

Rajendra Kumar And Anr. vs State Of Rajasthan And Ors. on 28 May, 1996

Equivalent citations: 1997(2)WLC287, 1996(2)WLN276

JUDGMENT

N.L. Tibrewal, J.

1. The story of the case relates to the life of Mst. Suman Kanwar and Vinod Kumar Dhobi who liked to each other. But to their misfortune they belong to different castes and perhaps this is the root cause of their trouble. Mst. Suman Kanwar belongs to the family of Rajput, an upper caste in the society, while Vinod Kumar is Dhobi of lower caste. There is no gain saying that in our society caste still plays a significant role in human relationship and behaviour. These petitions disclose a sordid and disturbing state of affairs that such things should happen in their lives.

2. The Habeas Corpus Petition was filed before this Court on 16th April, 1996 and on the same day, Shri S.R. Yadav, learned Public Prosecutor accepted notices of the respondents. He was directed to seek instructions on telephone and file reply to the writ petition by 18th April. On 18th, reply was filed and the petition was adjourned for the next day. On 19th April, direction to produce Suman Kanwar on 22nd April was given. Pursuant to the direction, she was produced before us and she gave her statement on oath which is reproduced in extensio as under (English Translation) I know Vinod Kumar Dhobi. He is my husband, on 27th January, 1995 our marriage was solemnised by a Pandit at Arya Samaj, Kota. After marriage, I was living with my husband at Malviya Nagar, Jaipur. After marriage, we lived together for about 1-1/2 years. After Malviya Nagar, we lived in Jhotwara-in a rented house. On 14th April. 1996, at our house in Jhotwara - Jaipur, two Police personnels, my brother Sampat Singh, my mother and two other boys came alongwith my uncle Bhanwar Singh. All these persons forcibly brought me and my husband to Kota in a Jeep. Those two Police persons were Raghuraj Singh Hada and Heera Lal. In Kota, we were taken at the Police Station where my husband was beaten by the Police and detained there. Thereafter, I was not allowed to meet my husband, and I do not know when he was allowed to go from there. I was made to sit in the Police Station till eleven at night and thereafter, I was sent to my mother. I want to live with my husband Vinod Dhobi. I do not want to live with my mother or any other relative. I apprehend danger to my life from my mother, brother and police persons. I have passed 9th class.

3. The above statement and disclosure was made by Suman Kanwar when she was assured of providing full protection by the Court. It is important to note that she was brought before us direct from the custody of her mother and that too by the police persons against whom she was having grievance. Hence, there could not be any pressure on her from the side of Vinod Dhobi or his relatives. We are satisfied from her demeanor that her statement is voluntary and straight forward and it has a ring of truth in it. From her statement, the following facts are disclosed:

(i) That She had left her parents house voluntarily and married with Vinod Kumar Dhobi on 27th January, 1995. Since then they were living together as husband and wife.

(ii) She and her husband were forcibly brought in a Jeep at Kota and were subjected to torture at the Police Station. Her husband was detained/confined in the Police Station and beaten by the Police, while she was made to sit there till late at night upto 11 p.m. and thereafter she was sent to her mother's house against her will.

(iii) In unequivocal terms she has desired to live with her husband Vinod Kumar.

4. On 22.4.96, after dictation of the order, Vinod Kumar Dhobi appeared before us and stated that he was kept in police custody at Kota for six days and on 20th April, 1996 he was allowed to go. That he was beaten by the A.S.I. Shri Raghuraj Singh Hada, and Constable Heera Lal. We, therefore, directed the Dy. Registrar (Judi.) to get him medically examined by the Medical Jurist, S.M.S. Hospital, Jaipur. His injuries were examined on 22.4.96 by the Medical Jurist, S.M.S. Hospital, Jaipur and as per the injury report, which has been placed on record, the following injuries were noticed on his body:

(1) Faint swelling present over left zygomatic region.

(2) Abrasion of size 1 x 1/4 cm with dry brownish black scab-placed over back near midline towards Rt. side at the level of eliac crest-simple/blunt.

(3) Abrasion of size 1/2 x 1/4 cm with hard brownish scab placed over 6 cm. below the Rt. side inferior angle of scapula-simple/blunt.

(4) Bruise, of size 2 x 1 cm bluish black in colour placed over left poplital fossa-simple/blunt.

(5) C/o pain & tenderness over front of chest OR/X- Ray/blunt.

(6) C/o Blurring of vision from left eye-OR/eye Surgeon opinion.

5. The duration of injuries was given between 5-7 days. At the time of examination Vinod Kumar disclosed to the Doctor that he was beaten by the Police on 16th April, 1996.

6. At this stage, factual aspect of the criminal case needs examination to appreciate the real controversy involved in the case and to deal with the various contentions raised before us by the learned Counsel of the parties. For this purpose we summoned Police diary of the case and minutely examined it.

7. Crime No. 9/95 was registered at Police Station, Railway Colony, Kota on a written report made by Sampat Singh, the real brother of Mst. Suman Kanwar, on January 11, 1995. In the report, it was

stated by him that his sister Suman Kanwar, aged 17 years, was missing from his house since the evening of January 5, and on enquiry, he came to know that she was taken away by Vinod Kumar son of Gopi Lal Dhobi, aged 22 years, to marry with her. On this report, Criminal case was registered under Sections 363 and 366 I.P.C. From the material on record it transpires that on her own request, Mst. Suman Kanwar was medically examined on January 22, 1995 by the Medical Jurist, M.B.S. Hospital, Kota for determination of her age and on the basis of her physical and radiological examination, her age was opined to be between 18 to 19 years. Apprehending his arrest, Vinod Kumar filed an application before this Court on 7.3.95 seeking anticipatory bail under Section 438 Cr.P.C. which was registered as S.B. Criminal Misc. Bail Application No. 1108/95. With bail application, the above medical Certificate and marriage certificate issued by Arya Pariwar Sansthan-Kota were attached. Suman Kanwar also appeared before the Court and after knowing her wishes this Court granted anticipatory bail to Vinod Kumar vide order dated, 15.3.95.

8. During investigation, the statement of Suman Kanwar under Section 161 Cr.P.C. was recorded by the Police on 25.3.95. It would be useful and convenient to reproduce the entire statement, which runs as under: (English translation) I lived with my mother and brother in our private house in Mahaveer Colony and studied in Ramanand school. In our Mohalla Vinod Kumar son of Gopilal Dhobi, aged 22 years also resided with whom I had acquaintance since long. I liked him. On 5.1.95 my brother Sampat Singh quarreled with me. He wanted to marry me with some one else while I liked Vinod. For this reason I was given beating and I left the house at 6 p.m. angrily and sat on a well near Chambal river. At about 11.30 at night Vinod came there searching me and asked me to go at my house but I refused to go there and told him that I would rather like to die than to go my house. I asked him to take me somewhere else. Then voluntarily I came at the Bus Stand with Vinod and we went Syopura in a bus. After 15 days we came back at Kota and went to "Arya Samaj" to marry with each other. In the absence of age certificate they refused to solemnise our marriage. Thereafter I got my medical and X-Ray examination for determination of age from a government doctor on 22.1.95 and on 27.1.95 we got married in Arya Samaj. Since then we are living as husband and wife. Thereafter, we moved an application seeking bail of Vinod Kumar but the same was rejected at Kota. Then I voluntarily went to Jaipur with Vinod and after grant of his bail from Jaipur I came back to Kota. I have married with Vinod Kumar. I recognize him as my husband and want to live with him.

9. In view of the above statement, the Investigating Agency thought it proper to again get medical examination of Mst. Suman Kanwar by a Medical board for determination of her age. The Medical Board opined her age to be between 17 to 19 years on the date of examination i.e. 25.3.95. Then, on the same day, the Investigating Officer produced Suman Kanwar before the Chief Judicial Magistrate, Kota with a prayer to record her statement under Section 164 Cr.P.C, Who directed the Judicial Magistrate (South), Kota to do the needful. On the same day, statement of Vinod Kumar Dhobi was also taken, wherein he denied to have abducted Suman Kanwar and stated that she herself left her parental house and married with him voluntarily. Suman Kanwar was then, produced before the Judicial Magistrate (South), Kota, for recording her statement under Section 164 Cr.P.C. but this prayer was rejected and direction was given to produce her before the concerned Court i.e. Additional Chief Judicial Magistrate No. 1, Kota for passing appropriate order for her custody. The Investigation Officer (for short I.O.) then, took the matter before the Addl. Chief

Judicial Magistrate, who after perusing the entire materials on record, was satisfied that Suman Kanwar was adult, hence, she was allowed to go and live with Vinod Kumar Dhobi as per her desire and will.

10. From the facts narrated above, the Investigating Agency after being fully satisfied that no offence was committed by Vinod Kumar, submitted a negative report, which is popularly known as Final Report (FR), before the concerned Magistrate on 29.3.95 detailing out all the above facts.

11. On submission of Final Report by the Investigating Agency, the complainant submitted a protest petition before the concerned Magistrate. His main grievance was that the statement of his mother Gajraj Kanwar was not recorded by the police during Investigation. The learned Magistrate vide order dated, July 22, 1995 directed the I.O. to record her statement and intimate him about the result of investigation within a month. This order is being challenged by the petitioner Vinod Kumar in Miscellaneous Petition No. 1023/95 under Section 482 Cr.P.C. This petition was Listed before the learned Single Judge on 14.12.95 who issued notice to the respondents to show cause as to why the F.I.R. be not quashed. On 6.1.96, this Court directed the learned Public Prosecutor to produce police diary of the case on next date of hearing, which was fixed as 18.4.96.

12. The earlier I.O. stood transferred by the time and the A.S.I. Raghuraj Singh took the charge of investigation of the case. He recorded the statement of Smt. Gajraj Kanwar on 7.10.95. It appears that after receipt of requisition of the case diary, in the garb of further investigation from Suman Kanwar and her medical examination, she was lifted from her husband's house and taken to Kota from Jaipur. According to the respondents, she was taken on 16.4.96 and was medically examined by the Medical Jurist, M.B.S. Hospital, Kota on 17.4.96, was opined her age between 19 to 20 years on the basis of physical and radiological examination. It was also opined that she was not virgin, though, there was no sign of forceful sexual inter-course or of habitual inter-course with her.

13. In the back-ground of above facts, arguments were heard in Habeas Corpus Petition as well as in Miscellaneous Petition for quashing the F.I.R.

14. Shri S.K. Gupta, learned Counsel appearing for the petitioners in both cases strongly criticised the entire action of the police and the conduct of A.S.I. Raghuraj Singh- particularly as to malafides and being wholly un-warranted. Learned Counsel contended that even if any investigation was to be made from Suman Kanwar there was hardly any need or occasion to forcibly take her from Jaipur as her statement could be recorded at Jaipur. It was contended that in the garb of further investigation Suman Kanwar and her husband were forcibly brought at Kota in a Jeep with an ulterior design to give her in custody of her mother against her will in utter disregard and disobedience of the order of the Magistrate. It was further contended that there was no occasion to record fresh statement of Suman Kanwar under Section 161 Cr.P.C. or to get her examined under Section 164 Cr.P.C. that the Magistrate was kept in dark as to the back-ground of the case which indicates the surreptitious nature of the conduct of the Police Officer. Mr. Gupta contended that undue extra interest was taken by the A.S.I. Shri Raghuraj Singh Hada on account of his caste' affiliation with the complainant and deliberately an attempt has been made to compel Mst. Suman Kanwar to abandon her marriage with Vinod Dhobi and for this purpose she and her husband have been tortured and put under threats of

violence.

15. On the other hand, the learned Advocate General and the Public Prosecutor seriously defended actions of the police and contended that investigation of a cognizable offence is a statutory right of a Police Officer and he has unfettered powers to investigate into the matter. It was also contended that A.S.I. Raghuraj Singh was within his right to take away Suman Kanwar from Jaipur for investigation purposes. Learned Counsel for the complainant, Shri S.P. Tyagi also contended that Suman Kanwar is minor and her custody with her mother cannot be said to be illegal. He, therefore, urged that both the petitions be dismissed.

16. We have given our anxious thought and careful consideration to the above submissions in the back ground of the facts and circumstances of the case.

17. In view of the statement of Suman Kanwar referred to earlier and submissions made before us by the learned Counsel for the parties, we would like to consider first of all as to whether the actions of the police are legal and justified or they suffer from the vice of malafides with an evil design to compel Suman Kanwar and Vinod Kumar to disown and break their marital relationship and for that end, whether they were pressurised or terrorised and subjected to torture with physical violence ? The facts as alleged to have existed on April 16, 1996, are clearly established on the basis of material brought on record and which are more or less undisputed, may be straight-way stated as under:

(i) Crime No. 9/95 was registered at Police Station, Railway Colony, Kota on 11.1.95 on a written report made by the brother of Mst. Suman Kanwar alleging there - in that his sister, aged 17 years, was taken away by Vinod Kumar Dhobi to marry with her.

(ii) On 22.1.95, Suman Kanwar was medically examined by the Medical Jurist, M.B.S. Hospital, Kota for determination of her age, though on her own request, and on the basis of her physical and radiological examination, her age was stated to be between 18 to 19 years on the date of examination.

(iii) Suman Kanwar and Vinod Kumar got married with each other on 27th Jan., 1995 at Arya Pariwar Sansthan - Kota.

(iv) Vinod Kumar was granted anticipatory bail by this Court vide order dated 15.3.95 after knowing wishes of Suman Kanwar and taking into consideration the medical report about her age and the certificate of her marriage.

(v) The Investigation Officer again got medical examination of Mst. Suman Kanwar by a Medical Board for determination of her age and as per report of the Medical Board, her age was between 17 to 19 year on the date of examination he. 25.3.95.

(vi) The statement of Suman Kanwar under Section 161 Cr.P.C. was recorded by the Investigation Officer on 25.3.95 in which she unequivocally stated that she left her parents' house voluntarily as her brother wanted to marry her with some one else against her wishes while she liked Vinod Kumar Dhobi. That she married with Vinod Kumar on 27.1.95 and wanted to live with him.

(vii) Suman Kanwar was, then, taken by the Investigation Officer to the concerned Magistrate to get her statement recorded under Section 164 Cr.P.C. The Magistrate declined to record her statement in view of her statement under Section 161 Cr.P.C, recorded by the Police on 25.3.95.

(viii) The concerned Magistrate also passed an order, being satisfied from the material on record of her being adult that she be allowed to live with her husband as per her desire.

(ix) The Police submitted Final-Report, in the case, but on a protest petition filed by the complainant, the Magistrate directed the Investigation Officer to record the statement of Smt. Gajraj Kanwar, mother of Mst. Suman Kanwar and to submit, the report within one month. Though, the statement of Smt. Gajraj Kanwar was recorded on 7.10.92 but the I.O. did not submit any report in the specified time and kept the investigation pending.

(x) Vinod Kumar, then, filed a petition under Section 482 Cr.P.C. before this Court which was registered as Misc. Petition No. , 1023/95. In this petition, the learned Single Judge of this Court, after considering various aspects of the case, issued notice to the respondents to show cause as to why the F.I.R. be not quashed. In that petition, on 6.4.96, this Court directed the Public Prosecutor to summon case diary and the report of the Investigation Officer. The matter was ordered to be listed after two weeks and 18.4.96 was fixed.

(xi) On 16.4.96, the Habeas Corpus Petition was filed and on the same day, notices were issued which were accepted by Mr. S.R. Yadav, the learned Public Prosecutor, who was directed to contact with the respondents on telephone and file the reply by 18.4.96. information of Habeas Corpus was received by the respondents on 16th April itself. The reply in the petition was filed on 18th April. On 19th April, this Court directed the respondents to produce Suman Kanwar on 22.4.96 positively.

18. We minutely perused the entire material on record, including the police diary of the case, the respective 'Rojnamcha Aam' of Police Stations Railway Colony, Kota and Jhotwara - Jaipur. After giving out-deep and careful consideration to all aspects and the facts and circumstances in the case, we are fully convinced and we may state at the out-set that police personnels, specially the A.S.I. Reghuraj Singh Hada, have acted in the matter in a most high-handed and authoritarian manner forgetting that they are also subject to the law of the land. We are also satisfied that Suman Kanwar was forcibly taken away from her husband's house in early hours of the day before the sun rise

alongwith her husband and they were subjected to indignity, humiliation, pressurisation, terrorisation and threat of violence and in fact, Vinod Kumar was beaten and confined in jail at Kota. We are really pained to note that such things happen in a country which is governed by the Rule of law. If the personal liberty of a young woman is to be played in this fashion by forcibly taking her away from her husband's house by a police officer without any search warrant or an order of the Court, one can imagine what would happen to the society. Civil liberty and personal dignity are fundamental rights of every citizen - whether he belongs to an upper or lower strata of society, and the same should be protected by the custodians of the law and order-rather than making mockery and infringement of them.

19. We seriously considered the much stressed contention made by the learned Advocate General and the Public Prosecutor that the Police Officers have statutory right to investigate into cognizable offences and they have unfettered power in the field of investigation. They tried to justify the police action and of A.S.I.-Raghuraj Singh Hada on the ground that Suman Kanwar was taken to Kota for recording her statement under Section 164 Cr.P.C. and also for her medical examination. Undoubtedly, investigation of a cognizable offence is the task exclusively reserved for the Police Officer whose powers in that field are unfettered so long as the power to investigate into a cognizable offence is legitimately and bonafidely exercised in strict compliance of the provisions under Chapter-XII of the Code of Criminal Procedure. In the garb of such powers, if they act outside the scope of the authority of law or malafidely with an evil object, not for the purpose of ascertaining and collecting true facts in the case, but to create or fabricate false evidence for the benefit of any party, then Judicial Courts are not powerless to check the mis-use of such authority as and when it comes to their notice. The authority to investigate a cognizable offence does not entitle any Investigating Officer subject to any person to the indignity and humiliation. A perusal of the case diary makes it evident that statement of Suman Kanwar under Section 161 Cr.P.C. was recorded by the I.O. on 25.3.95 in which she categorically stated to have left her parent's house voluntarily as her brother was forcing her to marry with a person against her wishes while she liked Vinod Kumar Dhobi. She also stated that subsequently she married with Vinod Kumar on January 27, 1995 and wanted to live with him. There is nothing on record to suggest, and it is not the case of respondents also, that her statement was obtained under duress or coercion or the I.O. did not record the same correctly. If that statement was there on the record, we fail to understand that there was any necessity or occasion for the I.O. to again record her statement under Section 161 Cr.P.C. on 16.4.96. In their reply, though the respondents are conspicuously silent about recording of fresh statement of Suman Kanwar on 16.4.96, but, such statement is included in the case diary. After perusal of that statement and in the facts and circumstances, we have no doubt in our mind that such statement could not be made by Suman Kanwar. We are of confirmed view that the said statement was fabricated by A.S.I. Raghuraj Singh to falsely implicate Vinod Kumar and his relatives in the criminal case and also to justify his illegal action of handing over Suman Kanwar in custody of her mother against her wishes, further, a reading of that statement shows that it should have been written after reaching at Kota on 16.4.96 while the entry in case diary shows otherwise. Fabrication, even if skilful, leaves some material behind for its detection. It appears to us that Suman Kanwar and Vinod Kumar were brought at Kota at the instance of the complainant to compel them to break their relationship and force Suman Kanwar to return to her mother. The filing of Habeas Corpus Petition and the receipt of its information on 16.4.94 also compelled the I.O. to fabricate this false

statement of Suman Kanwar to justify his action of handing over her to her mother.

20. Let us also examine the plea of the respondents that Suman Kanwar was taken to Kota for her statement Under Section 164 Cr.P.C. and also for her medical examination. Firstly, there was no necessity of getting her statement recorded Under Section 164 when her statement dated 25.3.95 Under Section 161 Cr.P.C. disclosed that no offence was committed by any one, including Vinod Kumar Dhobi. A similar request of the police was declined by the Magistrate on 25.3.95 and in our view, rightly so. The statement of a witness Under Section 164 Cr.P.C. is generally recorded to fix him/her to it when it is feared that he/she may resile afterwards or temper with it. The object of recording the statement Under Section 164 Cr.P.C. is not to create a false evidence as has been done in the present case. The statement shows that it does not bear any date but as per the respondents, it was recorded on 18.4.96. i.e., the date fixed in the High Court in Habeas Corpus Petition for filing the reply. The said statement appears to be the result of maneuvering and by keeping the Magistrate under dark of all facts of the case. It could not be voluntary also as we are satisfied that Suman Kanwar and Vinod Kumar were subjected to harassment. Unfortunately, the learned Magistrate also did not care to peruse the case diary before recording her statement. Then, assuming for a moment that recording of such statement was necessary in the case, then, too, there was no necessity of taking away Suman Kanwar from Jaipur as the statement could be recorded at Jaipur. The provisions of Section 164 Cr.P.C. are clear and they empower any Metropolitan or Judicial Magistrate to record any statement of a person whether or not, he has jurisdiction to enquire or try the case. In this connection, the relevant portions of Section 164 Cr.P.C. are reproduced as under-

164. Recording of confessions and statements:

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time after words before the commencement of the inquiry or trial;

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

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(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

21. Similarly, justification of the action on the ground of medical examination of Mst. Suman Kanwar is also untenable. Firstly, she was already medically examined twice by the Medical Jurist, M.B.S. Hospital, Kota on 22.1.95 and 25.3.95. The latter examination was by a Medical Board on the request of the Investigating Officer, as such, there was hardly any need to get her medically examined again. Then, she could be medically examined at Jaipur, where better facilities for medical examination are available and there was hardly any necessity to take her at Kota for this purpose in such a manner.

22. We are, therefore, satisfied that the above grounds are lame excuses on the part of the respondents to justify their illegal action of forcibly taking away Suman Kanwar from her husband's house. All these evidence have been created subsequent to the filing of Habeas Corpus Petition to justify their action and for creating situation for the complainant to get custody of Suman Kanwar by hook or crook. It is only due to such police officers that the Investigating Agency in our country has not acquired the reputation of being honest against the temptation of attempting to secure confessions or statements by questionable methods. It is not the function of an honest Police Officer to manipulate or fabricate a false evidence.

23. The factum of taking Suman Kanwar from Jaipur is not disputed before us, though the contention on behalf of the respondents is that she was taken on 16th April, while Suman Kanwar has given the date as 14th April. We express no definite opinion whether she was taken on 16th or 14th as Suman Kanwar may also state the date due to slip or loss of memory about the exact date. We have, therefore, examined the matter assuming that she was taken on 16th April from her husband's house in Shivpuri Colony, Jhotwara. The entries made in 'Rojnamcha Aam' of the Police Station, Jhotwara make it evidently clear that she was lifted from her husband's house in early hours before the Sun- rise. In their reply, A.S.I. Raghuraj Singh and Constable Heera Lal are silent about the time, but in police diary of the case the time is mentioned as 9 a.m. which is apparently incorrect.

24. In daily 'Rojnamcha' of the Police Station, Jhotwara, entry No. 1341 is made at 5.15 a.m. about reaching of A.S.I.- Raghuraj Singh and Heera Lal Constable at the Police Station for police help. The next entry No. 1342 is made at 5.30 a.m. showing their leaving Police Station, Jhotwara alongwith F.C. Ganga Ram for going to Shivpuri Colony. At 7 a.m. entry No. 1361 has been made after the return of Gangaram which states that after recovery Suman Kanwar was taken to Kota directly from the place of recovery. From this entry it is clear that she must have been lifted from her residence at about 6 a.m. before the Sun-rise.

25. We also find that Raghuraj Singh has given a false affidavit that Suman Kanwar was taken from Jaipur at 2 p.m. by an Express Bus and they reached Kota at 9 p.m. and reported at Police Station, Railway Colony, at 9.45 p.m. Firstly, this statement stands falsified by the entry No. 1361 made in 'Rojnamcha' of the Police Station, Jhotwara as stated above. Secondly, in 'Rojnamcha' of Police Station, Railway Colony, Kota, attendance of A.S.I.-Raghuraj Singh and Heera Lal F.C. is recorded at 5 p.m. which shows that they must have reached there before 5 p.m. on 16.4.95. If they had started at 2 p.m. from Jaipur they could not have reached at the Police Station, Kota at 5 p.m. as even Express Bus takes atleast 6 hours to cover the distance from Jaipur to Kota. Otherwise also, when

Suman Kanwar was recovered at 6 a.m. there was no necessity to remain at Jaipur upto 2 p.m. and in his affidavit Raghuraj Singh has not stated as to where she was kept at Jaipur upto 2 p.m. On the face of the documentary evidence of the respondents we find that A.S.I.-Raghuraj Singh has given false affidavit that Suman Kanwar was taken from Jaipur at 2 p.m. by an Express Bus. We are satisfied that the statement of Suman Kanwar is correct that she was forcibly taken away from Jaipur in a Jeep by the A.S.I.-Raghuraj Singh and F.C. Heera Lal, who accompanied with her brother Sampat Singh and other relatives. Raghuraj Singh has given false affidavit to misguide the Court and to cover his illegal and unauthorised action of forcibly taking away Suman Kanwar in a private Jeep arranged by the complainant and also to screen that she was lifted from her husband's house before the Sun-rise. We are also of the opinion that entry No. 697 in 'Rojnamcha' of the Police Station, Railway Colony, Kota was made after getting information about the filing of the Habeas Corpus Petition and as such, it became imperative for the Police to make an entry. This entry is apparently wrong and contains false averments.

26. In our considered opinion, the statement of Suman Kanwar is true that Vinod Kumar was also forcibly brought to Kota alongwith her in the Jeep and he was illegally detained/confined in Jail where he was given beating by Police persons on 16.4.96. Her statement finds corroboration from the medical report of Vinod Kumar, obtained by us. The aim and object of A.S.I.- Raghuraj Singh and other police persons for bringing Suman Kanwar and her husband at Kota was to put them under torture and fear in order to pressurise them to leave each other and also to put pressure on Suman Kanwar to return to her mother. The information of filing Habeas Corpus Petition appears to have been received by the respondents late on 16.4.96 and thereafter, a false entry was made in 'Rojnamcha' after 9.45 p.m. The act of A.S.I.-Raghuraj Singh as to forcibly taking Vinod Kumar to Kota and detaining and beating him at the Police Station is clearly an act of grave contempt of this Court, as the order of this Court granting anticipatory bail to Vinod Kumar was deliberately violated.

27. Further, when there was already an order of the Magistrate allowing Mst. Suman Kanwar to live with her husband as per her wishes, one fails to understand as to why and under what authority she was given in the custody of her mother on 16.4.96. Apparently, it was with a malafide intention with a view that she may be terrorised, pressurised and forced by her relatives to agree to give up her determination to live with Vinod Kumar and to disown her marriage with him. This action is clearly in disobedience of the order of the Magistrate.

28. During the course of arguments, the order dated 20.4.96, passed by the Addl. Chief Judicial Magistrate No. 1, Kota was referred by the learned Public Prosecutor as a defence to the Habeas Corpus Petition. This order was obtained from the Magistrate after direction of this Court on 19.4.96 to produce Suman Kanwar on 22.4.96. It appears to us that the learned Magistrate was kept in dark of all facts, including earlier order of the Magistrate whereby Mst. Suman Kanwar was allowed to live with Vinod Kumar as per her desire. Before the Magistrate, the application was moved on 20.4.96 stating therein that Suman Kanwar, being 16 years of age was a minor, as such, orders for her 'Supurdagi' be passed. We are constrained to observe here that the learned Magistrate should not have passed such order in a casual manner without applying his mind on the material on record and without notice to the other party. We attach no importance to this order for disallowing Habeas Corpus Petition on the facts and the back-ground in which it was passed.

29. At this juncture, it is important and relevant to examine the question raised by Mr. Tyagi about the age of Suman Kanwar. According to Mr. Tyagi, she is minor, and her mother, being her legal guardian, be entrusted with her custody. Determination of age of Suman Kanwar, therefore, assumes importance to deal with this argument, which is also always important in a criminal case registered under Section 363 and 366 I.P.C.

30. In F.I.R., which was lodged on 11.1.95 her age is given as 17 years by her own brother Sampat Singh. As per the medical report dated 22.1.95, her age was estimated between 18-19 years on her physical and radiological examination. In subsequent examination made by a Medical Board on the request of I.O., her age was opined between 17 to 19 years on 25.3.95. Then, again her age was stated by the Medical Jurist to be between 19 to 20 year on 17.4.96, which is also based on her physical and radiological examination. Thus, even we assume that on 11.1.95., Suman Kanwar was of 17 years as per her brother, she is above 18 years by now. Though, as per the medical reports and her statement she is more than 18 years old. In any case, there is no doubt of her being major. The school certificate, much relied upon by the respondents, showing her age as less than 17 years cannot be accepted as the basis for recording her date of birth in the school has not been brought before us. Even a copy of the entry in Scholars' Register has not been filed before us. The entries regarding dates, of births contained in scholars' register have no probative value unless the basis of the same is brought on record to show that the entry was made on the information given by a person who had personal knowledge about the date of birth. If the entry is made on the basis of the information given by a stranger or by some one else who had no special means of knowledge of the date of birth, such an entry has no evidentiary value. The medical evidence and the admission of her brother before us are conclusive to hold that Suman Kanwar is above 18 years and she is master of her way of life. Other-wise also Vinod Kumar being her husband, she has a right to live with him as desired by her. Thus, Judged from any angle the argument of Mr. Tyagi has no substance and we reject it.

31. From the discussions made hereinabove, we arrive at the following irresistible conclusions:

(i) That Mst. Suman Kanwar was not taken or enticed by Vinod Kumar, but she left her parents' house voluntarily and thereafter, married with him on 27.1.95 at Arya Pariwar Sansthan, Kota. Since then, they were living as husband and wife at Jaipur.

(ii) Suman Kanwar and her husband Vinod Kumar were forcibly lifted in early hours before the sun-rise from their residence at Shivpuri Colony-in Jhotwara-Jaipur by A.S.I.- Raghuraj Singh Hada, Constable Heera Lal and the family members of Suman Kanwar and they were brought to Kota in a jeep where they were detained in the police station.

(iii) The object and design behind taking them to Kota was to put them under fear, pressure and terror so that they may disown their marriage relation and Suman Kanwar may be compelled to live with her mother against her wishes. For this end, they were subjected to harassment and torture and in fact, Vinod Kumar was physically beaten at the Police Station.

(iv) That A.S.I.-Raghuraj Singh Hada after taking charge of investigation of the criminal case (FIR No. 9/95), took extra interest in investigation of the case for the benefit of the complainant.

(v) That Raghuraj Singh committed gross contempt of Court by filing false affidavit before us to the effect that Suman Kanwar alone was taken by him from Jaipur at 2 p.m. by an Express Bus. By disobeying the order granting anticipatory bail to Vinod Kumar, he also disobeyed the order of the ACJM, Kota by giving Suman Kanwar in the custody of her mother against her will.

(vi) ASI-Raghuraj Singh Hada is also prima-facie guilty of making false entry at SI. No. 697 in 'Rojnamcha Am' of the Police Station, Railway Colony, Kota. He is also guilty of fabricating the statement of Suman Kanwar Under Section 161 Cr.P.C. dated, 16.4.96.

(vii) That Mst. Suman Kanwar is above 18 years of age and she is legally entitled to live in her own way of life. Her act of living with her husband Vinod Kumar since long was not unlawful and she was not an accused in any case. Hence, the manner she was lifted and forcibly taken by the A.S.I.-Shri Raghuraj Singh Hada falls within the mischief of abduction-an offence under the Indian Penal Code.

32. In view of the aforesaid findings, further difficult question arises for consideration before us as to what relief should be granted in the petitions. In view of the statement of Suman Kanwar before us and the finding arrived at by us about her age there remains no problem for us in allowing the Habeas Corpus Petition. In the facts and circumstances of the case, we are also of the view that pendency of the investigation in the criminal case would not be in the interest of justice as it would amount keeping the Damocles sword hanging over the heads of Suman Kanwar and Vinod Kumar who are married to each other and want to live together. We are, therefore, of the view that the investigation in criminal case be also quashed.

33. Then remains the question of awarding compensation to Suman Kanwar and Vinod Kumar for the violation of their fundamental rights ensured under Article 21 of the Constitution of India. Another important question for our consideration is as to whether any of the police persons is guilty of contempt of Court and if so, what punishment should be awarded ?

34. The question of awarding compensation for infringement of fundamental rights without any excuse is no more res-integra and it is now well settled by a catena of judgments of the Apex Court of the country that the Courts who have power of enforcing observance of the fundamental rights have also the power to award compensation to the aggrieved party - a party whose fundamental rights have been violated by the State or the Officers of the State. Reference in this connection may be made to some of the judgments in Radul Sah v. State of Bihar and Anr. ; Bhim Singh v. State of J & K ; Arvinder Singh Bagga v. State of U.P. ; Inder Singh v. State of Punjab and Ors. ; Dhanjay Sharma v. State of Haryana ; and T.C. Pathak v. State of U.P. and Ors. .

35. In the instant case, atrocities have been committed by the Police to a young woman by forcibly taking away from her husband's house with an ulterior object to deprive her from the company of her husband. In the manner she was picked-up before the sun-rise and forcibly brought at Kota and then, detained in the Police Station till late night under fear and mental torture to compel her to go to her mother's house, then compelling her to live with her mother against her wishes, were in violation of her civil liberty.

Similarly, Vinod Kumar was also forcibly taken away from Jaipur and subjected to indignity, beating, humiliation etc. inspite of the fact that he had obtained an order of anticipatory bail from this Court. He was subjected to such humiliation, physical and mental torture for no fault on his part except that he liked Suman Kanwar, who belongs to higher caste in the society. Taking into consideration the totality of facts and the gravity of the high-handedness on the part of the Police, we think it just and proper that each of them be awarded compensation in the tune of Rs. 25,000/-.

36. We also find that the A.S.I.-Raghuraj Singh has committed grave contempt of this Court and the Court of Addl. Chief Judicial Magistrate, Kota by forcibly taking Vinod Kumar and Suman Kanwar from Jaipur and in detaining them in their custody against their wishes. Giving assault to Vinod Kumar in Police Station inspite of an order of anticipatory bail in his favour is not only atrocious, but is also an act of interfering with the due course of justice and a deliberate attempt to obstruct the administration of justice. He also committed contempt of Court by giving false affidavit to misguide this Court. Then he committed deliberate disobedience of the order of Addl. Chief Judicial Magistrate No. 1, Kota by giving custody of Suman Kanwar to her mother against her wishes.

37. The stream of justice has to be kept clean and clear and any one spoiling its purity must be dealt with sternly so that the message may percolate loud and clear-that no one can be permitted to under-mine the dignity of the Court and interfere with the due course of judicial proceedings for the administration of justice. In Chandra Shashi v. Anil Kumar Verma , the respondent produced a false and fabricated certificate to defeat the claim of the petitioner for transfer of the case. This action was found to be an act amounting to interference in administration of justice. Hon'ble Justice Hansaria, speaking for the Bench, observed;

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

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

38. In Dhananjay Sharma v. State of Haryana filing of a false affidavit to cover-up illegal acts was held to be an act of contempt of court amounting interference with the due course of justice and also

a deliberate act to obstruct the administration of justice In View of the authoratative pronouncement of the Apex Court of the country we have no hesitation in holding A.S.I.-Raghuraj Singh Hada to be guilty of the contempt of Court.

39. The net result of the above discussions is:

(i) The Habeas Corpus Petition No. 1951/96 is allowed and Mst. Suman Kanwar is allowed to do and live with her husband Vinod Kumar Dhobi as desired by her. The Superintendent, Nari-Niketan, Jaipur, will take immediate steps to send her to her husband's house at Jaipur under police protection. The S.P. and the S.H.O concerned are also directed to provide full protection to Suman Kanwar and Vinod Kumar Dhobi for their life and property.

(ii) The State of Rajasthan shall pay to Suman Kanwar and Vinod Kumar Dhobi a sum of Rs. 25,000/- each for violation of their civil rights and subjecting them to humiliation and indignity. The amount of compensation shall be paid within two months from the date of this judgment. On such payment, it would be open to the State Government to recover such amount of compensation from the police personnels, namely A.S.I.-Raghuraj Singh Hada and Constable Heera Lal in the ratio of 3/4th and 1/4 th respectively.

(iii) For contempt of the Court we direct the A.S.I.- Raghuraj Singh Hada to suffer simple imprisonment for a period of one month. The Dy. Registrar (Judl.) shall take steps for his arrest.

(iv) The State Government of Rajasthan is also directed to take immediate steps to launch prosecution against all the erring police officers involved in this sordid affair. In that event, we direct that investigation of the case shall be made by a Police Officer not below the rank of S.P. or Addl. S.P. to keep it out of undue pressure by the interested parties. We also direct that disciplinary enquiry be also started against the A.S.I.-Raghuraj Singh Hada and Constable Heera Lal by the Competent Authority.

(v) The respondents shall pay cost of litigation in Hebeas Corpus Petition, which is quantified as Rs. 2,000/-

(vi) The Miscellaneous Petition No. 1023/95 is also allowed and investigation and proceedings in criminal case F.I.R. No. 9/95 are hereby quashed.

40. A copy of this order be sent by the Dy. Registrar (Judl.) of this Court to the Chief Secretary and the Secretary, Home Department to the Government of Rajasthan and Director General of Police for compliance and appropriate action as per direction in the judgment.

41. Before concluding, we express our serious concern about the manner in which the investigation in criminal cases are made by the Police Officers in recent times. We have come across many

instances where the Police had acted not to uphold the dignity of law and protect the citizens, but in aid of private cause and to oppress the citizens. This requires to be checked immediately and we expect and trust that the Director General of Police, Rajasthan shall take a serious view in such cases as and when such instances come to his notice. We would like to state a similar agony expressed by Hon'ble Justice Faizan Uddin in Dhananjay Sharma's case (Supra) wherein he observed:

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

42. Both the petitions are disposed of as indicated above.