

Ch. Jage Ram, Inspector of Police and Another

Vs

Hans Raj Midha

Criminal Appeal No. 35 of 1969

)

(P. Jagmohan Reddy, D.G. Palekar JJ)

18.11.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This appeal is for expunging certain remarks made against appellants in the order of the Punjab and Haryana High Court on a habeas corpus petition filed by one Hans Raj Midha for the production of his son Prem Prakash Midha who is said to have been detained illegally by the Central Investigation Agency (C.I.A.) Staff, Karnal. In an investigation of an offence of theft committed on April 1, 1968 of a Cash Box containing Rs. 10,667.87 from the Head Post Office, Karnal, where the said Prem Prakash Midha was working as Clerk Incharge in the Savings Bank Section. It appears from the habeas corpus petition presented to the High Court on May 10, 1968, that after Prem Prakash who was working in the Bank, had gone out to meet his wife and came back he found the cash box missing. Immediately he reported the loss to the Assistant Post Master. It also appears from the affidavit filed on the return made by the appellant Jage Ram that a report of the theft of Rs. 10,667.87 belonging to the Postal Department was given on the same day over the telephone, an F.I.R. was issued under Section 380, I.P.C. by the Police Station, City, Karnal. After City Police had investigated the offence the investigation was handed over to the C.I.A., Karnal under the orders of Superintendent of Police, Karnal of April 24, 1968. The petitioner's father alleged in his habeas corpus petition that his son Prem Prakash was interrogated in his house before the case was entrusted to the C.I.A. but nothing incriminating was discovered; that on May 5, 1968, at about 5 p.m. he was taken away by A.S.I. Dayal Chand and a foot constable as Prem Prakash was wanted by Shri Jage Ram, Inspector, C.I.A., that Shri Ravinder Mehta the brother-in-law of the accused went to the C.I.A. Staff Office at Model Town and found him in their custody, but he was not allowed to meet him that day. The next day on May 6, 1968, the father went to the Police Station at Model Town to see him but he was not allowed to enter the premises nor was he allowed to interview his son. While the father was there he heard the cries of his son who was obviously being tortured. Ravinder Mehta also visited the C.I.A. staff on 7th, 8th and 9th May, 1968 and heard the cries and wailing of Prem Prakash who was being tortured. The father of the petitioner had also visited the Police Station for 7th to 9th when he heard the hue and cry of Prem Prakash. It was alleged that Jage Ram, Inspector, C.I.A. and Dayal Chand, A.S.I. were torturing Prem Prakash brutally and illegally and prayed that "a search warrant may be issued and a Court officer may be deputed to effect the search of Prem Prakash at the C.I.A. staff, Model Town, Karnal or at any place pointed out by the father of Prem Prakash, his wife or his brother-in-law Ravinder Mehta"; that a rule for the production of Prem Prakash may be issued and that he may also be medically examined immediately. On the petition being presented on May 10, 1968, the same day Jindra Lal, J. sitting

singly passed the following order :

"Rule returnable on Monday, May 13, 1968. On the request of the learned counsel I appoint Shri Sadhu Ram Gupta, my Reader to accompany the petitioner and to search the office of the C.I.A. Staff, Karnal, or any other place where the detenu is alleged to be confined. If the detenu is really in the custody of the respondents, he must be produced before this Court on the 13th May, 1968, also if he is really in the custody of the respondents or any other detaining authority in Karnal he must be forthwith medically examined by the Chief Medical Officer, Karnal, or in his absence from Karnal, the Officer next incharge."

2. In compliance with these orders, according to the report of Shri Sadhu Ram Gupta the Reader of the learned Judge, he reached the C.I.A. Staff Office at 8.30 p.m. on the same day accompanied by the father of the accused and one Shri Narinder Singh an Assistant in the Criminal Branch of that Court whom he took after obtaining verbal permission of the Judge as he has been going on such raids previously. After reaching the Police Station they saw one Kashmiri Lal constable (No. 267) who on enquiry told them that the Inspector and the Assistant Inspector had gone to take their meals. They then entered the main building and asked the petitioner to call out the detenu by his name and heard the faint voice of Prem Prakash Midha coming from a room. They lit the torch and opened the shutters and found Prem Prakash Midha lying on a gunny carpet spread on the floor and saw that his feet were swollen and he had some injuries on his head. The accused told them that he had been called on May 5, 1968, by Dayal Chand and some constables and was detained in C.I.A. Staff since then. He was not allowed to move out nor any of his relatives were allowed to see him. He also told them that he had been daily administered beating with a Danda by both the respondents. On their enquiry Kashmiri Lal told them that there were no papers relating to enquiry in connection with which the detenu had been detailed nor was there any daily diary register maintained in the C.I.A. Staff Office. In the meantime when another constable Uma Dutt in plain clothes reached there he was taken aside by constable Kashmiri Lal who asked him to inform the respondents i.e. the Inspector and the Assistant Sub-Inspector about the purpose of their arrival. At about 9.10 p.m. the said constable came and told that he had informed the respondents and that they would reach soon. At 9.15 p.m. one person in plain clothes came in the courtyard on a cycle and when asked if respondent No. 1 namely the Inspector had come, he told him that he would just go and bring him. As soon as he had asked him to go some relatives of the petitioners who were in the courtyard told him that he was A. S. I. Dayal Chand respondent No. 2, and immediately the Court Reader asked him not to go but in spite of it he went away on his cycle. At 10.50 p.m. Jage Ram Respondent 1 reached the office and told him that he detenu was under their legal arrest. When he was requested to show him the papers concerning the arrest of the accused Respondent 1 told him that the papers were with Respondent 2 and he directed Kashmiri Lal to ask Dayal Chand to bring the relevant papers. At about 11.15 p.m. someone out of the relatives of the petitioner had told them that Respondent 2 was busy writing some papers in a nearby house and he therefore asked Shri Narinder Singh to go and find out the matter. Within ten minutes Shri Narinder Singh came back with A. S. I. Dayal Chand and told him in the presence of the Respondent No. 1 that the A.S.I. was preparing a Zimini and that he had taken out the carbon papers in his presence and that further the A.S.I. had tagged these papers along with the police file. Respondent No. 2 handed over the file to Respondent 1 which related to the F.I.R. No. 88, dated April 1, 1968, P. S. Saddar, Karnal for an offence under Section 380, I.P.C. It was neither indexed nor page marked. The last Zimini was No. 25 which Narinder Singh told him he had seen respondent No. 2 writing and it was tagged in his presence. This Zimini in which the reasons for the detenu being an accused and his arrest are given was, dated May 10, 1968, and it did not bear any time thereon. This was initialed by the Court

Reader. The Court Reader further says that no remand order was shown to him but an application for remand and forwarding endorsement of the Government Pleader, dated May 10, 1968, was shown to him which he initialed on being asked by respondent No. 1 to do so. Thereafter he served the notices on both the respondents. After the notices were served Respondent 1 asked Respondent 2 to take the detenu of Duty Magistrate for his remand. The Court Reader asked the respondents to get the detenu medically examined before the remand was taken but they did not care and took him on their cycle to the residence of the Magistrate at 11.35 p.m. The Court Reader and others followed them and found them talking with the Duty Magistrate in the gate of his residence. The Court Reader brought the order of the Hon'ble High Court to the notice of the Magistrate and also gave him a copy of the orders as desired by him. Upon this the learned Magistrate ordered the remand of the detenu to the judicial custody up to May 18, 1968, and also directed the Appellant to get him medically examined by the Chief Medical officer, Karnal. Respondent No. 2 took the detenu to Civil Hospital and wanted to get the detenu examined from the Doctor on night duty but on their reaching the hospital and showing the orders of the High Court the doctor declined to examine and asked the police and themselves to take the detenu to the residence of the C.M.O. The C.M.O. as awakened during the night at 1.35 a.m. and was shown the orders of the High Court and after going through the same he made an endorsement that he would himself examine the detenu in the morning after looking at the injuries and ordered that the detenu be admitted in the hospital in the night. At 8.45 a.m. on May 11, 1968, the C.M.O. himself examined the detenu in their presence and handed over two copies of medical legal report which were enclosed with the report of the Court Reader. On May 13, 1968, the detenu was produced before R. P. Khosla, J. alongwith the returns filed by Jage Ram, Inspector and Dayal Chand, A.S.I.

3. According to Dayal Chand's affidavit he was associated with the investigations along with Jage Ram Inspector from May 4, 1968 to May 9, 1968. On enquiry made from the Post Office it was revealed that Prem Prakash accused had not marked his attendance in the Post Office and he had sent the report that the accused was out of station and on May 8, 1968, the deponent himself went to the house of the accused but could not find him there. It was on May 10, 1968, when he sent constable Bhagwan Dass No. 788 to the house of the accused he came back and reported that the accused had met him and promised to come and join the investigation; accordingly at about 11.30 a.m. the accused came. At that time Partap Singh, Inspector, Weights and Measures and one Jaswant Rai were present. The respondent interrogated the accused from 11.30 to 12.25 noon and thereafter arrested him at 12.30 noon. At the time of arrest the person of the accused was searched and a memo relating to the search was prepared which was attested by Shri Partap Singh and Jaswant Rai. Another Memo was prepared giving the visible injuries on the person of the accused. The deponent then wrote down the case diary for May 10, 1968, from 2 p.m. to 6 p.m. incorporating the entire investigation for the day up to that time. As there was a paucity of constables in the C.I.A. as they were mostly on election duty the only constable who was available at the time of the arrest of Prem Prakash accused was the moharir constable Kashmiri Lal. The deponent left Prem Prakash accused in the custody of Kashmiri Lal and at about 6.15 p.m. went in search of his immediate officer Jage Ram, Inspector whom he contacted at about 7.30 p.m. and got the remand papers relating to the accused forwarded by him. Then he went in search of H. P. Tiku, Prosecuting Inspector whom he could contract only at 9 p.m. when the remand papers were shown to him and got them forwarded by him also. Thereafter with these remand papers and the case diary in the basket of the cycle the deponent came to the office of the C.I.A. Staff with the intention of taking Prem Prakash to the illaqa Magistrate for remand. It may be useful to give his version thereafter in his own words :

"But hardly had he entered the compound of the office when a gentlemen who informed the deponent that he had come from the High Court asked the deponent to

bring Inspector Jage Ram to him. The deponent told that gentleman that the Inspector was on election duty and that the deponent would search him out and bring him. The deponent thereupon went in search of the Inspector on a cycle. The deponent did not hear any call of the reader from behind may be because of the suffering of hard of hearing. The Inspector was found in P.W.D. Rest House at about 10 p.m. and informed him that some gentlemen from the High Court had come and wanted to see him. Inspector Jage Ram thereupon left for the office of the C.I.A. Staff.

That from the P.W.D. Rest House after informing Inspector Jage Ram of the arrival of the gentleman from the High Court the deponent went to find out whether the duty Magistrate was at his residence. Finding the duty Magistrate at his residence, the deponent came back to the office of C.I.A. Staff where he came to know that the gentleman who had come from the High Court was the reader of Hon'ble Mr. Justice Jindra Lal and had come with an order of the Hon'ble Judge in the habeas corpus Petition of Prem Prakash accused. The order was served upon the deponent and deponent signed it in token of service at 10.35 p.m. After that the deponent showed the case diaries and the remand papers to the reader, who signed both of them but without mentioning the time. Before the duty Magistrate the reader again signed the case diaries and mentioned a time underneath the signatures."

The return of Inspector Jage Ram gives some facts which he came to know as a result of his investigation of the charge against the accused which is not relevant for the purposes of this appeal. It however, appears that even according to him the accused could not be traced till May 10, 1968, when on that day, because he was busy in election arrangements he had directed A. S. I. Dayal Chand to carry on the investigation on that day and make all possible efforts to join the accused Pram Prakash Midha with the investigation. He was informed at about 7.30 p.m. by A. S. I. Dayal Chand that the accused had been arrested at 12.30 noon and was also shown the reasons of arrest written in the case diary and got the remand papers forwarded from him. At about 10 p.m. Dayal Chand again contacted and informed the deponent at the P.W.D. Rest House that a gentleman from the High Court whom Shri S. M. Mehta who is brother-in-law of the accused seemed to have brought as 'Safarshi' wanted to see the deponent. He further mentioned that previously also on May 2, 1968, Ravinder Mehta accompanied by one other person had come to the deponent with two letters from Shri Gurdial Singh Nurpuri who was a Magistrate at Gidarabha when the deponent was posted there as Inspector in 1965/66 and tried to influence the deponent in favour of the accused. He enclosed the copies of these two letters. Thereafter the deponent proceeds to say as follows :

"On receiving this information from A. S. I. Dayal Chand the deponent proceeded to the office of the C.I.A. Staff, Karnal. There Shri Sadhu Ram, reader to the Hon'ble Mr. Justice Jindra Lal introduced himself to the deponent and served upon him the orders of the Hon'ble Judge at about 10.30 p.m. The deponent thereupon informed the reader that the accused was arrested at about 12.30 noon on the same day by A. S. I. Dayal Chand. His remand could not be taken so far due to preoccupation with election work but A. S. I. Dayal Chand had already got the application for remand endorsed from the deponent at about 7.30 p.m. and the accused was shortly going to be produced before a Magistrate for purposes of obtaining remand. After about 5 minutes A. S. I. Dayal Chand also reached the C.I.A. Office and showed the case diaries and remand papers to the reader, who signed both of them. At that time the reader had not given any time underneath his signature. Later on when the remand papers and case diaries were produced before the Magistrate Shri N. K. Jain the

reader again put his signature on the case diary and mentioned the time as 11.15 p.m. underneath."

In short both these officers deny the allegations made in the Habeas Corpus Petition of the father of the accused.

4. From the affidavits the case of the appellants was that they had not arrested the accused on May 5, 1968, as alleged nor had they kept him in their custody without obtaining a lawful order of remand for their custody, but had arrested him only on May 10, 1968, at about 12.30 p.m. In so far as the order for remand to their custody from a Judicial Magistrate is concerned it is clear from their statement that it was got only after the High Court's orders for the production of the accused were served on them, though no doubt they say that because they were busy, the papers could only be prepared and the Public Prosecutor's endorsement forwarding them could only be obtained by about 9 p.m. on that day. Secondly they do not deny that there were no injuries on the accused, but it is only contended that they were old injuries which were noted down. Thirdly there is a divergence in the statements of Dayal Chand and Jage Ram that while Dayal Chand says as soon as he was asked by some gentleman from the High Court to call Jage Ram he went away and that he did not hear anything further due to his being hard of hearing even though he was called back by that gentleman. While Jage Ram says that Dayal Chand had told him that a gentlemen from the High Court whom Shri Mehta, who is the brother-in-law of the accused seems to have brought as "Safarshi" wanted to see the deponent.

5. If as Dayal Chand says he did not hear even his being called back how did he in the first instance know he was called back and secondly since there was no talk between him and the gentleman from the High Court how he could have informed Respondent 1 that Shri Mehta, the brother-in-law of the accused seems to have brought him for 'Safarash'. These are not explained. There is nothing in Dayal Chand's affidavit that he had said that Mehta who came was the brother-in-law or that he had brought the gentlemen from the High Court for 'Safarash'. Even according to Respondent 1's statement what Respondent 2 told him was one S. M. Mehta had come while the brother-in-law is Ravinder Mehta. It is however contended by Shri Sachthey, the learned advocate for the two appellants that previously certain 'Safarshi' letters had been brought by Shri S. M. Mehta an employee of the High Court and Ravinder Mehta who is the brother-in-law of the accused from one Gurdial Singh Nurpuri and Judicial Magistrate of Gidarabha and so he thought that Mehta had brought the gentleman from the High Court for 'Safarash'. This explanation in our view is naive but however that does not explain how Dayal Chand came to know of this when he did not have time to have a talk with any of the persons who had accompanied the Court officer, which fact is also evident from the report of the Court Officer who said that as soon as he asked to see Jage Ram the person on the cycle namely Dayal Chand got on his cycle and went away inspite of the fact that immediately thereafter he recalled him back but he did not return. If a Dayal Chand says that the person who told him that he was from the High Court is true that person would not have failed to disclose the purpose of his visit namely that he had got orders form the High Court. It will be difficult to believe that a Police Officer will merely rush to call Judge Ram without further enquiry if he was merely informed that he had come from the High Court and assume that he purpose of his visit was only 'Safarash'. No police officer would be inclined to be in such a great hurry to rush to call his superior of he merely believed that a gentleman from the High Court was there only for the purpose of 'Safarshi' and not on an official duty. If it was however the former and if he was so inclined to send for the officer without ascertaining the purpose for which that gentleman came he would have sent a constable instead of himself rushing to bring Inspector Jage Ram. The haste with which he left the scene even without paying any attention when he was called back indicates that he

must have known the purpose why the person from the High Court had come. While we are on this topic we may pause to refer to a matter which is being sought to be utilised as a jurisdiction for the inference that the gentleman from the High Court had also come for 'Safarshi' work. This has reference to the letters written by Gurdial Singh Nurpuri, Judicial Magistrate, Gidarabha which were enclosed with the return filed by Jage Ram. Though they may look innocuous if given by any friend of the Inspector in as much as they merely ask him to help Prem Prakash Midha the accused who is said to have been the complainant in a theft case to trace the real culprit, but coming as they do from a Judicial Magistrate to a police officer in a state where we are informed by Mr. Sachthey on instructions there is a separation of judiciary from executive are not proper and are likely to be understood as interference in the discharge of duties by the police officers. It would appear from the second letter that the Judicial Magistrate had shown special interest because he seems to have personally come to Karnal from Gidarabha for the purpose of talking to the appellant Jage Ram but as he found him away he gave that letter. In any case whether these letters at the time when he received them were treated by the addressee as interfering with his duties or not they undermine the confidence in the judiciary by giving rise to the comment that such judicial officers may equally be susceptible to influence in the discharge of their duties by parties who are likely to appear before them. It is in the best interest of Judicial officers not to indulge in such practices. This matter may also be brought to the notice of the High Court for such action as it may think necessary to take.

6. Now coming back to the narration of what happened when he was produced in Court it is apparent from the order of Khosla, J. who after setting out the purport of the report of his reader Gupta and after perusing the affidavit filed by the two appellant Police Officer says that the detenu wanted to make a statement and was accordingly examined. This is what the learned Judge has stated :

"Reading of the statement made by the detenu together with the allegations projected in the instant petition supported by the averments in the accompanying affidavits and the report submitted by Shri Gupta point unmistakably to the contention of the learned counsel that detenu had been taken into custody by the Karnal local police on May 5, 1968, passed on to the C.I.A. Staff for investigation and interrogation and was mal-treated by the respondents. His arrest had surreptitiously been sworn to have taken place on May 10, 1968. The affidavits sworn by the respondents of course denied all accusations and it was maintained that the detenu was called in on May 10, 1968, and duly arrested. He had on his person two old injuries that were noted. The allegations that some third degree methods had been employed to illicit confession or information were equally emphatically traversed. Upon hearing counsel at some length and examining the material placed on the record with due care I have no hesitation in finding that the detenu had been taken into custody on some date before May 10, and tortured by the respondents. The examination carried out by the Chief Medical Officer, Karnal Hospital on the morning of May 11, showed that the detenu had on his person injuries more than two. The detenu was in Court and I found him suffering grievously from the after-effects cumulatively of those injuries. His version of torture administered by the respondents at diverse occasions stood materially corroborated. I also find that though the confinement of the detenu was illegal till May 10, 1968, he is at present in proper judicial custody. He must thus be remitted to the same custody. He is accordingly directed to be taken back to the Hospital Karnal and to await further order of the learned Magistrate.

The report submitted by Shri Gupta, Officer of this Court discloses in no uncertain

terms that Respondent No. 2 at least showed scant respect for the orders of this Court and when asked to show the papers relating to the case adopted evasive attitude and also by sneaking away subsequently completed police papers spuriously. I cannot but abhor such conduct and disapprove of the mentality.

Otherwise too, I have no doubt whatever that the affidavits sworn by the Respondents in this Court did not represent the true state of affairs calculated falsehood had been imported in material particulars.

For these and other illegalities committed by the respondents, the detenu is left to his remedies at law."

After making these observations the learned Judge rejected the petition for interim bail as he had no occasion to examine the merits of accusations laid against him as also because a theft of large sums of money was involved. He however left it open to the Magistrate to consider the question of bail as and when suitably moved by the accused in that behalf.

7. The learned advocate Shri Sachthy has strenuously contended that these remarks are unjustified and besides impeding the investigatory process which the police as a matter of their duty have to undertaken, if effects the career of the police officers concerned. He also contends that it is not true that the accused was arrested on May 5, 1968, or on any date prior to 10th and the remarks that they were in illegal custody and were brutally ill-treated were also unjustified in that they had been arrived at without any opportunity being given to the appellants or without holding any enquiry thereon. We are unable to appreciate these contentions. In a habeas corpus Petition where allegations are made that a citizen of this country is in illegal custody it is the duty of the Court to safeguard the freedom of the citizen which has been guaranteed to him by our Constitution and to immediately take such action as would ensure that no person however high or low acts in contravention of the law or in a high-handed, arbitrary or illegal manner. While no doubt it is the duty of the Court to safeguard against any encroachments on the life and liberty of individuals, at the same time we recognise that the authorities who have the responsibility to discharge their functions vested in them under the law of the country should not be impeded or interfered with, without jurisdiction. In furtherance of this duty the High Court passed the orders which in the circumstances of the case was fully justified. There was some comment on the learned Judge directing his reader to contact the petitioner to trace out the accused and also on the oral instructions as appeared from the report to have been given by the learned Judge to take the assistance of Narinder Singh an Assistant in the Criminal Branch because he had been going on such raids previously as indicating that the High Court was directing such raised previously. We are not in a position to stay whether this comment is justified because all the information necessary is not available to us, as such we do not wish to draw any inference on this aspect of the case. If the procedure was objected to in the High Court as it has been done before us it would have itself ascertained what was the basis for the reader's statement that Narinder Singh was being sent previously on such raids. We do not personally think that such raids are conducted but if in any particular case where there is urgency there is every jurisdiction for the procedure followed by the High Court to be adopted. In any case ordinarily, courts are not powerless as they can have recourse to the provisions of the Criminal Procedure Code which provides for directions being given to the Magistrates to deal with such matters by conducting an enquiry and making a report to the Court.

8. On the question whether the several remarks of the learned Judge are justified or not we may refer in this connection to the observations of S. K. Das, J. in State of U.P. v. Mohammad Naim,

[(1964) 2 SCR 363, 374.] as to the matters which have to be kept in view in considering whether the remarks made in judgments against authorities whose conduct comes into consideration before Courts of law in cases to be decided by them are disparaging. These are : (a) whether the party whose conduct is in question is before the Court or has any opportunity of explaining or defending himself; (b) whether there is evidence or record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.

9. What we must now see is, keeping in mind the above criteria whether the remarks made by Khosla, J. are unjustified. The first of these which are assailed concerns the validity of the finding that the accused was arrested earlier than May 10, 1968, and that he was tortured. We have perused the statement of the arrested person given before the learned Judge and it appears therefrom that none other than the Advocate General of the State had cross-examined him in respect of the allegations made by him against the appellant Police Officers. The detenu stated that on May 5, 1968, A.S.I., Dayal Chand accompanied by a foot constable in plain clothes came to his house at about 5 p.m. and took him to the C.I.A. Staff situated in Model Town, Karnal. The said Dayal Chand Respondent 2 was present in Court. He further says that Jage Ram was not present in the C.I.A. office when he reached there at about 9 a.m. that he was questioned about the missing cash box and on his showing ignorance was kept under guard who was changing every 3 hours. His hands were raised out and legs stretched out. The second respondent remained with him till about 12 midnight. At about 6 a.m. he was taken to another room and was made to stand in the said posture. On May 6, 1968, at about 10 p.m. both Respondent Jage Ram and Dayal Chand came to that room and again interrogated him about the theft. He pleaded innocence and denied that they interrogate other colleagues serving in the Post Office. Thereafter he described the manner in which he was tortured on the several days and states what happened on May 10, 1968, when Sadhu Ram Gupta, Narinder Singh and his father and brother-in-law Ravinder Mehta came to him and what he had told them. It appears from the cross-examination of the learned Advocate General that he was questioned about the theft and later it was put to him that he was absent between 5th to 10th from Karnal and remained at Chandigarh to get some recommendations for getting the course of investigations changed, which suggestion however was denied. He was further asked whether he did not appear before Respondent 2 on 10th at 11 a.m. on his own violation, which suggestion was also denied. He denied that there was any search of his person effected or any memo prepared and also denied that he had been giving false version of being tortured with a view to escape the liability of the theft. It was also put to him that before presenting himself before A. S. I. Dayal Chand on May 10, 1968, he had made arrangements with the help of his relatives in filing a habeas corpus Petition so that he would secure release, which suggestion also was described by the accused as entirely false and untrue. This latter suggestion of the learned Advocate General would answer the contention of the learned Advocate before us that it is only after the accused was arrested at 12.30 p.m. on May 10 at Karnal that the petition was filed at Chandigarh which is said to be 60 miles away. This contention would appear to be also not tenable because of the distance and time gap which will not make it possible for a petition to be filed before the Court closed. That the petition was filed much earlier on the other hand is apparent from the report of the court refer who said he left Chandigarh by bus 4.30 p.m. which he could only do if the order was passed much earlier to enable to him get copies and make arrangements for him to travel by bus at 4.30 p.m.

10. On the question whether the remarks that accused was injured are justified, we have also perused the medical report of the Chief Medical Officer, dated May 11, 1968, from which it is evident that he had found six injuries on the accused and one of them was such that he advised X-

Ray though later it was found that there was no fracture. The nature of these injuries as well as the condition of the accused at the time when he was produced before the learned Judge fully justify the conclusion that the accused when produced before the court was found "suffering grievously from the after-effects cumulatively of those injuries".

11. In our view there is no warrant for the submission that the appellants were not given an opportunity to explain nor that no enquiry was made against them in respect of the allegations made in the petition or by the accused. We do not know what other enquiry could be made. The appellants had opportunity of filing their affidavits and to give their version which they have done in great detail, which shows that they knew what the allegations against them were. If they wanted to produce any other person in support of their stand that the accused was only arrested on the 10th and not on the 5th or that the injuries found on the accused were old and were not fresh they could have done so. They do not deny that the Chief Medical Officer examined the accused nor is it possible for them to say how the injuries found on the accused some of which were fresh could be caused. They were certainly not old injuries nor is it their case that when the accused was arrested on the 10th he was found to be suffering from swollen feet or injuries which were fresh. None of the remarks of which exception has been taken, in our view could be described as unwarranted, unnecessary or irrelevant or can be characterised as generalisation or of a sweeping nature. There is, therefore no ground for granting the prayer for expunging any of the remarks in the order of the High Court. In this view the appeal is dismissed.

</html