

(2018) 07 RAJ CK 0065

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 4529, 4530 of 2017

Sanjay Tanwar @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 17-07-2018

Acts Referred:

Citation : (2018) 07 RAJ CK 0065

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Mahesh Bora, Ramesh Purohit, Rajesh Panwar, Sunil Joshi,
J.V.S.Deora, Sachin Acharya

Final Decision : Dismissed

Judgement

Both these criminal misc. petitions have been filed by the petitioners essentially with the prayer for quashing of FIR No.391/2017 of Police Station,

Ambamata, District Udaipur and all consequential proceedings arising out of the said FIR.

It appears that the petitioners had earlier preferred S.B.Cr. Misc. Petition Nos. 3653/2017 and 3654/2017 for quashing of the impugned FIR, however,

the said criminal misc. petitions were disposed of by this Court vide orders dated 30.10.2017 with a direction to the concerned investigating authority

that in case the petitioners submit a representation along with all the necessary documents before it within a period of fifteen days, then the same shall

be considered and decided before completing the investigation, strictly in accordance with law.

This Court further observed that if during investigation, the concerned authority needs to arrest the petitioners, then the petitioners shall be given 15

days notice before making such arrest. This Court granted liberty to the petitioners to approach this Court again in case need arises.

Now the petitioners have preferred these criminal misc. petitions with a specific assertion that one of the petitioners viz. Abhimanyu Tanwar

approached the Investigating Officer with a representation as per the direction given by this Court in the above referred misc. petitions, however, at

that time the respondent No.3 S.H.O., Police Station, Ambamata, Udaipur along with other police official, brutally assaulted the petitioner -

Abhimanyu Tanwar with belt and sticks. It is contended that in relation to the said beating, when the petitioner - Abhimanyu Tanwar approached the

higher police officers complaining about respondent No.3, the said complaint has not been even properly considered.

Taking into consideration the said assertion of the petitioners, this Court while issuing notices in the present criminal misc. petitions has passed the

following order:

19/12/2017

Issue notice of misc. petition as well as stay petition to the respondents.

Learned Public Prosecutor accepts notice on behalf of State. Hence, notice returnable on 6.1.2018 be issued to the respondents No.2 and 3.

The respondent No.3 being the S.H.O. P.S. Ambamata, District Udaipur shall remain present in the Court to furnish an explanation as to in what

manner, the representation submitted by the petitioners in light of the earlier order passed by this Court was considered.

Till next date, all further proceedings of the impugned F.I.R. No.391/2017 registered at Police Station Ambamata, District Udaipur shall remain stayed.

A copy of this order be placed in both the files.

The matter was thereafter taken up on 08.01.2018 and on that date, the explanation submitted by respondent No.3 was taken on record and the next

date was fixed as 17.01.2018. It appears that on 17.01.2018, the petitioner - Abhimanyu Tanwar was present in Court and categorically stated about

use of third degree method by the Investigating Officer when he appeared before him in pursuance of the direction given by this Court on 30.10.2017.

In support of the said contention, petitioner Abhimanyu Tanwar produced an injury report and some photographs.

Taking into consideration the said statement of petitioner - Abhimanyu Tanwar, this Court on 17.01.2018 directed the Public Prosecutor to keep the

Superintendent of Police, Udaipur and the respondent No.3 present in the Court on the next date.

The matter was again taken up on 23.01.2018, however, on that date the Superintendent of Police, Udaipur was not present on medical ground and

Court has observed that after being allegedly assaulted at the Police Station, Ambamata on 11.11.2017, the petitioner - Abhimanyu Tanwar moved

repeated applications to the I.G., Udaipur, S.P. Udaipur and Medical Officer, Government Hospital, Udaipur with a request to take action against the

respondent No.3, however, the I.G., Udaipur and S.P., Udaipur did not take any action and, therefore, this Court ordered to the I.G., Udaipur and S.P.,

Udaipur to remain present before this Court on 02.02.2018.

On 02.02.2018, the S.P., Udaipur was present in the Court, however, the I.G., Udaipur was not present and an application for exemption of his

personal appearance was moved, which was accepted for that day and the Court granted time to the S.P., Udaipur to personally make further enquiry

into the truthfulness of the allegations levelled by the petitioner - Abhimanyu Tanwar of custodial violence inflicted upon him by respondent No.3. The

Court has also directed the I.G., Udaipur and S.P., Udaipur to remain present in the Court on next date.

Both these petitions were then taken up by this Court on 15.02.2018 and on that date, the following order was passed:

“In furtherance of the direction given by this Court on 02.02.2018, Mr. Anand Srivastava, Inspector General of Police, Udaipur and Mr. Rajendra

Prasad Goyal, Superintendent of Police, Udaipur are present in the Court.”

Mr. Sunil Joshi, learned counsel appearing on behalf of Mr. Rajesh Panwar, AAG has placed on record written submissions on behalf of

Superintendent of Police, Udaipur. These submissions, include a report of the Superintendent of Police, Udaipur, indicating that the allegations of

custodial violence made by the complainant are false. Along with the submissions, a certified copy of order dated 09.02.2018 passed by the learned

Special Judge, SC/ST Cases, Udaipur is also annexed, whereby, the complaint submitted by the petitioner alleging custodial violence against the police

officials concerned was rejected.”

This Court put a pertinent query to Mr. Anand Srivastava, Inspector General of Police, Udaipur as to what action was taken on the complaint

submitted by the petitioner to him on 13.11.2017. Mr. Srivastava stated that the complaint was forwarded to the Additional Superintendent of Police,

Udaipur for enquiry. He fairly states that the primary obligation of the enquiry officer while examining the complaint made by the petitioner alleging

custodial violence should have been to get him medically examined but no such step was taken by the officer concerned. Â

Manifestly, it is clear that the Inspector General of Police, Udaipur, considering the seriousness of the allegations, assigned the matter to a Senior

Police Officer for enquiry but clearly, the said Police Officer chose to sit tight over the matter and did not even get the medical examination of the

complainant conducted.

Having perused the factual report submitted by the Superintendent of Police, Udaipur in context to the statement of the Medical Officer and so also

the order dated 09.02.2018 passed by the Special Judge, SC/ST Cases, Udaipur in Complaint No.5/2017, this Court is of the firm opinion that the

manner in which these proceedings were undertaken leaves much to be desired. Thus, while suo moto exercising the inherent powers of this Court,

the order dated 09.02.2018 passed by the learned Special Judge, SC/ST Cases, Udaipur is set aside.

This Court feels that the local police is acting in a biased manner to shield the concerned officers and a fair enquiry is not possible at their end. Thus,

keeping in view the guidelines laid down by Honâ??ble the Supreme Court in the case of Peoples Union for Civil Liberties vs. State of Maharashtra

[(2014) 10 SCC 635], the matter is entrusted to the Central Bureau of Investigation to hold a preliminary enquiry of the petitionerâ??s complaint

regarding custodial violence by the officials of the Police Station Amba Mata, Udaipur within the premises of the Police Station. A copy of this order

along with the pleadings shall be provided to Special Public Prosecutor Dr. Sachin Acharya who shall instruct the concerned official of the Central

Bureau of Investigation to hold a preliminary enquiry into the matter and submit a report for the Court perusal on the next date.Â

List on 23.04.2018. The personal presence of the police officials is exempted.â??

Thereafter on 23.04.2018, the application preferred on behalf of the Central Bureau of Investigation for giving them coloured photographs annexed by

the petitioner â??" Abhimanyu Tanwar was allowed and said photographs were

made available to the CBI.Â

On 09.07.2018, Dr. Sachin Acharya, Special Public ProsecutorÂ submitted report of investigation conducted by the CBI pursuant to the direction

given by this Court while passing the order dated 15.02.2018 and the same has been perused and is placed on record in sealed cover.

In the meantime, an application was preferred on behalf of the petitioner-Abhimanyu Tanwar and others in S.B.Cr.Misc. Petition No.4530/2017 on

16.05.2018 seeking modification in the order passed by this Court on 15.02.2018 and it is prayed that the petitioner â?" Abhimanyu Tanwarâ??s

complaint regarding custodial violence be preliminarily inquired by a higher ranked officer of the CBI, not below the rank of Additional S.P.

It is noticed that the report submitted by the CBI has been prepared by the Superintendent of Police, CBI/SC.III/New Delhi. The findings of the CBI

Enquiry are reproduced hereunder:

â??Findings of the CBI enquiry:-

The Preliminary Enquiry conducted on the allegation of custodial violence against Abhimanyu Tanwar in PS Ambamata has revealed the following

facts:-

(I) Enquiry has revealed that Sh. Abhimanyu had planted witnesses i.e. Phool Singh and Vikram Singh Devra in order to support his allegations.

He had stated in his earlier statements given to CBI, SC/ST Court and State Police Enquiry that his two friends Sh. Phool Singh and Sh. Vikram Singh

Devra had gone with him on 11.11.2017 to PS Ambamata and after the custodial violence when he came out they were outside the PS. Sh. Vikram

Singh Devra called Sanjay (Abhimanyuâ??s brother) from the phone of Abhimanyu and informed him about the assault done by the police officials.

When Sanjay came to the PS, they took Abhimanyu to M.B.Hospital for treatment and stayed there till 9:30 PM.

However, during the course of enquiry when Shri Abhimanyu alongwith Shri Phool Singh @ Jeetu (8290200821 and 8949775625) and Shri Vikram

(9983387595 and 8290836460) were confronted with the CDRs/ Tower Locations of their numbers, Vikram and Jeetu denied the fact that they were

present with Abhimanyu on 11.11.2017. In their further statement they have accepted that it was only on the request of Abhimanyu that they had

given their consent to act as a witness.

It is pertinent to mention here that during their earlier statements, Shri Vikram and Shri Phool Singh @ Jeetu have stated that they were present with

Shri Abhimanyu during the whole period and both of them were not carrying their mobile phones on that particular date. However, after sustained

examination and scrutiny of the CDR/Tower Location and Calls exchanged by his mobile number on 11.11.2017, Shri Vikram stated that since he is

under obligations of Abhimanyu, he agreed to perform as witness for Abhimanyu. Similarly, Phool Singh @ Jeetu who is friend of Bharat, cousin

brother of Abhimanyu agreed to act as a witness for Abhimanyu only on the request of his friend Bharat.

Abhimanyu has also submitted in his further statement that when he had asked Gopal and his brother Sanjay to give witness for him, they both denied.

Therefore, on advice of his known persons he approached his friend Vikram Singh Devra and Phool Singh Tanwar and they agreed to become his

witness in his custodial violence matter.

(II) Abhimanyu had stated earlier that after coming out from PS Ambamata, he contacted his brother Sanjay and informed him about

the custodial violence by police. During scrutiny of CDRs of Abhimanyu i.e. 9413813999 as well as CDRs of his brother Sanjay's both number

i.e. 8949974129 and 9828799773, no call(s) in the CDR were exchanged between them. When Abhimanyu was confronted with the CDRs of both the

mobile numbers of Sanjay, he accepted that earlier he had given false statement. He stated that his brother Sanjay along with one Shri Gopal (relative

of Abhimanyu who is working as Home Guard in Rajasthan Police) were present outside the Police Station on 11.11.2017 when he visited the Police

Station. However, since Gopal and Sanjay refused to support him as witness and give any statement on his behalf, therefore on the suggestion of his

acquaintances, he requested Vikram and Phool Singh to give statements on his behalf.

Thus, the status of Sanjay as witness is dubious.

(III) Many of the statements given by Abhimanyu during the course of enquiry are contradictory:-

(a) In his previous statements given to SC/ST Court, Police Enquiry and CBI Enquiry, he has not revealed that before going to M.B.

Govt. Hospital, he had gone to his residence. The fact that he visited his house

and then returned back to hospital has not been stated in his earlier statements. However, when he was confronted with the location details of his mobile number 9413813999, he admitted that he visited his house and then returned back to the hospital and got his name registered at Casualty/Emergency Counter at 21:22 on 11.11.2017. When enquired that why he has not stated this fact earlier, no satisfactory answer was given by Shri Abhimanyu.

(b) Sh. Abhimanyu had stated in his statements that the photographs of injuries had been taken from his mobile by Shri Vikram Singh Devra on 11.11.2017 at his home when they returned from Hospital.

However, during the enquiry when Abhimanyu and Vikram (9983387595 and 8290836460) were confronted with the CDRs / Tower Locations of their numbers, Vikram denied that he had taken the photographs. Subsequently, Abhimanyu retracted from his statement and stated that the photographs were taken by his brother Sanjay.

(c) Abhimanyu has stated that he had taken out printout of photographs (two sets) from one Cyber Cafe on 13.11.2017 when he was going to IG Office alongwith Bharat (his cousin) and enclosed one set of photographs with the Complaint given to IG, Udaipur.

However, when Bharat was examined, he stated that on 13.11.2017 he had gone alongwith Abhimanyu to IG office but he did not take the printout of photographs from any Cyber Cafe.

(d) Sh. Abhimanyu had never mentioned and submitted the said printout of injury photographs taken on 13.11.2017 in the SC/ST Court, Udaipur where he had filed complaint on 14.11.2017 or during trial which continued for next 3 months.

He submitted the said photograph in High Court directly.

(e) During the enquiry on 17.3.2017 when Abhimanyu was asked about the mobile phone from which he had taken photographs, he informed that he had lost his mobile phone 3 days ago and he did not have any softcopy or any hardcopy of the photographs. He also stated that he has tried to lodge complaint in Police but since he was not having the bill of mobile phones, therefore his case was not lodged.

Efforts were made by the EO to find the said phone through IMEI and sent request to all mobile service providers, however, could not find the same.

The said phone is now not used on any network of mobile service provider.

Since the mobile has been lost, the exact date and time of taking the photograph from the mobile cannot be ascertained.

The loss of the mobile having important evidence as photographs during the course of enquiry appears suspicious.

(f) During CBI enquiry Sh. Abhimanyu had mentioned that on 16.11.2017 he again went to M.B.Hospital and got medical treatment.

He had not mentioned this fact in his earlier statements given to CBI, SC/ST Court and State Police Enquiry.

(g) During the course of enquiry, Abhimanyu had stated that only 04 persons namely, Sh. Netrapal SHO, Sh. Chetan Das

Vaishnav Constable, Sh. Ashok Singh and he himself were present in the room of SHO. However, enquiry has revealed that Sh. Netrapal SHO., Sh.

Dilip Singh SI, Sh. Bhola, Sh. Prem Shankar, Sh. Hukum Raj Singh (Advocate of Bhola), Sh. Pushpender (Advocate of Abhimanyu) and Sh. Ashok

Singh were present in the room of SHO at the alleged time of occurrence. All the 07 persons have denied regarding any abuse, assault to Abhimanyu

Tanwar. Enquiry Officer has also examined other police officials who were present in the premises of the Police Station at the time of alleged

incident, however, they have all denied regarding any custodial violence against Abhimanyu Tanwar.

(IV) Scrutiny of CDR of Shri Pushpender, Advocate(7426801992) reveals that he was present in PS Ambamata. He was regularly in

touch with Shri Abhimanyu (941381399) upto 17:05 Hrs. He has stated that he was sitting inside the Chamber of SHO and had exchanged calls with

his senior Shri Prem Singh Panwar updating him about the matter that Shri Abhimanyu misbehaved with the SHO and others.

He also stated that he remained seated inside the Chamber of SHO during the whole period and no incidence of custodial violence with Shri

Abhimanyu took place.

(V) Statement of Sh. Dilip Singh, SI and IO of this case has revealed that he had called Abhimanyu to police station on 11.11.2017 as

per the High Court order to submit his representation if any. Sh. Abhimanyu along with his Advocate Pushpender went there.

Since it was a High Court matter, IO produced both parties in front of SHO Sh.

Netrapal for submission of representation by Abhimanyu and further

orders. According to Sh. Dilip Singh he was there in the room all the time because he was the IO of the case and he has to answer the queries of his

senior and no custodial violence against Abhimanyu took place in the chamber of the SHO.

It is pertinent to mention here that Abhimanyu has not made any allegations against Sh. Dilip Singh who is the IO of the case and who was present

in the chamber of the SHO.

(VI) Treatment given to Abhimanyu by Doctors on 11.11.2017, 16.11.2017 and 22.11.2017 has revealed as follows:-

(a) Dr. Sanjeev Goyal who had treated Abhimanyu on 11.11.2017 at 9:22 pm has stated that Abhimanyu complained of body

pain and he had not recommended hospitalization. Abhimanyu did not show any injury marks (external). Since he had complained only regarding

body pain, hence he prescribed him Analgesics medicine, one Injection Diclofenac and one tablet Diclofenac + Paracetamol combination. If

Abhimanyu had shown or complained him about the injury by assault he would have given him medication of Antibiotic oral or topical or any dressing

on external wounds and he would have advised him tetanoustoxiod injection which is compulsory in the case of external injury.

He further stated that if Abhimanyu had mentioned him about the injury mark or assault then he would definitely mention the same in the hospital

slip as History of assault and also referred the patient to the medical jurist of the hospital for medical examination of his injuries. To refer the injured

patient to medical jurist department (medical examination) Police request is not required. The same is required at the time of Medical examination by

medical jurist department/forensic department.

(b) Dr. Manish Sharma, Medical Jurist, M.B. Hospital had called Sanjay on 11.11.2017 at 21:20:14 for 58 seconds. On being

enquired about the call, he has stated that mobile number 9829086089 is being used by him since long and this is his official Govt. number which is

displayed on many places in hospital, like mortuary and telephone exchange of M.B. Hospital. About this call, at this point of time he could not recollect

as to with whom he had talked.

(c) Dr. Ankit Ahuja who had treated Abhimanyu on 16.11.2017 at

16.35 hrs. has stated that Abhimanyu told him that he was assaulted/beaten by some persons on 11.11.2017. He had mentioned the same on prescription that the patient had alleged history of assault. He also stated that there was no visible wound which required dressing or injection. After examination of injuries he had not advised him any dressing or hospitalization. Since he had simple injury hence he prescribed him (1) Antacid medicine (Omeprazole) (2) one pain killer tablet Diclofenac + paracetamol combination and (3) one multi vitamin (MVBC).

It is pertinent to mention here that the medical examination report of 16.11.2017 was concealed by Sh. Abhimanyu and never reported to SC/ST Court, High Court and during the police enquiry.

(d) Dr. Ashish Kumar Garg who had done medical examination on 22.11.2017 of Abhimanyu on the direction/order of Court dt.

21.11.2017 mentioned in his injury report about 6 injuries simple in nature and caused by blunt weapon.

He stated that Abrasions mentioned in injury report are caused by friction against a rough space or by compression such as a lateral rubbing action by a blow, fall on a rough surface, by being dragged in a vehicular accident, finger nails, thorns or teeth bite. Some pressure and movement by agent on the surface of the skin is essential.

He also stated that a bruise can be inflicted on the body by blunt trauma such as fist, stone, stick, bar, whip, hammer, axe, wooden handle, poker, boot

etc. A contusion is an effusion of blood into the tissue due to the rupture of blood vessel caused by blunt trauma. Bruises from belt leave a definite

imprint and cause patterned bruising which is one in which the size and shape mirror a portion of the object which caused it, a blow with a stick

produce two parallel / linear lines. Haemorrhages (railway line or train line type). However, injuries depends on site of impact and direction of the force.

He stated that at the time of medical examination weapon was not submitted in front of him. However wooden stick without any pointed ends or

objects in routine does not produce abrasions.

The Doctor has not affirmed that the injuries were actually caused by belt and stick.

He stated that he could not give any opinion on injuries on the basis of photographs submitted by the petitioner in the High Court because it is not possible to know the authenticity of photograph, the date and time when the photograph are taken or the quality of camera, trick photography, artificial bruise due to use of medicine etc.

It is pertinent to mention here that during the course of enquiry the complainant has lost his mobile through which his photograph of injuries were

captured. Therefore, the exact date and time of taking the photograph from the mobile cannot be ascertained. (VII) Enquiry has revealed that Sanjay,

brother of Abhimanyu, is the only independent witness who is supporting the alleged custodial violence. However, the enquiry cannot be sustained on

his sole version. During the course of enquiry, Abhimanyu has retracted from his previous statement that he had called Sanjay to the Police Station.

He has also mentioned that since Sanjay was not willing to appear as witness in the instant matter therefore he had requested Phool Singh and Vikram

Singh to appear as witness on his behalf. Thus, although Sanjay is supporting the story of custodial violence of Abhimanyu at this point of time yet he

cannot be considered as a reliable witness.

Conclusion:-

Considering the facts and circumstances as mentioned above, the allegations in the enquiry pertaining to custodial violence has not been substantiated.

The status of the complainant Abhimanyu in such circumstances completely as dubious. He is a named accused in FIR No. 391/2017 in PS

Ambamata pertaining to allegations of fraud and assault.

Enquiry has revealed that Abhmanyu has fabricated witnesses i.e. Vikram Singh and Phool Singh Devra in order to authenticate his allegations.

At one point, even his real brother Sanjay and his friend Gopal who had actually accompanied him to the Police Station had refused to appear as

witness for him. When confronted with his CDR locations, he has retracted from his previous statements. Thus the veracity of the complainant is

doubtful.

The Medical Report given by the Doctor does not corroborate the fact that he was beaten by belt and stick.

During the course of enquiry, too many contradictions in the statements of the complainant and the witnesses have come to the fore.

In view of the above, allegations pertaining to custodial violence of Sh. Abhimanyu Tanwar by the police officials of PSÂ Ambamata have not been substantiated. Prime Facie no case is made out for registration of FIR in the instant matter.

Sd/-

(L.S. Padma Kumar)

Supdt. Of Police

CBI, SC-III, New Delhi.â? Learned counsel for the petitioners has argued that as a matter of fact from bare reading of the impugned FIR, no offence

is made out against the petitioners. It is also contended that the dispute between the petitioners and the respondent No.2 is purely of civil nature,

however, an attempt has been made on the part of the complainant to give it criminal colour.

It is further argued that it was the respondent No.2 Bhola @ Khema Dangi, who approached the petitioners - Abhimanyu Tanwar and complainant

Madan Dangi for selling the land belonging to himÂ due to huge debt on him and his son Premshanker. After negotiation, it was agreed between the

parties that the land would be sold by the complainant for a consideration of Rs.6,00,000/-. Later on, the petitioner - Abhimanyu Tanwar paid

Rs.50,000/- in advance to the son of the complainant on 05.06.2017 and thereafter he also paid Rs.2,00,000/- to him on 10.06.2017Â on assurance

given by the complainant. Thereafter, Rs.1,00,000/- was also paid to the complainant on 21.06.2017 and the complainant has executed a power of

attorney in favour of petitioner-Vishal Jain on 23.06.2017. Again Rs.2,00,000/- were paid to the creditors of the complainant by petitioner â?

Abhimanyu Tanwar on 01.07.2017 and on 15.07.2017, Rs.50,000/- were paid to the complainant.

It is submitted that in all Rs.5,00,000/- have been paid to the complainant by 15.07.2017, however, later on at the instigation of some land grabbers, the

complainant filed an application before Sub-Registrar and objected for registration of the sale-deed of his land through his power of attorney Vishal

Jain, however, later on being confronted by petitioner No.1, the complainant agreed and withdrew the said application on 14.09.2017 and a blank

cheque of Rs.1,00,000/- was given to him and thereafter, the registered sale deed was executed in favour of one Sanjay Tanwar through Vishal Jain.

Learned counsel for the petitioners has, therefore, submitted that from the above facts, it is clear that the respondent No.2 has filed false FIR against

the petitioners.Â It is further argued by learned counsel for the petitioners that as a matter of fact, the police in connivance with the complainant is

bent upon to file charge-sheet against the petitioners without taking into consideration the sequence of evidence took place in relation to the land

transaction.

Learned counsel for the petitioners has also submitted that even though if the CBI has found that the allegations of custodial violence levelled by the

petitioner â?" Abhimanyu Tanwar are not proved, still a case for quashing of FIR is clearly made out and, therefore, these criminal misc. petitions are

liable to be allowed and the impugned FIR is liable to be set aside.

Per contra, Mr Rajesh Panwar, Additional Advocate General has vehemently opposed the petitions and submitted that from bare reading of the

allegations levelled in the impugned FIR, a prima facie case is made out and, therefore, the FIR cannot be quashed.Â It is further argued by Mr

Panwar that the police have collected evidence against the petitioners during the course of investigation and prima facie case against them is made

out, hence, no case for quashing of impugned FIR is made out.

Mr Panwar has further argued that the petitioner Abhimanyu Tanwar has levelled false allegations of custodial violence only with the intention to

mislead the Court. It is submitted that thorough investigationÂ into the allegations of custodial violence has been conducted by the Superintendent of

Police, Udaipur and it is found that the said allegations levelled by the petitioner- Abhimanyu Tanwar are false.Â It is further submitted that upon

insistence of the petitioner â?" Abhimanyu Tanwar, this Court has directed the CBI to conduct investigation into the allegations of custodial violence

against the police officials concerned and the CBI, after thorough investigation, has also come to the conclusion that the allegations levelled by the

petitioner Abhimanyu Tanwar of custodial violence are false.

Mr Panwar has further argued that attempt on the part of the petitioner to abuse the process of court should be seriously dealt with.Â It is submitted

that a litigant cannot be allowed to take liberties with the procedure of the Court and if any such thing comes into the notice of this Court, then stern

action is required to be taken against such litigant, so that it can be made an

example for others.

In support of the above contentions, learned Additional Advocate General has placed reliance on observations made by the Honâ??ble Supreme

Court in Dnyandeo Sabaji Naik & Anr. vs. Pradnya Prakash Khadekar & Ors., (2017) 5 SCC 496 and submitted that the Honâ??ble Supreme Court

has held that where a litigant has made an attempt to abuse the process of court, it is the duty and obligation upon all courts to ensure that legal system is not exploited.

Learned Additional Advocate General has, therefore, prayed that these criminal misc. petitions may be dismissed and suitable orders be passed to take necessary action against the petitioner-Abhimanyu Tanwar for abusing the process of this Court.

Heard learned counsel for the parties.

The complainant in the impugned FIR has alleged that under the pretext of selling his agriculture land situated in Siyalpura, accused Madan Dangi took

him to the office of petitioner â?? Abhimanyu Tanwar, where an advance consideration of Rs.50,000/- was paid to him and thereafter on the next day,

Madan Dangi and Abhimanyu TanwarÂ got written the sale deed, notarized it and got signatures of his son on blank stamp papers and kept the same

with them. Thereafter both the above petitioners got opened bank accounts in the name of the complainant and his son in the ICICI Bank and also

deposited Rs.20,000/- each in both the accounts and after issuance of cheque books in their names, they kept two blank cheques from each cheque

books. Thereafter,Â Madan Dangi and Abhimanyu Tanwar took them to Badgaon Tehsil Office, where a power of attorney was executed in favour

of petitioner â?? Vishal jain and told them that Rs.6,00,000/- would be given to them tomorrow.Â Next day in the office of petitioner - Abhimanyu

Tanwar,Â Rs.1,00,000/- was given in cash and Rs.1,00,000/was paid to creditor Kanhaiya Lal Vaishnav and in the evening, petitioner Abhimanyu

Tanwar gave Rs.50,000/- at the house of Madan Dangi, out of which, a sum of Rs.30,000/- was retained by Madan Dangi as commission. It is alleged

that as such on different dates, Rs.4,50,000/were paid to the complainant but rest of the amount has not been paid to him.Â Upon being asked about

remaining amount, Madan Dangi threatened the complainant and said that no amount is due.Â On this, the complainant filed an objection in the

Registry Office, then the petitioners Madan Dangi, Abhimanyu Tanwar and Vishal Jain called him for compromise and when he went for this along

with his son, 6-7 persons assaulted them and forcibly pulled them into a car and threatened that he should withdraw his objection, else his son would be

killed. Thereafter, those petitioners took them to the Tehsil Office, Badgaon and got their signatures on the papers already prepared and the objection

filed by the complainant was withdrawn and left them at Samta Nagar Office and gave a blank cheque saying that it is a digital cheque and submit it

to the bank after two days. It is further alleged that the petitioners threatened them that if any complaint is made to the police, they would kill both of

them. When the said blank cheque was submitted in the bank, the same was returned and then the complainant came to know that his whole

agriculture land had been grabbed by the petitioners while threatening them by getting the sale deed registered.

The police have registered the case against the petitioners for the offences punishable under sections 365, 420, 467, 468 IPC.

This Court is of the opinion that from the allegations levelled in the impugned FIR, a prima facie case of cheating and abduction is made out.

The Honâ??ble Supreme Court in various pronouncements such asÂ State of Haryana & Ors. vs. Bhajan Lal & Ors., 1992 SCC (Cri) 426Â and

Rupan Deol Bajaj (Mrs) & Anr. vs. Kanwar Pal Singh Gill & Anr., 1995 SCC (Cri) 1059 has specifically held that where the allegations levelled in

the impugned FIR do constitute a prima facie case, the FIR cannot be quashed.

Apart from that, I have also perused the case

diary and found that police have collected the evidence, which suggests that prima facie case against the petitioners for abduction and cheating is

made out.

The complainant has produced the blank cheque, which was allegedly handed over to him by one of the petitioners after getting the sale-deed of the

complainantâ??s land registered in the Registry Office on 15.09.2017.

Taking into consideration the overall facts and circumstances of the case, I am of the opinion that no case for quashing the impugned FIR is made out.

As noticed earlier, primarily, this Court issued notices in these criminal misc. petitions while taking into consideration the assertion of the petitioner â?

Abhimanyu Tanwar regarding custodial violence upon him by the S.H.O., Police

Station, Ambamata, District Udaipur when he went to the said police station for submitting a representation pursuant to the order passed by this Court on 30.10.2017 in earlier criminal misc. petitions filed by the petitioners. As this Court was not satisfied with the investigation conducted by the Superintendent of Police, Udaipur regarding the allegations of custodial violence on petitioner â?" Abhimanyu Tanwar and at the insistence of the petitioners, it has directed the CBI to conduct investigation regarding the allegation of custodial violence upon the petitioner â?" Abhimanyu Tanwar by the Station House

Officer, Police Station, Ambamata, District Udaipur.

As noted earlier, the CBI has conducted thorough investigation into the allegation of custodial violence and come to the conclusion that the allegation

regarding custodial violence upon the petitioner â?" Abhimanyu has not been substantiated. The status of the petitioner â?" Abhimanyu Tanwar

completely appears as dubious. He has fabricated the witnesses in order to authenticate his false allegations. The medical report given by the Doctor

does not corroborate the fact that the petitioner â?" Abhimanyu Tanwar was beaten by belt and stick.

Having taken into consideration the above facts, I am of the opinion that the petitioner -Abhimanyu Tanwar has made an attempt to abuse the process

of the court by making frivolous and false allegations of custodial violence on him by the S.H.O., Police Station, Ambamata, Udaipur.

The Honâ??ble Supreme Court in Dnyandeo Sabaji Naik & Anr. vs. Pradnya Prakash Khadekar & Ors. (supra) has held that it is the duty and

obligation of all the courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. Relevant

observations of the Honâ??ble Supreme Court in this regard are reproduced hereunder:

â??13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded

if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt

about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency.

Exemplary costs are inevitable, and even necessary, in order to ensure that in

litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.

Taking into consideration the directions given by Honâ??ble Supreme Court, this Court thinks it to be a fit case where directions can be issued to

take action against the petitioner-Abhimanyu Tanwar for abusing the process of the Court.

In view of the above discussions, the challenge of the petitioners to the impugned FIR fails, hence, both these criminal misc. petitions are dismissed.

The complaint filed by the petitioner regarding custodial violence in the Court of Special Judge, SC/ST (Prevention of Atrocities Cases), Udaipur on

14.11.2017 is also dismissed. The police shall take appropriate action against the petitioner -Â Abhimanyu Tanwar and others for filing false

complaint regarding custodial violence.

Stay petitions also stand dismissed.

Application No.474/2018 filed in S.B.Cr.Misc.

Petition No.4530/2017Â also stands dismissed.