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**(1997) 07 SHI CK 0007**  
**In the High Court Of Himachal Pradesh**  
**Case No : Criminal W.P. No. 10 of 1997**

Sh. Inder P. Chaudhrie

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

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**Date of Decision :** 03-07-1997

**Acts Referred:**

Arms Act, 1959 — Section 25, 27  
Criminal Procedure Code, 1973 (CrPC) — Section 439  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18  
Penal Code, 1860 (IPC) — Section 120B, 302

**Citation :** (1997) 3 ShimLC 515

**Hon'ble Judges :** M. Srinivasan, C.J;A.L. Vaidya, J

**Bench :** Division Bench

**Advocate :** Dineih Mathur, assisted by R.S. Sodhi and Vijay Pandit, for the Appellant; Iader Singh, General, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.L. Vaidya, J.—The present Petitioner is under judicial custody in a case arising out of FIR No. 364/96, dated 15-11-1996 of Police Station, Sadar, Shimla On 14-11-1996, late Sh. Harsh Baljee was alleged to have been murdered and the FIR was to that effect. In the aforesaid case, the present Petitioner was arrested on 11-4-1997. The investigation in the case has not yet concluded. Through the present petition, the following reliefs have been prayed for:

(a) by an appropriate writ, order or direction transfer the investigation of the case arising out of FIR No. 364/96, P. S. Sadar, Shimla under Sections 302/120-B, IPC read with Section 25 and 27/54/59 of Arms Act, to the Central Bureau of Investigation;

(b) direct an enquiry/investigation into the conduct of the investigating agency in violating the mandate of the constitution as also statutory law while trampling upon the rights of the Petitioner; and

(c) pass such other and further orders as this Hon''ble Court may deem fit and proper.

2. Various averments have been made in the petition to base the aforesaid relief asked for, the main being that the Petitioner was tortured, humiliated, brutalised and dehumanised to such an extent that it was difficult to narrate and put into words the trauma that the Petitioner has been through at the hands of the Investigating Agency while he was in their custody and police has been interfering in the administration of justice. With respect to the allegation of torture, para 6 of the petition is being reproduced hereunder for the sake of convenience:

Upon arrest, the Petitioner who makes bold to say that he is innocent and has got nothing to do with the case arising out of FIR No. 364/96, nor has any knowledge or is acquainted with the facts and circumstances of the case, was put through a most abusive process of investigation singularly deplored by the Supreme Court and constitutionally banned and prohibited by statutory law. The Petitioner was tortured, humiliated, brutalised and dehumanised to such an extent that it is difficult to narrate and put into words the trauma that the Petitioner has been through at the hands of the Investigating Agency while he was in their custody. To mention a few of the so-called scientific investigative methods adopted by the Investigating Agency, the Petitioner was brutalised to make him implicate himself, to fit a theory propounded by the Investigating Agency which is a figment of their imagination, the Petitioner was at 8.30 pm. on 11-4-1997 taken to Sadar Police Station, Shimla, where 8-10 screaming, yelling, abusing police personnel descended on him throwing him on the ground in the courtyard and kicking and showering him with fists, blows and slaps. They dragged the Petitioner around while hurling abuses and appearing to have lost control of senses. Within 15 minutes of the first bout of beating, the Petitioner was taken to C. I. A room where once again he was abused, pushed, kicked, slapped without even asking him any question and/or interrogating him on the subject for which the remand had been procured. There he was made to stand with his hands raised above his head, blind folded till 11 p. m. Whereafter he was put back into police lock-up. The following morning a fresh bout of abusing, beating once again started. The foul language used would hurt the ears of even the most seasoned policemen, let alone a gentleman like the Petitioner. Here, again began the inquisition. The Petitioner's hands were tied behind his back with a wooden rod running across the arms and he was suspended from the ceiling till excruciating pain ran throughout the body, more so the shoulder blades and the arms. Here too, he was slapped, punched and for the first time told that he is bound to support the investigation theory, failing which what he had received was but a sample of the whole. Not being in a position to even comprehend what the Investigating Agency was trying to achieve by its brutality, the Petitioner could not oblige and, therefore, had to be subjected to electric shocks on the finger tips, ear lobes, tongue which, besides causing anguish and pain, cut the tongue of the Petitioner. What is surprising and shocking is that all

this humiliation and novel methods of investigation adopted in the presence of the police officers who were simply enjoying the barbaric methods and encouraging the lower ranks to be less merciful. This continued throughout the day occasionally bringing" the Petitioner off the hook, but persisting in keeping the level of pain to an unbearable limit, as also ensuring that the Petitioner does not mercifully become unconscious. He was not permitted to sleep 2/3 nights at a stretch and at regular intervals routinely assaulted, humiliated. They repeatedly asked the Petitioner to make the Petitioner connecting himself to the crime and threatened to give electric shocks on his private parts ensuring him impotency. After a week of police bashing which the investigating officer termed as modern investigative methods, the personnel themselves being convinced of his innocence were helpless because of exigencies of duties which, according to them, demanded that they continue to adopt the beating session until the Petitioner consented to give his signature on various documents. The Petitioner is here not mentioning the exact torture because it is so dehumanising and humiliating that to put to same on record would mean a continuous reminder to the Petitioner of the ugliness and the abuse to which he was subjected and which would then haunt him as a nightmare for the rest of his life. Suffice it to say that the Petitioner was subject to what the Investigating Officer referred to as a lie detecting test, he was injected and drugged with some substance which made him delirious and unconscious, yet after 14 days of custody, the investigating agency has got nothing of which should make them proud of their despicable behaviour and abuse of office.

3. Regarding allegation of interference in the administration of justice, para 4 of the rejoinder is relevant which is reproduced hereunder;

I say that Sh. Uppal who is trying to defend the Investigating Agency is unaware of the fact that the team investigating FIR No. 374/96 P. S. Shimla has stopped to the lowest ebb and has tried to influence the Judiciary by approaching the judicial offices dealing with the case of the Petitioner. The embarrassment of the Sessions Judge Shimla, was made known in the open court before hearing the Bail application of the Petitioner on 9th June, 1997, the learned Sessions Judge remarked about how embarrassed he had felt when the Supdt. of Police approached him on the pretext of paying a social call met the learned Sessions Judge and showed him, what was purported to be a note written by the applicant to his wife, which the police claims to have intercepted, wherein certain remarks about the Judge were allegedly made causing embarrassment to the learned Sessions Judge. This note was then, in the words of the Sessions Judge, shredded before him, so that it would not cause any embarrassment during investigation.

Reply of the Respondent to this allegation before the learned C. J. M. is:

That the allegations in this para are cooked up and designed in such a manner that these tend to influence the investigation and are intended to get undue benefit No such remarks as alleged were made by the learned Sessions Judge.

On the other band he had in categorical terms, told the learned Counsel of the applicant that his client had embarrassed him by mentioning his name in one of the notes written by him to his wife. Therefore, the learned Sessions Judge had intimated the learned Counsel insisted the Sessions Judge to decide the application. It is pertinent to mention here that the Superintendent of Police had gone to pay as courtesy call to the learned Sessions Judge on his joining at Shimla as per convention and since the name of Sessions Judge figured in one of the torn notes intercepted by the Police purportedly written by the accused to his wife, the S. P. deemed it proper while leaving his chamber to apprise the Sessions Judge about it. There was nothing abnormal in such a social call which has nothing to do with the progress of the case but what the applicant wants to capitalize out of such a meeting is nothing but to cook up a food that appears to be tasty put virtually is obnoxious. Here it is in all fairness made clear that there is no bad intention on the part of the Investigating Agency to, in any manner, influence the judicial mind in its functioning. On the other hand, it is deducible from the averments of the -applicant that he wanted to create some embarrassing situation for the investigating as well as the adjudicating process. Otherwise, there was no point for him to have insisted for hearing of bail application by the learned Sessions Judge. At this stage, it is made clear that the writing was of the accused as per the report of the hand writing expert. Therefore, the allegations of the applicant are false to his knowledge and he is liable to be dealt with under relevant provisions of law.

A complaint to the effect was filed before the Magistrate, under whose orders, the Petitioner continues to be detained. A copy of the complaint is marked thereto as Annexure P-1.

The Petitioner submits that he views with great concern, the so called social calls made by the S. P. on Judicial Officers while trying to influence them, to the prejudice, of the Petitioner. This should also be indication enough, to this Hon''ble Court, as to the degree of fairness of Investigating Agency and the desperate attempts made to prejudice the case of the Petitioner at all forums.

4. The petition has been contested on behalf of the Respondents and the allegations made therein have been denied Para 6 of the reply is reproduced hereunder:

Para 6 of the writ petition is likewise wrong and false even to the knowledge of the Petitioner and, as such, the contents thereof are emphatically repudiated. All the allegations levelled in this para regarding the alleged torture, humiliation etc. are totally false and contrary to the facts. All the pleas given in this para regarding the alleged torture etc have been simply invented and concocted by the Petitioner with the purpose of creating false grounds for filing the present baseless writ petition. In this regard, it may be pointed out that during the period when the Petitioner remained in custody of the local police authorities, he was regularly medically examined by the Senior Doctors of Indira Gandhi Medical College, Shimla as well as by the concerned Senior Doctors of Din Dayal

Upadhaya Hospital In this regard, it may be pointed here that during the period of police remand, the Petitioner on one pretext or the other, always tried to create hindrances in the proper and smooth investigation of the case and on a number of occasions he made false pretexts of his ailment which eventually were proved false, but by adopting such a strategy the Petitioner was successful in gaining time and creating hindrances in the thorough investigation which was being conducted by the local authorities No such physical torture was ever inflicted on the Petitioner and the said fact attains complete Corroboration from the fact that no such application or prayer was ever made by the accused/ Petitioner containing the present groundless allegations and it is only for the first time that in this writ petition, baseless pleas have been taken by the Petitioner with his aforesaid ulterior motive. It is submitted here that the Petitioner was examined by the medical officer on 11-4-1997 after his arrest (MLC is marked as Annexure R-2). Thereafter the Petitioner expressed his desire on 12-4-1997 for treatment of hypertension and gastric troubles and he was taken to the hospital where the Doctor prescribed some medicines vide prescription slip. (Copy annexured as R-3). Further he was medically examined on 15-4-1997 (copy of MLC annexured as R-4) Thereafter Petitioner remained admitted in the hospital on 16-4-1997 and 17-4-1997. (Copy annexured as R-5). He was also medically examined on 19-4-1997, 21-4-1997 and 23-4-1997. (Copies of MLCs annexured as R-6, R-7 and R-8). Thus a bare perusal of all this medical record would go to show that the Petitioner was examined by different medical officers at different stages and nothing suggestive of any 3rd degree method at the hands of I. Os./ police is made out. On the other hand all this medical record categorically falsifies the allegation of the Petitioner. Therefore, it is, reiterated that the Petitioner has made such averments of torture etc. with an ulterior motive of sidelining the independent impartial and reasonable investigation by legally competent local police who have been conducting the investigation as per the law and in consonance with the directives of the Hon'ble Apex Court in this regard.

5. According to the Respondents, the family of the Petitioner is frequently visiting even the police station to meet the Petitioner and they were always afforded access to him. The allegation made by the Petitioner that it became difficult for the Petitioner to obtain local legal assistance to defend himself by taking recourse to remedies available at law, since most of the local counsel refused to take up the case, compelling the Petitioner to seek assistance from outside the State to argue his bail application has been denied. According to the Respondents, the local lawyers have been engaged and having meeting with the Petitioner under custody.

6. Learned Counsel for the parties have been heard at length and the record scrutinised.

7. Learned Counsel for the Petitioner has limited his submissions dealing with the following aspects of the matter:

(1) It has been contended that in the present case, the Investigating Officer Sh.

Balak Ram, who happened to be the S. H.O. of Police Station, Sadar, Shimla was the complainant and as such investigation by him of the said case was not only illegal but unsustainable under law. "

(2) Various facts have been brought on record which established that the Petitioner had been tortured physically and mentally under custody by the Investigating Agency which aspect makes the investigation to be highly prejudicial to the Petitioner and not an independent impartial one.

(3) The Police, who is the Incharge of the case, has been approaching and influencing the mind of the Judicial Officers thereby by interfering in the administration of justice.

(4) The Petitioner does not except a proper legal and impartial investigation from the present Agency.

8. The Petitioner's first submission is that the complainant, that is, S. H. O. Police Station, Sadar, Shimla, Sh. Balak Ram on the basis of whose information F.I.R. was recorded being highly interested in the case was legally debarred to investigate the case and in this behalf certain precedents have been cited.

9. Before the case law cited-is appreciated, it may be pointed out as to under what circumstances the F.I.R. was lodged and what part this S. H. O. has played in recording the F. I R. and what would be its effect in case investigation is conducted by this S. H. O.

10. At about 10 past 10 at night on 14-11-1996 a report No. 53 was recorded in the Roj Namcha at Police Station, Sadar, Shimla. The information was received on telephone and was so recorded by the Inspector/S. H. O. Balak Ram. It was recorded in this report that at 10 past, 10 at night on 14-11-1996, Medical Officer from I G. M. C. Shimla, informed through telephone that Sh Harsh Baljee has been brought from the Mall Road in the casualty of Indira Gandhi Medical College Hospital, Shimla, who has since expired and that for proceeding with the matter the I. O. be sent. It has also been recorded in the aforesaid report that thereafter Inspector/S. H. O. alongwith S. I. Bhupender Negi, A.S.I. Amar Singh, H. C. Harjeet Singh, H. C. Dulo Ram, Constable Kuldip Singh and Constable Parkash Chand in order to verify the fact went to Indira Gandhi Medical College and the aforesaid information was also conveyed to the Superintendent of Police, Addl. Superintendent of Police and Deputy Superintendent of Police. This was the first information received through the telephone.

11. Thereafter, S H O Balak Ram after verifying the facts in a summary manner in the hospital and after inspecting the dead body sent a Rukka to the Police Station, Sadar, Shimla on the basis of which a formal F. I R was registered.

12. On the basis of the aforesaid facts revealed from the police record, the F. I. R was registered on the basis of the Rukka sent by Sh Balak Ram, S H. O. Police Station, Sadar, Shimla. This S. H. O. reached the spot when the occurrence had already been taken place and the Doctor had informed him about the death of

the deceased, as referred to above, and so recorded in the Roj Namcha. It is not the case of the Petitioner even that Sh, Balak Ram, S. H. O. had anything to do personally with the occurrence.

13. At this stage, the law cited by the learned Counsel for the Petitioner can be referred. In Bhagwan Singh Vs. The State of Rajasthan, the investigation was conducted by Head Constable who was himself the person, to whom bribe was alleged to have been offered and who lodged the F.I.R. as informant or complainant. It was held that this was an infirmity which was bound to reflect on the credibility of the prosecution case. Thus, in this reported case the I. O. was one of the eye witnesses to the occurrence and it was he to whom the alleged bribe was given.

14. Gyan Chand v. The State of Rajasthan 1983 Cri LJ 3716, was a case registered u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1989. Here in this case, the police officer after receiving the information of an offence effected search and seizure of the unauthorised opium. This very officer investigated the case personally. It was held that it was not fair as it violated the principle of criminal jurisprudence. In this case also, the circle Inspector who investigate the case was the person who recovered the incriminating article after effecting search, meaning thereby he was an important witness of the recovery of the alleged opium through the search.

15. In Megha Singh Vs. State of Haryana, -the Head Constable arrested the accused and recovered pistol and cartridges from him and it was on his complaint that a formal F.I.R. was registered. It was held that being the complainant, he should not have proceeded with investigation of the case.

16. There is absolutely no dispute to the aforesaid proposition laid down in the cases referred to above. In every case, the Investigation Officer was an important witness of the occurrence and it was he who had made the report of the occurrence to the police. With this background, it can safely be said that the investigation by such officer who is witness to the occurrence will be against the principles of criminal jurisprudence, especially when that person would "be very much interested in the case. Insofar as the present case is concerned, there is no such allegation against Sh, Balak Ram, S. H. O. Police Station, Sadar, Shimla. He is not a witness to the occurrence. Whatever report he made from the hospital and on the basis of which the formal F.I.R. was lodged, it was done by him as an officer in charge of the police station. With this background, a part of the investigation even if conducted by this witness will not in any way render that investigation illegal, what to speak of being against principles of criminal jurisprudence.

17. It may be very specifically pointed out here that the aforesaid aspect of the matter has not been pleaded by the Petitioner at all, but has been argued for the first time before us by the learned Counsel for the Petitioner. The pleadings in this behalf are silent. Thus, the first submission urged on behalf of the Petitioner does

not carry any legal weight and has to be accordingly rejected.

18. It has been very forcefully contended by Mr. Mathur, learned Counsel for the Petitioner that the Investigation Agency has been applying third degree method while interrogating the Petitioner in the said case. The physical torture of the Petitioner during interrogation by the Investigating Agency, according to the learned Counsel, has been beyond the statutory powers of Investigating Agency which has rendered not only the method applied for investigating the case to be illegal but on the other hand has adversely affected the physical as well as mental state of the Petitioner. There is no dispute to the proposition that investigation into a criminal case must always be carried on fairly and legally and there should not be any grouse on behalf of the accused party which may result in the investigation being carried on unfairly and with some ulterior motive. In the present case, according to the Petitioner, the investigation by the Investigating Agency by applying third degree method cannot be said to be a fair impartial one. The Petitioner has pleaded the following facts in support of the aforesaid submissions:

(1) The Petitioner was tortured, humiliated, brutalised and dehumanised to such an extent that it is difficult to narrate and put into words the trauma that the Petitioner has been through at the hands of the Investigating Agency while he was in their custody,

(2) The Petitioner was at 8.30 p.m. on 11-4-1997 taken to Sadar, Police Station, Shimla, where 840 screaming, yelling, abusing police personnel descended on him, throwing him on the ground in the courtyard and kicking and showering him with fists, blows and slaps.

(3) Within 15 minutes of the first bout of beating, the Petitioner was taken to C I. A room where once again he was abused, pushed, kicked, slapped without even asking him on the subject for which the remand had been procured

(4) On the following morning (12-4-1997) a fresh bout of abusing, beating once again started. The Petitioner's hands were tied behind his back with a wooden rod running across the arms and he was suspended from the ceiling till excruciating pain ran throughout the body, more so, the shoulder blades and the arms. Here too, he was slapped and punched.

(5) The Petitioner could not oblige the Investigating Agency to support their theory and therefore he had to be subjected to electric shocks on the finger tips, ear-lobes, tongue which besides causing anguish and pain, cut the tongue of the Petitioner.

(6) The Petitioner was not permitted to sleep 2/3 nights at a stretch and at regular intervals routinely was assaulted humiliated.

(7) The Petitioner was subject to what the Investigating Officer referred to as a lie detecting test, he was injected and drugged with some substance which made him delirious and unconscious, yet after 14 days of custody, the Investigating

Agency has got nothing of which should make them proud of their despicable behaviour and abuse of office.

19. According to the Petitioner, the aforesaid facts were brought to the notice of the Magistrate who in a most dispassionate manner directed the medical examination by a Doctor who apparently was hand in glove with the police and gave out a report totally contradictory to the reality of situation.

20. The Respondents in their reply have categorically denied the factum of alleged torture meted out to the Petitioner at the hands of the Investigating Agency. On the other hand, it has been pleaded that on various dates, the Petitioner was medically examined which did not support the theory of physical torture being pleaded by the Petitioner.

21. According to the Petitioner, the Investigating Agency applied third degree method while interrogating him just after his arrest on 11-4-1997 till he remained in police custody. In order to prove the bona fide of these allegations made in the petition, two aspects of the matter have to be considered. Firstly, the aforesaid facts of physical torture were ever brought to the notice of the Court by the Petitioner, if at all at what time? Secondly, on factual side apart from bald assertion made in the petition, is there any thing on record to prove the alleged torture meted out to the Petitioner?

22. The Petitioner was arrested on 11-4-1997 and for the first time was produced before the Magistrate on 12-4-1997 for the purpose of seeking police remand. On that date, the accused was personally presented under custody before the Magistrate and he was remanded to police custody till 17-4-1997. The order of the Magistrate dated 12-4-1997 which is in the police file recorded that the accused contended that he was innocent, but on the other hand the police had shown on the record of the investigation that the accused was not co-operating with the Investigating Agency. This order has been specifically mentioned here with the purpose that the accused who was present in the Court, nowhere made any representation or complaint regarding the physical torture, if any, given to him by the Investigating Agency on 11-4-1997 as has been pleaded by him in the present petition. Not a single word to that effect was uttered by the accused on 12-4-1997 when produced before the Magistrate. It is not the case of the Petitioner that he had made such an oral submission but the same was not recorded by the Magistrate.

23. Thereafter, it was on 17-4-1997 that the accused was personally produced before the Magistrate when the police asked for further remand which was granted for five days only and the accused was directed to be produced on 22-4-1997. The order passed by the learned Magistrate on 17-4-1997 granting remand of five days, is a detailed order. At that time, the remand application was opposed by the learned defence Counsel Sh. Dinesh Mathur, Advocate, on the ground that there did not exist sufficient grounds for the remand of the accused to police custody as he was innocent and there was no material against him to

show his involvement in the present episode Even at that time, the order of the Magistrate no where recorded that the accused or his counsel made any representation regarding the third degree method being used while the accused was being interrogated. Order only recorded that during custody of the accused in police he had been subjected to Psychatric lie detector test. Again it has not been pleaded that any representation was made to the Magistrate at that time pertaining to the physical torture being given to him during interrogation and that the Magistrate did not record the same in his order.

24. The accused was thereafter produced before the Magistrate on 22-4-1997 on which date further police remand for five days was prayed for. Accused was at that time represented by Sh. T.R. Chandel, Advocate, who was also present before the Magistrate when the accused was produced. After hearing the learned Counsel for the parties, the learned Magistrate granted police remand for two days and accused was directed to be produced on 24-4-1997. On this date also, the accused or his counsel no where brought to the notice of the learned Magistrate regarding the alleged physical torture given to him by the Investigating Agency.

25. On 24-4-1997, the accused was presented before the Magistrate and his learned Counsel S/Sh. T. R. Chandel and Vijay Pandit were also present. Prayer of the Police for further police remand was not accepted and the accused was remanded to judicial custody and was directed to be produced on 8-5-1997. On this date also, neither the accused nor the learned Counsel appearing for him brought to the notice of the learned Magistrate regarding the aforesaid fact.

26 Thereafter, the accused was produced before the learned Magistrate on 8-5-1997, 22-5-1997, 4-6 1997, 17-6 1997 and 30-6-1997 for seeking his judicial remand, which was so granted by the learned Magistrate. Even on these dates the accused or his learned Counsel never brought to the notice of the learned Magistrate the alleged third degree method having been applied by the Investigating Agency.

27. The accused preferred a bail application u/s 439 of the Code of Criminal Procedure before the learned Sessions Judge, Shimla on 12-4-1997 which was registered as Cr. Bail Application No. 111-S/22 of 1997 S/Sh. Dinesh Mathur and G C. Gupta, Advocates, appeared for the Petitioner before the learned Sessions Judge. In that bail application also nothing was pleaded regarding the alleged physical torture given to the Petitioner on 11-4-1997 by the Investigating Agency. The grounds in the petition were only to this effect that the Petitioner was not connected with the alleged occurrence and being a patient of blood pressure, lever enlargement aged 55 years, which aspect required his bail to be favourably considered. Again, when the learned Sessions Judge, rejected the application vide order dated 18-4-1997, the Petitioner moved to this Court for grant of bail u/s 439 of the Code of Criminal Procedure vide Cr. M. P. (M) No. 293 of 1997 which application was filed on 25-4-1997 and was disallowed on 7-5-1997 In this application also no mention was made with respect to the

alleged torture. This application was argued by S/Sh. T. R. Chandel, M. S. Chandel and Jagdish Vats, Advocates. Neither the application nor the arguments advanced on behalf of the Petitioner contained any aspect of the aforesaid alleged torture having given to the Petitioner by the Investigating Agency.

28. Thus, there were so many occasions for the Petitioner to have brought to the notice of the Court the alleged maltreatment being meted out to him at the hands of the Investigating Agency. There is no explanation either pleaded in this petition or argued before us for this vital lapse.

29. It is also borne out from the record that from 12-4-97 to 24-4-97 various persons met the Petitioner while he was in police custody which included lawyers engaged by the Petitioner also. This aspect is borne out from the various entries made in the concerned diary. As per Ann. R-11, various persons met the Petitioner on 12-4-1997, 13-4-1997, 14-4-1997, 15-4-1997, 16-4-1997, 18-4-1997, 19-4-1997, 20-4-1997, 21-4-1997, 22-4-1997, 23-4-1997 and 24-4-1997. On 12-4-1997 there were three meetings by various persons with the Petitioner at 9.55 a. m. at 4 p. m. and 6 p.m. respectively. On 15-4-1997, again there were three conversations one at 9.25 a. m. with his wife, Anr. at 9.50 a. m. with his Counsel Sh Balwant Kukreja through telephone and again at 5.05 p. m. in person with the said Advocate who came along with the wife of the Petitioner. So, on the basis of the aforesaid entries it has been very specifically brought on record that not only relatives of the Petitioner but his learned Counsel have been meeting him on various dates, as referred to above. Almost every day several persons have been meeting the Petitioner while he was in police custody.

30. In case the Petitioner was being treated through third degree method by the Investigating Agency, in natural course he was required to refer that aspect to his visitors who included his close relatives and lawyers also. Had he informed those persons about that fact, those persons were the best to have sworn by an affidavit that aspect of the matter. There is nothing on record to that effect. The only inference would be that the Petitioner did not disclose to his visitors the alleged treatment meted out to him, probably because such treatment as alleged in the present petition, had not been given to him. In the aforesaid background it cannot be said on any score whatsoever that the Petitioner had, no opportunity to inform the Court or his lawyer or his relatives regarding the physical misbehaviour being meted out to him at the hands of the Investigating Agency. There is absolutely no explanation in this regard either pleaded or argued before us. On the aspect of the factual side the Respondents have brought on record various medical certificates issued after the Petitioner had been medically examined by the Doctors on various dates. The Petitioner was subjected to medical examination on 11-4-1997 (Annexure R-2), 15-4-1997 (Annexure R-4), 17-4-1997 (Annexure R-5), 19-4-1997 (Annexure R-6), 21-4-1997 (Annexure R-7) and on 23-4-1997 (Annexure R-8). These medical certificates issued by the Doctors after the examination of the Petitioner, nowhere even remotely corroborated the alleged physical torture given to the Petitioner. Much has been

said with respect to the Lie detecting test, which test according to the learned Counsel for the Petitioner was not available at Shimla. It might be correct that there was no Lie Detector at Shimla, but it was not that test which was conducted in the Indira Gandhi Medical College Hospital at Shimla, but on the other hand as per record the test conducted was Psychiatric Lie Detector test which was so conducted on 13-4-1997 by the Psychiatrist who happened to be the Professor and Head of the Department of Psychiatry, Medical College, Shimla. We have inspected the original record which is with the police file, wherein it has been clearly referred that the test was conducted after taking consent from the patient. The Psychiatrist recorded the following observations:

Chemical hypnosis was given and under that questions were asked after taking consent from the patient. Pulse 92, B. P. 140/90, consciousness + There is no evidence of any injury.

31. Thus, it was not a test conducted through Lie detector, but on the other hand it was a Psychiatric Lie Detector test conducted by the Psychiatrist,

32. Thus, taking into consideration the aforesaid aspects which are reflected from the record itself, it cannot be said on any stretch of imagination that the Petitioner has been able to establish at this stage of the case that he was physically tortured while being interrogated by the Investigating Agency. On the other hand, the pleas raised in this behalf in the present petition appears to be an after thought especially when on factual side those do not stand legally established and otherwise also the pleas having been raised at such a belated stage when there were various occasions for the Petitioner to have brought them to the notice of the Court earlier. Moreover, the Petitioner has rendered no explanation for such lapse.

33. With respect to interference by the police in the administration of justice, only one instance has been pleaded which has also been referred to above. At this stage, it may not be out of place to mention here, that on that account an application for initiating appropriate proceedings against the erring members of Investigating Agency, has already been moved by the Petitioner before the Chief Judicial Magistrate, Shimla. The learned Chief Judicial Magistrate, Shimla, has to dispose of that matter in accordance with law and there is nothing for this Court at this stage to pass any order in that behalf. However, it has been argued on behalf of the Petitioner that whatever action is taken by the Chief Judicial Magistrate on the complaint preferred by the Petitioner (Annexure P-1) that is altogether a separate matter, but so far as the present petition is concerned, this instance has been quoted which has not been disputed by the opposite side in order to infer the manner police is behaving in the matter,

34. The Respondents have admitted that the Superintendent of Police visited the learned Sessions Judge but not in the context of the present case but as a courtesy call to the new Sessions Judge who had joined recently and during that meeting One torn note intercepted by the police purportedly written by the

accused to his wife was shown by the Superintendent of Police to the Sessions Judge There is no denial of the meeting of the Superintendent of Police with the Sessions Judge. It cannot be inferred that the Superintendent of Police had gone to influence the Sessions Judge; no doubt some torn notes written by the accused to his wife are said to have been shown to the Sessions Judge. That aspect of the matter will not in any way mean that the police was interfering in the administration of justice On the other hand, this aspect of the matter if taken as it is cannot legally be made a ground for assigning the investigation to the C. B. I. especially when the Petitioner has already taken steps by preferring a complaint in this behalf before the Chief Judicial Magistrate, Shimla.

35. It has been forcefully argued on behalf of the Petitioner that in the present case the Investigating Agency is behaving in the manner which is alien to the principles of criminal justice and with some ulterior motives. The Investigating Agency are out to procure even the medical reports from the Doctors suiting investigation. The said submission on the basis of the facts discussed above has to be ignored straightaway. The Petitioner's bald allegations made in the petition without there being any support to those allegations cannot be accepted as a gospel truth. Whereas in the circumstances as have been discussed above, the pleas raised in the petition have not been found factually correct at all. It is really strange to note that the conduct of the Medical Officers is being assailed without there being any factual aspect brought on record Such a procedure being adopted by the Petitioner cannot be said to be a legal one, more so, to be a procedure to be followed while imparting justice in a case of present nature.

36. Last but not the least, learned Counsel has referred to State of Haryana and others Vs. Ch. Bhajan Lal and others, Para 64 of the aforesaid case runs as under:

64. The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the Investigating Agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of the police echelones

since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos. Any recognition of such power will be tantamount to recognition of "Divine Power" which no authority on earth can enjoy.

37. There is absolutely no dispute to the aforesaid observations made by the Apex Court. However, the aforesaid observations in the background of the present case as detailed above, in a way will not be helpful to the case of the Petitioner. In the present case, nothing has been brought on record which in any way establishes that the Investigating Agency has transgressed the circumscribed limits and has exercised the powers in breach of any statutory provisions causing serious prejudice to the personal liberty of the present Petitioner. That being so, this aspect of the matter also does not help the Petitioner.

38. No other point has been stressed.

39. In view of the foregoing reasons, the present petition being devoid of any merit is accordingly dismissed with costs, which are assessed at Rs. 3,000.