

**HIGH COURT OF MADHYA PRADESH**

**GWALIOR BENCH**

**S.B.: Justice G.S. Ahluwalia**

**W.P. No. 13057 of 2020**

**Arun Sharma**

**Vs.**

**State of M.P. and others**

.....  
Shri Suresh Agrawal, Counsel for the Petitioner  
Shri M.P.S. Raghuvanshi, Additional Advocate General  
Shri Tapan Trivedi, Counsel for respondent no.3  
Shri D.P. Singh, Counsel for respondents no. 4 and 5  
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Date of Hearing : 26-11-2020

Date of Judgment : 02-12-2020

Whether approved for reporting : Yes

**Judgment**

(Passed on 02/12/2020)

1. This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :

It is, therefore, most humbly prayed that the petition filed by the Petitioner may kindly be allowed and respondent no.1 and 2 may kindly be directed to take effective action against the respondent no.3 to 5 and pass appropriate order so that the petitioner can take justice. Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the fact and circumstances existing in the present case.

Further, compensation be granted to the petitioner from the respondents authorities.

Award the cost of this writ petition in favor of the petitioner throughout.

2. The matter was taken up on 2-11-2020, and arguments on the question that whether reputation/privacy/personal liberty of a citizen of India are integral part of Article 21 of the Constitution of India or not, and whether monetary compensation can be awarded for violation of fundamental rights or not, were heard. When the facts of this case were being considered in the light of the law of the land, then the Advocate General sought time to reconsider the action taken by the police authorities against the respondents no. 3 to 5, as according to him, the matter was handled by the police authorities in a most casual manner. Accordingly after holding that right of Privacy/reputation/dignity are integral part of Article 21 of the Constitution of India and monetary compensation can be awarded to the victim for violation of his Fundamental Rights, this Court adjourned the matter at the request of the Advocate General for further hearing on merits of the case.

3. The respondents no. 3 and 4 were posted as Sub-Inspector, whereas the respondent no.5 was posted as Constable in Police Station Bahodapur, Distt. Gwalior. The respondents no. 1 and 2 have filed their additional return. The matter is heard on merits.

4. Although the facts of this case were already mentioned in detail in the order dated 2-11-2020, but at the cost of repetition, they are being reproduced once again from order dated 2-11-2020:

2. The necessary facts in short are that the petitioner is a tenant in a shop. On 25-7-2020,

the landlady of the said shop, made a complaint to the respondent no. 3/S.H.O., Police Station Bahodapur, Distt. Gwalior, alleging that the petitioner is neither vacating the shop nor is making payment of rent and has also threatened that he would encroach upon the remaining house of the landlady. Thus, it was prayed that the shop be got vacated and the arrears of rent be paid to the landlady. The respondent no. 3, marked the said complaint to the respondent no. 4 for conducting an enquiry and it is alleged that thereafter, the respondents no. 4 and 5 forcibly evicted the petitioner from the shop on 25-7-2020 itself and was also beaten by the respondent no.4. The goods including the furniture of the shop was taken to the police station where the petitioner was compelled to give an undertaking that he would vacate the shop and accordingly, the goods belonging to the petitioner were returned by the respondents. Thereafter, on 14-8-2020, the respondent no. 3 and 5 took the petitioner in custody, and got his uncovered face photograph published in the newspapers as well as on social media, by projecting him as a hard

core criminal. On a complaint made to the Superintendent of Police, Gwalior, an enquiry was conducted and it was found that the petitioner is an innocent person having no criminal antecedents and accordingly, he was released. It is the stand of the respondents no. 1 and 2 that one person with similar name was wanted in a criminal case which was registered in the year 2011 and a reward of Rs. 5,000/- was declared by the Superintendent of Police, Gwalior by order dated 13-8-2020 and under mistaken identity, the petitioner was wrongly taken into custody. The respondent no.3 was placed under suspension and the news with regard to his suspension was duly published in the news papers.

5. It is submitted by the Counsel for the State that in the compliance report dated 2-11-2020, the respondents no. 1 and 2 had clearly pleaded that violation of personal liberty of a citizen of India is a serious misconduct, but by mistake, the respondents no.1 and 2 were in-correct on their part to plead “that the present case is merely that of mistaken identity and is not a serious misconduct on the part of the respondents no. 3 to 5”. It was prayed that this incorrect stand taken by the respondents no. 1 and 2 in their compliance report dated

2-11-2020 be ignored and may be permitted to be withdrawn.

6. It is submitted by the Counsel for the State, that in the compliance report dated 9-11-2020, it was mentioned that the respondents no. 3 to 5 have been line-attached, but looking to the seriousness of the misconduct committed by them, today, they have been placed under suspension.

7. As already pointed out, the incident took place in two phases, i.e, on 25-7-2020, the petitioner was forcibly dispossessed from his shop by the respondents no. 3 to 5 at the behest of the landlady and thereafter, on 14-8-2020, the petitioner was taken in custody (No arrest memo was prepared) on the pretext that a reward of Rs. 5,000 has been declared by S.P., Gwalior against him and his uncovered face photograph with news “An accused with reward of Rs. 5000 has been arrested” was also published in the news papers as well as was uploaded on social media by the police.

8. Shri Amit Sanghi, Superintendent of Police, Gwalior during the course of hearing through Video Conferencing, made a submission that in fact he received a telephonic call from the brother of the petitioner, informing him that his brother is an innocent person, but still he has been taken into custody, and he immediately, got an enquiry done and when it was found that the respondents no. 3 and 5 have wrongly taken the petitioner in custody, then not only he ensured that the petitioner is released, but an arrangement was also made to send him to his house. This submission made by Shri Amit

Sanghi, Superintendent of Police, Gwalior also finds corroboration from the press notes released by the police, which have been filed by the respondents no. 1 and 2 along with the compliance report dated 20-10-2020, and news published in the Dainik Bhaskar dated 15-8-2020 is reproduced as under :

बहोडापुर पुलिस की एक गंभीर लापरवाही सामने आई है। पुलिस शुक्रवार को 5 हजार के इनामी बदमाश अरुण पुत्र ओमप्रकाश शर्मा को पकड़ने गई थी, लेकिन पकड़ लिया एक निर्दोष युवक अरुण को। जिस पर कोई अपराध ही पंजीबद्ध नहीं है। युवक को पकड़ने के बाद तस्दीक तक करना उचित नहीं समझा और बहोडापुर के थाना प्रभारी दिनेश राजपूत ने वाहवाही लूटने के लिए युवक को आरोपी की तरह बैठाकर फोटो खिंचवाया फिर प्रेस नोट भी जारी करा दिया। युवक का भाई थाने में खड़ा होकर गुहार लगाता रहा लेकिन एक न सुनी। जब मामला एसपी अमित सांधी के संज्ञान में आया तो उन्होंने एसपी पंकज पांडे को भेजकर जांच कराई। तब पता चला कि वास्तव में पुलिस जिसे पकड़ ले वह निर्दोष है। इस गंभीर लापरवाही पर एसपी ने थाना प्रभारी दिनेश राजपूत को निलंबित कर दिया है। एसपी का कहना है कि इस तरह की लापरवाही बर्दाश्त नहीं की जाएगी। सभी थाना प्रभारियों को निर्देश दिए हैं कि आरोपी को पकड़ने पर तस्दीक जरूर करें।

News uploaded on Social Media reads as under :

#### ग्वालियर ब्रेकिंग न्यूज

ग्वालियर—

बहोडापुर थाना पुलिस की बड़ी लापरवाही आई सामने एक निर्दोष व्यक्ति को 5000 का इनामी बताकर सोशल मीडिया पर पुलिस ने जारी किया फोटो सहित प्रेस नोट परिजनो की हंगामे के बाद एसपी ने लिया मामला में जांच के बाद एसपी ने उप निरीक्षक दिनेश राजपूत को किया सस्पेंड

बहोडापुर थाना पुलिस ने निर्दोष व्यक्ति को चिटफंट का फरार आरोपी बताया था।

This prompt action of Shri Amit Sanghi, Superintendent of Police Gwalior was in consonance with the law of land and Shri

Sanghi showed all concerns for protection of life and liberty of an innocent person, but unfortunately, the respondents no. 3 to 5 did not show any respect for the life and liberty of a citizen of India and kept the petitioner in illegal detention for 7 ½ hours. Whether this conduct of the respondents no. 3 and 5, was with an ulterior motive or was a bonafide mistake shall be considered in the following paragraphs.

**9. Incident dated 25-7-2020**

**10.** It is the allegation of the petitioner, that he is a tenant in a shop, and at the behest of the landlady, the respondents no. 3 to 5, forcibly evicted him from the shop and his belongings were taken to the police station, where he was forced to give an undertaking that he would vacate the shop and only thereafter, his some of the belongings were returned back and the remaining articles and money have not been returned. It is also alleged that during forcible eviction proceedings, the respondent no. 4 and 5 had also beaten him. The photographs of taking out the articles/belongings out of the shop, loading the same on a mini truck and the presence of respondent no. 5 on the spot have also been filed.

**11.** It is not out of place to mention here that although the respondents no. 4 and 5 have filed their detailed return, but they have not denied the allegations of beating, forcible eviction by respondents no. 4 and 5, non-return of some of the belongings and money of the petitioner as well as the correctness of the photographs filed by the petitioner.

12. The respondent no. 4, in her return, has pleaded that so far as the incident, which took place on 14-8-2020 is concerned, She was not in the town and had gone to Jhansi in connection with some other investigation. Even the petitioner has not alleged that on 14-8-2020, the respondent no. 4 was present. Thus, it is clear that the respondent no. 4 is not involved in the incident which took place on 14-8-2020.

13. So far as the incident of forcible dispossession of the petitioner from his shop by the respondents no. 3 to 5 is concerned, it is the stand of the respondent no. 4 that on 25-7-2020, the landlady made an application to the respondent no. 3 seeking dispossession of the petitioner from the shop, which was marked to her. The copy of the application made by the landlady to the respondent no. 3, with his remark is reproduced as under :

प्रति,

श्रीमान थाना प्रभारी महोदय,  
थाना – बहोड़ापुर  
जिला – ग्वा0 (म0प्र0)

विषय –

महोदय,

सविनय नम्र निवेदन है, कि मैं प्रार्थीया रामवती आर्य w/o स्व0 श्री नारायण प्रसाद आर्य उम्र 90 वर्ष, नि0 पागल खाना तिराहा, शब्द प्रताप आश्रम, प्रार्थीया का विनय है, कि प्रार्थीया ने अपनी दुकान किराये पर अरूण शर्मा s/o श्री ओमप्रकाश शर्मा, नि0 – 75 लक्ष्मण तलैया, शिंदे की छावनी लश्कर, ग्वा0 को 11 माह का एग्रीमेंट कराकर दी थी, जिसका मासिक किराया 1400/-रु देना तय हुआ था, एवं इसका एग्रीमेंट 27.08.14 को खत्म हो गया था, इसके बाद अरूण शर्मा के द्वारा कोई एग्रीमेंट नहीं किया गया, और न ही कोई किराया दिया गया इससे कई बार दुकान खाली करने के लिए बोला गया, पर ये गाली गलौच पर उतारू हो जाता है, एवं दुकान न खाली करने की धमकी देता है, कहता है कि



अभी तो दुकान पर कब्जा किया है, और पूरे मकान पर कब्जा कर लूंगा, सन 2014 से सन 2020 तक अरूण शर्मा के द्वारा मुझे कोई किराया नहीं दिया गया।

अतः श्रीमान जी से निवेदन है, कि प्रार्थीया की दुकान खाली कराकर, सन् 2014 से 2020 का पूरा किराया दिया जाए।

दिनांक: 25.07.20

प्रार्थीया

Seal Police SI संगीता मिंज  
Station जांच कर रिपोर्ट  
Bahodapur देवें  
25.7.2020

रामवतीवाई w/o स्व० श्री  
नारायण प्रसाद आर्य  
नि० पागल खाना, शब्द  
प्रताप आश्रम (ग्वा०)  
मो० न० 9074415152 (विपिन)  
8076988074 (अन्नू)  
(ये मेरे दोनो पोते हैं)

14. The respondent no. 4 has also filed a copy of the undertaking given by the petitioner, at the police station, which is at Page 23 of the return of respondents no. 4 and 5, which reads as under :

श्रीमान थाना प्रभारी महोदय,  
थाना बहोडापुर,

विषय :-दुकान का जो सामान ले गये थे वो बापस रखने वावत्।

महोदय,

उपरोक्त विषय में निवेदन है कि मैं प्रार्थी अरूण बोहरे पुत्र श्री ओमप्रकाश बोहरे निवासी लक्ष्मण तलैया बहोडापुर जो कि विपिन शाक्य पुत्र स्व श्री जगदीश शाक्य उम्र 31 साल नि० पागलखान तिराहा के मकान में मैं दुकान करता था आज दिनांक 25.7.2020 को विपिन ने पुलिस बल के साथ दुकान को जो खाली करायी थी सामान यथा स्थित दुकान में रख रहे हैं जब तक मेरा बडा भाई शीतल बाहर से नहीं आ जाता तब तक दिनांक 25.8.2020 तक मेरी दुकान उसी मकान में रहेगी। शीतल के आने पर हम दोनो पक्षो का हिसाव होगा। हिसाव होने के बाद जो समझोता होगा दोनो में वह मान्य होगा।

प्रार्थी नं एक  
अरूण पुत्र ओमप्रकाश बोहरे  
नि० लक्ष्मण तलैया  
बहोडापुर

प्रार्थी नं दो  
विपिन शाक्य पुत्र स्व०  
जगदीश शाक्य  
नि. पागल खाना  
तिराहा बहोडापुर

**15. In the said undertaking also, the petitioner had specifically alleged that today, he has been dispossessed by Vipin Arya, with the help of police.** On the contrary, by taking advantage of the presence of the respondent no. 4 at Jhansi on 14-8-2020, She tried to project that in fact the incident which took place on 25-7-2020 is false. It is really unfortunate, that the respondent no. 4 has tried to mislead this Court. Be that as it may be. During the course of arguments, it was admitted by the Counsel for the respondent no. 4 that on 25-7-2020, the respondent no. 4 was on duty in the Police Station Bahodapur, Distt. Gwalior, and was entrusted with the work of conducting enquiry on the application filed by the landlady (which has already been reproduced earlier).

**16.** Further, the respondent no. 4 has herself filed a copy of letter dated 27-7-2020, written to her by the S.H.O., Police Station Bahodapur, Distt. Gwalior, in which it is mentioned that She had inquired the matter on 25-7-2020, and a report has been called by the Senior Police Officers, therefore, She should submit her reply. Thereafter, the respondent no. 3 submitted his report to the Senior Police Officers, in which it is mentioned that on receiving an information of ruckus, the respondent no. 4 had gone to the shop of the petitioner, and brought the belongings of the petitioner to the police station and obtained an undertaking from the Petitioner (Which has already been reproduced). The copy of letter dated 27-7-2020 written by respondent no. 3 to the respondent no. 4 and the

report of the respondent no.3 to the Senior Police Officers are reproduced as under :

**कार्यालय थाना प्रभारी बहोडापुर ग्वालियर**

क. /20 दिनांक 27.7.2020  
प्रति,

उनि, संजीता मिंज  
थाना बहोडापुर ग्वा,  
विषय— स्पष्टीकरण चाहने के संबंध में।

// ..... //

उपरोक्त विषयान्तर्गत लेख है कि दिनांक 25/07/2020 को आपके द्वारा आवेदक रामवती बाई पत्नि स्व. श्री नारायण प्रसाद आर्य नि. पागल खाना शब्द प्रताप आश्रम ग्वा. द्वारा आवेदन पत्र पर से अनावेदक अरुण शर्मा पुत्र श्री ओमप्रकाश शर्मा निवासी 75 लक्ष्मण तलैया शिन्दे की छावनी लश्कर ग्वा. की दुकान का सामान थाने लाया गया था उक्त संबंध में वरिष्ठ अधिकारी द्वारा प्रतिवेदन रिपोर्ट चाही गई है अतः उक्त जाँच में आपके द्वारा क्या कार्यवाही की गई है उक्त के संबंध में स्पष्टीकरण देवे।

Report given by respondent no. 3 to S.P. Gwalior :

**कार्यालय थाना प्रभारी थाना बहोडापुर ग्वालियर**

क. / /20 दिनांक—  
प्रति,

श्रीमान पुलिस अधीक्षक महोदय  
जिला ग्वालियर (म.प्र)  
द्वारा — उचित माध्यम।  
विषय— आवेदक अरुण शर्मा के प्रकरण में प्रतिवेदन के संबंध में।

// ..... //

महोदय,

निवेदन है कि दिनांक 25/07/2020 को आवेदक रामवती बाई पत्नि स्व. श्री नारायण प्रसाद आर्य नि. पागल खाना शब्द प्रताप आश्रम ग्वा. द्वारा अनावेदक अरुण शर्मा पुत्र श्री ओमप्रकाश शर्मा निवासी 75 लक्ष्मण तलैया शिन्दे की छावनी लश्कर ग्वा. के विरुद्ध आवेदन पत्र दिया गया था जिस पर से दिनांक 25/07/2020 को पागल खाने तिराहे पर भीड होने एवं लडाईं झगडे जैसे हालात उत्पन्न होने की वजह से उनि. संजिता मिंज मय फोर्स के पागल खाना तिराहे पहुँची एवं दोनो पार्टियो से लडाईं झगडे का कारण पूछा जिससे बताया गया कि विपिन आर्य द्वारा दुकान खाली करवाकर लोडिंग मे सामान भरवाया जा रहा था जिससे काफी विवाद होने की स्थिति में उनि. संजिता मिंज द्वारा दोनो पार्टियो को समझाया गया नही मानने की स्थिती को देखते हुए दोनो पार्टियो को थाना हाजा पर मय लोडिंग के लाया

गया दोनो पार्टियो द्वारा मकान किराया एवं पैसे के लेन देन का विवाद होना बताया बाद दोनो पार्टियो को समझाईश दी गई एवं दोनो पार्टी के द्वारा आपस में आपसी समझौते से राजीनामा किया गया बाद दोनो पक्षों का सामंजस्य होने से दोनो पार्टिया अपना सामान वापस ले गये।

थाना प्रभारी  
थाना बहोडापुर

17. The respondent no. 3 has filed his separate return. In his return, he has stated that it is incorrect to say that no criminal case was ever registered against the petitioner. One crime No. 839/2013 was registered in Police Station Morar, Distt. Gwalior for offence under Sections 506,507,384,465,466,467,468,471 of I.P.C. and under Section 66 of I.T. Act and Sessions Trial No. 160004/2016 is pending and the next date is 25-11-2020. Another offence in Crime No. 173/2013 has been registered at Police Station Heeranagar, Indore for offence under Sections 3/4,13 of Public Gambling Act, under Section 66 of I.T. Act and under Section 420,465,466,467,468,471,120B and 188 of I.P.C. and Sessions Trial No. 1100531/2016 is pending and fixed for 8-2-2021. However, it is not the case of the respondent no.3, that the petitioner was wanted in a criminal case in which reward was declared against another person. It is further submitted that the respondent no. 3 has a brilliant service carrier of 7 years. On 25-7-2020, at about 15:30, the respondent no. 3 went back to his residence and at 16.46 he received a Whatsapp text message from Reserved Inspector, Gwalior Shri Arvind Dangi, which reads as under :

भाई साहब बहोडापुर थाने की पुलिस मेन्टल हास्पिटल चौराहे पर एक

दुकानदार का सामान भर के ले गयी है, दुकानदार का नाम अरुण शर्मा, मकान मालिक और किराएदार का विवाद है लेकिन पुलिस दुकान मालिक के संग मिलकर उसका सामान ले गयी है थोडा देख लिये ना मामला

18. Accordingly, he went to Police Station at 16:00 and by that time, the petitioner along with bag and baggage had already returned back. The respondent no. 4 gave him a copy of application dated 25-7-2020 made by landlady and behind the back of the respondent no. 3, the respondent no. 4 had already brought the belongings to the Police Station and had already compelled the petitioner to submit an undertaking. It is further submitted that the endorsement made on the application dated 25-7-2020, made by the landlady, doesnot bear his signatures and the entire incident took place, when the respondent no. 3 was in his residence. However, the respondent no.3, has not claimed that the endorsement of entrusting enquiry to respondent no.4 is not in his handwriting. It is further pleaded in the return that the respondent no.3 is aware of the fact “that vacation of property dispute is a civil dispute and he cannot act in violation of law”. So far as the incident dated 14-8-2020 is concerned, it is pleaded that on 13-8-2020, the Superintendent of Police, Gwalior had declared rewards against various persons, and reward of Rs. 5000 was declared against one Arun Sharma, son of Omprakash Sharma, resident of Sector No.02, D-97, Vinay Nagar, Police Station Bahodapur. On 14-8-2020, the respondent no. 5 informed him that the petitioner is the same person and relying on his information, the

petitioner was brought to the police station and since, the person against whom reward was declared, was wanted in a criminal case registered at Police Station Gole Ka Mandir, Gwalior, therefore, the verification was done by Police of Gole ka Mandir, and when it was found that the petitioner is not the person, against whom reward has been declared by the Superintendent of Police, Gwalior, then he was allowed to go. This stand of the respondent no.3, regarding voluntary verification of identity of the petitioner by Police of Police Station Gole Ka Mandir, Gwalior is not correct in the light of the press note relied upon by the respondents no.1 and 2, which have been filed by them along with compliance report dated 20-10-2020. However, admitted that the news with regard to the arrest of the petitioner with his uncovered face got circulated among the News Paper and Social Media. It is further pleaded that since, circular dated 2-1-2014 was in existence, therefore, the news was shared. It is further submitted that a news was also published in the news paper that the respondent no.3 has been placed under suspension on arresting an innocent person. It is further pleaded that for the fault of the newspaper, the respondent no. 3 cannot be held liable. Further it is pleaded that at the time of photo session also, the respondent no. 5 was present and is also in the photo, but even at that time, the respondent no. 5 never disclosed to the respondent no. 3, that the petitioner is not the person against whom a reward has been declared. Although the petitioner has admitted that unless and until, “a person

is held guilty by a Court of competent jurisdiction, he is presumed that he is innocent”, but still insisted that the petitioner is an accused in two other cases.

**19.** So far as the return filed by the respondent no. 5 is concerned, he has not taken any stand with regard to the incident which took place on 25-7-2020. He has also not denied the photographs filed by the petitioner, in which he is visible on the spot, when the shop was being got forcibly vacated. Thus, in absence of any denial on the part of the respondent no. 5, regarding his presence on the spot on 25-7-2020, it is held that the respondents no. 4 and 5 went to the shop of the petitioner, and got the same vacated in an illegal manner without there being any order of the Court.

**20.** In the undated report of the respondent no.3 (which has been filed by the respondent no.4 and has been reproduced), the respondent no.3, tried to mislead the Superintendent of Police, Gwalior, by saying that an information was received that there was some ruckus at *Pagalkhana Tiraha*, therefore, S.I. Sangeeta Minj went with force. But, the respondent no. 3, in his letter dated 27-7-2020, written to respondent no.4, had himself written that the respondent no. 4 has brought the belongings of the petitioner on the complaint made by the landlady and there is nothing in letter dated 27-7-2020, that the respondent no. 4 was sent after receiving an information of ruckus at *Pagalkhana Tiraha*. Further, it is clear from the application dated 25-7-2020 written by Landlady, the said

application was marked by the respondent no.3 to respondent no. 4 for enquiry.

**21.** The Counsel for the State also could not point out as to how, the respondent no. 3 could have taken cognizance of the complaint made by the landlady. From the plain reading of the application, it is clear that She had prayed for recovery of arrears of rent as well as for eviction of the petitioner. By no stretch of imagination, the complaint filed made by the landlady can be said to have disclosed cognizable offence. Even a non-cognizable offence was not disclosed in the complaint. The entire complaint was beyond the jurisdiction of the police authorities but still cognizance of the same was taken.

**22.** When a specific question was put to Shri Amit Sanghi, Superintendent of Police, Gwalior, that whether it is the official duty of the police to get the shops vacated without there being any orders of the Court, then it was rightly admitted by Shri Amit Sanghi, Superintendent of Police, Gwalior, that the police has no authority whatsoever under any law, to evict the tenants from the tenanted premises and the eviction can take place only under the decree of eviction issued by the Court of competent jurisdiction. However, it is submitted by Shri Sanghi, that the incident of 25-7-2020 took place prior to his posting in Gwalior. Even the respondent no.3, in his return has categorically stated that the matter of eviction is a civil matter and police has no jurisdiction.

**23.** Although the Counsel for the respondent no. 4 relied upon



Section 23 of Police Act, but as a departmental enquiry is pending against the respondents no. 3 to 5, therefore, only undisputed facts and the stand taken by the respondents as well as the preliminary enquiry reports are being considered for deciding this petition. However, it is not out of place to mention here, that now the respondents no. 3 to 5 are involved in mud-sledging on each other, thereby placing certain documents on record, which were suppressed by the respondents no. 1 and 2.

**24.** It is the case of the respondent no. 4 that it was the respondent no. 3, who had directed her to enquire the complaint made by the landlady, whereas it is the case of the respondent no. 3, that the copy of the complaint was given to him by respondent no. 4, only when he returned back to the police station at 16:00 and the endorsement made on the application thereby, directing the respondent no. 4 to enquire, does not bear his signatures. However, the return of the respondent no. 3 is beautifully silent as to whether such endorsement is in his handwriting or not? In para 8 of the return, the respondent no. 3 has pleaded that as per routine procedure when any complaint is submitted in Police Station, it is registered in Complaint register and is placed by the Police Station Munshi before the respondent no.3. Although it is the contention of the respondent no. 3 that he was given the said application by the respondent no.4, only after he came back to the police station at 16:00, but his return is completely silent as to why he did not ask the respondent no. 4, that under whose

authority, the endorsement of entrusting enquiry to the respondent no. 4 was written. In absence of such pleadings, an adverse inference has to be drawn against the respondent no.3, and it is held that endorsement made on the application dated 25-7-2020 made by the landlady is in the handwriting of the respondent no.3 and it was the respondent no.3 who had entrusted the enquiry to the respondent no. 4. Thus, it is clear that the respondent no. 3 has taken a completely false stand in his return, that he had not marked the application, made by landlady, to the respondent no.4. Further, the respondent no. 3, himself has placed the copy of text message received by him on *Whatsapp* from Reserved Inspector Shri Arvind Dangi **that the police of Bahodapur Police Station, in connivance with the landlord, has taken away the belongings of the tenant.** Thus, the respondent no.3, himself has proved that the petitioner was forcibly evicted by the respondents no. 4 and 5 and since, the complaint was marked by the respondent no.3, therefore, it can be safely presumed that the entire incident of forcible eviction took place on the instructions of the respondent no.3, inspite of his admission in para 8 of his return that vacation of property is a civil dispute. The stand taken by the respondent no. 3, in para 8 of his return reads as under :

“8..... The respondent no.3 clearly knows that vacation of property dispute is a civil dispute and cannot act in violation of law.”

**25.** Further, the respondent no. 3 has not placed any document on record to show that on 25-7-2020, he was at his residence till 17:00.

26. Further, a preliminary enquiry into the incident was conducted by C.S.P., Gwalior, and it was found that the respondents no. 4 to 5 are guilty of forcibly evicting the petitioner from the shop. Although the copy of the preliminary enquiry report has not been placed on record, but under the instructions of the Court, the Superintendent of Police, Gwalior, has made the same available. The preliminary enquiry report dated 28-7-2020 reads as under :

**कार्यालय नगर पुलिस अधीक्षक अनुभाग ग्वालियर (म.प्र.)**

क्रमांक / नपुअ / ग्वा0 / CL155 / 20

दिनांक 28 / 07 / 2020

प्रति,

**अतिरिक्त पुलिस अधीक्षक महोदय  
(शहर-मध्य क्षेत्र) जिला ग्वालियर**

विषय:- आवेदक अरूण शर्मा निवासी लक्ष्मण तलैया बहोड़ापुर ग्वालियर द्वारा प्रस्तुत आवेदन पत्र के संबंध में।

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महोदय,

उपरोक्त विषय में लेख है कि आवेदक अरूण शर्मा द्वारा कार्यालय में उपस्थित एक शिकायती आवेदन पत्र प्रस्तुत किया जिसमें उसके द्वारा थाना बहोड़ापुर में पदस्थ उनि सजिंता मिंज, आरक्षक अचल शर्मा, मकान मालिक विपिन आर्य व उनके साथ आये अन्य लोगों द्वारा उसके साथ मारपीट कर उसकी दुकान के सामान की तोड़फोड़ कर उनि सजिंता मिंज व आरक्षक अचल शर्मा के द्वारा लोडिंग में दुकान का सामान भरकर बहोड़ापुर थाने पर ले जाने के संबंध में प्रस्तुत किया गया है।

आवेदक की उक्त शिकायत के संबंध में थाना प्रभारी बहोड़ापुर से तथ्यात्मक प्रतिवेदन प्राप्त किया गया एवं आवेदक का कथन लेख किया गया जिससे पाया कि-

यह कि आवेदक अरूण शर्मा ने अपने कथन में बताया कि वह पिछले करीब 7 साल से अनावेदक विपिन आर्य निवासी पागलखाना तिराहे बहोड़ापुर के यहां एक दुकान 1400/- प्रतिमाह के किराये पर लेकर कोल्ड ड्रिंक व नमकीन व किराने का सामान बेंचने का काम करता है अनावेदक के परिजनों द्वारा आवेदक से पूर्व में 2 लाख रुपये उधार लेना जिसके ब्याज के एबज में आवेदक को दुकान का किराया देने से मना करना इस कारण आवेदक द्वारा पिछले एक साल से दुकान का किराया नहीं देना तथा दिनांक 25.07.2020 को शाम करीब 4 बजे थाना बहोड़ापुर की उनि सजिंता मिंज, आरक्षक अचल शर्मा व मकान मालिक विपिन आर्य उसका भाई अन्नू, चाचा खेरा आर्य का अन्य व्यक्तियों के साथ आना। आरक्षक अचल शर्मा के द्वारा आवेदक से पानी की बोतल व मीठी सुपारी लेना जिसके पैसे आवेदक द्वारा

आरक्षक से मांगने पर आरक्षक अचल द्वारा के द्वारा विपिन का किराये न देने वाली बात उससे कहना जिस पर आवेदक द्वारा आरक्षक विपिन के घरवालों से पूर्व में इस संबंध में बात हो जाने की बात कहते हुये, अचल शर्मा के द्वारा चाटा मारना तथा मैडम मिंज के द्वारा अचल शर्मा व विपिन आर्य से कहा कि दुकान से बाहर लेकर आने व मारपीट करने की कहने पर अचल शर्मा व विपिन आर्य व उनके साथ आये सभी लोगो के द्वारा मारपीट करना व दुकान का सामान बाहर फेंकना जिससे काफी नुकसान होना तथा मैडम द्वारा सामान को लोडिंग वाहन में भरकर बहोड़ापुर थाने पर ले जाना तथा उसे झूठे हरिजन एक्ट व छेड़छाड़ के केस में फंसाने की धमकी देना बताते हुये आवेदक द्वारा उनि संजिता मिंज व अचल शर्मा द्वारा लोडिंग में भर गये सामान की फोटो भी प्रस्तुत किए गए हैं विस्तृत कथन संलग्न है।

थाना प्रभारी बहोड़ापुर से प्राप्त किए गए प्रतिवेदन में थाना प्रभारी द्वारा दिनांक 25.07.2020 को आवेदिका रामवती बाई के द्वारा अनावेदक अरुण शर्मा के खिलाफ आवेदन देना तथा दिनांक 25.07.2020 को पागलखाने तिराहे पर भीड़ व लडाईं झगडा जैसे हालात उत्पन्न होने की वजह से उनि संजीता मिंज मय फोर्स के पागल खाना तिराहे पहुंची व लडाईं झगडे का कारण पूछने पर विपिन आर्य के द्वारा दुकान खाली करवाकर लोडिंग में सामान भरवाया जाना विवाद की स्थिति देख उनि संजीता मिंज के द्वारा दोनों पार्टियों समझाना नहीं मानने पर दोनों पार्टियों व लोडिंग वाहन को थाने पर लेकर आना व मकान किराये एवं पैसे के लेन-देन का विवाद होना बताया है दोनों पार्टियों को समझाइस देना, दोनों पार्टियों का आपस में आपसी समझौता से राजीनामा किया जाना बाद दोनों पक्षों का सामंजस्य होने से दोनो पार्टियो का अपना सामान वापस ले जाना लेख किया गया है।

शिकायत सम्पूर्ण जांच कथन आवेदक, स्पष्टीकरण उनि संजिता मिंज एवं आवेदक द्वारा प्रस्तुत किए गए फोटो उनि संजीता मिंज एवं आरक्षक 1644 अचल शर्मा के द्वारा अनावेदक विपिन आर्य का सहयोग करते हुये आवेदक अरुण शर्मा की दुकान का सामान अवैध तरीके से लोडिंग में भरकर थाने पर लाना पाया गया है जोकि उपनिरीक्षक संजीता मिंज एवं आरक्षक 1644 अचल शर्मा थाना बहोड़ापुर के द्वारा अपने पदीय अधिकारों का दुरुपयोग करते हुये पुलिस सेवा की शर्तो का उल्लंघन किया जाकर पुलिस की छवि को धूमिल करने की कृत्य किया गया है।

प्रतिवेदन उचित कार्यवाही हेतु प्रेषित है।

संलग्न—आवेदक का आवेदन पत्र मय फोटो  
थाना प्रभारी का प्रतिवेदन मय प्रपत्र

(नागेन्द्र सिंह सिकरवार)

नगर पुलिस अधीक्षक

अनुभाग ग्वालियर

27. Thus, it is clear that although the complaint/application dated 25-7-2020 did not disclose commission of any cognizable offence,

but instead of directing the landlady to approach the Civil Court seeking eviction of the petitioner, the respondent no. 3, immediately usurp the powers of the Civil Court, and directed the respondent no. 4 to enquire into the allegations of non-payment of rent and non vacating of shop by the petitioner. Thereafter, without wasting even a single minute, the respondents no. 4 and 5 went to the shop of the petitioner, and after dispossessing him forcibly, his belongings were brought to the police station, where an undertaking was obtained from the petitioner, and only thereafter, he was allowed to take back his belongings from the Police Station. Thus, the manner in which the petitioner was evicted from his shop in an illegal manner, it appears that the respondents no 3 to 5 took contract from the landlady to get the shop vacated, which is an alarming situation and cannot be ignored by the Court. Even the respondent no.3 has produced a text message received from Reserved Inspector, Shri Arvind Dangi, which also says that the police of Bahodapur Police Station, in connivance with landlord has taken away the belongings of the tenant to the police station.

**28.** The Supreme Court in the case of **State of Maharashtra Vs. Saeed Sohail Sheikh** reported in **(2012) 13 SC 192** has held as under:

**39.** In a country governed by the rule of law police excesses whether inside or outside the jail cannot be countenanced in the name of maintaining discipline or dealing with anti-national elements. Accountability is one of the facets of the rule of law. If anyone is found to have acted in breach of law or abused his position

while exercising powers that must be exercised only within the parameters of law, the breach and the abuse can be punished. That is especially so when the abuse is alleged to have been committed under the cover of authority exercised by people in uniform. Any such action is also open to critical scrutiny and examination by the courts.

40. Having said that we cannot ignore the fact that the country today faces challenges and threats from extremist elements operating from within and outside India. Those dealing with such elements have at times to pay a heavy price by sacrificing their lives in the discharge of their duties. The glory of the constitutional democracy that we have adopted, however, is that whatever be the challenges posed by such dark forces, the country's commitment to the rule of law remains steadfast. Courts in this country have protected and would continue to protect the ideals of the rights of the citizen being inviolable except in accordance with the procedure established by law.

(Underline supplied)

29. By no stretch of imagination, it can be said that the conduct of the respondents no. 3 to 5 was in discharge of their official duties. Under these circumstances, this Court has to deal with the matter with all seriousness and has to deal with heavily. It is also not out of place to mention here that after an undertaking was given by the petitioner in the police station, some of his belongings were returned and was permitted to keep the same in the shop. However, none of the respondents i.e., No. 3 to 5 have disputed the allegation of the petitioner, that some of his belongings and money has not been returned back.

**30. Incident dated 14-8-2020**

31. The admitted facts are that a reward of Rs. 5,000/- was declared by Superintendent of Police, Gwalior on 13-8-2020, against

one Arun Sharma, son of Omprakash Sharma, resident of Section No.2, D-97, Vinaynagar, Police Station Bahodapur, Distt. Gwalior, whereas the petitioner is Arun Sharma son of Omprakash Sharma, resident of Laxman Talaiya, Near Asmani Mata Temple, Kapate Wali Gali, Bahodapur, Distt. Gwalior. **Thus, it is clear that residential address of both the persons are different.** Another undisputed fact is that the petitioner was brought to the Police Station Bahodapur, on 14-8-2020 at 13:56 and was released at 21:37. Thus, it is clear that the petitioner was kept in illegal confinement in the Police Station for 7 1/2 hours, and during this period, the respondent no.3, even did not try to verify that whether the petitioner is the same person against whom reward has been declared by the S.P., Gwalior, or not. The respondent on.3 could have verified the identity of the petitioner from his residential address also, but even that was not done. It is also mandatory under law, that after arresting a person, an information is to be given to his family members. As the brother of the petitioner had already approached the S.P., Gwalior, therefore, the respondent no.3 was aware that the residential address of the petitioner is different from that of the person, against whom reward has been declared by S.P., Gwalior.

**32.** Further, the respondent no. 1 in para 11 of his return has stated that after the reward of Rs. 5000 was declared by the Superintendent of Police, Gwalior, instructions were issued to the Police Station Bahodapur personals to put the efforts to trace out Arun Sharma, son

of Omprakash Sharma, wanted in crime no. 255/2011. The copy of the order by which rewards were declared by the Superintendent of Police, Gwalior has also been filed by the respondent no.1. From the said order, it is clear that reward against one more person, namely Avinash son of Ashok Upadhyay resident of Sector 3, behind Electricity Office, Vinay Nagar, Police Station Bahodapur, Distt. Gwalior, was also declared and he was also the resident of an area falling within the territorial jurisdiction of Police Station Bahodapur, then why instructions were issued to trace out Arun Sharma only and why not Avinash son of Ashok Upadhyay also? Thus, it is clear that Arun Sharma (Tenant) was unlawfully taken into custody with malice and in utter misuse of the official position.

**33.** Further, the return of the respondent no.3, is completely silent on the question of timing of sending press release to I.T. Cell, Superintendent of Police, Gwalior. Further, it is the stand of the respondent no.3 himself, that since, the person against whom, the reward was declared was wanted in a crime registered at Police Station Gole Ka Mandir, and after due verification by Police of Gole Ka Mandir, the petitioner was released, but has not clarified that why the respondent no. 3, released the press note and forwarded the same to the I.T. Cell, Superintendent of Police, with uncovered face of the petitioner by branding him as “An accused with reward of Rs. 5000”, even prior to verification. Thus, it is clear that the respondent no. 3, did not verify the identity of the petitioner and deliberately released



the press note with uncovered face of the petitioner. Further, the stand that the Police of Gole Ka Mandir, had voluntarily verified the identity of the petitioner, is contrary to the submission made by the Superintendent of Police, Gwalior. At the cost of repetition, it is once again pointed out that during the course of hearing, it was specifically stated by Superintendent of Police, Gwalior that on receiving a complaint from the brother of the petitioner, he got the enquiry done, and when it was found that the petitioner was never required by the police, then he was released. Further, it is the stand of the respondent no. 3, that the press note was released in the light of the Circular dated 14-1-2014, which has been partially quashed by this Court by its order dated 2-11-2020. However, the Counsel for the respondent no. 3, could not point out any thing from the then existing circular, to show that the police officers were given unfettered right to declare any innocent person as a “an Accused against whom reward has been declared” and release the press note with his uncovered face photograph, even without due verification. Even otherwise, the conduct of the respondent no.3 was not in accordance with the circular dated 2-1-2014, which was in existence till 2-11-2020. Thus, it is clear that now the respondents no. 3 to 5 are trying to indulge themselves in mud sledging against each other, however, the fact of the case is that while doing so, they themselves have disclosed certain inculpatory facts which were suppressed by the respondents no. 1 and 2 in their return.

34. Further, Additional Superintendent of Police, Gwalior has also conducted a preliminary enquiry. It is really surprising that all the senior police officers were somehow trying to project that the present case is that of mistaken identity. Although, the copy of the preliminary enquiry report prepared by Shri Pankaj Pandey, Add. Superintendent of Police, City (Center), Gwalior was not filed by the respondents, but on the directions of the Court, the same has been made available and the same is reproduced as under :

कार्यालय अति० पुलिस अधीक्षक, शहर(मध्य), जिला ग्वालियर(म०प्र०)  
क्रमांक/अपुअ/(मध्य)/प्रा०जांच/517-ए/2020 दिनांक  
30/9/2020

शिज/45-ए/2020

प्रति,

पुलिस अधीक्षक,  
ग्वालियर

विषय:- उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज, थाना प्रभारी, बहोड़ापुर के विरुद्ध प्राथमिक जांच प्रस्तुत किए जाने के संबंध में।

संदर्भ:- आपके आदेश क्र/पुअ/ग्वा/पीए/निलं०/(24/2020)/24/2020 दिनांक 14.08.2020 व 28.08.2020 एवं पृ.क्र./पुअ/ग्वा/शिज/स.उप./1336/2020 दिनांक 20.08.2020 व पृ.क्र./पुअ/ग्वा/शिज/स.उप./1711/2020 दिनांक 14.09.2020 के पालन में।

विषयान्तर्गत संदर्भ आदेशों एवं आवेदक अरुण शर्मा निवासी लक्ष्मण तलैया, आसमानी माता के मन्दिर, थाना बहोड़ापुर, ग्वालियर का आवेदन पत्र जो कि उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज थाना प्रभारी, बहोड़ापुर व आरक्षक अचल शर्मा के संदर्भ में है, का अवलोकन करने का कष्ट करें, जिसके तहत प्राथमिक जांच प्रतिवेदन प्रस्तुत किए जाने हेतु निर्देशित किया गया है।

आवेदक अरुण शर्मा द्वारा प्रस्तुत किए गये आवेदन पत्र में उल्लेखित तथ्यों का अवलोकन किया गया, जिसमें आवेदक द्वारा उल्लेखित किया गया कि "दिनांक 13.08.2020 को आरक्षक अचल शर्मा द्वारा प्रार्थी को थाना बहोड़ापुर बुलाया गया। जब प्रार्थी थाने पहुंचा तो उसे बिना सुने, मारपीट करते हुए बद्सलूकी की गयी व हवालात में बन्द कर दिया गया एवं तथाकथित 5000/- रुपये का इनामी घोषित कर, प्रार्थी के साथ फोटो खिंचवा कर प्रेस वार्ता की गयी एवं मीडिया में वायरल कर दिया। इस तरह आरक्षक अचल शर्मा और उप निरीक्षक दिनेशसिंह राजपूत द्वारा षडयंत्रपूर्वक प्रार्थी को झूठा फंसाकर प्रार्थी व प्रार्थी के परिवार की छवि धूमिल की गयी।"

प्राथमिक जांचकर्म में निम्नवत साक्ष्य संकलित की गयी :

1. आवेदक अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0लक्ष्मण तलैया, ग्वालियर का कथन दर्ज.
2. उप निरीक्षक दिनेशसिंह राजपूत थाना बहोड़ापुर-हाल-पुलिस लाईन के कथन व थाना बहोड़ापुर के रो0सा0क्र. 76, 22, 74, 72, 20/14.08.2020 की सत्यापित नकलें प्राप्त
3. आरक्षक 1439 कमल वर्मा, थाना बहोड़ापुर का कथन.
4. आरक्षक 529 धर्मेन्द्रसिंह तोमर, थाना बहोड़ापुर का कथन.
5. आरक्षक 1839 अभिषेक शर्मा, थाना बहोड़ापुर का कथन.
6. आरक्षक 638 जसविन्दरसिंह, थाना बहोड़ापुर का कथन.
7. आरक्षक 2605 अनूपसिंह गुर्जर, थाना बहोड़ापुर का कथन.
8. आरक्षक 1875 सुरेन्द्र कुमार भट्टेले, आई.टी.सेल, पुलिस अधीक्षक कार्यालय का कथन.
9. आरक्षक 1644 अचल शर्मा, थाना बहोड़ापुर हाल-पुलिस लाईन ग्वालियर का कथन.
10. उप निरीक्षक आर0पी0गौतम, थाना गोला का मन्दिर जिला ग्वालियर का कथन.

**आवेदक अरूण शर्मा** पुत्र श्री ओमप्रकाश शर्मा, उम्र 32 साल निवास-लक्ष्मण तलैया, आसमानी माता के मन्दिर के पास, कपाटे वाली गली, थाना बहोड़ापुर जिला ग्वालियर ने कथन में बताया कि दिनांक 25.07.2020 को शाम करीब 4 बजे मेरी दुकान पर थाना बहोड़ापुर से आरक्षक अचल शर्मा व उप निरीक्षक संगीता मिंज आये थे। अचल शर्मा ने मुझसे पानी की बोतल ली थी व एक पेकेट मीठी सुपाड़ी का लिया था। मैंने करीब 10 मिनट बाद बोतल व सुपाड़ी के पैसे मांगे तो आरक्षक अचल शर्मा ने मुझे 2-3 थप्पड़ मार दिए और बोला कि फटाफट विपिन आर्य की दुकान खाली कर। मैंने कहा कि मेरे भाई और विपिन आर्य की आपस में बात हो गयी है। इसके बाद आरक्षक अचल शर्मा मेरी दुकान के अन्दर घुस आया और विपिन आर्य, अन्नू आर्य व 3-4 अन्य लोग आ गये और सभी मुझे मारने लगे। इसके बाद मैंने अपने भाई को मोबाइल छीन लिया और घुटने से एक ठोकर मारी व दुकान से आरक्षक अचल शर्मा, विपिन आर्य, अन्नू आर्य सहित अन्य लोगों द्वारा दुकान से किराने का सामान बाहर फेंकना शुरू कर दिया। इस दौरान ये सभी दारू के नशे में दिखाई दे रहे थे। इसके बाद तीन लॉडिंग प्रायवेट वाहन करके आये और सामान भरकर थाना बहोड़ापुर ले गये व फर्नीचर तोड़कर सड़क पर डाल गये। थाने से मैंने अपने चाचा मदनलाल शर्मा जो कि थाना इन्दरगंज में प्रधान आरक्षक हैं, को मोबाइल से फोन लगाया, जिन्होंने इस घटनाक्रम की जानकारी वरिष्ठ अधिकारियों को दी। वरिष्ठ अधिकारियों के हस्तलेप के बाद थाना बहोड़ापुर से मेरा सामान वापस दुकान पर आया। दुकान पर गल्ला चैक किए जाने पर उसमें रखे 28330/- रुपये मौजूद नहीं पाये गये इस घटना की शिकायत मेरे द्वारा सीएसपी, सीएम हेल्पलाईन आदि दो तीन जगह पर की गयी।

दिनांक 12.08.2020 को शाम के 7 बजे मेरे मोबाइल पर आरक्षक अचल शर्मा का फोन आया था, उस समय मैं अपने गांव ईटमा थाना करहिया जिला ग्वालियर में मौजूद था। दिनांक 13.08.2020 को सुबह 11 बजे आरक्षक अचल शर्मा को पुनः फोन आया और बोला कि जो तुमने शिकायत की है, उसकी जांच के लिए सीएसपी साहब थाने पर आये हैं, आपका बयान लेना है। मैं थाने पर सुबह 11 बजे फोन पर सूचना मिलते ही थाना बहोड़ापुर पहुंचा था, जहां पर थाना प्रभारी उनि दिनेश राजपूत जी ने मेरा एड्रेस व नाम, पता पूछा। इन्हें आरक्षक अचल शर्मा व उनि संगीता मिंज द्वारा बताया गया था कि मैं विनयनगर में रहता हूं और इस पर पांच हजार रुपये का इनाम

है, यह वही अरूण शर्मा है, जिस पर दिनेश राजपूत द्वारा मेरा फोटो खींचकर सोशल मीडिया पर डाल दिया और मुझे हथकड़ी लगाकर, मेरे साथ मारपीट की गयी। मैं बार-बार निवेदन करता रहा कि जिस पर इनाम घोषित है, मैं वह अरूण शर्मा नहीं हूँ और न ही मेरे विरुद्ध कोई धोखाधड़ी का केस दर्ज है किन्तु उनि दिनेश राजपूत द्वारा मेरी एक बात नहीं सुनी गयी। इसके बाद मेरे भाई शीतल शर्मा द्वारा वरिष्ठ अधिकारियों से तस्दीक कराये जाने का अनुरोध गया, जिसकी तस्दीक उपरांत मुझे निर्दोष पाया जाकर छोड़ा गया। थाना गोला का मन्दिर के पुलिस अधिकारियों ने भी थाना बहोड़ापुर आकर मुझसे बातचीत की और घटनाक्रम की तस्दीक और इन्होंने भी मुझे निर्दोष पाया। इसके बाद दिनांक 13.08.2020 की रात करीब 10 बजे मुझे थाना बहोड़ापुर में रखे गये पुलिस निरोध से नये टीआई प्रशान्तसिंह यादव द्वारा तस्दीक उपरांत छोड़ दिया गया था। इसके बाद मेरे द्वारा वरिष्ठ अधिकारियों को आवेदन पत्र प्रस्तुत किए गये। मुझे अभी भी आरक्षक अचल शर्मा से डर है कि यह मुझे किसी भी झूठे केस में फंसवा सकता है।

**उप निरीक्षक दिनेशसिंह राजपूत, तत्का0थाना बहोड़ापुर हाल-पुलिस लाईन ग्वालियर,** ने कथन में बताया कि मैं थाना बहोड़ापुर में 02 मई 2020 से 14.08.2020 तक उप निरीक्षक पद पर एवं इंचार्ज थाना प्रभारी के रूप में पदस्थ रहा। दिनांक 13.08.2020 को श्रीमान् पुलिस अधीक्षक, ग्वालियर द्वारा अरूण पुत्र ओमप्रकाश शर्मा निवासी विनयनगर के ऊपर आदेश क्र/पुअ/ग्वा/एडी/158/2020 दिनांक 13.08.2020 में थाना गोला का मन्दिर के अपराध क्र0 255/11 धारा 420 भादवि आदि में 5000/- रु. (पांच हजार रुपये) के पुरस्कार की घोषणा की गयी थी। इनामी का थाना बहोड़ापुर क्षेत्र का होने से आसूचना संकलन में लगे आरक्षक एवं बीट आरक्षकों को उक्त इनामी के बारे में जानकारी प्राप्त करने हेतु बताया गया था। जिसके तहत थाने के आरक्षक अचल शर्मा द्वारा फोन पर बताया गया कि उक्त नाम का आरोपी लक्ष्मण तलैया पर रहता है, जिसका पूर्व में विनयनगर में घर था। आरक्षक के द्वारा बताया गया कि उक्त फरारी इन्दौर में भी धोखाधड़ी के केस में जेल गया था एवं काइम ब्रांच ग्वालियर द्वारा भी इसको धोखाधड़ी के केस में पकड़ा गया था। आरक्षक द्वारा बताया गया कि वह उक्त आरोपी का घर जानता है, उक्त आरोपी वही है, जिस पर इनाम घोषित हुआ है। तत्पश्चात् दिनांक 14.08.2020 को आरक्षक अचल शर्मा द्वारा अरूण शर्मा को फोन पर बुलाया गया व थाने के अन्य आरक्षकों के साथ इसको तस्दीक हेतु थाने लाया गया था, जिसकी रिपोर्ट थाने के रोजनामचा सान्हा 22 दि0 14.08.2020 पर दर्ज की गयी थी एवं उक्त फरारी इनामी को पकड़ने के संबंध में थाना गोला का मन्दिर को सूचित किया गया एवं थाना प्रभारी गोला का मन्दिर से फोन पर चर्चा की गयी तो थाना गोला का मन्दिर के उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरूण शर्मा की तस्दीक केस डायरी से की गयी एवं अरूण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरूण शर्मा थाना बहोड़ापुर द्वारा पकड़ा गया अरूण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरूण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्टि की गयी थी। इनामी अरूण शर्मा की नाम, बत्दियत, सरनेम व पता एक होने से भूलवश अन्य अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने आया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरूण शर्मा का पूर्व में भी

क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। मेरे द्वारा भूलवश अरुण शर्मा को थाने लाया गया। इसको थाने लाये जाने में मेरा कोई बुरा आशय नहीं था। उक्त घटना फरारी व अरुण शर्मा के नाम, पता एक होने से हुई है।

**साक्षी आरक्षक 1439 कमल वर्मा, थाना बहोडापुर जिला ग्वालियर** ने कथन में बताया कि दिनांक 14.08.2020 को मैं व आरक्षक जसविन्दर, आरक्षक अभिषेक शर्मा, आरक्षक धर्मेन्द्र तोमर, थाना प्रभारी महोदय के साथ इलाका भ्रमण पर थे, तभी ए0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रुपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम थाना प्रभारी बहोडापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरुण शर्मा की तस्दीक केस डायरी से की गयी एवं अरुण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरुण शर्मा थाना बहोडापुर द्वारा पकड़ा गया अरुण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरुण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्टि की गयी थी। इनामी अरुण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरुण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरुण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड़ दिया गया था।

**साक्षी आरक्षक 1839 अभिषेक शर्मा, थाना बहोडापुर जिला ग्वालियर** ने बताया कि दिनांक 14.08.2020 को मैं व आरक्षक जसविन्दर, आरक्षक धर्मेन्द्रसिंह तोमर, आरक्षक कमल वर्मा, थाना प्रभारी महोदय के साथ इलाका भ्रमण पर थे, तभी ए0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रुपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम थाना प्रभारी बहोडापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरुण शर्मा की तस्दीक केस डायरी से की गयी एवं अरुण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरुण शर्मा थाना बहोडापुर द्वारा पकड़ा गया अरुण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरुण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्टि की गयी थी। इनामी अरुण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरुण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरुण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड़ दिया गया था।

**साक्षी आरक्षक 638 जसविन्दरसिंह, थाना बहोडापुर जिला ग्वालियर** ने कथन में बताया कि दिनांक 14.08.2020 को मैं व आरक्षक अभिषेक शर्मा, आरक्षक धर्मेन्द्रसिंह तोमर, आरक्षक कमल

वर्मा, थाना प्रभारी महोदय के साथ इलाका भ्रमण पर थे, तभी ए 0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम थाना प्रभारी बहोड़ापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरुण शर्मा की तस्दीक केस डायरी से की गयी एवं अरुण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरुण शर्मा थाना बहोड़ापुर द्वारा पकड़ा गया अरुण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरुण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्टि की गयी थी। इनामी अरुण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरुण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरुण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड़ दिया गया था।

**साक्षी आरक्षक 2605 अनूपसिंह गुर्जर, थाना बहोड़ापुर**  
जिला ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को मैं कामदगिरी अपार्टमेन्ट के सामने खड़ा था, तभी थाना प्रभारी बहोड़ापुर उनि दिनेश राजपूत व आरक्षक अभिषेक शर्मा, आरक्षक धर्मेन्द्रसिंह तोमर, आरक्षक कमल वर्मा, जसविन्दर इलाका भ्रमण पर थे, मिले और मुझे बताया कि आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब मैं भी थाना प्रभारी बहोड़ापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरुण शर्मा की तस्दीक केस डायरी से की गयी एवं अरुण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरुण शर्मा थाना बहोड़ापुर द्वारा पकड़ा गया अरुण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरुण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्टि की गयी थी। इनामी अरुण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरुण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरुण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड़ दिया गया था।

**साक्षी 529 धर्मेन्द्रसिंह तोमर थाना बहोड़ापुर** ने कथन में बताया कि दिनांक 14.08.2020 को मैं व अन्य आरक्षकगण जसविन्दर, अभिषेक शर्मा, कमल वर्मा इंचार्ज थाना प्रभारी उनि दिनेश राजपूत के साथ इलाका भ्रमण पर थे, तभी ए0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम सभी हमराह उनि दिनेश सिंह राजपूत के जाकर उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर उप निरीक्षक आर0पी0गौतम

अपराध सदर की केस डायरी लेकर थाने पर अरुण शर्मा की तस्दीक हेतु आये व उन्होंने अरुण शर्मा से पूछताछ की, तो उक्त अपराध में वांछित आरोपी अरुण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरान्त अरुण शर्मा को उसके परिजनों के हमराह रो0सा0क. 76/14. 08.2020 पर रूखसत किया गया। उक्त घटनाक्रम के बारे में मीडिया में मैसेज जाने से घटना का प्रसारण हो गया।

**साक्षी उप निरीक्षक आर0पी0गौतम, थाना गोला का मन्दिर** जिला ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को मैं थाने से मय फोर्स के इन्द्रमणि तिराहे पर वाहन चैकिंग कर रहा था। दौराने वाहन चैकिंग थाना प्रभारी निरीक्षक दीपसिंह सेंगर द्वारा फोन कर मुझे बताया कि अपराध क0 255/11 धारा 420 भादवि,3(1) म0प्र0 निक्षेपकों के हितों का संरक्षण अधिनियम 2000, आरबीआई अधिनियम 1934 की धारा 45एस, 58बी(5-ए) में संदेही अरुण पुत्र ओमप्रकाश शर्मा नि0 लक्ष्मण तलैया का थाना बहोड़ापुर में बैठा होने की सूचना दी गयी, जिसकी तस्दीक हेतु उप निरीक्षक भगवानसिंह के साथ मैं थाना बहोड़ापुर पहुंचा और थाना प्रभारी बहोड़ापुर निरीक्षक प्रशान्त याद से जाकर मिला। बाद उनके निर्देशन में थाने पर बैठा संदेही अरुण पुत्र ओमप्रकाश शर्मा उम्र 32 साल निवासी ग्राम ईटमा थाना करहिया जिला ग्वालियर हाल-लक्ष्मण तलैया, आसमानी माता के मन्दिर के पास, ग्वालियर पूछताछ कर कथन लिया, तो उसने बताया कि मैं 11 वर्ष से पागलखाना चौराह थाना बहोड़ापुर क्षेत्र में विपिन कार्य के मकान में किराये पर दुकान लेकर किराने की दुकान करता हूं। मैंने परिवार डेयरी गोला का मन्दिर में कभी काम नहीं किया है और न ही मैं परिवार डेयरी के किसी अधिकारी/कर्मचारी को जानता हूं। मेरा परिवार डेयरी से कोई संबंध नहीं है, न ही पुलिस ने मुझे इस अपराध की डायरी के संबंध में कभी तलाश नहीं किया है। यदि मैं अपराध में दोषी हूं तो बुलाने पर मैं शीघ्र थाना गोला का मन्दिर में उपस्थित हो जाऊंगा। तस्दीक की, थाना प्रभारी निरी0 प्रशान्त यादव को हालात अर्ज किए, बाद संदेही अरुण शर्मा को थाना बहोड़ापुर से रूखसत किया गया। बाद तस्दीक उपरान्त थाना गोला का मन्दिर पहुंचा और तस्दीकी हालात थाना गोला का मन्दिर निरी0दीपसिंह सेंगर को विवेचना के हालात बताये। अपराध सदर में फरार आरोपियों पर 5-5 हजार रुपये का दिनांक 13.08.2020 को इनाम घोषित किया गया था।

**आरक्षक 1644 अंचल शर्मा, थाना बहोड़ापुर** जिला ग्वालियर ने कथन में बताया कि थाना बहोड़ापुर में तैनाती के दौरान मेरी ड्यूटी विनयनगर बीट में चल रही थी। बीट भ्रमण के दौरान जैसे ही मैं पागलखाने तिराहे पर आया, जहां मैंने देखा कि 40-50 व्यक्ति भीड़ लगाये खड़े थे। उसमें से 10-12 लोगों के हाथों में डण्डे थे। मैं उस समय अकेला ही था, मैंने मौके पर जाकर देखा और पूछा कि क्या बात है। कुछ लोगों ने बताया कि दुकान मालिक व दुकान किरायेदार के मध्य दुकान खाली कराने का विवाद है। मौके पर जब विवाद शांत नहीं हुआ और उसी दौरान वहां से उप निरीक्षक संजीता मिंज का निकल हुआ, जिन्हे मैंने रोककर विवाद के बारे में बताया। मैडम ने दोनों पक्षों को समझाया और जब दोनों पार्टी बात मानने को तैयार नहीं थी, तब दोनों पार्टियों को थाना बहोड़ापुर बुलाया गया। थाने पर दोनों पक्षों को सुना गया। दुकान मालिक विपिन आर्य ने बताया कि वर्ष 2013 से दुकान को किराया नहीं मिल रहा है और किरायेदार अरुण शर्मा ने इस बात से सहमत होते हुए वर्ष 2013 से किराया नहीं मिल रहा है और किरायेदार अरुण शर्मा ने इस बात से सहमत होते हुए वर्ष 2013 से किराया नहीं देना स्वीकार किया। जब अरुण शर्मा से दोनों पक्षों में हुए एग्रीमेन्ट के बारे में जानकारी ली गयी

तो अरूण शर्मा ने एग्रीमेन्ट नहीं दिया। अरूण शर्मा के चाचा थाना इन्दरगंज में मदनलाल शर्मा प्रभार हैं, जिनके हस्तक्षेप से कोई कार्यवाही नहीं हुई और दोनों पक्षों को थाने से वापस किया गया।

इंचार्ज थाना प्रभारी बहोड़ापुर उनि दिनेश राजपूत का एक दिन मेरे पास फोन आया कि अरूण शर्मा 5000/- रु का इनामी है और इसका पता बताओ। इसके कुछ समय बाद आरक्षक अभिषेक का भी फोन आया था, तब मैंने उन्हें बताया कि अरूण शर्मा लक्ष्मण तलैया पर रहता है। अरूण शर्मा नि० विनयनगर के नाम से 5000/-रु का इनाम घोषित हुआ था। मुझे ज्ञात हुआ कि अरूण शर्मा का बड़ा भाई शीतल शर्मा पहले विनयनगर में रहता था, जिसने वहां का मकान बेच दिया था और वर्तमान में लक्ष्मण तलैया पर रहने लगे थे, इस कारण मेरे द्वारा इंचार्ज थाना प्रभारी को अरूण शर्मा के पते की जानकारी दी गयी। मेरे द्वारा जानकारी दिए जाने के बाद इंचार्ज थाना प्रभारी द्वारा अपनी टीम के साथ अरूण शर्मा को पकड़ा गया। जब पुलिस पेट्रोल पम्पर इंचार्ज थाना प्रभारी व आरक्षक अभिषेक टीम के साथ मौजूद थे, जिन्होंने मुझे पेट्रोल पम्प पर बुलाया। मैं जैसे ही पेट्रोल पम्प पर पहुंचा तो इंचार्ज थाना प्रभारी ने मुझसे पूछा कि अरूण शर्मा यही व्यक्ति है। मैंने देखकर उन्हें बताया कि हां, अरूण शर्मा यही व्यक्ति है। इसके बाद अरूण शर्मा को थाने पर ले जाया गया और आगे की कार्यवाही की गयी। बाद में पता चला कि थान गोला का मन्दिर के जिस अपराध अरूण शर्मा इनामी आरोपी था, वह यह अरूण शर्मा न होकर अन्य अरूण शर्मा निकला, तब उसे थाने से छोड़ दिया गया।

**वरिष्ठ आरक्षक 1875 सुरेन्द्र कुमार भट्टेले,आई०टी०सेल,पुलिसअधीक्षक कार्यालय,** ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को तत्का०थाना प्रभारी बहोड़ापुर उनि दिनेश सिंह राजपूत द्वारा मेरे व्हाट्सएप नम्बर पर प्रेसनोट बनवाने हेतु मैसेज भेजा था कि "आरोपी अरूण पुत्र ओमप्रकाश शर्मा नि०विनयनगर ग्वालियर का,थाना गोला का मन्दिर के अपराध में 5000/-रुपये का इनामी था,

जिसे पुलिस पेट्रोल पम्प बहोड़ापुर से पकड़कर गिरफ्तार किया गया है इस इनामी का स्क्रीन शॉट का प्रिन्ट आउट प्रस्तुत किया, जो अवलोकनार्थ संलग्न है। आईटी सेल में प्रेसनोट को तैयार किया गया व इसका स्क्रीनशॉट व्हाट्सएप पर थाना प्रभारी को देकर उनसे मीडियों को देने से पूर्व अनुमोदन लिया गया था।

जांच में आवेदक अरूण शर्मा द्वारा अपने कथन में स्पष्ट किया गया कि सर्वप्रथम उसे दिनांक 25.07.2020 को किराये की दुकान के विवाद को लेकर आरक्षक अचल शर्मा व उप निरीक्षक संजीता मिंज द्वारा थाना बहोड़ापुर लाया गया था,किन्तु इस प्रकरण में वरिष्ठ अधिकारियों के हस्तक्षेप से बिना कोई कार्यवाही किए उसे थाने से मय सामान छोड़ दिया गया था। इसके बाद उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज थाना प्रभारी बहोड़ापुर एवं आई०टी०सेल के वरिष्ठ आरक्षक 1875 सुरेन्द्र कुमार भट्टेले के कथनानुसार पुलिस अधीक्षक,ग्वालियर द्वारा थाना गोला का मन्दिर के अपराध क्र० 255/11 धारा 420 भादवि,3(1)(2)(4) म०प्र० निक्षेपकों के हितों का संरक्षण अधिनियम 2000, 45-एस/58बी(5-ए) आर०बी.आई० अधिनियम 1934 में फरार आरोपी अरूण पुत्र ओमप्रकाश शर्मा नि० सेक्टर नं०-2, डी-97,विनयनगर, थाना बहोड़ापुर जिला ग्वालियर की गिरफ्तारी हेतु 5000/-रुपये का इनाम आदेश क्र/पुअ/ग्वा/एडी/158/2000 दिनांक 13.08.2020 के तहत घोषित किया गया था। इंचार्ज थाना प्रभारी बहोड़ापुर उनि दिनेश राजपूत ने अपने कथन में स्पष्ट किया कि इस आरोपी के इनाम की जानकारी थाने के समस्त कर्मचारियों को दी गयी, जिस पर थाना बहोड़ापुर में



तैनात आरक्षक 1644 अचल शर्मा द्वारा उन्हें 5000/-रु. के इनामी अरुण शर्मा के पुलिस पेट्रोल पम्प बहोड़ापुर पर खड़े होने की सूचना उनि दिनेशसिंह राजपूत को दिए जाने पर इन्होंने थाने के रो0सा0 22/14.08.2020 पर दर्ज की जाकर, हमराह टीम में आरक्षक 1439 कमल वर्मा, आरक्षक 638 जसविन्दरसिंह, आरक्षक 1389 अभिषेक शर्मा, आरक्षक 529 धर्मेन्द्रसिंह तोमर व आरक्षक 2605 अनूप सिंह गुर्जर को लेकर आरक्षक 1644 अचल शर्मा द्वारा दी गयी सूचना स्थल पर पहुंचकर अरुण शर्मा को दस्तयाव कर, थाना बहोड़ापुर लाया गया और दिनांक 14.08.2020 को ही उप निरीक्षक दिनेशसिंह राजपूत द्वारा अपने मोबाइल वाट्सएप नं0 70491-62900 पर प्रेसनोट हेतु मैसेज आई0टी0सेल के वरिष्ठ आरक्षक 1875 सुरेन्द्रकुमार भट्टे को भेजकर आरोपी अरुण पुत्र ओमप्रकाश शर्मा नि0 विनयनगर को थाना गोला का मन्दिर के अपराध का 5000/-रूपये के इनामी पुलिस पेट्रोल पम्प बहोड़ापुर से गिरफ्तार करना बताया जाकर स्क्रीन शॉट का प्रिन्ट आउट दिया गया और बाद में प्रेसनोट में सुधार करवाया जाकर पुनः प्रेसनोट प्रसारण किए जाने की स्वीकृति उप निरीक्षक दिनेशसिंह राजपूत द्वारा आई0टी0सेल में दी गयी, जिस पर से आई0टी0सेल से प्रेसनोट ई-मेल एवं व्हाट्सएप फोटो प्रेसनोट मय आरोपी अरुण शर्मा स्टॉफ के फोटो के साथ प्रसारित किया गया। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0गौतम द्वारा थाना बहोड़ापुर पहुंचकर संदेही अरुण शर्मा से पूछताछ व तस्दीक उपरांत थाना प्रभारी बहोड़ापुर को अवगत कराया गया कि जो अरुण शर्मा थाना बहोड़ापुर में इनामी के रूप में लाया गया है, वह थाना गोला का मन्दिर के अपराध क्र. 255/11 में असल आरोपी नहीं है, जिस पर से थाना प्रभारी बहोड़ापुर द्वारा थाने पर पुलिस निरोध में रखे गये अरुण शर्मा को रो0सा0क्र. 76/14.08.2020 पर रिपोर्ट दर्ज कर थाने से रूखसत किया गया।

इस तरह जांच से स्पष्ट हुआ कि संदेही अरुण शर्मा को 5000/-रूपये का इनामी होने की सूचना आरक्षक 1644 अचल शर्मा द्वारा उप निरीक्षक दिनेशसिंह राजपूत इंचार्ज थाना प्रभारी बहोड़ापुर को दिए जाने पर इनके द्वारा हमराह टीम के साथ संदेही अरुण शर्मा को थाने पर लाया गया था, जिसकी वल्लिद्यत, सरनेम व पता होने से भूलवश इनामी समझकर थाने पर लाया जाना उनि दिनेश राजपूत द्वारा अपने कथन में स्वीकार किया गया है एवं अरुण शर्मा की गिरफ्तारी का प्रेसनोट जारी करवाये जाने से पूर्व उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज थाना प्रभारी बहोड़ापुर द्वारा आरोपी अरुण शर्मा के संदर्भ में थाना गोला का मन्दिर के अपराध में बारीकी से तस्दीक न करते/कराते हुए जल्दबाजी किया जाना एवं आरक्षक 1644 अचल शर्मा की सूचना पर विश्वास किया जाना स्पष्ट हुआ। इस तथ्य की पुष्टि उप निरीक्षक दिनेशसिंह राजपूत की हमराह टीम के आरक्षकों एवं आई0टी0सेल द्वारा की गयी है। संदेही अरुण शर्मा को 5000/-रूपये का इनामी बताते हुए इसे रो0सा0क्र.22/14.08.2020 समय 13.56 बजे में थाने लाकर रो0सा.क्र. 76/14.08.2020 समय 21:37बजे तक थाना बहोड़ापुर में बिठाकर, रखा जाकर तस्दीक उपरांत रूखसत किया जाना पाया गया। संदेही अरुण शर्मा के विरुद्ध उक्त की गयी कार्यवाही के लिए प्रथम दृष्टया उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज थाना प्रभारी बहोड़ापुर एवं आरक्षक 1644 अचल शर्मा थाना बहोड़ापुर की अपने कर्तव्य के प्रति अतिउत्साह में लापरवाही किया जाना पाया जाता है।

अतः संदर्भित पत्रों एवं निर्देशों के पालन में प्राथमिक जांच प्रतिवेदन अवलोकनार्थ सादर प्रेषित है।

संलग्न :

1. आवेदक अरुण शर्मा पुत्र ओमप्रकाश शर्मा नि०लक्ष्मण तलैया, ग्वालियर का कथन दर्ज.
2. उप निरीक्षक दिनेशसिंह राजपूत थाना बहोड़ापुर-हाल-पुलिस लाईन के कथन व थाना बहोड़ापुर के री०सा०क .76, .22, .74, .72, 20/14. 8.2020 की सत्यापित नकलें प्राप्त
3. आरक्षक 1439 कमल वर्मा, थाना बहोड़ापुर का कथन.
4. आरक्षक 529 धर्मन्द्रसिंह तोमर, थाना बहोड़ापुर का कथन.
5. आरक्षक 1839 अभिषेक शर्मा, थाना बहोड़ापुर का कथन,
6. आरक्षक 638 जसविन्दरसिंह, थाना बहोड़ापुर का कथन,
7. आरक्षक 2605 अनूपसिंह गुर्जर, थाना बहोड़ापुर का कथन,
8. आरक्षक 1875 सुरेन्द्र कुमार भट्टेले, आई.टी.सेल. पुलिस अधीक्षक कार्यालय का कथन, स्क्रीन शॉट, प्रेसनोट, इनाम का आदेश,
9. आरक्षक 1644 अचल शर्मा, थाना बहोड़ापुर हाल-पुलिस लाईन ग्वालियर का कथन,
10. उप निरीक्षक आर०पी०गौतम, थाना गोला का मन्दिर जिला ग्वालियर का कथन,

(पंकज पाण्डेय)

अति० पुलिस अधीक्षक

शहर(मध्य), ग्वालियर

**35.** In the conclusion, it was observed by the Add. Superintendent of Police, City (Center), Gwalior that it is a case of mistaken identity done under excitement, because of similarity in name, father's name and residential address. Surprisingly, the Add. S.P., City (Center), Gwalior himself has disclosed the residential addresses of the petitioner and the wanted person in his preliminary enquiry report, but inspite of that he, for the reasons best known to him, gave a wrong finding that because the residential address of both the persons were same, therefore, the respondent no. 3 had committed mistake.

**36.** At the cost of repetition, it is once again clarified that during the course of hearing of the case, the S.P., Gwalior has made a statement before this Court, during the course of arguments, that in fact he had received a call on his mobile phone from the brother of

the petitioner, and only on his instructions, an enquiry was conducted and the petitioner was later on released. But the Add. Superintendent of Police, City (Center), Gwalior, did not mention this fact in his Preliminary Enquiry Report, although he has recorded the statement of one Shri R.P. Gautam, Sub-Inspector, Police Station Gola ka Mandir, Gwalior, who had conducted an enquiry in order to find out the identity of the petitioner. But surprisingly, the Add. Superintendent of Police, City (Center), Gwalior, in his preliminary enquiry report, conveniently drew a conclusion that by mistaken identity the petitioner was brought to the Police Station and upon his identification he was released, but did not mention that the respondents no. 3 to 5 did not try to verify the identity of the petitioner on their own, but the identity of the petitioner was established only after the intervention of the Superintendent of Police. Further, the respondent no.3 also in his return, did not claim that after taking the petitioner in custody, he ever tried to verify his identity. Be that as it may be.

37. It is surprising, that the Additional Superintendent of Police, City (Center), Gwalior was informed by the petitioner, about the incident which had taken place on 25-7-2020, and was also aware of the fact that in both the incidents, the respondent no.3 and 5 were involved, but still did not try to find out as to whether the unlawful custody of the petitioner on 14-8-2020 by the respondent no.3 and 5 was the case of mistaken identity or it was in continuation of the

incident dated 25-7-2020. As already observed that it appears, that the respondents no.3,4 and 5 had taken a contract for getting the shop vacated, and when the shop was not vacated by the petitioner inspite of the undertaking given by him in the police station, therefore, deliberately he was apprehended on 14-8-2020. Even before the enquiry officer, the respondent no.3 had made a statement that he had blindly believed the information given by the respondent no. 5 that the present petitioner is the same person, against whom a reward of Rs. 5,000 has been declared by the Superintendent of Police.

**38.** Further, the Add. Superintendent of Police, City (Center), Gwalior did not even try to verify that whether the respondent no. 5 was on his duty in the police station or was on duty at somewhere else. According to the respondent no. 5, he was on duty at another point, and he doesnot know anything about the unlawful apprehension of the petitioner. However, in the preliminary enquiry, it was found that the petitioner was unlawfully apprehended by the respondent no.3, on the information given by the respondent no.5. Thus, it is clear that the respondent no. 5 was not on the point, where he was deputed, but he was roaming around here and there. However, the Add. Superintendent of Police, City (Center), Gwalior, did not observe about the conduct of respondent no. 5 of leaving his point of duty and roaming around here and there. Be that whatever it may be.

**39.** Further, the respondent no. 5 has admitted that in the

photograph of the petitioner with uncovered face which was published in the newspaper, he is also there. It is fairly conceded by the Counsel for the respondent no.5, that as per the duty Rojnamcha Sanha, the respondent no. 5 should not have been in the police station at the time of photo session. Further, it is the stand of the respondent no.3, that it was the respondent no.5, who had given an information that the petitioner is the same person, against whom a reward of Rs. 5000 has been declared by the Superintendent of Police. Thus, it is clear that inspite of the best efforts by the respondents no. 3,4, and 5, as the petitioner had not handed over the vacant possession of the Shop to the landlady, therefore, the petitioner was taken into unlawful custody on 14-8-2020 at 13:56 and was kept in the police station unlawfully till 21:37 and was released only after the intervention of the Superintendent of Police, Gwalior and in the meanwhile, the photograph of the petitioner was circulated amongst Social Media as well as Print Media by projecting him as under :

पांच हजार रूपय का इनामी धोखाधडी का आरोपी पकडा गया।

40. Another important aspect of the matter is that according to the preliminary enquiry report prepared by the Add. Superintendent of Police, City (Center), Gwalior, the petitioner was brought to the Police Station Bahodapur, Distt. Gwalior on 14-8-2020 at 13:56 and was kept till 21:37, but for the reasons best known to the respondents no. 3 and 5, the petitioner was not formally arrested. If the respondents no. 3 and 5 were of the view that the petitioner is the

same person against whom reward of Rs. 5000 has been declared by the S.P., Gwalior, then there was no impediment for arresting the petitioner formally. Further, if the movements of the petitioner were curtailed in order to do some investigation, then the primary duty of the respondent no. 3 and 5 was to verify as to whether the petitioner is the same person, against whom the reward of Rs. 5000 was declared by the Superintendent of Police or not. Even that was not done. Further, the respondent no. 3 has tried to shred his responsibility by stating that he had acted on the information given by the respondent no.5, but the said stand of the respondent no. 3 cannot be accepted because, even if the stand of the respondent no.3 is accepted, but still it cannot be said that he had acted in good faith. The word “Good Faith” has been defined in Section 52 of I.P.C., which reads as under :

52. **“Good faith”**.—Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

It is not the case of the respondent no.3, that before and after taking the petitioner in custody and before releasing the press note with news “An accused with reward of Rs. 5000 has been arrested” with uncovered face of the petitioner, he had acted with due care and attention. So far as the registration of two criminal cases against the petitioner is concerned, the Counsel for the respondent no.3, could not point out that if any criminal case has been registered against a person, then the police in an illegal manner, and without there being

any allegation in a particular case, can project him as a “An accused with reward of Rs. 5000” and can publish his uncovered face in the print as well as social media. The respondent no.3 has filed a copy of the charge sheet filed by the police in crime No. 173/2913 registered at Police Station Heeranagar, Indore. From this charge sheet it is clear that on 20-4-2013, an information was received that gambling is going on, therefore, the police party raided the premises, however, two persons succeeded in running away. The purse of one of the miscreant fell down and from the ID proof kept in the said purse, it was found that the said purse belongs to one Rinku. Large number of mobile sims and mobile phones were seized. During investigation one Santi@ Chandraprakash of Morena was also implicated as an accused. On verification, it was found that the mobile SIMs were purchased from the shop of the petitioner on the basis of forged documents, and accordingly, he too was made an accused. Thus, it is clear that in crime no. 173/13, the allegations against the petitioner are that mobile SIMs were purchased from his shop on the basis of forged documents. However, there is no allegation that the petitioner was involved in actual gambling. Further, the respondent no.3, has also admitted that unless and until, a person is convicted, he is presumed to be innocent, and it is not the case of the respondent no.3, that the petitioner has been convicted in any criminal case. Further, the Supreme Court in the case of **Malak Singh Vs. State of P&H** reported in **(1981) 1 SCC 420** has held as under :

7. As we said, discreet surveillance of suspects, habitual and potential offenders, may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance registers have to be and are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. ....

The Supreme Court in the case of **Bhim Singh (Supra)** has held as under :

2.....Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct.....

41. During the course of arguments, it was submitted by the Counsel for the respondent no.3 that a mistake has been committed by respondent no.3, but that was committed in excitement and now he would abide by all the judgments passed by Supreme Court as well as High Court and now he would follow all instructions. The contention made by the Counsel for the respondent no.3 cannot be accepted. The Counsel for the respondent no.3 could not point out any provision of law, which gives authority or exemption to the respondent no. 3 from deviating his duties under excitement. Further, this admission clearly establishes that the respondent no. 3 had acted in a haste under rash and reckless excitement without any due care and attention. Further, what was the need of excitement is also not



known.

42. Thus, it is clear that not only the petitioner was taken in unlawful detention, but he was projected in the media that he is a “an accused with reward of Rs. 5000”. Although, the respondents no. 3 and 5 had, intentionally apprehended the petitioner in an unlawful manner, but unfortunately, the police authorities have tried to project that it is a simple case of mistaken identity. Further, the respondents no. 1 and 2, in their compliance report dated 20-10-2020, have filed a copy of news published in the newspaper that the respondent no. 3 has been suspended for **arresting an innocent person**. Thus, it is the case of the respondents no. 1 and 2 also, that the petitioner was arrested but is completely silent as to why formal arrest memo was not prepared?

43. It is a well established principle of law that there is a difference between “Custody” and “Arrest”. The Supreme Court in the case of **Khatri (2) v. State of Bihar**, reported in **(1981) 1 SCC 627**, has held as under :

7. There are two other irregularities appearing from the record to which we think it is necessary to refer. In the first place in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of their arrest as required by Article 22 of the Constitution. We do not wish to express any definite opinion in regard to this irregularity which prima facie appears to have occurred in a few cases, but we would strongly urge upon the State and its police authorities to see that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. It is also clear from the particulars furnished to us from the

records of the Judicial Magistrates that in some cases particularly those relating to Patel Sahu, Raman Bind, Shaligram Singh and a few others the accused persons were not produced before the Judicial Magistrate subsequent to their first production and they continued to remain in jail without any remand orders being passed by the Judicial Magistrates. This was plainly contrary to law. It is difficult to understand how the State continued to detain these accused persons in jail without any remand orders. We hope and trust that the State Government will inquire as to why this irregularity was allowed to be perpetrated and will see to it that in future no such violations of the law are permitted to be committed by the administrators of the law. The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police.

(Underline supplied)

The Supreme Court in the case of **Mohd. Arif v. State (NCT of Delhi)**, reported in **(2011) 13 SCC 621** has held as under :

**168.** Firstly speaking about the formal arrest, for the accused being in custody of the investigating agency he need not have been formally arrested. It is enough if he was in custody of the investigating agency meaning thereby his movements were under the control of the investigating agency. A formal arrest is not necessary and the fact that the accused was in effective custody of the investigating agency is enough. It has been amply proved that the accused was apprehended, searched and taken into custody. In that search the investigating agency recovered a pistol from him along with live cartridges, which articles were taken in possession of the investigating agency. This itself signifies that immediately after he was apprehended, the accused was in effective custody of the investigating agency.

The Supreme Court in the case of **Sundeep Kumar Bafna v.**

**State of Maharashtra**, reported in **(2014) 16 SCC 623** has held as under :

7. Article 21 of the Constitution states that no person shall be deprived of his life or personal liberty except according to procedure established by law. We are immediately reminded of three sentences from the Constitution Bench decision in *P.S.R. Sadhanantham v. Arunachalam*, which we appreciate as poetry in prose: (SCC p. 144, para 3)

“3. Article 21, in its sublime brevity, guardians human liberty by insisting on the prescription of procedure established by law, not fiat as *sine qua non* for deprivation of personal freedom. And those procedures so established must be fair, not fanciful, nor formal nor flimsy, as laid down in *Maneka Gandhi case*. So, it is axiomatic that our constitutional jurisprudence mandates the State not to deprive a person of his personal liberty without adherence to fair procedure laid down by law.”

Therefore, it seems to us that constriction or curtailment of personal liberty cannot be justified by a conjectural dialectic. The only restriction allowed as a general principle of law common to all legal systems is the period of 24 hours post arrest on the expiry of which an accused must mandatorily be produced in a court so that his remand or bail can be judicially considered.

44. It is clear that after taking the petitioner in unlawful custody, the respondents no. 3 and 5 did not waste a single minute in sending the press note with photograph to I.T., Cell, Office of S.P. Gwalior. Although the Add. Superintendent of Police, City (Center), Gwalior, during preliminary enquiry has recorded the statement of Head Constable 1875 Surendra Kumar Bhatele, who has stated that on 14-8-2020, the respondent no.3 had sent a message for preparing a press note on his *Whatsapp*, but conveniently did not mention the time of sending such message.

45. All the important documents have been withheld by the Police, and even on the directions of the Court, only the file pertaining to the suspension of the respondent no. 3 and some copies of different orders were sent, some of which have been reproduced in this order. Be that as it may be.

46. From the file of suspension of the respondent no. 3, it appears that the respondent no.3 was suspended by order dated 14-8-2020. Thereafter, the respondent no.3 moved an application for revocation of his suspension on 28-8-2020, and on the very same day, his suspension order was revoked. It is not out of place to mention here, that on 14-8-2020, a report was submitted by Additional Superintendent of Police, City (Center), Gwalior, that the petitioner was unlawfully detained in police station Bahodapur. Thereafter on 3-10-2020, a show cause notice was issued to respondent no. 3. It is not out of place to mention here that the notices of this petition were issued for the first time, by this Court on 8-9-2020. Thus, it is clear that after taking an application from the respondent no.3 for revocation of his suspension, the Superintendent of Police, Gwalior revoked his suspension on the very same day and the chapter was closed. However, only after receiving the notice from this Court, the first show cause notice was given to the respondent no. 3 on 3-10-2020 and accordingly, a fine of Rs. 5000 was imposed by order dated 14-10-2020, i.e., just two days prior to filing of first compliance report. Thus, it is clear that the police department has not taken the

misdeeds of the respondents no. 3 to 5 with all seriousness and took the matter as if the police has a right to tarnish the *privacy/personal liberty/reputation* of any citizen at their sweet will. ***Thus, the Advocate General of the State was right in making a statement before this Court on 2-11-2020, that the matter has been handled in a most causal manner and he may be granted time to reconsider the steps taken against the respondents no. 3 to 5. Thus, it is clear that even the Advocate General of the State was not satisfied with the manner in which the police authorities had handled the case against the respondents no. 3 to 5.*** Be that as it may.

47. The Counsel for the respondent no. 5 submitted that all the police personals which are visible in the photograph have not been proceeded against by the Superintendent of Police, Gwalior and he has deliberately adopted the policy of pick and choose, and the respondent no.5 has been made a scapegoat. In reply, it is submitted by Shri Amit Sanghi, Superintendent of Police, Gwalior, that action was taken on the basis of the Preliminary Enquiry Report in which it was concluded that the respondents no. 3 and 5 are responsible for unlawful custody.

48. Considered the submissions made by the Counsel for the respondent no. 5 and Shri Amit Sanghi, S.P., Gwalior. In the preliminary enquiry report, the enquiry officer has not considered the role played by all other team members who are visible in the photograph. Therefore, the Superintendent of Police, Gwalior is

directed to conduct an enquiry with regard to the role of all other police personals who were the members of the team, which had illegally apprehended the petitioner and are visible in the Photograph and take action accordingly.

**49.** The Supreme Court in the case of **Arnab Manorajan Goswami Vs. State of Maharashtra**, by **Judgment dated 27-11-2020** passed in **Criminal Appeal No. 742 of 2020** has held as under :

**59.** These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 of the CrPC. ....

**60.** Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC —or prevent abuse of the process of any Court or otherwise to secure the ends of justice. Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one – and a significant - end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a

legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. ....Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

**50.** As already held in previous paragraph that even according to respondents no.1 and 2, the petitioner was arrested but still memo of arrest was not prepared. The Supreme Court in the case of **D.K. Basu**

**Vs. State of W.B.** reported in **AIR 1997 SC 610** has held under :

**35.** We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by



a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

**36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.**

51. Thus, it is clear that since the petitioner had not handed over the vacant possession of the shop to the landlady, as per his undertaking given by him on 25-7-2020 in police station Bahodapur, Distt. Gwalior, therefore, he was taken in unlawful custody on 14-8-2020 by the respondents no. 3 and 5 and was brought to the police station Bahodapur at 13:56 and was released at 21:37 only after the intervention of the Superintendent of Police, Gwalior. Further, after taking him in custody, he was not formally arrested and no attempt was made by the respondents no. 3 and 5 to verify that whether the petitioner is the same person against whom a reward of Rs. 5000 has been declared by the S.P., Gwalior or not, specifically when the residential address of the petitioner is different. Further, without

formally arresting him, the respondents no. 3 and 5 projected in the media (Print as well as Social) that the petitioner is a “an accused with reward of Rs. 5000” and has been arrested. Further even after release of the petitioner from the Police Station, no attempts were made to withdraw the press release from Print Media, and it was prominently published in the news paper on the next day, that the petitioner is a criminal and has been arrested. Thus, it is held that the fundamental right of the petitioner as enshrined under Article 21 of the Constitution of India has been deliberately and unfortunately with malafide intentions was grossly violated by the respondents no. 3 and 5.

52. Thus, the present case is a glaring example of police atrocities and gross violation of directions issued by the Supreme Court in the case of **D.K. Basu (1997)( Supra)**. Not a single direction given by the Supreme Court in the case of **D.K. Basu (1997) (Supra)** was followed.

53. **Quantum of Compensation**

54. This Court by order dated 2-11-2020, has already held that in case of violation of fundamental right of a citizen of India, this Court can grant compensation.

55. The respondents no. 1 and 2 in their compliance report dated 9-11-2020, have submitted that the quantum of compensation may be decided by this Court.

56. The Petitioner has filed a copy of the application dated 18-8-

2020, which was given to the Superintendent of Police, Gwalior in which it has been pleaded by the petitioner that because of forcible taking out his belongings from the shop, he has suffered a monetary loss of Rs. 3 Lacs. Thus, it is directed that the respondent no. 1 shall pay a compensation of Rs. 5 lacs to the petitioner i.e., Rs. 2 lacs for causing damage during forcible taking out of his belongings from his shop on 25-7-2020 and Rs. 3 lacs for grossly violating the fundamental right of the petitioner. The compensation of Rs. 5 lacs be paid by respondent no.1, within a period of one month from today. The compensation amount, so paid to the petitioner shall be recovered by the respondent no.1 from the salary/dues/suspension allowance of the respondents no. 3, 4 and 5. An amount of Rs. 3 lacs shall be recovered from the respondent no.3, an amount of Rs. 1 lac each shall be recovered from the respondent no. 4 and 5. The respondent no. 2 is directed to ensure the compliance of payment of compensation and shall file the acknowledgment of receipt of compensation within a period of 35 days from today before the Principal Registrar of this Court. The Petitioner is further granted liberty that if he so desires, then he can file a civil suit for recovery of more compensation, and in that case, the compensation of Rs. 2 lacs awarded towards loss shall be adjustable.

**57. Whether the act of respondents no. 3 to 5 amounts to criminal act or not and whether they are liable to be prosecuted under different provisions of Indian Penal Code, as well as**

**Prevention of Corruption Act?**

58. It is submitted by the Superintendent of Police, that forcible eviction of a person from the tenanted premises is not the duty of the police and as per the preliminary enquiry report, it was found that the respondents no. 4 and 5 are *prima facie* guilty of forcibly evicting the petitioner from his shop. Further the respondent no.3 has also admitted in his return that vacating property is a civil dispute, and police has no jurisdiction. It is also evident from the departmental charge sheet, that a charge of forcible eviction of the petitioner from his shop has been leveled. Further, from the documents relied upon by the respondents no. 3 and 4 as well as Whatsapp text message of Reserved Inspector Shri Arvind Dangi, it is also clear that the petitioner was forcibly evicted by the landlady with the active help of the respondents no. 3 to 5. This act of respondents no. 3 to 5 would certainly amount to criminal act. Further, the unlawful detention of the petitioner on 14-8-2020 would also be a criminal act. However, it is submitted by Shri Amit Sanghi, Superintendent of Police, Gwalior that since, a deeper enquiry was required, therefore, no F.I.R. has been registered against the respondents no. 3 to 5.

59. Further, it is submitted by the Additional Advocate General, that the discretion of the Station House Officer, not to lodge the FIR cannot be taken away and this Court cannot direct for lodging the F.I.R. This submission is directly in conflict with the judgment passed by the Supreme Court in the case of **Lalita Kumari Vs. State**

of U.P., reported in (2014) 2 SCC 1.

60. The Supreme Court in the case of **Lalita Kumari (Supra)** has held that where the complaint discloses the commission of cognizable offence, then the police officer is under obligation to register the F.I.R. However, if the police officer so desires, may also conduct a preliminary enquiry before lodging the F.I.R. and preliminary enquiry should be completed within a period of seven days. In the case of **Lalita Kumari (Supra)** it has been held as under :

**120.** In view of the aforesaid discussion, we hold:

**120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

**120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

**120.3.** If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

**120.4.** The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

**120.5.** The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

**120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

**120.7.** While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

**120.8.** Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

**61.** Thus, the stand taken by Superintendent of Police, Gwalior, that unless and until a deeper enquiry into the matter is conducted, the FIR could not have been lodged against the respondents no. 3 to 5 is incorrect. When a complaint discloses commission of cognizable offence, then in some cases, a preliminary enquiry may be conducted. In this Case, preliminary enquiries were conducted regarding incident dated 25-7-2020 and 14-8-2020 and in both the preliminary enquiries, it was found that the respondents no. 3 to 5 *are prima facie guilty*. Thus, in the light of the judgment passed by Supreme Court in the case of **Lalita Kumari (Supra)**, nothing more was

required to be done by the S.H.O., Police Station Bahodapur, Distt. Gwalior before lodging a F.I.R. against the respondents no. 3 to 5. Further more, the contention of the Counsel for the State that the discretion of the police officer, not to lodge the FIR cannot be taken away by the Court is concerned, it is palpably misconceived and contrary to the law of Land. In the case of **Lalita Kumari (Supra)** it has been held that registration of FIR under Section 154 of Cr.P.C. is mandatory, where the information discloses commission of cognizable offence.

**62.** It is further submitted by the Counsel for the State that so far as the incident dated 14-8-2020 is concerned, the act of the respondents no. 3 and 5 would be covered by Section 76 of Indian Penal Code, therefore, they cannot be prosecuted. By relying on illustration (b) of Section 76 of Penal Code, it is submitted that since, the respondents no. 3 and 5 had taken the petitioner in custody under a belief, that he is the same person, against whom a reward of Rs. 5000 has been declared and is wanted in a criminal case, therefore, even if they have committed a mistake, but still, it cannot be said that they have committed any offence.

**63.** Heard Shri M.P.S. Raghuvanshi, Additional Advocate General for the State.

**64.** Section 76 of Indian Penal Code reads as under :

**76. Act done by a person bound, or by mistake of fact believing himself bound, by law.**—Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be,

bound by law to do it.

*Illustrations*

(a) *A*, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. *A* has committed no offence.

(b) *A*, an officer of a Court of Justice, being ordered by that court to arrest *Y*, and, after due enquiry, believing *Z* to be *Y*, arrests *Z*. *A* has committed no offence.

65. For application of Section 76 of Penal Code, the following circumstances must exist :

- (a) The person must be an officer of a Court of Justice;
- (b) There must be an order of the Court
- (c) Before arresting a person, he must have conducted an enquiry;
- (d) He must have bonafide belief, that he is arresting the same person, against whom an order of the Court has been issued.

66. However, if the present case is considered, then none of the above mentioned ingredients are present. Neither the respondents no. 3 and 5 are the officer of a Court of Justice, nor there is any order of the Court. Further, admittedly no enquiry was done by the respondents no. 3 and 5 before apprehending the petitioner, nor there was any bonafide belief on their part to do so.

67. The present case is a glaring example of gross misuse of police uniform. As already pointed out, that although the Superintendent of Police, Gwalior acted promptly after receiving an information of unlawful detention of the petitioner, and did every thing to protect the fundamental rights of the petitioner, but thereafter, all efforts have been made to protect the respondents no. 3 to 5, inspite of clear



findings by the enquiry officers themselves, that the respondents no. 3 to 5 have acted in an illegal manner. Be that as it may. Under these compelling circumstances, this Court cannot ignore its constitutional duty by relegating the petitioner to file complaint against the respondents no. 3 to 5, therefore, the Superintendent of Police, Special Police Establishment (Lokayukt) Gwalior is directed to lodge a F.I.R. against the respondent no. 3 to 5 for their criminal acts committed in their official uniform, including offence under Sections 294,323,341,379,380,424,452,34 of I.P.C. and under Section 7,7-A of Prevention of Corruption Act, 1988. Further, the S.P.E. (Lokayukt) shall be free to implicate any other person, who appears to have committed offence, either under any provision of I.P.C. or under any provision of Prevention of Corruption Act, 1988, including under Section 12 of Prevention of Corruption Act. **Let this exercise be done within a period of fifteen days from today and the copy of the FIR should be submitted before the Principal Registrar of this Court, within a period of 16 days from today.**

68. Before concluding the order, this Court thinks it apposite to point out hostile attitude of the Police Department in protecting the life and liberty of the citizens of India. This Court by order dated 2-11-2020, had quashed a part of circular dated 2-1-2014 issued by the Director General of Police and had quashed the provisions by which the police was authorized to share the personal information and photographs of accused and victims (covered or uncovered) with the

media. Further patrolling of accused in general public was also held to be violative of Article 21 of the Constitution of India, and accordingly, the Director General of Police, Bhopal, was directed to issue necessary instructions in this regard. During the course of arguments, it was pointed by Shri M.P.S. Raghuvanshi, that circular dated 7-11-2020 has been issued, and when he was directed to point out that whether there is any direction to the police personals, not to publically parade the accused persons in general public, then he prayed that since it is already 1:30 P.M., therefore, he would reply after tea break. Accordingly after tea break it was submitted by Shri M.P.S. Raghuvanshi, Add. Advocate General, that he has taken instructions, and in fact clause 7 of circular dated 7-11-2020 specifically provides that the accused persons should not be produced before the Media, and that would cover parading in General Public also.

**69.** Clause 7 of circular dated 7-11-2020 reads as under :

**7.** गिरफ्तार व्यक्ति को मीडिया के समक्ष किसी भी हालत में प्रस्तुत न करे।

**70.** Unfortunately, the State Police, is still not ready to realize the importance of liberty of the citizen of India. When this Court had restrained the police from parading the accused persons in general public, then by no stretch of imagination, the non-parading of accused in general public would be covered by clause 7 of Circular dated 7-11-2020. Further, Shri M.P.S. Raghuvanshi, Add. Advocate General submitted that it has come to the notice of the Police Headquarters,

that inspite of the fact that parading of accused persons in general public has been held to be violative of Article 21 of the Constitution, still in some cities of State of Madhya Pradesh like Ujjain etc, such incidents have taken place and accused persons were paraded in general public, and submitted that Police Headquarter will take action. Since, this submission made by Shri M.P.S. Raghuvanshi, Add. Advocate General is not the subject-matter of this Case, therefore, it is left to the wisdom of the Police Department. However, Shri M.P.S. Raghuvanshi, Additional Advocate General submitted that a specific circular restraining the police from parading the accused persons in general public shall be issued and accordingly, after the conclusion of hearing, he supplied a copy of order dated 26-11-2020 issued by the Police Headquarters, directing that no parading shall be done in general public. The said order dated 26-11-2020 is taken on record.

**71.** With aforesaid observations, this petition is **Allowed, with cost of Rs. 20,000/-** payable jointly by respondents no. 3 to 5 to the petitioner within 15 days from today. They shall also file a copy of acknowledgment of receipt before the Principal Registrar of this Court, within a period of 16 days from today.

**Let a copy of this order be sent to Superintendent of Police, Special Police Establishment (Lokayukt), Gwalior immediately for necessary action and compliance.**

**G.S. Ahluwalia  
Judge**