained away from the police, be did it voluntarily though under the advice of Sital.

There is nothing to suggest that he was prevent ed earlier from going away to his house. The state ment that he was kept in village Sankha for one month and ten days is falsified by the fact that he was served with the notice of the transfer of his.

complaint case on some date between 12-8-1954 and 24-8-54. The opposite party seems to be under the blithe but dangerous belief that he can frus trate legal proceedings by destroying evidence and that he can wipe out one contempt by committing another contempt.

Certainly a person who commits contempt of Court by obstructing the course of justice cannot escape punishment by interfering with the contempt proceedings by winning over the complainant. There was absolutely no occasion for the application being made in the Court of the District Magistrate where the complaint case was pending; the District Magistrate had nothing to do with the contempt proceedings pending in this Court.

The proper, court in which the application should have been presented is this Court, but if seems that Sheoraj, the opposite party and others dared not come to this Court with such an application as that dated 25-8-54. There is, thereforer no doubt that it is a false application. There is no charge against the opposite party for contempt of this Court by interfering in an unlawful manner with the contempt proceedings by tampering with the evidence of Sheoraj and inducing or forcing him to file the application containing falsehood in the District Magistrate's court but the facts supply strong

circumstantial evidence in support of the charges made against the opposite party.

11. It is fully established that the opposite party committed contempt of the courts of the Judicial Magistrate and the District Magistrate by unlawfully interfering with the proceedings pending before them and exerting undue pressure upon Sheoraj, Ram Das, etc. who were to be material witnesses in them.

12. As regards the Superintendent of Police, there is only the allegation in the affidavit of Sheoraj, but there are no circumstances to corroborate it. The affidavit actually makes no distinction between one opposite party and the other and it is by no. means certain that both of them are meant to have done every act which is said in the affidavit to have been done by the opposite parties.

The Deputy Superintendent was the person mostly concerned with the complaint of Sheoraj and its withdrawal. There is no doubt that he has done the acts mentioned in the affidavit of Sbeoraj. As regards the Superintendent of Police all that can be said is that he must have been, aware of what the Deputy Superintendent was doing.

If he remained ignorant it only means that he himself is inefficient in the performance of his duties. The counter-affidavit filed by him is on the same lines as that filed by the Deputy Superintendent and he has espoused his cause whole-heartedly. He has not pleaded that he was not aware of the misdeeds of the Deputy Superintendent and therefore did not take steps to check him; on the other hand he has supported him in everything that he did.

There is also the fact that the Deputy Superintendent could not have dared do any of the mischievous acts that he has done unless he was certain of receiving the support of the Superintendent and he would have been certain of it if the Superintendent was no respecter of the law. There may thus be good material for departmental action against the Superintendent of Police, but I am not satisfied that he can be said to have been guilty of the contempt of court.

Contempt proceedings being quasi-criminal, the benefit of reasonable doubt should be given to the alleged contemner, vide -- 'The King v. Fletcher', 52 CLR 248 (G); -- "The State v. Dasrath Jha', AIR 1951 Pat 443 (H) and -- 'Michaelson v. U. S. Ex Rel C. St. P. M. and O. R. Co.', (1924) 266 US 42 (I). In -- 'Perera v. The King', 1951 WN 208 (J) the Judicial Committee accepted the defence of good faith on the part of a person who was charged with contempt of court.

The Superintendent of Police also might have acted in good faith believing all that was told to him by the Deputy Superintendent of Police and he might not have known the truth. I, therefore, agreo that the notice issued to him should be discharged.

13. The offence committed by the Deputy Superintendent deserves serious notice. He has committed repeated contempts of court and seems to be labouring under the impression that being a Deputy Superintendent of Police he can with impunity do anything he likes in relation to proceedings pending in court. He has committed serious offences as of wrongful confinement, criminal intimidation, forgery etc. He therefore fully deserves to be sent to prison for the contempt

committed by him. But we take into account that the offences committed by him will be taken due notice of by the State and the State may pass an order of removal from service which is fully justified. Generally the Court leans to the side of mercy and having regard to the punishment that may be inflicted upon him by the State we think that he need not be sent to jail and that infliction of fine would be sufficient vindication of the law.

Chowdhry, J.

14. This is an application under Sections 3 and 4, Contempt of Courts Act (XXXTT of 1952) by one Sheoraj, a "dhobi' of village Teni, police station Khaga, district Fatehpur, against the Superintendent of Police A. P. Batra and Deputy Superintendent of Police Hari Singh of Fatehpur, hereinafter referred to as the S. P. and the D. S. P. respectively.

15. The applicant's case, as contained in the affidavit filed in support of the present application, is that while returning to his village with one Ram-das at about sunset on 25-6-1954 from a fair in village Thariayon, he and his companion were waylaid on the outskirts of village Teni and robbed at the point of Karauli and lathis by Sheoshankar alias Bhura, Ram Manohar and Girdhari; that in response to the alarm raised by them Mahadeo Pasi, Mahadeo Chaukidar and Sukhdeo Chaukidar reached the spot; that with their help two of the culprits, Sheoshankar and Ram Manohar, were secured but the third one escaped; and that they took Sheoshankar and 'Ram Manohar along with the stolen articles to the police statipn at Khaga and the applicant lodged there the first information report of the occurrence at 9 p.m. Ram Manohar was an absconder in connection with a case against him under Section 19(f), Indian Arms Act, and made confessions to the Station Officer Khaga about a number of offences. He was presented before the court, where proceedings in the Arms Act case had been stayed by reason of his having absconded, and sentenced to two years' R, I, It is the applicant's allegation that the S. P. and the D. S. P. under the directions and control of the S. P. took a very strange attitude from the very beginning for reasons best known to them.

As soon as the S. P. came to know that the said case under Section 392, I. P. C., had been registered and the confession of Ram Manohar had been recorded in the case diary, he got enraged with the Station Officer and scolded him for registering the case. Having come to know of these developments, the applicant filed a complaint against the said accused for the offence in question on 29-6-1954 in the court of the Judicial Magistrate, Khaga, The Judicial Magistrate recorded the statement of the applicant under Section 200 and of the witness. Ram Das., under Section 202, Criminal P. C., and issued processes to the accused to answer the charge under Section 392, I. P. C., on 12-7-1954. The applicant avers that when the opposite parties came to know of the filing of the complaint they decided to harasi the applicant and thereby stifle the prosecution.

16. As proof of the said allegation that the opposite parties had decided to harass the applicant in order to stifle the prosecution, the applicant cites the following acts alleged to have been committed by them. They had the applicant arrested and brought" to Fatehpur, put pressure on him to withdraw the complaint, and on his refusal to do so forced him to affix his thumb impression on four papers without disclosing to him what was written in those papers.

The applicant alleges that he was detained in police custody from July 2 and released on the morning of July 4, 1954, under threat of being ruined if he prosecuted his complaint. While he was in police custody a relation of the applicant, one Ramnath of Mohammadpur, police station, Thariayon, filed an application before the Judicial Magistrate on 3-7-1954 to the following effect:

> "It is respectfully submitted that Sheoraj, who is my relation and Biradari, has filed a complaint against Sheo Shankar alias Bhura and others on 29-6-1954 under Section 392, I. P. C. The statement of the complainant and evidence under Section 202, Cr. P. C., having been recorded the Magistrate proceeded to order for the issue of process against the accused and 12-7-1954, was fixed for the attendance pf the accused persons.
>
> For reasons best known to it, the police does not want that the case be proceeded with and with that end in view they are taking all sorts of illegal steps and one of the links of this chain is that the complainant had been brought to Fatehpur since yesterday morning and is being kept in the police control since then. Yesterday during day time he was kept at the residence and in the office of the Deputy Superintendent of Police and was kept at the Police station Kotwali during night.
>
> All these things having probably not come in record anywhere and this detention amounts to an offence under Section 342 I. P. C. During all this time constant efforts are being made to have the statement of the complainant spoiled or to have the complaint withdrawn. This is against law and justice. The applicant is bringing these things to the notice of the court because apart from its being offence under various sections, it amounts to contempt of court. It may be noted and necessary action be taken."

17. The applicant goes on to aver that he came to know, on being released from police custody, that one of the four papers on which the applicant had been coerced into affixing his thumb-impression had been forwarded to the Judicial Magistrate on 5-7-1954. It ran as follows.

To, The Judicial Officer, Khaga, District Fatehpur.

Sir, It is submitted that the applicant is resident of village Teni, police station Khaga district -Fatehpur. On 25-6-1954, which was Friday, the applicant lodged a report at the police station Khaga. On 3rd day thereafter i. e. on Sunday, two police constables brought the applicant and the witnesses to the Hospital at Khaga and got them medically examined. Rs. 25/- were paid as fee by the Station Officer.

After medical examination I and my Samdhi Gahru came back to our house. On 29-6-1954 two constables brought me and Ram Das from my house and took us to the Station Officer. The Station Officer thereafter brought us to Fatehpur to the house of Vakil Sahib. Vakil Sahib thereafter took me and Ram Das on an ekka to the courts and made me sit outside the court room and wrote out whatever he wanted.

Thereafter my thumb impression was obtained on the complaint I do not know what is written in the complaint. Thereafter the Vakil Sahib sent me and Ram Das to his house along with his men. There the Station Officer, Khaga, came & took us to Khaga by the evening bus. Next morning a constable took me and Ram Das to village Budhwan for recognising Girdhari Lohar.

Thereafter I and Ram Das went back to our house. I do not know what was recorded as my statement, on which my thumb impression was obtained. I have pot filed any complaint against any person of my circle. I therefore pray that this Hon'ble Court be pleased to dismiss my complaint against Ram Manohar and others under Section 392 I. P. C. Petitioner, Sheoraj Son of Bhuiyan Din, Dhobi, resident of village Teni, police station Khaga, district Fatehpur."

18. The Magistrate passed the following order on receipt of that application on 5-7-1954:

> "Today this application was received in a close wrapper through a constable. The application was taken up. The applicant was called but he is absent. Ordered that it be put up for verification on the date fixed."

19. The applicant avers that on account of the threats of the opposite parties he could not attend the court on 12-7-1954 but came to Allahabad on 10-7-1954 and filed the present application on 15-7-1954, He contends that the aforesaid conduct of the opposite parties amounts to gross contempt of court and prays that they be punished for the same according to law.

20. The opposite parties have filed separate but identical replies by counter-affidavits. The gist of their case is that the report lodged by the applicant on 25-6-1954 was really a report only against one man, Sheo Shankar of his having committed theft in the applicant's house in Teni; that the Station Officer Baqar Husain converted it into one under S. 342, I. P. C. as alleged by the applicant, in order to 'implicate Ram Manohar falsely because Ram Manohar had absconded and jumped bail in the 19 (f) Arms Act case; and that the applicant had been set up by others, meaning Station Officer Baqar Husain by implication, in order to frustrate the departmental inquiry instituted against the Station Officer for his attempt to implicate Ram Mahohar falsely. The details of their counter affidavits are the following.

21. The report was lodged on 25-6-1954 and the accused Ram Manohar and Sheo Shankar were produced before the Magistrate on 26-6-1954. Before they were sent to jail, they were separately interrogated by the D. S. P. as the Circle Officer concerned. It is alleged that this was done as a part of the routine duty of a Circle Officer to supervise the investigations in cases of all grave offences, such as dacoity, robbery and murder with a view to obviating the risk of innocent persons being victimised as a result of improper or insufficient investigation.

Ram Manohar is said to have told the D. S. P. that he had jumped ball in the 19 (f), Arms Act case and brought to the police station, Khaga by his surety on the morning of 25-6-1954. If so, it is averred, Ram Manohar could not have committed the alleged robbery on the evening of that date Sheo Shankar is alleged to have confessed to the D. S. P. that be had committed theft of a lota and Rs. 1/14/- in the house of Sheoraj on 25-6-1954 but was caught, the stolen things were recovered

from him and he was taken to the police station by Sheoraj, the said two chaukidars and one Gahru, and that Sheoraj related these facts to the Station Officer but the latter got the first information report recorded as he liked.

The D. S. P. brought these facts to the notice of the S. P., and the latter directed the former to make further inquiries into the matter and obtained a remand for 48 hours for the purpose. The remand was obtained, Station Officer Baqar Husain was sent for and he appeared before the D. S, P. on the morning of 27-6-1954. On being interrogated by the D. S. P., the Station Officer is said to have confessed that Ram Manohar had been brought to the police station by his surety, and that he was locked up with Sheo Shanker as he was a criminal.

Not satisfied with this explanation of the Station Officer, the D. S. P. went to Teni, the scene of the occurrence, taking Sheo Shankar with- him. He interrogated there the two Chaukidars, Ram Das, Gahru and Sheoraj, and they supported the aforesaid statement of Sheo Shankar. On 28-6-1954 the D. S, P. informed the S. P. of the result of his "inquiry. On the same day the S. P. ordered transfer of S. I. Baqar Husain to the police station at Fatehpur in order that the inquiry initiated by the D. S. P. might proceed without any risk of interference and manipulation by the Sub-Inspector.

22. The opposite parties aver in the counter-affidavits that they were informed on 29-6-1954 that a complaint had been filed by the applicant before the Judicial Magistrate, Kbaga, that the latter summoned the accused to appear before him on 12-7-1954 and that on 2-7-1954 the applicant approached the D. S. P. and as a part of the departmental enquiry held by the D. S. P., disclosed to him the circumstances in which he had been made to file the complaint.

These circumstances are the same as contained in the aforesaid application filed before the Judicial Magistrate on 5-7-1954. Thereupon, the D. S. P. professes to have advised the applicant to place the facts, if he so desired, before the Judicial Magistrate. On 6-7-1954 the D. S. P. is said to have submitted a report to the S. P., on the conduct of S. I. Baqar Husain, and the latter was suspended on 24-7-1954.

After the filing of the present application the applicant filed an application supported by an affidavit on 25-8-1954, and made a statement on 31-8-1954, before the District Magistrate, Fatehpur (to whose court the applicant's complaint had in the meanwhile been transferred). The opposite parties have filed copies of the affidavit and the statement.

The former is a lengthy document but the gist of it is that during the preceding 11/2 months the applicant had been kept in duress ay one Shital Dhobi, and that during this period he was taken to various places, including the houses of lawyers at Fatehpur and Allahabad and also the High Court, that the. Fatehpur lawyers tried to persuade him to make a statement in Court supporting the robbery case as set forth in the first information report but the applicant refused to agree to that and told him that he had already disclosed facts correctly to the D. S. P. at his (applicant's) house, and that at the High Court his thumb-impression was obtained on two written documents although he did state before the Allahabad lawyer and the latter's clerk that he the applicant) did not understand what it was all about and what the contents of those documents were.

The concluding portion of the affidavit is to the effect that, on an opportune moment presenting itself, the applicant made good his escape from the house of the Fatehpur lawyer, reached his village, sent his son Girwar to the S. P. to inform him how the applicant had been kept in confinement by Shital Dhobi for two months and attempts had been made during that period by the police to persuade him under threats to make a false statement.

The applicant's statement, dated 31-8-1954, before the District Magistrate was that the complaint which he had filed was false, that he had in fact filed no complaint and the lawyer had obtained his thumb-impression on the petition of complaint, that he was not administered oath in court nor was his statement recorded on the back of the complaint that he did not even come to court, and that he had already filed an applicaion on 25-8-1954.

On this statement, the District Magistrate passed an order on the same date (31-8-1954) discharging all the accused. Evidence was allowed to be produced by the parties in the present proceedings and, to complete the picture, it may be added that the applicant deposed here that he made no application (meaning the present contempt application) in this Court but some clerk took his thumb-impression on a paper in the High Court, and that he had neither engaged nor even seen any lawyer in Allahabad.

Referring to his own learned counsel, Sri P. C. Chaturvedi, who was examining him in-chief, he professed never to have seen him. He further stated that he had filed no complaint but the Station Officer had taken him to a lawyer at Fatehpur who was not paid anything by him, that neither he nor Ramdas made any statement in court but their thumb-impressions were taken by a clerk while the Magistrate was busy with his work. He also supported the opposite parties' case that the real occurrence about which he had lodged the report on 25-6-1954 was that of theft at his house by Sheo. Shankar, and that in respect of that occurrence he was interrogated by the D. S. P. at his house on the third day.

In connection with the aforesaid application dated 3-7-1954, purporting to have been filed before the Magistrate by one Ram Nath, the applicant stated that he did not know any Ram Nath, while he took full responsibility for the other application received by the Magistrate on 5-7-1954. He stated that he sent this latter application of his own accord through a constable and emphatically denied having done it at the instance of the opposite parties.

23. A few other facts, which are not in dispute, may be stated in their chronological order. The D, S. P. sent to S. I. Baqar Husain a written order dated 26-6-1954 informing him that he was mot satisfied with, his investigation and asking him to see him on 27-6-1954. The S. I. saw the P. S. P. on 27-0-1954, There is a difference between the statement of the S. I. and the affidavit of the D. S. P., as to what happened in this interview on 27-6-1954. As pointed out above, according to the D. S. P.'s affidavit the S. J. confessed to him that Rani Manohar had been brought to the police, station by his surety and that he had been locked up because he was a criminal; but the S. I. deposed that on being told by the D. S, P. that he had taken down the report incorrectly he (the S. I.) produced the two accused before him (the D. S. P.) and the accused adhered to the confessions which they had already made before him (the S. I.) of their guilt. On 28-6-1954, the S. P. ordered transfer of S. I. Baqar

Husain to the police lines at Fatehpur, and the S. I, reached the police lines on 29-6-1954.

The investigation was made over to Second Officer S. P. Singh. S.I. Baqar Husain remained in the police lines till 3-7-1954 on which date at about 2 P.M. he left for police station Chandpur under an order of the S. P., that he should remain within the limits of that police station. He was suspended by an order dated 24-7-1954 but reinstated by an order dated 29-11-1954. When he appeared here on 24-1-1955 he came from Kanpur district where he had been transferred.

There is one other set of facts which are material. On 26-6-1954 S. I. Baqar Husain dispatched the two accused Sheo Shankar and Ram Manohar to the district jail and they were produced before a Magistrate with two communications from the S. I. one for recording their confessions and the other for 14 days' remand.

The Magistrate granted, the remand till 10-7-1954 and, after administering the usual warning, directed that they be produced for the recording of their confessions on 28-0-1954. Before the accused could be sent to 'the Jail after the passing of these orders, and without making any reference to the orders, another Public Prosecutor obtained on the same date (26-6-1954) from another Magistrate 48.

hours remand to police custody for further investi gation.

Thereupon the D. S. P. directed the S. O. Kotwali to keep the accused in the police lock up. On the expiry of the 48 hours remand, Second Officer S. P. Singh, who had in the meanwhile been entrusted with the investigation of the Section 392, I. P. C. case, applied for further remand. There is a note of the D. S. P. to the public Prosecutor that a 3 days' remand was necessary which ends with the following request; "Please manage to take it."

The Additional District Magistrate sanctioned the remand, Further remands were obtained until a final report was submitted by the Second Officer under Section 169, Criminal P. C, and the accused were released on 27-7-1954.

24. It is in this setting of facts and circumstances that the present application has to be disposed of, and the broad questions that arise for determination are whether the applicant's allegations as to the conduct of the opposite parties in regard to his report and his complaint are correct and, if so, whether such conduct amounts to contempt of court.

25. Before entering into the merits of the applicant's allegations a legal issue, raised and strenuously urged by the learned counsel for the opposite parties, must needs be disposed of. The issue, raised was: Whether the applicant's affidavit is not legal evidence and should not therefore be looked into for the disposal of the present application?

The argument of the learned counsel was that if his contention as to the inadmissibility of the affidavit be accepted, there would be nothing left on the records in support of the allegations contained in the present application. Neither of these contentions fa well-founded. In the first

instance, the affidavit is admissible in evidence, and, in the next, even if it were not, there exist circumstances in this case which speak more eloquently against the opposite parties, specially the D. S. P., than any direct evidence could.

And in this context the following quotation from Best's Principles of the Law of Evidence, Eleventh (1911) Edition, at page 309, where the learned author deals with the comparative probative values of direct and circumstantial evidence, is most apposite:

> "Besides, the rule that facts are provable by circumstances as well as by direct testimony, has a considerable effect in preventing guilty or dishonest parties from tampering, or making away with witnesses, and other instruments of evidence, which they would be more likely to do, if they knew that the only evidence which the law would receive against them was contained in a few easily-ascertained depositories."

It may be that the rule extolled by the learned author has failed to serve its preventive purpose in the present case, but that does not take away from its efficacy as a mode of proof.

26. The learned counsel for the opposite parties took his stand on the preamble (Section 1) to the Evidence Act, 1872, where it is laid down that the Act does not apply to affidavits presented to any court. He sought to conclude therefrom that affidavits are not a mode of proof. He further argued that under the Rules of the Court an affidavit serves only to initiate proceedings, and that material facts contested between the parties can be proved during the proceedings only by viva voce evidence and not by affidavits.

Now, to say that the Indian Evidence Act does not apply to affidavits is not the same thing as to say that affidavits are not evidence. The same preamble which lays down that the Act does not apply to affidavits contains, in my opinion, also the reason for its saying so; for, it also provides that the Act applies to all judicial proceedings in or before any court. Evidence viva voce is no doubt taken in judicial proceedings in or before a court, so that it is possible for the Judge presiding over the Court to central that evidence.

For instance, the Judge will disallow inadmissible evidence or leading questions in examination-in-chief. But affidavits, while there appears to be no bar against it, are generally not sworn before the Court jn which they are used, but before some other Court or person empowered to administer oath. See Section 139, C. P. Code and Section 539, Criminal P. C. The aforesaid control of the Court over the deponent according to the rules of the Evidence Act is therefore not possible in the case of an affidavit. That appears to be the reason' why the preamble to the Act lays down that it does not apply to affidavits.

27. At the same time, although the Evidence Act does not apply to affidavits, there is no doubt that affidavits are used as a mode of proof. See, for instance, Section 51, Divorce Act, 1869, which permits a party to verify his case by affidavit, except that the opposite party has a right to cross-examine him whereafter he may also be re-examined.

Likewise, Section 30(c) of the C. P. Code empowers a Court to order any fact to be proved by affidavit, and under Order 19, Rule 2, of the Code the deponent may be ordered to attend for cross-examination. Affidavits are mainly used on interlocutory motions, that is, "on any application to a court which if granted would not finally decide the rights of the parties'. And the obvious reason why the Court acts on affidavits on interlocutory applications is that no other evidence is obtainable at so short a notice.

-- 'Gilbert v. Endean' (1878) 9 Ch D 259 (K). Rule 12 of Chapter IX of Vol. I of the Rules 06 Court, 1952, enumerates such applications, including one praying that a person be punished for contempt of court which must be supported by affidavits. It would thus appear that affidavits are certainly used as a mode of proof though only at the initial stage of an interlocutory matter. The opposite party may file a counter-affidavit or it may demand attendance of the deponent of an affidavit for cross-examination.

If he does neither, the affidavit, used initially to start proceedings, will become evidence in the fullest sense against him. If, on the other hand, the deponent of an affidavit does not produce himself for cross-examination in response to the demand of the opposite party, it will be denuded of all probative value. Judged in the light of these elementary principles of the law of evidence, it cannot be said that the present applicant's affidavit was reduced to a mere brutum fulmen after initiation of the present proceedings on its basis, for the applicant did produce himself as a witness and was subjected to cross-examination. As to what weight may be attached to the affidavit is quite another matter.

28. Reverting now to the applicant's allegations against the opposite parties, they relate obviously to two stages, the stage after the lodging of the report dated 25-6-l954 but before the complaint was, filed on 29-6-1954, and the stage after the filing of the complaint. His allegations relating to the first stage are that both the S. P. and D. S. P. took a, strange attitude from the very beginning, and that as soon as the former came to know mat the case under Section 392, I. P. C., had been registered and the confession of Ram Manohar had been recorded in the case diary, he got enraged with the Station Officer and scolded him for registering the case.

The applicant's allegations relating to the second stage are that as soon, as the opposite parties came to know of the filing of the complaint, they decided to stiffle the prosecution, & that in order to achieve this object they had him arrested and brought to Fatehpur, put pressure on him to withdraw the complaint and, on his refusing to yield, forcibly took his thumb-impression on blank papers and sent one of them to the trying Magistrate.

The document has been reproduced above and was found on the record of the case. Its purport was that the applicant had filed no complaint against anybody but the Station Officer had forcibly obtained his thumb-impression on it and it ended with the prayer that it be dismissed. The reply of the opposite parties is that as a result of the routine inquiry made by the D. S. P. from various persons, including the applicant himself, it was found that only a theft had been committed at the applicant's house by Sheo Shankar but in order to implicate Ram Manohar falsely S. I. Baqar Husain had engineered a report of an offence under Section 392, I. P. C., and that thereupon the D. S. P. had

advised the applicant to bring the facts to the notice of the trying Magistrate. The implication is that the applicant himself was the author of the said communication.

29. In the present proceedings the applicant and S. I. Baqar Husain were produced as witnesses in support of the application, while four witnesses were produced by the opposite parties. Of these two (Ramdas and Gahru) were produced in support of the version that it was only a case of theft by Sheo Shankar, and the other two (Matauwa and Ramdhani) to prove that Ram Manohar had been arrested and taken to the police station at the instance of his surety.

30. Now, so far as the present proceedings are concerned, it is quite unnecessary to decide whether only, a theft was committed, as the D. S. P. purports to have found on inquiry, or whether the report as taken down by S. I. Baqar Husain was the correct version of the occurrence. The proper forum to decide that question was the Magistrate who had seisin of the complaint filed by the applicant on 29-6-1954.

It is therefore unnecessary to examine the oral evidence produced in the present proceedings from that point of yiew. The said complaint did not however take the normal course complaints do of being adjudicated upon on merits after the summoning or the accused and the recording of evidence pro and contra. Two applications of diametrically opposite natures were filed before the trying Magistrate before the date for which the accused had been summoned, one purporting to be by one Ram Nath complaining that the police at the headquarters were trying to stifle the prosecution, and the other purporting to be by the applicant himself asking the Magistrate to dismiss the complaint because it had been engineered by S. I. Baqar Husain.

This latter prayer was reiterated before the District Magistrate in the applicant's application and affidavit dated 25-8-1954 and in his statement dated 31-8-1954 so that the District Magistrate thought that no useful purpose was likely to be served by proceeding further with the case and discharged the accused. The question for consideration in these proceedings is whether the situation which led to the passing of his orderly the District Magistrate was a culmination of events taking their normal and 'natural course, or it had been artificially brought about by the 'opposite parties or any one of them.

If the latter, the acts of the opposite parties, or the opposite party concerned, as the case may be, amounted to an interference with the course of justice in connection with an inquiry into a criminal offence pending before a Magistrate, and will therefore be punishable as contempt, irrespective of what the result of the inquiry might have ben, -- 'R. v. Parke', (1903) 2 KB 432 at p. 442 (L); and -- 'R. v. Davis', (1906) 1 KB 32 at p. 42 (M)'.

31. The situation which led to the passing of the District Magistrate's order dated 31-8-1954 could have been the culmination of events taking their normal and natural course if the application and affidavit dated 25-8-1954 and the statement dated 31-8-1954 could possibly be ascribed to the applicant's own volition. A careful scrutiny of the contradictory parts played at various stages by the applicant however makes it impossible to come to any such conclusion.

His lodging of the report on 25-6-1954, filing of the complaint on 29-6-1954 and presentation of the present application on 15-7-1954 betray one state of mind, but diametrically opposed to that is the state of mind betrayed by the application received by the trying Magistrate on 5-7-1954, his application and affidavit dated 25-8-1954, his statement before the District Magistrate on 31-8-1954 and his statement dated 24-1-1955 in the present proceedings.

Police investigation had hardly had time to complete itself on the report of 25-6-1954 when a complaint was hurriedly filed on 29-6-1954. It is interesting to note the reason given in the present application for filing the complaint the reason, that is, that the opposite parties adopted a strange attitude from the very beginning and the S. P. scolded the Station Officer for having registered the case under Section 392, 1. P. C. How, in the words of the present application, did the applicant, a 'dhobi of village Teni; come to know 'of these developments' between the said police officers passes one's comprehension. Thereafter, it is alleged in the present application, the applicant could not attend the Magistrate's court on 12-7-1954 due to the greats of the opposite parties, but he had courage enough to come to Allahabad and file the present application on 15-7-1954 and then gq back to his village.

Within a month and a half of the presentation of this application the applicant filed an application in the Court of the District Magistrate, supported by an affidavit, on 25-8-1954, and made a statement in that court within a week of that, all of which set at naught the complaint dated 29-6-1954 and the "present contempt application. On 24-1-1955 the 'applicant presented the strange spectacle of making a statement in this Court which falsified his own case and supported that of the opposite parties.

He did not even recog'nise his own counsel. He emphatically denied having filed at the instance of the opposite parties the application received by the Magistrate on 5-7-1954. Asked in cross-examination whether the opposite parties had threatened him, or whether anybody had beaten him at the police station Fatehpur, he answered both the questions" in the negative even before the questions had been completed.

32. Thus, there can be no manner of doubt but that the applicant has been alternately playing into the hands of two contending parties. There can also be no doubt that these contending parties were S.,I. Baqar Husain on the one hand and the opposite parties, or at least the D. S. P., on the other. As soon as S. I. Baqar Husain found that the investigation was going out of his hands, he got the complaint filed by the applicant on 29-6-1954.

It was he who was obviously the source of aforesaid reasons contained in the present application for filing the complaint. After the S. I. had been ordered to the police lines the applicant admittedly came into contact with the D. S. P., and that contact admittedly resulted in the -filing of the said application before the Magistrate on 5-7-1954. What hand, if any, had the opposite parties, or any of them, in the filing of that application, will be dealt with presently.

The S. I. left for Chandpur on 3-7-1954, but somehow he succeeded in getting the present application filed by the applicant on 15-7-1954. After that control of affairs passed exclusively into

the hands of the opposite parties, and that control has exhibited itself in the attitude taken by the applicant first in the court of the District Magistrate and then in this Court.

The attitude adopted by the applicant in the District Magistrate's court resulted in the dismissal of his complaint, and those interested in such a result must have counted a lot on his attitude in this Court for the dismissal of the present complaint. But evidently they reckoned without the said golden rule of circumstantial evidence enunciated by Best in his treatise on evidence.

33. The persons interested in the dismissal of the present application are naturally the opposite parties. They, or at least one of them, must therefore obviously be the force behind the suicidal statement made by the applicant in the present proceedings. The opposite parties were, or at least one of them was, also vitally interested in the dismissal of the aforesaid complaint. This is evidenced by the part played by the D. S. P. from the very beginning. He professes to have done it as part of the routine duty of a Circle Officer to supervise the investigations in cases pf all grave offences. That is in deed a claim of perfection, but even supposing that this D. S. P. was such an ideal officer, this petty case of a robbery unattended with violence could hardly be described as a grave offence. And all that has come to light in the present case would show that it was something else than the gravity of the offence which attracted his attention, The report was lodged at Khaga on. 25-6-1954, and Ram Manohar and Sheo shankar were produced before a Magistrate at Fatehpur on 26-6-1954 with two applications of S. I. Baqar Husain, one for 14 days remand and the other for recording the confessions of the accused. The Magistrate administered the usual warning to the accused and directed them to be taken to jail and to be produced before him for the recording to confessions on 28-6-1954.

The D. S. P. all of a sudden interposed himself at this stage. He sent an order to S. I. Baqar Husain on 26-6-1954 to see him on the following day because, he said, he was not satisfied with his investigation. This step the D. S. P. professes to have taken because, before the accused could be taken to jail in compliance with the aforesaid order of the Magistrate, he had interrogated the accused and found that facts were different from what appeared in the report.

This was an interesting situation indeed. According to S. I, Baqar Husain the accused were going to make confessions, but according to the D. S. P. the accused complained to him that they were being falsely implicated. It does not appear how within less than 24 hours of the lodging of the report the EX S. P. had come to know what its contents were. He had not gone to Khaga. The accused would not know that the S. I. had manufactured a false report against them.

In this connection it is pertinent to refer to the statement of S. I. Baqar Husain. He deposed that Ram Manohar had confessed to a number of dacoities, that in this confession he had implicated certain relations of a lawyer of Fatehpur (who need not be named), including Ram Dhani, and that this Vakil saw the D. S. P. on 26-6-1954. Ram Dhani has stated that it was not true that Ram Manohar had made a confession implicating him.

This statement is unworthy of credence on the face of it since Ramdhani would not know that Ram Manohar had made any confession before the police. Ramdhani has however admitted being a

relation of the said lawyer. S. I. Baqar Husain stated further that the D. S. P. made a mention of the said lawyer having seen him on 26-6-1954 in his report of inquiry against him (the S. I.). A report of this inquiry was admittedly made, but it was not filed to contradict the said statement of the S. I. In fact, the S. I. was not even cross-examined with regard to his statements that Ram Manohar had implicated the lawyer's relations and that the lawyer saw the D. S. P. on 26-6-1954. In the circumstances, the only source of D. S. P.'s information as to the report that had been lodged on 25-6-1954 appears to have been the lawyer, and this lawyer would be naturally interested in preventing Ram Manohar from implicating his relations.

34. It would thus appear that it was this interview of the said lawyer with the D. S. P. on 26-6-1954 that was behind the sudden interest which the D. S. P. started taking in the case since that date. And this is confirmed by the subsequent activities of the D. S. P. which were all directed towards preventing Ram Manohar from making a confession. A police officer in the D. S. P.'s situation should have allowed the accused to be taken to Tail on 26-6-1954 and then, in compliance with the Magistrate's order, to be produced for their confessions on 28-6-1954 in order to see which of the conflicting versions was the true one.

That way, however, lay the danger of Ram Manohar implicating; the said lawyer's relations. In the teeth of the aforesaid order of the Magistrate, the D. S. P. secured an order of remand of the accused to police custody from another Magistrate.

That it should have been possible for the D. S. P. to do so is an extremely sad commentary on the then administrative machinery of the magistracy of the district qf Fatehpur, besides its showing to what extent this officer could go.

The anxiety he betrayed in this connection is worthy of note. When 48 hours remand to police custody was sanctioned by the other Magistrate on 26-6-1954, the accused would naturally have been kept in police custody for that period. But conscious presumably of the fact that magisterial orders were capable of being thwarted, the D. S. P. passed an order directing the S. O. Kotwali to keep the accused in lock up.

When the 48 hours remand period expired, it would have sufficed for the D. S. P. to ask the Public Prosecutor to apply for further remand. "Please manage to take it" is, however, what the D. S. P. wrote to the Public Prosecutor. Several further remands were taken. Incidentally, in none of the orders authorising detention of the accused in police custody did the Magistrate record his reasons for doing so, as was imperative under Section 167 (3), Criminal P. C. The upshot bf it all was that the second officer, to whom the socalled investigation had been made over by the D. S. P., eventually submitted a final report under Section 169, Criminal P. C., and both the accused were released on-27-7-1954. Surprisingly enough, this final report was submitted in respect of Sheo Shankar also in respect of whom it is even here the case of the opposite parties that he was guilty of an offence punishable under Section 380, I. P. C. And be it noted that a judicial inquiry against the accused had already started on 29-6-1954 and had not yet come to an end. The D. S. P. however had apparently no faith in a judicial inquiry and decision and thought that a parallel police investigation and final report were the proper substitutes for the same. This conduct of the D. S. P. by itself amounted to

gross contempt of court.

35. It is said in the D. S. P.'s counter-affidavit that on 27-6-1954, S. I. Baqar Husain confessed to him that Ram Manohar had really been brought to the police station by his surety and that he (the S. I.) locked him up with Sheo Shankar as he was a criminal. The S. I. however denied it in his statement in this Court and deposed that on being accused of having recorded the report incorrectly he produced the accused" before the D. S. P. and the accused adhered to their confessions.

It is incredible that the S. I. should have made the confession attributed to him in the D. S. P.'s affidavit. If any such confession had been made, the so-called inquiry into the conduct of the S. I. should have come to an end then and there and the D. S. P. should have made a report to the S. P. on the basis of that confession. But the D. S. P.'s affidavit is that even after that confession he went to village Teni and interrogated witnesses. It may be mentioned here in passing that no written record of the inquiry was maintained by the D. S. P.

36. In the light of the facts and circumstances mentioned above, there could be no doubt but that it was the D. S. P., and not the automaton, the present applicant, who was behind the application received by the Magistrate on 5-7-1954. Many were the somersaults taken by the applicant, and since sometime before presentation of the application before the District Magistrate he has been under the undoubted sway of the D.S. P. It is no wonder therefore that in his statement before this Court the applicant said that he himself was responsible for that application. Similar applications were sent to the S. P. and the District Magistrate also. The applicant's statement in this connection is however most unconvincing. He says that as it was evening time and the following day was a Sunday and he was returning home, he handed over the applications to a police constable with Rs. 6/-.

What this sum of money was meant for does not appear. None of the applications; at any rate; bore any court-fee labels. Asked as to what the name of the constable was, the applicant stated that he did not know it but that he was related to one Ramanand Sunar of his village, who was employed in the police department at Lucknow, and used to come to is village. Obviously, this was an attempt to explain away the unfortunate note appearing in the order sheet of the Magistrate that the application had been received in a close wrapper through a constable.

The actual words used, of which "close wrapper" is a translation, were "bund kaidak". A "bund kaidak" is used for transmission of official correspondence and would not be available to a private person like the, applicant. There is no reason why the applicant himself should not have presented the application before the Magistrate. Indeed, it would nave been the most natural thing for him to do.

He made over the applications instead to a constable although he did not even know' his name. The constable was named because otherwise the falsity of his statement would have been proved. The D. S. P. admits that on 2-7-1954 he had come to know of the facts which form the contents of the said application, although he adds that he advised the applicant to place those facts before the Magistrate.

The tell-tale note in the order sheet of the Magistrate, the unsatisfactory statement of the applicant and the other surrounding circumstances referred to above, however, clearly shpw that it was the D. S. P. who was behind the application sent to the Magistrate. Had the D. S. P. stated that his only part in the affair was that he had the application presented before the Magistrate the situation might have been different, for if the contents of the application reflected what was in the mind of the applicant it mattered not that the D. S. P. or his man acted as the messenger.

But, apart from the other reasons mentioned above, the fact that he completely washes his hands of the whole affair goes to prove his full complicity in it. It was suggested that S. I. Baqar Husain may have sent the application through a constable. That suggestion would not however stand a moment's scrutiny for the S. I. could not possibly be a party to an application which would cut at the very root of his case.

37. In the result, therefore, I am satisfied that the eventual dismissal of the applicant's complaint was not the result of the events taking their normal & natural course but had been artificially brought about by the D. S. P. There are strong reasons to hold that the D. S.P.. wanted to screen the relations of a certain lawyer, that there was a danger of those relations getting involved if Ram Manohar made a confession or a statement in court, and that therefore he bit upon the course of getting a final 'report made in the police investigation into the report lodged by the applicant and of getting the applicant's complaint dismissed.

But whatever may have been the D. S. P.'s motive, there is no doubt that, he did prevent the police investigation into the applicant's report and the magisterial inquiry into the applicant's complaint taking their normal course and stifled both. He even tried to stifle the present application. This conduct of the D. S. P. amounted, as adverted to above, to an 'interference with the course of justice and is punishable as contempt of court irrespective of what the, ultimate result of the inquiry might have been.

Such conduct would be reprehensible in any man, but it would be much more so in the case of one holding the responsible office of a D. S. P. I am of the opinion that D. S. P. Hari Singh is guilty of contempt of courts subordinate to this Court, viz., the court of the Judicial Magistrate Fatehpur, where the applicant's complaint dated 29-6-1954 was filed and remained pending until transferred, and of the court of the District Magistrate Fatehpur where the said complaint was transferred and eventually dismissed, the contempt in question not being an offence punishable under the Indian Penal Code.

It is not possible to attribute the said interference with the course of justice to any act of the S.' P. There can, however, be no gainsaying the fact that at no stage did he try to sift matters and exercise his independent judgment but allowed himself throughout to be led away by the ipse dixit of the D. S. P. He was either too supine or no judge of men and affairs.

Had the S. P. exercised vigilance expected of the head of the police force of a district, not of course the kind of vigilance displayed by the D. S. P., interference with the course of justice might have been, avoided.

BY THE COURT

38. In the result, the application is allowed in respect of the Deputy Superintendent of Police Hari Singh but dismissed in respect of the Superintendent of Police A. P. Batra. The Deputy Superintendent of Police Hari Singh is fined Rs. 500/-. In default of payment of fine, he will suffer simple imprisonment for 11/2 months. He will also pay Rs. 500/- as costs to the Government Advocate. The applicant Sheoraj and the Superintendent of Police A. P. Batra will bear their own costs.

Desai, J.

39. There is no justification for certifying this as a fit case for appeal to the Supreme Court. I am authorised by my brother Chowdhry to say that he concurs in this. The application for certification is refused.