
(1996) 05 AHC CK 0113
In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition Nos. 35956 and 37064 of 1992

Hari Krishna Mahashwari @ Hari Maheshwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 176
Uttar Pradesh Police Regulations, 1948 — Regulation 135A

Citation : (1996) 05 AHC CK 0113

Hon'ble Judges : R.B.Mehrotra, J and V.P.Goel, J

Final Decision : Disposed Of

Judgement

R. B. Mehrotra, J.—In Writ Petition No. 35956 of 1992, the petitioner prayed for a relief that the petitioner should be provided with the highest Z plus security failing which the Central Government, the State Government, I.A.S. and I.P.S. officers will neither permit the petitioner to approach the court and will get the petitioner killed by entangling the petitioner in some offence. The second relief prayed was that in accordance with the constitutional machinery of the country, the petitioner is praying to the Court that respondents may be asked to explain their encounter policy and facts in the said regard may be fully looked into. The third relief claimed in the petition was that an enquiry be conducted by a Judicial Officer regarding all the cases pending against the petitioner. In support of the aforesaid writ petition, the petitioner filed an affidavit.

2. In Writ Petition No. 37064 of 1992, the Home Secretary, Uttar Pradesh? the Director General of Police, Uttar Pradesh and S.S.P. Kanpur City, Kanpur were arrayed as respondents and a relief was prayed that in presence of some Judicial Officer, the petitioner be permitted to run his business of Scooter Stand and publication of "Kanpur Crime Reporter" or the officers, who are indulging in violating the honour of the Court and are professionally humiliating the Court should be directed to ensure continuance of the petitioner's aforesaid business. Second relief prayed in this petition was that the petitioner should be permitted

in accordance with the concept of equality provided in the Indian Constitution to earn money by killing people for which the petitioner is competent and which the petitioner has proved by standing in the Court on 15th October, 1992 that the petitioner is capable of doing the same as has been done by the police by killing 20,000 people and thereby earning money or getting money on the basis of arranging these murders. Special relief prayed in the petition was that the Hon"ble Court may pass such orders against such professional killers so that they may realise that the judiciary of the country has its own honour and the persons indulging in deteriorating the said honour are not to be spared as has been done by Calcutta High Court in its decision reported in AIR 1992 Cal 105 holding that the Court cannot be spectator of permitting anybody to do wrong.

3. The reliefs prayed for are in a very peculiar and vague words and do not make out any sense as to what the petitioner prayed for.

4. However, the aforesaid writ petitions were registered as Criminal Misc. Writ Petition in this Court and notices were issued to the respondents to file their counteraffidavits. Both the matters have been heard together for a long period of four years by different Courts and the petitioner's conduct is mainly responsible for this inordinate delay in deciding the case as whenever a court wanted to hear the matter, the petitioner had been indulging in making baseless and false allegations not only against the Judges of this Court but also against the Chief Justice of this Court and entire Judicial system and indulging himself even in abusing the Judges, Chief Justice of this Court as well as the Apex Court. The petitioner had also throughout been moving one application after the other making several grievances during the pendency of the matter and on above application the Court asked for a counteraffidavit, the bulk of the case at present is contained in hundreds of pages, the details whereof, in short, will be given hereinafter.

5. Before proceeding with the applications and affidavits which the petitioner has been filing from time to time, it is necessary to mention the contents of the petitions themselves.

6. In Writ Petition No. 35956 of 1992, the petitioner stated that Annexures "1" and "2" of the petition may be looked into. Annexure "1" to the petition is a Criminal Misc. Petition filed by the petitioner in the Supreme Court being Criminal Misc. Petition No. 32993 of 1984 in Transfer Petition (Criminal) No. 99102 of 1988. In this Criminal Petition also, the petitioner made allegations that the police are murdering persons in the shape of encounters to earn money and they themselves create terrorism and conditions for victimising the people. It was also alleged that the police also murder people who oppose their policies and implicate them in false cases and destroy the life of those persons and their families. In this category, he claimed himself to be a glaring example of victimisation. The application further referred that despite the order passed by Hon"ble Mr. Justice P. N. Bhagwati and Hon"ble Mr. Justice Sabyasachi Mukherji on 13/11/1984, to provide the petitioner a security guard, the security guard has

pot been provided. A request was made in this application that the petitioner be provided with the security guard for the safety of the petitioner's life. This application is dated 3111984. Annexure"2" to the petition is a Question narie which has been filed by the petitioner making allegations against the police that they are indulging in getting murders done and the questions were framed as to whether the Constitution permits a police officer to kill people for money.

7. The third paragraph of the petition is incomplete. It only says that the petitioner made a request before the Chief Metropolitan Magistrate. The next sentence is incomplete. Then some questions have been put in the petition again repeating the story which are mentioned in the Questionnaire filed as Annexure "2". Question No. "2" in this petition is to the effect that in case the Court does not call for the Government and its officers to explain the questions asked for, then it will be presumed that the judiciary is also a party directly or indirectly, in the murders of the people by the police. Third paragraph of the petition says that the petitioner is ready to say so many things and he has many facts with him which he will be telling the Court on being asked. This is all what is contained in the first petition.

8. In the second petition being Writ Petition No. 37064 of 1992, paragraph"1" states that the Court had not granted licence on 15101992 for the murder of the petitioner, the date on which the petitioner made an application for regaining his lost property and for increasing his income. Whatever the Court has done, must be right. Paragraph"2" of the petition says that Annexures "1", "2" and "3" will show that the only source of the earning of the petitioner was a licence for Scooter Stand which was being run in the name of the petitioner's mother which is laying closed for last 12 years. For this Gurdeep Sinha Sarna, Station Officer and Ajay Kumar Singh, SubInspector and some police constables are responsible. Paragraph "3" stated that the aforesaid Scooter Stand was got forcibly closed regarding which Hon"ble Mr. Justice R. M. Sahai and Hon"ble Mr. Justice R. P. Singh directed the Collector, S. S. P. and S.P. to permit the petitions to continue and on petitioner's moving a contempt petition, the petitioner was permitted to continue the Scooter Stand. Now the Scooter Stand is being run by the petitioner's servants and on 17th August, 1991, when the petitioner was shot at but was saved, the petitioner has been implicated in National Security Act. Later on, the petitioner's servant Kamlesh was killed and the Scooter Stand was got closed at 3 p.m. All the cars and cycles were removed from the Scooter Stand. On the first occasion, several cars remained closed in the Scooter Stand and the people also supported the opening of the Scooter Stand. When the report was called on the same, it was reported that the Scooter Stand belongs to Kesar Devi, who is residing with her daughter, his son is squanderer and is in jail, his servants are not ready to continue and for this reason the Scooter Stand has been closed. The police has not got closed the Scooter Stand. The petitioner says that the report is not correct. The writ petition further stated that the correct fact is that since the petitioner has raised the issue of encounter, the encounters have come to a close and for depriving him from his livelihood, the police has got the

Scooter Stand closed. They are jealous of him and are happy for getting his Scooter Stand closed and they are showing that they are superior authority and despite the orders of the High Court, they have not the Scooter Stand closed. They claimed themselves to be superior to the High Court. In paragraph "8", it was stated that on 9th of September, 1982, one Bijjan was killed in the encounter, which was published in Crime Reporter, Kanpur, consequent thereto the newspaper has been closed and has not been permitted to be opened till today and the building in which the newspaper was being run has been demolished and a flat has been constructed thereon. The shop keeper of the ground floor Mohan Lal Bhaskar has connived with the police and has filed a false report under Section 452, IPC and the petitioner was sent to jail on 2051986 with a plastered left hand and was implicated in Gangsters Act and was sent to Allahabad. Thereafter a fiat was constructed. This flat was sold by the police at the cost of Rs. 50,000 in the name of one Sushil. The petitioner was released after two months. After the petitioner's release, nobody could occupy the aforesaid premises. On this Sri Yashpal Singh, S. S. P. suspended, S, I. Satish Chandra Seth. Despite their best efforts, they could do nothing against the petitioner. In paragraph"10", the petitioner states that these professional murderers should be asked not to interfere in the functioning of the petitioner's newspaper in the aforesaid one room flat. Paragraph "11" of the petition is in the form of a question which says that the petitioner has no work to do on the basis of which the petitioner could earn his livelihood. The police department people, who are traitors of the country and are indulging in the act by getting people killed, had compelled the petitioner to move applications before the court to permit the petitioner to earn money which application has been forwarded by the Court and the petitioner had no money to spend for maintaining his family and for doing Pairvi of his cases. This is all the contents of this petition.

9. The bulk of the record of the writ petitions discloses that the petitioner has moved several applications and affidavits, details whereof are as under:

- (1) Application, dated 1621992.
- (2) Application, dated 30101992.
- (3) Application, dated 9111992.
- (4) Application, dated 22121993.
- (5) Application, dated 721994.
- (6) Application, dated 2121994.
- (7) Application, dated 2321994.
- (8) Application, dated 731994.
- (9) Application, dated 2131994.
- (10) Application, dated 3131994.

- (11) Two Application, dated 841994.
- (12) Application, dated 2141994.
- (13) Application, dated 2741994.
- (14) Application, dated 2281994.
- (15) Application, dated 29101994.
- (16) Application, dated 15111994.
- (17) Application, dated 16111994.
- (18) Application, dated 2221995.
- (19) Application, dated 341995.
- (20) Application, dated 1341995.
- (21) Supp. Affidavit, dated 2991992.
- (22) Supp. Affidavit, dated 12101992.
- (23) Affidavit, dated 21121993 in support of application, dated 22121993.
- (24) Affidavit, dated 851995.
- (25) Affidavit, dated 1951995.

10. A telegram sent by the petitioner, dated 1271994 is also on record. Letters sent by the petitioner along with their envelopes have been exhibited as Exts. 1, 2 and 3 and have been placed on record on 1611996.

11. In reply to the aforesaid applications and affidavits, the respondents have filed following affidavits and counteraffidavits:

- (1) Affidavit of D.G.P., dated 28101994.
- (2) Affidavit of Home Secretary, dated 28111994.
- (3) Affidavit of S.S.P. Kanpur, dated 17111994.
- (4) CounterAffidavit of S.S.P. Kanpur, dated 8121994.
- (5) CounterAffidavit of S.S.P. Kanpur, dated 15121995.
- (6) Supp. CounterAffidavit, dated 3061995.
- (7) Affidavit of D.I.G., P.H.Q., dated 371995.
- (8) Affidavit of Home Secretary, dated 671995.
- (9) Affidavit of D.I.G., dated 671995.
- (10) Supp. CounterAffidavit by Sri Jag Mohan Yadav formers S P Kanpur, dated 671995.

- (11) Supp. CounterAffidavit of Inspector of Police, dated 671995
- (12) Affidavit of Dy. S. P. Kanpur, dated 771995.
- (13) Affidavit of Dy. S. P. Kanpur, dated 1971995.
- (14) CounterAffidavit of D.G.P., dated 981995.
- (15) CounterAffidavit of Principal Secretary (Home) dated 981995.
- (16) Affidavit of compliance, dated 1191996.
- (17) Affidavit of S.S.P, Kanpur, dated 15101995.
- (18) Affidavit of S. I. Vijal Anand Tyagi, dated 16101995.
- (19) Supp. Counter Affidavit of D. G. P. dated 16101995.
- (20) Supp. CounterAffidavit of D. G. P. dated 1611996.
- (21) Affidavit of Dy. S. P. Kanpur, dated 1611996.
- (22) Supp. Affidavit of S. I. V. A. Tyagi, dated 1611996.
- (23) Affidavit of S. O. P. K. Singh, dated 1321996.
- (24) Chart with Supp. CounterAffidavit, dated 1321996.

12. The order sheet of the Court runs ia more than hundred pages. Detailed orders have been passed on the petitioners applications whenever a grievance of any nature was made by the petitioner and the Court being conscious of the fact that the petitioner has made allegations though without any basis of killing of the citizen of the country on the basis of false encounters the issue involved for consideration in the petitions was of infringement of Human Rights and the country being a signatory to the International covenant on civil and political rights framed on the basis of the principles proclaimed in the charter of the United Nations and the universal declaration of rights. Preamble of our Constitution proclaims and recites the solemn resolve to secure to all a fundamental right of freedom, justice and peace and in view of the fact that basic feature of our Constitution is Article 21 of the Constitution which guarantees that no citizen will be deprived of his life and liberty without authority of law, the Court felt its obligation to enquire into the allegations made by the petitioner regarding indulgence of police in killing of the citizens of the country by showing false encounters though the petitioner failed to place any proper materials before the Court to examine the allegations and though the petitioner had been indulging in making baseless and false allegations against the entire judicial system of the country and the petitioner has always been indulging in using abusive language against the Judges of this Court, the former Chief Justice of the Court and also against the Chief Justice of the country. All such allegations and applications made by the petitioner are on record of the case and since they are not relevant for the purposes of the decision of the petitioners, the details

whereof are not being mentioned herein.

13. The order sheet of the case shows, the endeavour of the Court, being conscious of their obligations, in such matters, in order to allay any doubt in the mind of the petitioner that the judiciary of the country is not discharging its obligations on a serious matter like killings of the citizens by showing false encounters, we asked Mr. L. P. Naithani, an eminent Senior Advocate and a human right activist, to assist the Court as an amicus curiae, but the petitioner refused to accept his appointment and insisted to argue the case in person.

14. A detailed resume of the order sheet itself will increase the bulk of the judgment which is not required for ultimate decision of the cases, as such we are of the opinion that it is not necessary to give details of the orders passed by different Benches of this Court on different occasions which would also show that the matter was being pursued by the Court without any delay. At the cost of repetition, it is being said that the delay, if any was caused mainly due to misconduct and behavior of the petitioner himself.

15. However, to give a glimpse of the nature of grievances made by the petitioner from time to time and orders passed by this Court and also to give a glimpse of the conduct of the petitioner, a brief resume of the proceedings of the case is being given below:

16. The first writ petition came up for orders for the first time before a Bench constituted by Hon. R. R. K. Trivedi and Hon'ble S. K. Verma, JJ on 29/11/1992. The petitioner was granted time for filing supplementary affidavit on his request giving facts about his grievance. As stated earlier, the petition did not contain any specific grievance. On 15/10/1992, the matter came up before the same Bench on which date the petitioner was permitted to implead to Senior Superintendent of Police, Kanpur City as respondent No. 4. The Standing Counsel was granted time to file counteraffidavit. The petitioner was permitted to file Supplementary Affidavit. The Court directed that the petitioner is permitted to live peacefully at his residence and the police will not harass the petitioner.

17. On 11/2/1994, the matter came up before the Bench consisting of Hon'ble N. L. Ganguly and Hon'ble N. B. Asthana, JJ. The Bench observed that after hearing the petitioner in person for sometime, it would not be proper to proceed further in the matter. Thereafter Hon'ble Chief Justice nominated the case to a Bench presided over by Hon'ble Palok Basu, J.

18. The matter was placed before a Bench presided over by Hon'ble Palok Basu, J. on 5/11/1992. The matter came up before the same Bench on 9/11/1992. The Bench observed that the petitioner is arguing in person and his arguments are not coherent. Despite repeatedly being asked as to what relief the petitioner wants, the answer was not clear. On the application moved by the petitioner. The Bench observed that the prayers made in application are argumentative in nature and do not mention as to what interim relief the petitioner wants. On the apprehension of the petitioner that he is apprehending his arrest the Bench

passed an order that in case the petitioner personally goes to the Senior Superintendent of Police, he may be provided police squad to come to Court on 25th of November, 1992, the date on which the case adjourned.

19. The matter again came up before the Bench presided over by Hon''ble Basu, J, on 24/11/1994. In the meantime the Standing Counsel was granted time for filing counteraffidavit. The Bench expressed its inability to hear the matter on the basis of an application moved by the petitioner and ordered that the matter may be placed before Hon''ble the Chief Justice for nominating some other Bench. The case was directed to be placed before Hon''ble the Chief Justice on 13/11/1994 at the request of the petitioner. The application moved by the petitioner is on the record which itself will show as to why it became necessary for the Court to release the matter. The application contained malicious allegations against the Bench, consequent thereto the Bench presided over by Hon''ble Palok Basu, J. felt it proper to release the case. This was the second Bench which had to release the case.

20. The Hon''ble the Chief Justice thereafter directed that the matter should be placed before the Bench presided over by the Hon''ble S. K. Mukherji, J. The matter came up before Hon''ble S. K. Mukherji, J. 13/11/1994. On the said date, the Bench passed an order that it will not be necessary to record the reasons which may prejudice the case of the petitioner. Under these circumstances, the papers of the case be laid before Hon''ble the acting Chief Justice within 48 hours for nominating a Bench in which Hon''ble S. K. Mukherji, J. is not a member. Again the Hon''ble Chief Justice had to nominate a Bench presided over by Hon''ble Giridhar Malviya, J. The Bench presided over by Hon''ble Giridhar Malviya, J. heard the petitioner's case on 31/11/1994, 18/11/1994, 19/11/1994, 22/11/1994, 27/11/1994, 22/11/1994. and 23/11/1994. The orders passed therein show that the Bench has been consistently directing to the respondents that the petitioner is not harmed in any manner. A direction was given to the Chief Metropolitan Magistrate for considering the request of the petitioner recalling the cases filed against him and to the Special Judge appointed under the Gangsters Act to consider the request of the petitioner for recalling the cases pending against the petitioner triable by the Sessions Judge and the Judge competent to try the cases under the Gangsters Act. The DIG was directed to provide guard to the petitioner and showcause notice was issued against the respondents as to why despite the orders of the Supreme Court, the security was not provided to the petitioner. In another order, the same Bench showed the concern that despite the orders of the Court, proper counteraffidavits are not being filed and an interim mandamus was issued commanding the respondents to give all assistance to the petitioner to restart his newspaper "Kanpur Crime Reporter" from the initial place of its publication at house No. 248/236, Mohaila Generalganj, Kanpur and also to start a cycle stand in house No. 49/5, Mohaila Generalganj, Kanpur. It was further directed by the said Bench that the petitioner shall not be harmed in any manner and if any harm is done to him, the Senior Superintendent of Police and also the DIG shall be held personally responsible for the same. The Home Secretary, the

Director General of Police and the Senior Superintendent of Police, Kanpur city were issued notices to show cause why they should not be punished for Contempt of Court for not complying with the various directions given by the Court.

This order was passed on 28101994. Thereafter when the matter was placed on 28111994 before the Bench presided over by Hon''ble Giridhar Malviya, J., the petitioner filed five applications addressed to the Hon''ble Chief Justice as well as to the Judge of the Bench. These applications were placed on record. The Bench observed that in view of these letters, it would not be proper for the Bench to continue the hearing of the case and the papers be placed before Hon''ble the Chief Justice for nominating some other Bench. The applications filed by the petitioner has used abusive language and has made false and baseless allegations against the Judges of the Bench as well as the then Chief Justice of the High Court by name and also made allegations against the Chief Justice of India and derogatory remarks against the Judiciary of the country. The matter was thereafter placed before the then Acting Chief Justice on 1911995. The then Acting Chief Justice nominated a Bench presided over by Hon''ble S. N. Sahay, J. The matter was placed before the said Bench on 821995 on which date the petitioner absented himself from the Court. The information was sent to the petitioner to appear in the Court on 341995. The petitioner was informed of the said order. The petitioner did not turn up and instead informed by a telegram that the petitioner is appearing in Apex Court and prayed therein that the case be adjourned for 15 days. The matter was placed before the Bench on 421995 on which date the Court was pleased to fix 1051995.

21. Instead of telling all the aforesaid facts to the Apex Court, the petitioner chose to file a Criminal Misc. Petition No. 82 of 1995. The aforesaid petition came up for orders before the Apex Court on 1721995. The Apex Court mentioned in its order that the order, dated 28111994 passed by the Bench of this Court says that because of certain letters written by the petitioner, copies whereof are not on record, the learned Judges constituting the Bench felt that it will not be proper to hear the matter by the Bench. The order further states that the petitioner's grievance is that the matter is not being assigned to any other Bench even though it was mentioned before the Hon''ble Chief Justice on 5121994, 9121994, 2011995 and 2311995. The Court observed that the Chief Justice of the High Court should consider the request of the petitioner sympathetically for nominating some other Bench. The Apex Court was neither informed as to what type of letters the petitioner has filed before the Court nor any positive direction was given by the Court as the letters filed by the petitioner were not before the Apex Court. The aforesaid order of the Apex Court was communicated to the Registrar of this Court by letter, dated 2221995. The petitioner appeared before the Apex Court in person. The petitioner was under a duty to inform the Apex Court as to what letters he had filed before several Benches of this Court which compelled the Benches to release the matter. It is apparent from the record that the petitioner made false statements before the

Apex Court that despite a mention being made by him, the Hon''ble Chief Justice of this Court has not fixed the matter, as the record reveals that the matter was fixed even before the Criminal Misc. Writ petition was moved by the petitioner before the Apex Court. The petitioner wilfully concealed the material and obtained an order from the Apex Court by making baseless and false allegations against the Hon''ble Chief Justice of this Court. However s since Hon''ble Mr. Justice S. N. Sahay was not available, the matter was urgently brought to the notice of the Hon''ble Chief Justice on 1551995 who nominated a Bench presided over by one of us (Justice R. B. Mehrotra).

22. We heard the matter on day today basis continuously from 1551995. Thereafter the matter was adjourned to 3rd July, 1995. The petitioner absented himself in the proceedings after lunch on 3rd of July, 1995, consequent thereto the matter was posted on 6th of July, 1995 and thereafter it was heard on 7th of July, 19th of July, 19th of August, 11th of September, 16th of October, 1995 and 16th of January, 1996 and 13th of February, 1996 on which date we reserved the judgment.

23. Substance of the grievances raised by the petitioner in the main writ petition and by means of several misc. applications and various affidavits and supplementary affidavits filed by him during the course of hearing can be summarised as under:

(1) The petitioner claimed that since he was publishing a newspaper, namely, "Kanpur Crime Report" wherein he was publishing the matters against the police authorities, out of malice the petitioner has been implicated in false criminal cases with an idea that the petitioner may refrain from publishing the police atrocities and highlighting the false killing of the citizens of the country in the name of encounters.

(2) The petitioner has not been provided with the security despite the orders of the Hon''ble Supreme Court and various orders passed by this Court.

(3) the order passed by this Court in Criminal Misc. Application No. 10790 of 1989, Smt. Kesari Devi v. R.B. Pradhan and others, the motor cycle bearing registration No. UME 7255 has not been handed over to the petitioner in running condition.

(4) The petitioner's contention is that he was earning his livelihood by running a cycle stand in Kanpur City but the police authorities are illegally preventing the petitioner from running his business out of malice for the reasons already disclosed in point No. "1".

(5) The petitioner was not permitted to published his newspaper "Kanpur Crime Reporter" despite orders of this Court.

(6) The petitioner has been deprived of his belonging and cash on being arrested on 3rd of July, 1995. The police authorities have not returned the amount so recovered from the petitioner at the time of his arrest.

(7) An attempt was made by the police authorities of the City of Kanpur to kill the petitioner in false encounter. He has sought an enquiry by an independent agency in the said incident.

(8) The petitioner has given specific instances of cases where the police has killed various citizens of this country after arresting them by showing such killings in police encounters.

(9) A general allegation has been made that under a planned conspiracy, the police of the State of Uttar Pradesh have killed so far twenty thousand people of the State in their custody falsely alleging that these persons have been killed in encounters with the police.

24. On various dates on which the matter was heard, we have dealt with all the grievances of the petitioner except the grievance of the petitioner regarding killing of a large number of people by the police authorities in custody showing them to have been killed in encounters. However, we summarise the various orders which we have passed from time to time regarding the grievance of the petitioner.

First grievance.Regarding implicating the petitioner in false criminal cases:

25. Initially Sri Jag Mohan Yadav, Senior Superintendent of Police, Kanpur, submitted a list of 37 cases given details of history sheet in which the petitioner was involved. However, on scrutiny, it was disclosed later on by the affidavit of Sri Pushpak Jyoti, Deputy Superintendent of Police that on the date of filing of the writ petition, 14 criminal cases were pending against the petitioner, later on it was disclosed that 3 more cases were also pending against the petitioner. In all 17 criminal cases were pending against the petitioner. To examine the allegation of the petitioner that he has been falsely implicated in all these cases without there being any material record and for examining the relief claimed by the petitioner in this connection that all criminal proceedings pending against the petitioner be quashed, we summoned the records of all the 17 cases pending against the petitioner. We closely examined the records of all the cases and we were satisfied from perusal of the records of the cases that it is not possible to arrive at a conclusion that the cases pending against the petitioner have been fabricated without there being any evidence on record. On considering the aforesaid aspect of the matter, on 19th of July, 1995, we passed an order that in the circumstances of the case, it is not possible to issue a direction for quashing proceedings of all 17 cases or any of them pending against the petitioner. However, we directed that the cases pending against the petitioner should be grouped together and should be divided in two groups. All cases pending against the petitioner triable by the 1st Class Magistrate should be transferred to the Court of the Addl. Chief Metropolitan Magistrate I, Kanpur and directed that all such cases should be expeditiously disposed of by the aforesaid court as far as possible within six months. We also directed that the cases which are triable by the Sessions Judge/Addl. Sessions Judge, who has been designated to try the cases under the Gangsters Act, should also be grouped and tried by a Sessions

Judge, who is competent to hear and decide the cases under the Gangsters Act. For this group of cases, a direction for expeditious hearing of the petitioner's cases was also given.

26. As per our direction, the cases transferred to the court of the 1st Addl. Chief Metropolitan Magistrate, Kanpur are being heard. The counteraffidavits filed by the respondents allege that the petitioner is not cooperating. However, the cases which were to be heard by the Sessions Judge competent to hear the cases under the Gangsters Act could not be proceeded with as there was no Sessions Judge in the Kanpur Division authorised to hear the cases under the Gangsters Act by the Government. On our direction, the Government has come out with a notification appointing Sri V. N, Chaddha, Addl. District and Sessions Judge, Kanpur appointing him to hear cases under Section 5(2) of the Anti Social Activities (Prevention) Act, 1986 (for convenience referred to as Gangsters Act). We had been monitoring throughout the progress of the cases pending against petitioner. The latest progress report regarding the cases pending against the petitioner has been furnished to us after reserving our judgment in the matter. The report discloses.

27. The report disclosed that as on 21/4/1996, out of 17 cases pending against the petitioner, the petitioner has been acquitted in 9 cases. Out of the 8 cases pending against the petitioner, 4 cases are being tried by the IInd Addl. District and Sessions Judge, Kanpur Nagar as per direction given by this Court and the remaining 4 cases are being tried by the Addl. Chief Metropolitan Magistrate I, Kanpur Nagar, details whereof are being given as under:

Cases pending before the IInd Addl. District and Sessions Judge, Kanpur Nagar

(1) Sessions Trial No. 607 of 1992, under Section 307, IPC, P S Badshahi Naka, dated fixed 24/4/1996.

(2) Sessions Trial No. 1009 of 1991, under Section 307, IPC and 25 Arms Act P. S. G.R.P., dated fixed 27/4/1996.

(3) Sessions Trial No. 1529 of 1995, under Section 307, IPC P. S. Collectorganj, dated fixed 22/4/1994,

(4) Sessions Trial No. 11 of 1991, under Section 3(1), Gangsters Act, police station Badshahi Naka, dated fixed 27/5/1996.

Cases Pending in the Court of the Addl. Chief Metropolitan Magistrate, Kanpur Nagar

(1) Case Crime No. 3578 of 1995, under Section 452/323/504/506 IPC, P. S. Badshahi Naka, dated fixed 9/5/1996.

(2) Case Crime No. 2525 of 1995, under Section 224, IPC, P. S. Kotwali, dated fixed 9/5/1996.

(3) Case Crime No. 3580 of 1995, under Section 341/354/386, IPC, P. S.

Badshahi Naka, dated fixed 951996.

(d) Case Crime No. 3595, under Section 386, IPC, P. S. Badshahi Naka, dated fixed 951996.

28. It has also been placed by the Addl. Chief Standing Counsel that out of aforesaid 8 cases, the petitioner has been bailed out in all the 8 cases but on being discovered that the sureties furnished by the petitioner in two cases are forged the petitioner has not been released from the jail custody. Thereafter the petitioner has not furnished fresh bail bonds in Sessions Trial Nos. 1009 of 1991 and 1539 of 1995 consequent there to, the petitioner continues to be detained in judicial custody in Kanner Central Jail.

29. Since we are disposing of the matter finally, it will not be possible for us to further monitor the progress of the cases but we are conscious of the fact that the petitioner has made allegations that he has been implicated falsely out of malice. We direct that the District Judge shall monitor the progress of the cases pending against the petitioner and will ensure this full cases (sic) petitioner are finally decided as far as possible within six months from today. This disposes of the first grievance of the petitioner.

30. Before, however, disposing of this issue, we also want to place on record that as many as 4 criminal cases were pending against the petitioner as far back as 1980 when the petitioner approached the Hon"ble Supreme Court for being provided with security. There is no material placed before us to show that the petitioner was published in the Kanpur Crime Reporter" in the year 1980 nor any material has placed before us to show that the petitioner has ever made any such grievance before the apex Court except asking for the security. This also supports our view that it is not possible, in the facts of the case, to hold that the petitioner has been implicated in all the criminal cases which at one stage were 37 in number out of malice or without any material. We are clearly of the view that the criminal proceedings against the petitioner cannot be quashed. The maximum relief which can be given is for the expeditious hearing of those cases pending against the petitioner for which we have taken due care and have given appropriate direction.

Second Grievance Regarding nonproviding of security despite order of the Hon. Supreme Court.

31. The grievance of the petitioner is that he had not been provided with security despite the orders of the apex Court as well as of this Court. The record discloses that on 1311984 while considering the petitioner's Transfer Petition for transferring criminal cases pending against the petitioner to some court in Delhi on the ground that the petitioner is apprehensive of danger to his life and he is in need of security, the apex Court directed the State Government to provide him security guard until the four criminal cases are disposed of by the courts before which they are pending. Immediately thereafter there is another order on record, dated 1641984 passed by the apex Court while hearing the petitioner's Crl.

Transfer Petition Nos. 99102 of 1984 stating that "the counsel for the respondent states that he is ready to provide security as directed by this Court but so far petitioner has not asked for security. In case the petitioner wants to attend the courts in U. P., he will be provided security as directed by this Court". Wish the aforesaid observations, the petitioner's transfer application was dismissed. The petitioner, however, sent telegram and letter for further direction. The matter was again taken up by the apex Court on 30/7/1984. The apex Court made it clear that the order for providing security has already been passed by the Court. No further orders need be passed. It was also observed that Court failed to appreciate as to why the petitioner continues to harbour this apprehension. The Court directed that the petitioner can always write to the Superintendent of Police, Kanpur district requesting him to provide security guard at the place suggested by him and if he makes such application through Jail or otherwise, the same shall be immediately forwarded to the Superintendent of Police, Kanpur, who will immediately proceed to provide him security guard as directed. The telegram and letter sent by the petitioner were accordingly disposed of. All these orders have been placed on record by the petitioner himself.

32. Another order of the apex Court placed by the petitioner on the record is dated 31/2/1993. This order was passed on a writ petition filed by the petitioner being Writ Petition No. 490 of 1993. A Division Bench of the apex Court dismissed the petitioner's writ petition as withdrawn making it open to the petitioner, if he is so advised, to move the High Court. Apparently this petition was moved when the petitioner's matter was pending in this Court and was being perused by this Court itself in its right perspective. There is another order of the apex Court placed by the petitioner on record. This order is without date. It was passed in Criminal Transfer Petition Nos. 99102 of 1984. The said order runs thus:

"An application for further direction and contempt is dismissed."

This also shows that during the pendency of the matter in this Court, another attempt was made by the petitioner to obtain an order from the apex Court which was also dismissed. The petitioner has wilfully suppressed before this Court the applications on which these orders were passed. We have already detailed in the earlier part of this judgment that the petitioner has moved false and baseless applications concealing material facts in the apex Court while the matter was pending in this Court. This clearly established that the petitioner is only raising a false bogey of not being provided security. In fact the petitioner never needed it or wanted it. We also bring on record that this Court had during the pendency of this case had throughout been insisting on the respondents that the security of the petitioner's person is the responsibility of the respondents and they have to zealously guard his persons. A counteraffidavit on behalf of the respondents has been placed on record which says that whenever the police authorities approached the petitioner at the address given by the petitioner for providing security to the petitioner, the petitioner, was not available, as a

consequence whereof, the respondents despite their efforts were not able to provide the security as the petitioner himself avoided it. This grievance of the petitioner has been specifically considered by us in our order, dated 16101995. We have held that since the petitioner is in jail custody, the question, of providing security to the petitioner has become redundant. The respondents have throughout been contending that despite the best efforts, the petitioner was not available at the place where he showed his residence as a consequence thereto, the Security Police Authorities could not provide security to the petitioner despite their readiness and willingness to do so. On a consideration of the entire record, we are of the view that the bogie of security has been falsely raised by the petitioner from time to time. We however, direct the respondents that they will zealously guard the person of the petitioner, whether the petitioner is in jail or outside. The Apex Court has already directed the Senior Supdt. of Police, Kanpur to consider the petitioner's request whenever such a request is made. In view of the Apex Court's direction already passed, no fresh direction need be issued regarding providing the security to the petitioner. The issue is accordingly disposed of.

Third grievance Regarding nondelivery of motor cycle despite the order of this Court.

33. This issue was dealt with in detail by us on 16101995. A detailed order in this connection has already been passed. The defence of the respondents was that the petitioner himself is not accepting the delivery of the motor cycle on the flimsy excuse that the motor cycle is not in the running order. In these circumstances, we directed that the petitioner will accept the delivery of the motor cycle in whatever condition it is, that thereafter the petitioner will point out the defects in the motor cycle and the Magistrate, who has to deliver the motor cycle, will got removed the defects and will bring the motor cycle in running condition.

34. On 1611996, the petitioner accepted that the motor cycle has been delivered to the petitioner in pursuance of the order of this Court but the order of this Court regarding removal of defects has not been complied with. We considered the petitioner's grievance on 1611996 and directed that the 1st Addl. Chief Metropolitan Magistrate, Kanpur shall fulfil the petitioner's grievance in connection with the direction given by us on 16101995. Subsequent thereto, no grievance in this connection has been brought to our notice. We take it to be granted that the requisite grievance of the petitioner has been met out. The petitioner, if aggrieved by the order of the 1st Addl. Chief Metroplitan Magistrate, who was directed to dispose of the petitioner's grievance for compliance of this Court's order, dated 16101995 can pursue his remedy in appropriate proceedings. This matter cannot be permitted to be pursued in the present proceedings any more.

Fourth Grievance Regarding depriving of the livelihood by not permitting the cycle stand to run.

35. The records of the proceedings show that on 28101994, this Court issued an interim mandamus Commanding the respondents to give all assistance to the petitioner to restart his newspaper "Kanpur Crime Report" from initial place of its publication viz., House No. 48/236, Mohalla Gereralganj, Kanpur and also start his cycle stand in House No. 49/5, Generalganj, Kanpur. The petitioner contended that despite the aforesaid direction, the petitioner's son is not being permitted to run the aforesaid cycle stand. The proceedings of the Court, dated 1611996 records that the petitioner moved an application before us that one. Deep Narain Malviya, approached the Station Officer, Badshahi Naka, Kanpur Nagar seeking permission to run the cycle stand, on 1511996, we directed to the Additional Chief Standing Counsel to file a reply to the application filed by the petitioner seeking permission to run the cycle stand and also directed that appropriate orders may be passed on the said application. On the next date i.e.. 1321996, the petitioner refused to participate in the proceedings, consequent thereto the orders were reserved. A counteraffidavit has been filed by Pramod Kumar Singh, Station House Officer of Police Station Badshahi Naka, Kanpur Nagar on 1321996 wherein it has been stated that regarding petitioner's grievance for running the cycle stand and with regard to the alleged obstruction by the police in the aforesaid regard, a thorough enquiry was made by Sri Umesh Kumar Circle Officer. Sri Umesh Kumar made a personal inspection of the spot viz. premises No. 49/5, Generalganj, Kanpur Nagar and made queries from the local inhabitants. It was reported that one Sri S. K. Chandak is the owner of the pemises in question and the keys of the said premises are reported to be with Sri S. R. Chandak. Sri Chandak is reported to be landlord of the said premises. The statement of Sri Chandak was recorded. Sri Chandak has stated that the tenancy of the premises stood in the name of the father of the petitioner, namely, Sri P. L. Maheswari. Sri P. L. Maheshwari died about 10 years ago and he vacated the house in question. The house is in a dilapidated condition and there is no tenant in the same. Sri Chandak denied that any cycle stand was ever run in the aforesaid premises. The Circle Officer also recorded the statement of local residents who disclosed that for last 34 years, the cycle stand is not being run. The enquiry revealed that for 4 or 5 years, the cycle stand was not being run. The dispute is in regard to the private property where the landlord to claiming that the tenancy of the petitioner has ceased to exist. Presides that, for running a cycle stand, a permission is required by the local authorities namely, Nagar Nigam, Kanpur Nagar. The counteraffidavit discloses that no such permission has been obtained by the petitioner. A report was also obtained from the Mukhya Nagar Adhikari, Kanpur Nagar which contends that there is no provision in the rules of the Nagar Palika Adhiniyam for giving permission to run a cycle stand in private premises. The report of the Mukhya Nagar Adhikari, Kanpur Nagar, the statements of the local witnesses, the statement of the landlord of the premises have been filed along with the counteraffidavit. In view of these disputed facts, it is not possible for us to give any direction to the police authorities to ensure running of the cycle stand by the petitioner in the aforesaid premises. The petitioner may see his remedy elsewhere. This disputed issue cannot be resolved

in the present proceedings.

Fifth Grievance Regarding depriving the petitioner from running his newspaper "Kanpur Crime Reporter"

36. The fifth grievance of the petitioner is that despite interim mandamus issued by this Court on 28101994 commanding the respondents to provide all assistance to the petitioner to restart his newspaper "Kanpur Crime Reporter" from initial place of its publication i.e., House No. 48/236, Mohalla Generalganj, Kanpur Nagar, the petitioner has not been permitted to do so.

37. The aforesaid Pramod Kumar Singh in his counteraffidavit brought on record that an enquiry was made from the District Magistrate, Kanpur Nagar as to whether any declaration of newspaper "Kanpur Crime Reporter, has been made before the District Magistrate, Kanpur Nagar in accordance with Section 5 of Press and Registration of Books Act (hereinafter referred to as Press Act). The other query made was to the effect that in case the declaration has been made, as to whether the newspaper was supplied in accordance with the provisions of the Press Act by the petitioner Sri Maheshwari It was also enquired as to whether Sri Maheshwari has been permitted to run the said newspaper. In reply to the aforesaid, queries, the District Magistrate on 721996 has informed that in the Declaration Register, no such newspaper figures. The report of the District Magistrate has been filed with the counteraffidavit. Similarly, on enquiry made from the District Information Officer with regard to the aforesaid newspaper, it has been reported that the aforesaid newspaper is not registered in the office of the District Information Officer nor any such newspaper is registered in the record of the District Information Officer. The counteraffidavit further states that since registration of the aforesaid newspaper could not be ascertained from any of these sources, it could not be ascertained as to from which place the said newspaper is being published. The grievance of the petitioner in this regard was also dealt with by us in our order, dated 16101995. In regard to the aforesaid grievance, a counteraffidavit was filed bringing on record that nobody is available at the relevant place to run the newspaper. On the said case, we directed that in case any dependent of the petitioner makes a declaration to run the newspaper "Kanpur Crime Report", such declaration will be dealt with expeditiously by the concerned authority in accordance with the newspaper in accordance with the rules prescribed in this connection and order should be passed within a month from the date the petitioner makes declaration for running his newspaper along with a certified copy of the order, to the concerned authority and the respondents will not case use any undue obstruction in running the said newspaper. In accordance with the aforesaid direction, the petitioner's grievance in this regard stands disposed of. Subsequent to the passing of the aforesaid order, no grievance in this connection has been raised by the petitioner before us. No copy of the newspaper "Kanpur Crime Reporter, has been placed before us by the petitioner as to whether at any point of time the declaration as required under the Press Act was made. This disposes of the fifth grievance of the petitioner.

Sixth grievance.Regarding return of cash and belongings to the petitioner on his being arrested and 371995.

38. This grievance was raised by the petitioner during the course of proceedings on 1191995. We directed that the amount of Rs. 3,000 which has been recovered from the person of the petitioner and which has been deposited at the police station, Badshahi Naka, Kanpur Nagar should be delivered to the petitioner, within three days from the date of the order in the presence of the Jail Superintendent. Kanpur, In view of the aforesaid order, the grievance of the petitioner. The petitioner has not made any complaint regarding noncompliance of the aforesaid order.

Seventh grievance.Regarding an attempt to kill the petitioner in false encounter.

39. In supplementary affidavit, dated 2991992, it was stated by the petitioner in paragraph "12" thereof that the present S. S. P. Sri D. N. Sawal has got fired on the petitioner. The allegation is that the petitioner kidnapped one Amar Nath Agrawal and his son Navin Agrawal on 471991. On 571991, the petitioner released the son of Amar Nath Agrawal. Navin Agrawal is said to have disclosed this fact to the Senior Superintendent of Police on 281991 with the assistance of Central C.I.D. On 981991 the aforesaid news item was published in the newspaper. On 1781991 S. I. Sri R. S. Goel fired at the petitioner by a 32 bore new pistol in the premises of G. R, P. at the Railway Station. The petitioner was, however, saved. On 1981991, a report was lodged under the order of the Director General of Police at police station, Badshahi Naka whereas the case should have been registered either at G. R. P. police station or Generalganj police station.

40. In the counteraffidavit filed by Dr. Grish Bihari, the District General of Police, U. P., paragraph "3" thereof states that with regard to kidnapping of Sri Navin Agrawal, a case Crime No. Nil, under Section 365/366, I.P.C., was registered at police station, Badshahi Naka and chargesheet has been submitted in the case and the case is pending trial in the Court of the Additional Chief Metropolitan Magistrate, Kanpur Nagar, with regard to the firing at the police party by the petitioner during the course of his arrest at Railway Station on 1781991, a case Crime No. 337/338/9, under Sections 307, I.P.C. and 25, Arms Act was registered at Police Station, G.R.P. Kanpur Nagar. After investigation, chargesheet has been submitted in this also. The case is pending trial in the Court of the Additional District JudgeIII, Kanpur Nagar. The extract of the report of the Senior Superintendent of Police, Kanpur Nagar has been filed as Annexure S. C. A.II on the basis of which the affidavit has been sworn by the Director General of Police. In view of the fact that the trial in regard to the aforesaid incidents are pending in courts, no comments are required as it is likely to prejudice either the prosecution or the defence case. Even otherwise there is no material before us on the basis of which, we can comment further on the petitioner's grievance in this regard.

41. This disposes of the petitioner's Seventh grievance.

Eighth grievance. Specific allegations regarding persons killed in false encounters.

Instances

(i) In supplementary affidavit filed on 14/10/1992, the petitioner has made allegation that on 9/4/1992, the police has killed an alleged criminal named Bijjan. In paragraph "4" of the aforesaid affidavit, it has been stated that Sri Suresh Chandra Gupta, who was also an Editor of a newspaper and who published a news item, that "Bansa and Arukh have been killed by police in day light", was got killed by Sri Sukrata Mukherji, Senior Superintendent of Police through his Station Officer. The then Chief Minister Sri Sripati Misra went on the spot and suspended the station officer, but so far no report has been submitted about his killing and limits of cruelty achieved all heights when both the brother-in-laws of Sri Suresh Chandra Gupta, namely, Devi Prasad and Hari Lal were also got killed by the police at Fatehpur since the aforesaid two persons were going to file a case for the help of their brother-in-law in the Supreme Court. In that connection also, no report has been submitted to this date.

(ii) In second supplementary affidavit filed on 14/2/1992, the petitioner has given further specific illustrations making allegations of killing by showing encounter stating that a person named Takai was murdered. In that case, the Supreme Court entrusted the enquiry to C.B.I, when the officer of C.B.I, reached Gonda for enquiry, the then S.S.P. Sri Yashpal forced to get C.B.I. officer, ordered wherein a Station Officer, named Saroj got killed a Circle Officer of the police and it was reported that the Circle Officer has been killed in encounter by criminals.

(iii) In the said supplementary counteraffidavit, another instance of killing by showing encounter was given with regard to Ram Sanahi Sachan, was arrested by the police at 2.00 p.m. Despite the fact his brother gave an application on the same day at 4.00 p.m. that his brother has been arrested by the police, the aforesaid Ram Sanahi was killed the same night in police custody and later on it was shown that he was killed in encounter.

(iv) Another instance given by the petitioner was with regard to Gay a Singh and Gangoo Singh, who were actually killed by the police behind a hotel. However, falsely it was shown that they had been killed in an encounter.

(v) Next instance given in the affidavit was in regard to Jagdish Kurmi who was also alleged to have been killed in police encounter whereas the Magistrate has in an enquiry under Section 174, Cr.P.C. reported that Jagdish Kurmi had died due to excess use of force.

(vi) Next it was alleged in the aforesaid affidavit that two young persons were killed by Hari Singh.

(vii) The affidavit further disclosed that one Sri Jag Mohan Sinha, a leader of Allahabad has been killed.

(viii) 13 persons in Belna, district Banda were killed in false encounters including a 14 years" child. In paragraph "8" of the affidavit, reference has been made to the killings of Mainpuri and Etah.

(ix) In paragraph "14" of the affidavit, it has been stated that murder of Mirja Mallah and another Mallah, murder of Sherik and Sheo Balak, Murder of Badwakey, murder of Anis Kaliya were also done by the police and an attempt to kill Jaisi Meri and Shami Iqbal was also made.

(x) In paragraph "15" of the affidavit, it has been stated that a liquor trader of Varanasi has been got killed. The allegation of the petitioner is that these persons have been killed in false encounters and no enquiry has been made or the enquiry has been unreasonably hushed up.

43. On perusing the counteraffidavits, we arrived to the conclusion that no satisfactory reply has been given by the respondents in their counteraffidavits to the aforesaid allegations made by the petitioner. We accordingly gave a detailed direction on 1191995 to the Director General of Police to file a detailed counteraffidavit and also directed that regarding general allegation of killing of twenty thousand people in encounters, a detailed counteraffidavit should be filed. We made it clear in the order that ultimate responsibility of informing this Court is of the Director General of Police who will furnish necessary information regarding all encounters in which police claims to have killed the criminals, the magisterial enquiry conducted in these matters and the report submitted by them, should be brought on record. In response to the aforesaid direction, the respondents could not file their affidavits within the time allowed by the Court and a request was made by respondents" counsel that since a detailed counteraffidavit has to be filed regarding all the encounters alleged to have taken place and it will require some time in collecting the details of all the cases, with constraint, we initially granted, one month"s time to file counter affidavit on 119li? 95 and there after on 16101995, we granted two months" time for filing counteraffidavit. On 1611996 also, we granted time to the respondents to file necessary counteraffidavits in pursuance of our order, dated 1191995 positively by 1421996. We made it clear that no further time will be granted. We also brought on record that in the counteraffidavit filed by Sri V. S. Mathur, a statement has been made that since 1982 to 3041995, as many as 2,974 persons have been killed in police encounters. A year wise detail of these encounters has also been furnished in the counteraffidavit. In the light of the aforesaid facts, we directed that details of all the encounters accepted by Sri V.S. Mathur in his affidavit should be furnished to this Court. In the light of the submission of the respondents that since the details of as many as 3,000 cases were to be collected and brought on record, we granted time to the respondents to bring on record the necessary details of the specific allegations made by the petitioner as well as of the general allegations made by the petitioner regarding policy of the State Government in killing people by showing false encounters.

44. In response to the aforesaid directions, ultimately counteraffidavits have

been filed by Dr. Girish Beihari, the Director General of Police, Sri S. K. A Rizvi, the Deputy Inspector General/Asstt. to D. G. P., U. P. bringing on record the entire details of the encounters and the enquiries made therein and the follow up actions taken in pursuance of the enquiry. Details have also been given where, on enquiry, police personnel have been found guilty and the details have also been given where, on enquiry under Section 174, Cr PC, a final report has been submitted. The necessary files showing those details have also been produced before us.

45. So far as the specific cases are concerned, we have individually examined available records with care. Our conclusions in regard to the specific allegations made by the petitioner are as under:

46. Dr. Girish Bihari Director General of Police, U. P., Lucknow in his affidavit, dated 16/11/1996, has stated regarding instance No. (i) that one Bijjan alias Brijendra was killed in the police encounter and a final report was submitted in the court in 1982. With regard to Suresh Chandra Gupta alleged to have been killed by Banda police, Sri Lal Chandra Gupta, the brother of the deceased moved an application before the S. P. Banda and a Case Crime No. 103 of 1963, under Section 302/120B, IPC was registered at Police Station, Baberu and the case was investigated by C.B. C.I.D. and a chargesheet was submitted against the accused persons in which all the accused persons have been convicted Section 302/120B, IPC and sentenced to imprisonment for life the Sessions Judge, Banda on 27/2/1985.

47. Regarding Instance No. (v) i. e., killing of Gaya Singh and Gangoo Singh, the aforesaid counteraffidavit disclosed that the aforesaid persons have been convicted from the court of law and no further action is required to be taken in the matter now. Copy of the letter furnishing the aforesaid information has been filed as Annexure S. C. A. "4",

48. Regarding Instance No. (v), it has been stated that no documents are available regarding, the matter, as such no comments are possible.

49. Regarding Instance No. (x), it has been stated that on enquiry, it has been revealed that no liquor trader of Varanasi has been killed by the police in Lucknow.

50. For rest of the instances given in the supplementary affidavit filed by the petitioner, the counteraffidavit states that for want of further details regarding the date and time and place where these persons are alleged to have been killed in encounters, despite best efforts, the police records do not disclose any such killing. It may be stated that at this stage that the petitioner has refused to cooperate with the Court and has even refused to participate in the proceedings on the last date of hearing i. e. 13/2/1996. Since no details have been furnished and only the names of the persons are given, it is not possible for the Court to insist on the respondents to bring details of the instances given by the petitioner. In these circumstances, we are not in a position to hold the respondents guilty of

either not disclosing the necessary materials before the Court nor we can hold them responsible for killing all the persons alleged in the supplementary affidavit filed by the petitioner,.

Ninth grievance. General allegations that 20,000 citizens have been killed by police showing their false encounter.

51. So far the general allegations have been made by the petitioner regarding State Police indulging in a policy of false encounters, the records are bulky ones. It is practically not possible to closely scrutinise each and every case of the alleged encounters in almost 3,00 cases admitted by the respondents to have been killed in encounters. Even otherwise, no useful purpose could be achieved by opening up the cases where encounters were alleged to have been admitted between 1982 and 1990 as no evidence is likely to come forward after such a long time. We have taken care to examine the cases where peoples have been alleged to have been killed in encounters from the year 1991 onwards.

52. However, a detailed counter affidavit with a detailed chart of ail the cases since 1982 has been filed by Sri S. K. A. Rizvi, presently posted as D.I.G., Assistant to D. G. P., Lucknow. The learned Additional Chief Standing Counsel Sri Kazmi has also placed before us all the relevant files of the cases regarding which details have been furnished in the counter affidavit.

53. On scrutiny of the chart enclosed with the aforesaid counter affidavit, after 1991, it shows that in as many as 9 cases the magisterial enquiry has revealed that the allegation of the police that the persons has been filled in encounter, has been found to be false. Accordingly charge sheets have been submitted in those cases in the court and the cases are pending, la as many as 21 cases the magisterial enquiry is pending, in 17 cases enquiry by agency like C. B. C. I. D. is pending under in as many as 105 cases, the magisterial enquiry under Section 176 of the Code of Criminal Procedure has been held to record satisfaction, that the persons have been killed in encounter by the police as reported by the police officers.

54. However, on further scrutiny, it has been revealed that the files of 38 cases containing the enquiry reports of the Magistrate are not available on the record. I, as many as 639 cases where the police claimed that persons have been killed in encounter with the police, there is only a report of the Magistrate as contemplated by Section 174 of the Code of Criminal Procedure putting a seal on the police version, on the inquest report, neither any magisterial enquiry has been held nor any other enquiry by any other agency like C. B. C. I. D, has been thought of necessary.

55. We have checked the files of these 639 cases on at random basis where no enquiry under Section 176 of the Code of Criminal Procedure has been made by any Magistrate. The record does not reveal as to in what manner the dead bodies of the deceased persons were disposed of. Though the names of these persons have been disclosed but the record does not show whether any intimation of the

death of such persons was given to their relatives or whether any of their relatives claimed the dead body. The record does show that before disposing of the dead body, the procedure prescribed in Regulation 135A of the U. P. Police Regulations was followed. However, we make it clear that we have not asked for producing any such records and on our query the learned Additional Chief Standing Counsel has furnished information that procedure has been followed in many cases.

56. Regulation 135A of the U. P. Police Regulations provides that when a corpse recovered by the police is unclaimed or cannot be identified the police officer making enquiry under Section 174 of the Code of Criminal Procedure, shall arrange to give the fact of discovery the widest possible publicity with a view to identification as also to the tracing out of the deceased's relations, friends or acquaintances to whom it can be made over for disposal. Further procedure thereof has also been provided as to how the publicity is to be made in rural and urban areas etc. etc.

57. The above provision has been incorporated in the U. P. Police Regulations for the guidance of the police officers for ensuring if any death occurs in suspicious circumstances including in an encounter with the police, it is obligatory on the police officer concerned to find out the identity of such person in all possible manners. However, in the facts of the case, we are not in a position to comment further, but we feel necessary to express purview that the above procedural requirement which has been enshrined in the U. P. Police Regulations should invariably be followed for ensuring that in case of death of a person his relatives must know the cause of the death so that they may be able to agitate the matter further if they so choose to do so. In the totality of the circumstances we are not satisfied as to why the magisterial enquiry has not been conducted in some cases whereas in same set of circumstances, the magisterial enquiry under Section 176 of the Code of Criminal Procedure has been conducted.

58. Human Rights movement is a global phenomena. Several independent International Organisations like Amnesty International are agitating the issues of killing of the people by State authorities in a clandestine manner by showing false encounters. The allegation is that such persons are killed in police custody but to justify the atrocity of the police, it is falsely alleged that the person has been killed in a n encounter by the police.

59. Report of Amnesty International qua India is published in March, 1992 by Amensty International Publications, United Kingdom. In regard to our country, it gives details of cases where the police have tortured the victims and have killed the police in police custody. This Report contains a vivid detail of such cases. The Book is a revealing reading of police atrocities between 1st January, 1985 and 1st November, 1991.

60. AppendixI of the Book gives a chart and details of the persons killed in police custody. Some extracts of the aforesaid Report are reproduced for making out

the point arising in these petitioners:

"Numerous other Indians, notably civil libertarians, have also persistently urged the Government to act to halt police violence against detainees. But successive Indian governments have failed to do so. They chose not to implement a 1985 proposal by the Law Commission that would facilitate the prosecution of those responsible for killing people in custody. Nor have they acted on the many, often excellent, recommendations made over the years by the National Police Commission such as making judicial inquiries mandatory in all cases of death or grievous injury caused in police custody."

"The facts presented in this report show this is not the cause. Section 176 of the Code of Criminal Procedure makes an investigation by a Magistrate obligatory in all cases of death in police custody. Yet, despite extensive research which involved Amnesty International writing to all relevant state officials to establish what action they had taken to investigate specific allegations of torture resulting in death, the organization has been able to discover no more than 42 magisterial inquiries conducted in a total of 415 cases. It found that judicial inquiries were ordered in 20 cases. With the notable exception of the high quality judicial investigations sometimes ordered by the Andhra Pradesh Government, the full findings of inquiries are rarely published.

Particularly disturbing is the fact that few police officers are ever brought to trial and virtually none are convicted for committing human rights violations. As far as Amnesty International has been able to establish, police officers were arrested in only 25 cases of death in custody which occurred since 1985 and criminal charges were brought in only 52 cases. In no more than three cases are officers known to have been convicted of murdering people in their custody. As the Statesman has commented in August 1989; "the main reason why barbarous third degree methods are still used, despite being illegal, is that the police know full well that they are a protected species and that no harm will come to them if the odd prisoner dies in the lock up". A senior former official commented: "In India public demonstrations and loud protests in Legislatures have to be organised before police officers are punished for their illegal acts. Very often the only action is transfer, followed by the hushing up of the case by superior police officers."

In fact, this report presents extensive evidence that senior police, executive Magistrates, doctors and state officials themselves participate in the coverup of such crimes or shield the police officers responsible from being brought to justice. Commenting on the brutal murder of a farmer in police custody for refusing to pay bribes to a police constable, the Chief Justice of India's Supreme Court in 1985 found, "police officers alone and none else can give evidence regarding the circumstances in which a person in their custody comes to receive injuries, bound by the ties of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth."

61. In *Uttarakhand Sangharsh Samiti, Mussoorie v. State of U. P.*, 1996 UPLBEC 461, a Division Bench of this Court dealing with the problem of human rights held:

".....Until the enactment of the Human Rights Act, 1993, the subject was a matter of international concern when violations occurred within nations, Degrading human life, values and rights affected just and honourable relations between nations. This in turn has been known to be taken as disregard for international law and treaty obligations in the dealings of migrated people with one another. Respect for international law and just and honourable relations between nations is an obligation set by the Constitution of India (See Article 51 of the Constitution of India). But what once was a subject of public international law, is today federal law. Principles of International law and a Code of conduct in the affairs of human relations and guaranteeing its value is the nation's by law. Could principles of international law in respectin human life and conduct be different in a civilised society? Savagry, carnage, destruction of life and property by agressers of people who are relegated to the vanguished finds an answering international law. Violence, call it was or by any other name international conventions adjust by reparation. The Constitution of India adopts an international Code of conduct."

62. In the light of the development of law on Human Rights and with the enactment of Protection of Human Rights Act, 1993 (hereinafter referred to as the Act) providing for Constitution of a Nation Human Rights Commission and State Human Rights Commissions, the procedure provided under Sections 174 and 176 of the Code of Criminal Procedure is to interpreted in making it more meaningful for protecting the liberties of not only of the citizens of this country but also of all those who are living in this country as the guarantee under Article 21 of the Constitution of India has been extended by the apex Court of this country even to aliens.

63. Chapter XII of the Code of Criminal Procedure provides for information to be furnished to the police and the power of the police officers to investigate when commission of any crime is reported to it.

64. Section 174 of the Code of Criminal Procedure provides that when the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by a animal or by mechnery or by an accident, or has died under circumstances raising a reasonable suspicion that some other persons has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests and unless otherwise directed by any rule prescribed by the State Government, or by any general or special order, the District or Subdivisional Magistrate shall proceed to the place where the body of such deceased person is and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation and draw up a report of the apparent

cause of death etc. etc.

65. Subsection (3) (i), (ii) and (iii) of Section 174 of the Code of Criminal Procedure provides procedure where a woman has died within seven years of her marriage. Subclause (iv) thereof provides that if there is any doubt regarding the cause of the death in such cases, Magistrate is required to forward the deadbody to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government.

66. Section 176 of the Code of Criminal Procedure provides that when any person dies while in the custody of the police or when a woman is alleged to have committed suicide within seven years of her marriage or the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that same other person committed an offence in relation to such woman, in these circumstances, it is obligatory on the Magistrate to hold a regular inquiry into the cause of the death. In all other cases covered by Section 174, it is only discretionary with the Magistrate to hold such enquiry.

67. The record produced before us does not disclose as to why in certain cases where the persons were killed in the alleged encounter, it was thought of necessary to hold the magisterial enquiry under Section 176 of the Code of Criminal Procedure and why in large number of cases it was not thought necessary. This requires pragmatic interpretation of Section 176 of the Code of Criminal Procedure.

68. In *Joginder Kumar v. State of U. P. and others*, AIR 1994 SC 1349, the apex Court has extended the principles of Articles 21 and 22 of the Constitution to a person who has been arrested for some offence and has held that right of arrestee to have some one informed about his arrest and to consult privately with a lawyer is a fundamental right guaranteed under Articles 21 and 22 of the Constitution of India and it is the duty of the police to ensure that the person arrested is informed that he has a right to inform his relatives and also to consult a private lawyer and it has further been held that thereafter if the arrested person so requires, it will be obligatory on the police to permit the arrested person to consult his lawyer and also to inform his relatives immediately at the time of his arrest. The extension of these principles which are not incorporated in the Code of Criminal Procedure show that the Courts are conscious of their obligation of ensuring that no citizen of this country is put to any harassment by the police authorities for want of adequate information regarding his right or his detention may not be done in any clandestine manner.

69. The principles laid down in *Joginder Kumar's* case (*supra*) can be a guideline for interpreting Section 176 of the Code of Criminal Procedure. Subsection (4) of Section 176 of the Code of Criminal Procedure provides that where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known and shall allow them to remain present at the inquiry. However, this provision of

information is mandatory only when the Magistrate holds an enquiry under Section 176 of the Code of Criminal Procedure. In cases where the Magistrate in its discretion decides not to hold inquiry, even such information is not extended to the relatives of the deceased person, as has been disclosed in the records of the cases produced before us. This procedure is liable to be misused by the police authorities. Accordingly, we are of the view that the opening words of Section 176 (1) of the Code of Criminal Procedure, namely, "When any person dies while in the custody of the police" should be interpreted also to mean that ""Whenever the police claims to have killed any person in encounter". This interpretation of Section 176 of the Code of Criminal Procedure ensure protection of Human Rights in all cases of death where the police claims to have killed the person in encounter and in such cases, the Magistrate will be under an obligation to inform the relatives of such person. This also will safeguard any clandestine effort on the part of the police of kill a person in its custody and then claim that the person has been killed in an encounter.

70. On the analysis of the aforesaid, we hold that whenever the police claims to have killed a person in an encounter, an inquiry by a Magistrate under Section 176 of the Code of Criminal Procedure will be mandatory.

71. In the background of global Human Rights Movement and the issues of Human Rights being raised in United Nations, the Indian Parliament has enacted the Act, namely, of the Protection of Human Rights Act, 1993 which came into force on 811994.

72. Section 3 of the Act provides for the constitution of the National Human Rights Commission. The Commission is to consist of a Chairperson, who has been a Chief Justice of the Supreme Court, two Members, out of them, one having been a Judge of the Supreme Court and the other having been the Chief Justice of a High Court and two Numbers to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

73. Section 12 of the Act provides that the Commission shall have the power to inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of violation of human rights etc., etc.

74. Section 14 of the Act provides the power of the Commission to get the complaints investigated and the procedure for such investigation has also been provided.

75. Section 21 of the Act provides for constitution of the State Human Rights Commissions. A State Government has been authorised to constitute the Human Rights Commission, though it is not obligatory.

76. Section 30 of the Act provides for conferring powers of the courts, to designate certain judicial officers to conduct human rights cases or to constitute human rights courts,

77. In pursuance of the aforesaid Act, the Central Government has constituted

the National Human Rights Commission.

78. In the set of circumstances narrated in this Judgment, it is not feasible nor practicable to pursue these matters in this Court. The petitioner has, on the last date of hearing, stated that he is not participating in the proceedings. Even otherwise his participation was of no assistance to the Court. This Court has no machinery of its own to investigate the alleged violation of human rights cases. The petitioner was insisting that an inquiry should be held by an independent agency. The Parliament having enacted the Protection of Human Rights Act, 1993 and National Human Rights Commission having been constituted, a statutory and independent body has been constituted under the Act, which has power to take suo motu actions in appropriate case. The Act has come into force on 811994. In the facts of the present case, it will also not be proper for us to request to the National Human Rights Commission to consider a large number cases for taking suo motu action and particularly the cases where the incident occurred before the constitution of the Commission. In this view of the matter, in case where either the files of the magisterial inquiry are not available or in cases where no magisterial inquiry has been held and the incident has occurred after 811994, we are of view that the files of some of these cases which we have chosen on random basis be placed before the National Human Rights Commission for its consideration as to whether in any case, it proposes to take a suo motu action. A detailed Chart of these cases is enclosed as Schedule "I" to this judgment and the files of these cases will also form part of the record of this judgment.

79. Before departing with the case, we may bring on record that at one stage, Sri Jagmohan Yadav, the then S. S. P. Kanpur filed a counteraffidavit which was later on found incorrect. An apology was tendered by Sri Jagmohan Yadav for the mistake and it was stated that the mistake was committed by him inadvertently. On looking to the entire circumstances of the case, we are satisfied that the mistake was not wilful. No further action is called for in the aforesaid connection. We, however, make it clear that the Police Officers should be careful in filing affidavits in courts.

80. Lastly, we may also bring on record that the petitioner has indulged in false and baseless allegations which we have referred in the earlier part of the judgment. However, in the circumstances of the case the petitioner has already been convicted in some criminal cases in view of the fact that as many as 8 criminal cases are pending against the petitioner, we are of the opinion that in the circumstances of the case, any further proceeding of initiating Contempt of Court against the petitioner for his conduct, will only give handle to the petitioner to misuse the process of the court by again making baseless and false allegations. In these circumstances, we are of the opinion that no action need be initiated against the petitioner for committing Contempt of Court.

81. We also put on record our appreciation for the able and fair assistance provided in the case by Sri S. M. A. Kazmi, the learned Additional Chief Standing Counsel.

82. Accordingly, we dispose of the present writ petitions with the following directions:

(1) The files of the cases detailed in Schedule T of this judgment may be forwarded to the National Human Rights Commission for its consideration and taking suo motu action in the matters, if it proposes to do so.

(2) We issue a writ of mandamus directing the respondent State of Uttar Pradesh to hold a magisterial inquiry invariably in all cases where the police claims to have killed a person in an encounter and also to inform the relatives of such person immediately on the occurrence of the death and in cases where the relatives cannot be found out, the procedure prescribed under Regulation 13SA of the U. P. Police Regulations shall be mandatorily followed. We further direct that in all cases where such magisterial inquiry has been held, the copy of the inquiry report of the Magistrate shall be forwarded to the National Human Rights Commission till any State Human Rights Commission is not established and after establishment of the State Human Rights Commission in the State of Uttar Pradesh, the copy thereof will be forwarded to the State Human Rights Commission for being informed of such cases.

(3) We also recommend the State Government to constitute a State Human Rights Commission and Human Rights Courts as provided in the Protection of Human Rights Act, 1993, as early as possible.

(4) District Judge, Kanpur Nagar will monitor the criminal cases pending against the petitioner and will ensure their expeditious disposal, as far as possible, within six months from today.

83. The Registrar of this Court is directed to ensure that a copy of this judgment is furnished to

(a) The National Human Rights Commission constituted under the Chairpersonship of Justice Rajig Nath Misra, Former Chief Justice of India at its appropriate address to be traced out by the Registry alongwith the records of the police in regard to cases detailed in Schedule "1". Records of these cases shall be placed before the Registrar alongwith this judgment.

(b) The Secretary, Home Department, Union of India, New Delhi.

(c) The Secretary, Home Department, State of Uttar Pradesh, Lucknow.

(d) The District Judge, Kanpur Nagar.

A copy of this judgment may be placed on record of Civil Misc. Writ Petition No. 37064 of 1992.

84. Copy of this judgment may be furnished free of cost to the Additional Chief Standing Counsel on making formal application and to the petitioner without any formal application for the same, within a week from today. Additional Chief Standing Counsel shall ensure that a copy of this judgment is furnished to the

petitioner, who is in jail in the Central Jail, Kanpur, through the Superintendent, Central Jail, Kanpur within the prescribed period.