Delhi High Court
Vikas Yadav vs State Of Uttar Pradesh [Along With ... on 9 September, 2003
Equivalent citations: 2003 VIIIAD Delhi 299, 108 (2003) DLT 357, 2004 (72) DRJ 13, 2004 (1) JCC 43
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Bench: J Kapoor
JUDGMENT J.D. Kapoor, J.

1. These are the petitions arising out of case no. 78/2002 under Section 364/ 302 / 201 IPC read with Section 34 IPC, Kavi Nagar Police Station, Ghaziabad, seeking transfer of the case under Section 407 Cr.P.C., pending before the Court of Sh.S.N. Dhingra, Addl. Sessions Judge to any other court of competent jurisdiction. It is pertinent to mention that earlier to these petitions, the petitioners had also moved a similar petition before this court which was dismissed with sombre advice by his Lordship Justice R.C. Chopra to the learned Additional Sessions Judge that judges trying criminal cases should neither be too vocal nor to be excited in making observations or comments which may have tendency to send wrong signals to the parties.

2. This case which was transferred from U.P. to Delhi by the orders of the Supreme Court, was assigned for trial by the District and Sessions Judge of Delhi to the learned Additional Sessions Judge, Sh. S.N. Dhingra.

3. The earlier petition was a result of various incidents that took place during the proceedings which allegedly caused serious apprehension in the mind of the petitioners that they may not get a fair trial. Some of the incidents that took place since 20th January, 2003 detailed in the said petition were like this:-

(i) That at the very inception, the Honourable Judge was making wild allegations in the court that the events in Madhya Pradesh have been managed by the applicant/accused, though the various proceedings which were initiated in Madhya Pradesh, were judicial proceedings.

(ii) That during the course of arguments, the Honourable Judge had made avoidable remarks like he is the person who has convicted politicians like Kalpanath Rai and he knows how to deal with person like the petitioner.

(iii) That 21st January, 2003, the persons responsible for taking the photographs were to appear in the Court and since they were not present, the court suo moto stated that it would exhibit the photographs in the absence of the photographer as there was no need for the accused to dispute their presence on the spot. That the counsel for the accused objected to the exhibiting of the photographs in the absence of the photographer when the court remarked that if they are disputing their presence at the place where the marriage took place, then in a few days time, several witnesses will come who shall depose to the contrary.

(iv) That again on 21st January, 2003, the DNA expert from Kolkatta Dr. Sharma, was to appear in the court pursuant to the summons issued to him. That he not only did not appear in the court, but

he did not send also any person conversant with the facts of the case to depose on his behalf. The Honourable Judge waived his presence purportedly in terms of Section 293 Cr.P.C. and also directed that the documents be exhibited and that in the event the counsel for the accused wants to cross-examine the doctor, he should move an application specifying the reasons/grounds on which he would like to cross examine the DNA specialist. That it was brought to the notice of the court that the papers sent by the DNA expert were incomplete papers and therefore, should not be exhibited more so in the absence of the expert. The crucial data which is a genotype Gel which is a film on the basis of which the expert can come to certain conclusions, was not sent to the court and therefore, the counsel insisted that the aforesaid documents be directed to be produced in the court. The Honourable Judge overlooked the plea and did not even record the objections raised by the counsel for the applicant/accused. That it is pertinent to mention that until the genotype gel is placed on record, the accused will not be in a position to verify the genuineness/authenticity of the various calculations made by the doctor, as these calculations are merely, typed print outs without revealing the source from which the figures have been extracted. That in these circumstances, the accused will be deprived of a valuable opportunity of cross examining the doctor and also of the opportunity of testing the genuineness of the entries made in the report. That in such a situation the accused will be deprived of fair and impartial trial.

(v) That on 22.01.2003 when the matter came up for evidence the question arose as to whether on the next date 23.1.2003 the witness will be produced in the court in view of the Republic Day Rehearsal. It was made clear to the court that in the evidence the witness come on 23.1.2003, their statements should not be recorded in the absence of the accused in terms of Section 273 Cr.P.C. On 23.1.2003, the counsel for the accused was present in the court since morning, but the Honourable Judge arrived in the court only after 12 p.m. Presumably because of the serious traffic jam emanating from the Republic Day Rehearsal. That two witnesses, namely Zameer and Zarif who were present in the court in the morning and who were there till 12 o'clock, left the court, and an impression was created by the court that the two witnesses left the court at the instance of the accused persons, and various newspapers lapped up the said impression and carried this news. One Mudassar Ali who is a witness for the day, got his statement recorded in examination in chief, despite the protests from the counsel for the accused that his Statement should not be recorded in the absence of the accused in terms of Section 273 Cr.P.C., the Honourable Judge rejected the plea, of the counsels for the applicant/accused who expressed their disinclination to cross-examine the witness, in the absence of the accused persons. Later, in the interest of justice, they cross examined the witness and requested the Honourable Court that subject to further instructions, from their clients, they may be given an opportunity to recall the witnesses for further cross-examination. The Honourable Court directed that no such liberty is required as they are always free to make such application. That suprisingly, on 27.1.2003, when one such application was moved by the counsel for the accused, the same was declined by the court on the ground that the reasons/points on which she should be cross examined, should be disclosed to the court. It is paradoxical to note that on the same day, about 15 fresh witnesses were included by the Prosecution for being examined and even additional evidence on Finger Prints has been introduced, though the examination of these witnesses may change the very course of the case.

4. Relevant observations of Justice R.C. Chopra are as under:-

"Transfer of a case from one court to another should not be made lightly as it has a demoralizing effect on the concerned Judicial Officer also. It is the need of the hour that criminal cases are handled firmly so that the confidence of general public in the administration of justice is preserved but the Judges trying criminal cases should neither be too vocal nor too excited in making observations or comments which may have the tendency to send wrong signals to the parties. Orders passed by the Court should always be well considered and balanced so that the justice is not only done but it should also be seen to have been done. Judicial discipline and Court decorum must be maintained in all situations. It should be remembered that sobriety and equilibrium are judicial ornaments of a Judge. A Judge may be the master of his court but he remains a servant of law."

5. Counsel for the petitioner states that the above advice of the High Court has not been taken by the learned ASJ kindly as the manner in which he is conducting the proceeding has left no doubt in the mind of the petitioners that evidence or no evidence, the learned ASJ is bent upon to convict them. He further contends that the learned ASJ does not follow the mandatory provision of law governing the trial and recording of evidence and throws every canon or tenet to the wind. Some of the instances referred and relied by the learned Counsel are as under:-

(i) "The Ld. Addl. Sessions Judge, Sh. S.N. Dhingra has been on various occasions disallowing cross examination of important witnesses like Raj Ajay Katara, Nilam Katara, Brij Bhushan, and S.I. J.K. Gangwal, by the counsel of the accused. Whereas in the case of prosecution witnesses, they were allowed mechanically. The prosecution witness were allowed in the absence of the accused, in violation of the basic principles of law and jurisprudence.

(ii) The Ld. Addl. Sessions Judge, Shri S.N. Dhingra has developed a penchant for teasing the defense lawyers appearing in this case, as a consequence of which, many reputed and seasoned lawyers who had earlier appeared in the case, have declined to continue with the brief.

(iii) That in this context, Article 22(1) of the Constitution of India is reproduced herein for ready reference:-

"22. Protection against arrest and detention in certain cases- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

(iv) That the Honourable A.S.J. in flagrant violation of the Constitutional Guarantee, on 6.5.2003, shouted at the Counsel for the petitioner with the following remarks:-

"Get out of my court." When the counsel protested at the misbehavior of the Judge, he modulated his words, with the following remarks, "Please go out of my court." The counsel then pointed out to the court that it appears that the learned A.S.J. does not want the counsel to represent his client. The Ld. Judge retorted "You need not come to my court."

(v) That all these comments emerged from the Ld. Sessions Judge , when the counsel pointed out to the Ld. Judge that no burden should be caste upon the defense counsel to produce prosecution

witnesses, even if the said witness happens to be the sister of the accused person who is incidentally in London while the accused is in judicial custody. That the Ld. Judge had earlier i.e. On 3.5.2003, passed inter alia the following orders:-

"Bharti Singh, who is sister of accused persons, she had been cited as a witness and her summons have come back with report that she has been sent to England for studies, it has also come in the statement of witness that on the very day of incident, she was sent to Faridabad. This court though shall send summons to Bharti, but since it is duty of defense counsel shall produce Bharti in court of their own on next hearing and it is also made clear that if she is not produced of their own, it would be considered that she is deliberately being withheld from court and this court no doubt shall send summons to this witness through High Commission in U.K. but she being sister of one of the accused and cousin sister of other and allegedly author of these documents is an important witness even if she turns hostile and I believe that counsel for accused persons, shall be enough fair to counsel their client to produce this witness in court. Shri Bharati, Adv. states that counsel should not be dragged in this exercise but I consider that counsel for accused is laso an officer of the court and e is equally important in reaching at fair decision of the case, and therefore, it is equally important duty of the counsel to assist the court and advise their client. Objection is over-ruled."

(vi) When the statutory position was mentioned to the Judge that it is the duty of the prosecution to produce the Prosecution Witnesses and not of the defense, the Ld. ASJ, reacted as stated in para 7 supra.

(vii) That on 17.3.2003 when the case came up for Trial before the Ld. ASJ, it was pointed out to the court inter alia, that "there were certain observations in the judgment of the Honourable Supreme Court regarding the Bail Application and that after perusing the entire order, it may be advisable to approach the Honourable supreme Court for clarification of the said Order as it is the Supreme Court alone which can amend or modify its own Order and therefore, the petitioner informed the ld. ASJ that they would be approaching the Honourable Supreme Court with appropriate applications for modification which applications would be moved on the 24.3.2003 itself as the Honourable Supreme Court was during the said period closed for Holi Holidays and sought abeyance of the proceedings till 27th March, 2003.

(viii) The Ld. A.S.J. directed the petitioner's counsel to first move application on these lines which was moved and a copy of the said Application dated 17.3.2003 for the sake of ready reference is marked and filed hereto as Annexure-E. The Ld. ASJ twisted out of context both the applications filed by the petitioner as well the oral submissions and passed an order dated 17.3.2003 in which it was inter alia mentioned, "I consider that the request made by the learned counsel for the accused person is unjustified, unfair and unbecoming of professional ethics of advocates."

(ix) The Honourable Supreme Court noted the error in its Order and clarified that the Bail Application pending in the Allahabad High Court would stand transferred to the Delhi High Court and also gave liberty to the petitioner that he may directly approach the Delhi High Court with the bail application. It was also mentioned in the said Order that "In the order passed by this Court on March 3, 2003, it is stated the transfer application was allowed. It is made clear that this Court,

never intended to transfer the Sessions Case pending before the Additional Sessions Court, New Delhi to any other court. The Transfer Petition (Cr.) No. 65/2003 is disposed of accordingly."

(x) That on various occasions, it was the Ld. ASJ who terrorized the lawyers, though in the Order sheet, he would state to the contrary and would openly proclaim that "the pen is in his hands."

6. It is contended by the learned Counsel that without any rhyme or reason, the Ld. ASJ has developed the habit of passing any adverse remarks against the counsel for the petitioners which are lapped up by the press so that adverse publicity is given to the counsel for the petitioners and has been terrorizing the witness like passing comments like against one witness, the Ld. ASJ openly remarked "You are a peculiar witness, I will see you".

7. It is further contended that the prejudice of the court is further implicit from number of court questions which were put to witnesses to fill in the lacuna of the prosecution case, and to extract some thing prejudicial to the interest of the accused in such case, the counsel for the petitioners submitted to the Ld. ASJ that the Ld. ASJ was indulging in cross examination and was playing the role of a prosecutor and that since certain new adverse facts were sought to be extracted from the witnesses, the defense counsel should be given opportunity to further cross examine the witnesses. The Ld. ASJ in many cases rejected the objection and at times it even refused to record the objections.

8. Learned counsel has referred to an English case Jones Vs. National Coal Board from (1957) 2 QB 55 Lord Denning's famous Book `The Due Process of Law' where a trial Judge had been intervening and interrupting too much by cross-examining the witness that it made it impossible for the counsel to put his case properly. Observations made in various judgments on this aspect as referred by the counsel are:-

"(i) In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries.

(ii) Justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations. ((1945) 1 All ER 183)

(iii) The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repitition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well. Lord Chanceller Bacon spoke right when he said that :"Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal". (Jones V National Coal Board) (1957) 2Q B 55)

9. Series of many more instances have been culled out in the petition as to the way the objections as to the admissibility and mode of exhibiting and proving the documents adopted by the Ld. ASJ. Glaring instance cited by the Counsel was that when Ajay Kumar P.W. 31 who was having a white membranous lining on his right eye, which he covered by wearing a black cooling glass was requested to remove the said glass for court observation in this point and consequential question, the judge directed him not to remove the glass and further ordered he need not answer any question on this aspect. Then when Mr. Katara appeared to furnish superdari bond, the court took him by surprise, made him a court witness and cross examined him at length. All this took place in the absence of the accused. Then when Satinder Singh a police driver was asked to produce the log book, the Court objected to it, on most untenable grounds.

10. Learned Counsel further contended that not only in this case but in the past also the said ld. ASJ has been adopting his own procedure unknown to the legal provision in trial of Criminal cases. Couple of instances referred by the Counsel are as under:-

(i) In Kalpanath Rai v. State (Through CBI) , Supreme Court made the following observations when the ld. ASJ took out letters sent by the accused from the jail from his pocket and used them as evidence against the accused in his statement under Section 313 Cr.P.C:-

"61. Learned Judge of the Designated Court has relied on two letters which he had received presumably from A-7 while the accused was languishing in jail during the pre-trial period. Learned Judge while questioning A-7 under Section 313 of the Code whisked out those letters from his pocket, marked them as Exs. DA-7/1 and DA-7/2 and asked the following question:

Question : You had submitted to this Court documents Exs. DA-7/1 and DA-7/2 under your signatures. What have you got to say?

"Both documents bear my signatures. They were prepared by my brother and my representatives but I had signed them without reading them. They were submitted to the court on my behalf but I was not having any knowledge whether these have been submitted to the court or not."

The above letters, read as a whole, were in substance a litany of his innocence. Such as:

"My lord, Sir, I suffered all these 9 months for not being guilty. Sir, I have a family. I have only a small dream, to lead a good life with my family without any overambitions.

With pain and sorrow I request you to please take appropriate actions against the people who tell and spread the untold story which you or CBI was never told because that is an assassination of the character of a person who does not know anything or did not do anything wrong. My Lordship, I have never even heard the names of A-1 to A-6, or met them in my life before I came to jail. In the name of Jesus I can assure you these things. My Lordship, I am swearing in the name of God, I am an innocent man, and I look for your mercy and justice.

Please relieve me from this agony and pain. If not, I do not think I can take all these things for long. Please have pity on me."

But the unfortunate aspect is, learned Judge has extricated one sentence out of those letters and used it as though it was part of prosecution evidence against the accused and jettisoned the entire remaining bulk of the letters which are lengthy supplications for kindness and mercy."

62. It was illegal on the part of the learned Judge of the Designated Court to have used any part of the said letters, especially when those letters were not adduced as evidence in the case through any procedure known to law. Not even an affidavit has been filed by anyone at least for formally proving those letters in evidence. Section 313 of the Code is intended to afford opportunity to an accused "to explain any circumstance appearing in the evidence against him". It is trite that an accused cannot be confronted during such questioning with any circumstance which is not in evidence. Section 313 of the Code is not intended to be used an an interrogation. No trial court can pick out any paper or document from outside the evidence and abruptly slap it on the accused and corner him for giving an answer favorable or unfavorable. The procedure adopted by the learned Judge in using the said two letters is not permitted by law. We, therefore, disapprove the said course and dispel the said letters book, bell and candle.

(ii) In Kalpnath Rai's case the ld. ASJ had made following observations against the working of the Parliament when Kalpnath sought permission to attend the Parliament which High Court on suo moto oral application of the Standing Counsel of the Government expugned the remarks in Crl.M(M) 592/1996 vide judgment dated 28th February, 1996:-

"See the irony while the Parliament passed TADA Act to strike at the terrorists and to make a stringent law for the terrorist, a member of Parliament and a Central Minister has been found to be harbouring the terrorist and anti social and criminal elements. This much for the concern of Shri Kalpnath Rai for his constituency, society and the nation about which Shri Kalpnath Rai has delved at a length in his application."

"In ancient India, Kings and Emperors thought it a privilege to sit at feet of a man of learning. In today's India MPs and Ministers think it ia privilege if they get a chance to sit at the feet of under world Dons and base businessmen, to get secret donations from them and to get their blessings."

The offending paragraph at page 10 of the order reads as under:-

"In the past most of the time of Nations most prestigious institutions i.e.Lok Sabha and Rajya Sabha has been wasted at the huge cost of national exchequer by causing walk cuts, pendamoniums, creating fish market scene and Halla Gulla and going to the extent of using muscle power inside the house. In fact, the legislative business stand side-tracted. The politics seems to have become the most profitable business of the day where in the individual enjoy able the fruits of political power and he becomes holder of several new accounts in the Indian and foreign banks and these accounts fatten day in and or day out."

"Keeping the state of affairs in mind, where politics today is not treated by the politicians as a ancrefant functions of leading the nation to higher atitudes of character and values but is treated like a business which requires no institution of factories, no toiling of day and nights out and earning fabulous amount without being answerable to any law enforcement agency."

High Court expugned the remarks with the following observations:_ "At pages 8,10 and 11, the use of the words "Political business" also is not appropriate."

"In the present case there was no occasion for the Ld.Addl. Sessions Judge to make comments either against Parliament or its proceedings or against Parliamentarians or politicians. He ought to have confined himself to the specific issue before him and dealt with the said remarks extracted above are hereby expunged."

(iii) Again while dismissing the application of Kalpnath Rai praying that direction be given to the jail authorities to bring him in separate vehicle, learned ASJ made the following uncalled for remarks in his order dated 19.3.1996:-

"Accused Kalpnath Rai was a member of the ruling elite of this country. He has been a Cabinet Minister. Although he was not a Minister responsible for jails but nevertheless he was part of the Govt. which was ruling this country. If the Government of which he was a member, did not bother to improve the conditions of jail now at least he should not have a complaint about the miserable conditions of jail because he being among the ruling elite and having joint responsibility of the jails, himself had never thought of the miseries and the problems being faced by ordinary prisoners and shared the responsibility of the conditions of jails.

The idea that legal rules are binding upon all sections of society, and all sections are to be treated equally, does not seem to be liked by these x-governing elite of the country. These accused persons are acustomed to two parallel legal systems one for the rich and those who weild political power and influence and other for the small men without resources or capabilities to obtain justice or fight in justice."

(iv) In Kishori v. State (NCT of Delhi) 2001 V AD (Delhi) 742, Ld. Judge had used the statement of a witness made in some other case as evidence in the case being tried by him not only for summoning a person under Section 319 Cr.P.C as accused but convicted him on the said statement. Relevant extracts of the judgment of Delhi High Court vide which said person viz.Kishore Lal was acquitted are as under:-

"8. Admittedly Kishori, the appellant was not named by the complainant when her statement under Section 161 Cr.P.C. was recorded. As per learned Trial Court's observations there was no other public witness cited by the prosecution nor available who had named Kishori to be the accused. In similar circumstances a Division Bench of this Court in case State vs. Kishori, Murder Reference No. 4/96 decided on 24th October, 1997 observed that:-

"The power under Section 319 Cr.P.C. is not to be exercised in routine. Such a power is required to be exercised sparingly."

9. In that case also, Kishori was summoned by the Court by invoking the provisions of Section 319 Cr.P.C. on the basis of the statement of the complainant Devi Bai recorded in a Sessions case. In that case also Devi Bai had not named the accused Kishori to be the accused. It was in this background that Division Bench observed that there were material contradictions on the vital aspect in her statement to police and made in the Court hence set aside the conviction which was based on the sole testimony of Devi Bai.

10. The observation of the Division Bench in Murder Reference No. 4/96 squarely applies to the facts of this case. In the present case also the complainant in her statement to the police under Section 161 Cr.P.C. had not named Kishori even remotely. She categorically stated that it was Ram Pal Saroj at whose instance her three sons were murdered. Ram Pal Saroj was arrested and he faced the trial for nearly 12 years. At no stage she came forward and stated that it was not Ram Pal Saroj but was Kishori. It was not prosecution's case that at the first available opportunity Raj Bai named this appellant. She had not filed any affidavit before any of the Commissions set up by the Government for this purpose namely Justice Ranganath Commission and the other set up by the NCT of Delhi namely Justice Kapoor and Aggarwal Commission. It is after almost 12 years that for the first time when she stepped into the witness box on 15th March, 1996 she named Kishori to be the accused. In her cross examination recorded on 15th April, 1996 she stated that she had given the name of Kishori apart form giving the name of Ram Pal Saroj. In her own words she said:-

" I had in my statement given the name of Kishori apart from Ram Pal."

11. In spite of her admission in cross examination that she gave the name of Ram Pal Saroj as accused still the learned Addl. Sessions Judge acquitted the said Ram Pal Saroj by observing that from the statement of the victim it transpired that Ram Pal Saroj was not the person but it was Kishori. This observation is contrary to the admission made by the complainant (PW-2) herself. Moreover, the investigating officer categorically denied that the complainant named Kishori or he omitted to record his name in her statement under Section 161 Cr.P.C. According to the I.O. he correctly recorded the statement of victim Raj Bai. Therefore, on the sole testimony of Raj Bnai made after 12 years in the court, it would be unjust to convict the appellant relying on the sole testimony of Raj Bai. In similar circumstances the Division Bench of this court in the case of Ved Prakash and Ors. vs. State Volume IV (1997) CCR 384 observed that the entire prosecution case when hinges on the sole testimony of the complainant and no other witness deposed about the accused amongst rioters then it would not be proper and just to rely on it."

(v). In Crl.Revision No.318/1995 filed before the High Court by the Bar Association when Shri S.N.Dhingra took cognizance of offence under Section 182 and 192 IPC against two Advocates appearing for the accused persons following order of the High Court was referred by the Counsel :-

" The facts relevant for the disposal of this petition, briefly stated are that an FIR No.555/95 was registered at PS Trilok Puri under Sections 366A / 341/506/ 376 read with Section 34 IPC. The

accused moved an application for bail which came up for hearing on 15.11.1995 before Shri S.N.Dhingra, learned Additional Sessions Judge, New Delhi. The bail application was supported by an affidavit of the prosecutrix Suman in which she mentioned her age as 18 years. However, in the course of hearing before the Court she stated that her age was 17 years and some months only and not 18 years and she had mentioned her age as 18 years at the instance of petitioners No.2 & 3. The learned ASJ held that an applicatioin which is accompanied by this kind of affidavit shows that witness is being pressurized and was of the view that the bail application should be rejected on this ground alone whatever be the merits. Counsel for the accused/petitioners herein submitted that the prosecutrix had approached them along with their father and the age was given by the father of the prosecutrix. This plea was not accepted on the ground that had it been so the prosecutrix would not have stated before the Court that the Counsel had asked her to state her age as 18 years. The application for bail was rejected vide orders dated 15.11.1995.

On 17.11.1995 the learned ASJ made a complaint under Section 195 of the Code to ACMM Karkardooma Court for initiating action under Section 182 and 192 of the IPC against the petitioners-Advocates on the ground that they had made the prosecutrix state her age falsely in the affidavit which was to be used in judicial proceedings. On the basis of this complaint the learned Metropolitan Magistrate issued summons against the two petitioners herein for offences under section 182 and 192 of the IPC.

No enquiry was held to find out as to who appeared to be truthful. It is not at all understandable as to why learned ASJ was impressed by the statement of the prosecutrix and not by the statement of the Counsel who are officers of the Court and should ordinarily be believed unless there is some material to hold otherwise. In the orders dated 15.11.1995 no findings were recorded that the petitioners should be prosecuted under Sections 182 and 192 of the IPC and it is not disclosed on record as to why after two days the learned ASJ thought of sending a complaint to learned ACMM for initiating prosecution against the petitioners.

The credibility of the prosecutrix Suman stands fully exposed by the fact that the case, registered on the basis of her FIR under Sections 366A/ 341 / 506 / 376 / 34 IPC, has already resulted in acquittal on account of the fact that she as well as her father turned hostile and did not support the prosecution case. The accused were acquitted vide judgment dated 7.11.1996. Neither in the Sessions trial nor before the learned ASJ , who had ordered filing of a complaint against the two Advocates the prosecutrix had given any proof that her age was less than 18 years. It, therefore, cannot be said that on the date when she had sworn her affidavit she was less than 18 years of age. No complaint was lodged against the prosecutrix for filing a false affidavit whereas the petitioners were sought to be proceeded against for advising her to state her age falsely. If a person comes to swear an affidavit and wants to mention a particular fact the Counsel is not supposed to hold an enquiry regarding that fact and only thereafter help him swear an affidavit as the primary responsibility always remains upon the person who swear an affidavit. The learned ASJ totally ignored and overlooked wha the prosecutrix had done.

This Court, therefore, has no hesitation in holding that the complaint filed by the learned ASJ on 17.11.1995 and the impugned summoning order dated 20.11.1995 passed by the learned

Metropolitan Magistrate were an abuse of the process of law and based on no material on record."

12. Recently this Court also cautioned Mr. Dhingra in Crl.Rev.521/2003 (Som Nath Sapra Vs. State and anr.) not to adopt his own procedure and remain within the precincts of Cr.P.C as he has been fixing the case for defense evidence immediately after recording the plea of not guilty and extracting defense version pursuant to a charge/notice.

13. Counsel for the petitioner contends that since series of events, orders, censures referred above and recent directions given by this court and even the advice of Justice R.C.Chopra , appear to have no effect and therefore petitioners' apprehension that he will not get justice is not misplaced.

14. However, the allegations made in this petition and even the perusal of some of the observations made by the learned ASJ referred above do not present a pleasant picture and it appears that the atmosphere during the trial always remains surcharged and tenseful. Counsel for the petitioners states that he always is under the threat of being humiliated or dealt with curtness and such a conduct of the learned ASJ has the effect of the client loosing faith in the competence of his lawyer. For instance, Judge was not expected to ask the witness not to remove his goggles which apparently he was not wearing due to eye infection or any eye ailment and direct him not to answer any question put up by the counsel on that aspect. Counsel wanted to see whether witness has perfect eye-sight to be able to see in the late night darkly hours. Even the learned APP states that such direction to the witness is bound to cause prejudice to the prosecution case itself as the accused may, at the end of trial take undue advantage.

15. Be that as it may, the least that is expected from the Court is to deal with the lawyer in a respectful manner as he too is an officer of the court and not to give the impression to the accused that he is not getting a fair trial. Justice or fairness in trial should not only be done but should always seem to be done. Since the trial is in progress, it will be not proper to transfer the case to another court in the midstream but at the same time the trial court can be given certain directions to allay the apprehension of the petitioner that the procedure as prescribed by law is not being followed by the learned ASJ.

16. Trial court is directed to record the evidence in question-answer form wherever controversy as to the admissibility or relevance of the question is involved. Further, if the Learned ASJ considers that a particular question is inadmissible or irrelevant, he shall provide reasons therefore or order for deciding it at final stage. But in any case such a question has to be recorded in writing. It is for such eventtualities that Section 275 Cr.P.C provides for recording the evidence in question answer form.

17. Before parting it is impressed upon the learned ASJ that he should always bear in mind that Judgments and observations of superior court as to the procedure adopted or view taken by the lower court are not only to be obeyed and acted upon in letter and spirit but always should be taken as guidelines.