
(1988) 01 SHI CK 0001
In the High Court Of Himachal Pradesh

Sh. Padam Dev and Another

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 07-01-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 182, 342

Citation : (1989) CriLJ 383 : (1988) 1 ShimLC 326

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Judgement

R.S. Thakur, J.—On September 23, 1986, Padam Dev and Ishwar Lal addressed a written complaint to one of us (Hon"ble the Chief Justice) whereby they alleged certain acts of harassment and high-handedness committed by the police personnel, namely, Girdhari Lal, A. S. I., Surinder Kumar and Hem Raj, constables against them. Having taken into consideration all the material facts and circumstances of the case, the letter was registered as a writ petition.

2. Shri Ishwar Lal, one of the petitioners, has been running a tailoring shop in Jungabazar for the last 15 to 20 years and was also having a residential house near his shop where he has been living with his family members all these years. The other complainant, Padam Dev, was working with him in the tailoring shop in August 1986. Respondent Girdhari Lal, at the relevant time was posted as A.S.I. In-charge, Police Post, Junga, while the other two respondents, Surinder Kumar and Hem Raj were serving as constables in the said police post under him. According to the petitioners, the respondent police officials have adopted a hostile posture towards the petitioners and that through abuse of their official position, they have committed such acts of misfeasance and malfeasance against the complainants as to make their lives highly insecure and thus miserable. These acts are described as under:

1) On August 1, 1986, said Hem Raj and Surinder Kumar constables came to the shop of Ishwar Lal and dragged the petitioner Padam Dev to the police post where he was given severe beatings and under this torture he was made to sign

a document which contained the allegations making out a criminal case against Ishwar Lal and" thereafter Padam Dev was made to disappear from Junga. Ishwar Lal was then summoned to the police post and was told that said Padam Dev had got a criminal case registered against him and when Ishwar Lal denied having committed any criminal act he, was threatened and abused in filthy language by the two constables and thereafter the two constables also visited the residential house of Ishwar Lal and threatened his wife and children. Then on apprehending insecurity for himself and the members of his family, Ishwar Lal made a complaint in writing to the Inspector General of Police, Shimla, on August 7, 1986 requesting that security be provided for his life and property so that he could run his shop and also that action be taken against the respondents constables.

2) On September 10, 1986, at about 10 am. the said two constables again came to the shop of Ishwar Lal, caught hold of Padam Dev and dragged him to the police post by catching him by the neck and in the police post he was handcuffed and taken to a doctor in the civil hospital at Junga for medical examination. Although on this medical examination, petitioner Padam Dev was found to be normal as per the medical certificate, yet he was again brought to the police post at Junga, a search was made of his person and the respondents recovered one match box, one bundle of biris and Rs. 350/- in cash from said Padam Dev but no search Memo in this behalf was prepared nor any note in respect of these articles was made anywhere. He was kept confined in the police post throughout the night in handcuffs and was released next morning at 8 a.m. but the aforesaid articles recovered from him including the cash, were not returned to him and were misappropriated by the respondents.

3. Out of the three respondents, respondent No. 4 Girdhari Lal, A.S.I., and Hem Raj constable respondent 6 filed their returns.

4. A.S.I. Girdhari Lal, respondent 4 denied that Padam Dev petitioner was made to sign a document containing the allegations of criminal case against Ishwar Lal under duress or torture. His version is that as a matter of fact, petitioner Padam Dev, lodged a report against Ishwar Lal in the said police post on August 1, 1986, wherein he alleged that he and Ishwar Lal had gone to Chail on July 30, 1986 and brought 17 bottles of foreign liquor from there in bags in a bus and when the bus was at Dhaliara, one k.m. short of Junga Bazar, they got down from the bus and hid the bags containing 17 bottles of foreign liquor in a dilapidated house at Dhaliara and then came to Junga. Further, when they were at Junga, said Ishwar Lal learnt that the police was resorting to raids for recovery of illicit liquor and in order to vouchsafe that said Padam Dev would not divulge to the police that he had illegally kept 17 bottles of liquor at Dhaliara, he locked said Padam Dev in one of the rooms of his house not only for the day of July 31, 1986 but also the night intervening July 31, 1986 and August 1, 1986 and on this a case u/s 342 of the I.P.C. was registered against Ishwar Lal in the police station at Dhalli. He further averred that during the investigation of this case,

however, it was found that the case was false and, therefore a report was submitted to the Court on December 23, 1986 for cancellation of this case and the informant Padam Dev was intended to be proceeded against u/s 182 of the I.P.C.

5. As regards the incident of September 10, 1986, his version is that petitioner Padam Dev on that day at about 10.45 p. m. was found near the hotel of one Ranjit Singh in Junga Bazar when he was under the influence of liquor and was hurling abuses and causing nuisance in the Bazar. The respondents, therefore, got him medically examined and then he was sent up for trial u/s 510 of the I.P.C. before the Gram Panchayat, Junga, as Section 34 of the Police Act was not applicable to Junga Bazar and the case against the petitioner Padam Dev u/s 510 of the I.P.C. was pending in the said Panchayat. He denied that said Padam Dev was handcuffed or his person was searched or any cash or other article was recovered from his possession. It was also denied that he was kept confined in the police post throughout the night and was released on September 11, 1986 at 8 a.m. It was rather asserted that immediately after medical examination, said Padam Dev was released on his furnishing a personal bond which was filed with the calendar in respect of the offence u/s 510 of the I.P.C.

6. Similar are the averment of constable Hem Raj, respondent 6, in his return.

7. It may be stated that the petitioners have cited by way of illustration as to how respondents constables have been committing excesses. A driver, Romesh Chand, on July 31, 1986, was coming from Solan in a Bus No. HPS 868 as its driver, which was bound for Shimla and when he arrived at Junga he refused to drive the vehicle further on the ground that the road was blocked due to land-slides while the passengers were asking him to drive the bus to Shimla. Meanwhile, the two respondents constables came there while under the influence of liquor, took the said driver to the police post at Junga and gave him severe beating and was released only when the conductor attached to the said bus paid them some money for purchasing liquor and this driver had also made a complaint against them to the authorities concerned. This, however, has also been denied in the two returns filed by the two respondents. However, we feel that for the purposes of disposal of this writ petition that incident need not be taken note of.

8. It may also be noted that the two incidents narrated above, as set out by the petitioners by way of grievances against the respondents have also in substance been admitted by the respondents in their returns but their case is that the respondents have acted therein in due performance of their duties and in conformity with law and the petitioners have merely twisted those facts to import the colour of illegality into them.

9. Thus the question that arises for determination is whether the aforesaid acts imputed to the respondents were in conformity with law and were performed by the respondents in a bona fide manner in due exercise of their duties or they

were tainted with the infirmity of illegality and mala fides?

10. In order to arrive at a proper and just decision, this Court had called the concerned record. Now so far as the incident of August 1, 1986 is concerned the file of the Judicial Magistrate concerned reveals that Padam Dev purports to have made a report in the police post at Junga on August 2, 1986 at 9 a.m. to the effect that he and Ishwar Lal went to Chail on July 30, 1986 and brought 17 bottles of whisky from there in two bags on July 31, 1986 in a bus from which they got down in village Dhaliara, kept the bottles of whisky in a dilapidated house at Dhaliara and then came to Junga. On arrival at Junga, he (Padam Dev) came to know that the police was coming for exercise raid. On this said Ishwar Lal locked him in one of the rooms of his house and kept confined him for the day and the ensuing night and he was not even allowed to answer the nature's call and he was thus kept ; in illegal confinement by said Ishwar Lal without his consent and he be proceeded against for this illegal act. On this, a case u/s 342 of the I.P.C. was registered against Ishwar Lal. Ziminis touching this case then disclose that thereafter said Padam Dev was made to join the investigation only on August 16, 1986 at 3 p.m. when he purports to have made a statement to the Investigating Officer that he had made a false complaint against Ishwar Lal as he was angry with him at that time but he was not ready to apologise in writing for doing so. The A.S. I. Girdhari Lal then made a report to the concerned S.H.O. Dhalli that in these circumstances proceedings for cancellation of the case against Ishwar Lal be initiated and permission may also be accorded to proceed against Padam Dev u/s 182 of I.P.C. The Station House Officer accordingly made an application to the concerned Magistrate on December 23, 1986, for cancellation of this challan. This A.S.I. then purports to have recorded the statement of Padam Dev petitioner on December 12, 1986, wherein said Padam Dev is said to have stated the reason for his lodging false complaint against Ishwar Lal. The reason given is that after keeping the 17 bottles of whisky in the dilapidated house at Dhaliara on July 31, 1986, he was sent next day by Ishwar Lal to fetch those bottles but when he found them missing from there, said Ishwar Lal got furious and alleged that he (Padam Dev) had played some mischief and thus put him (Ishwar Lal) to a loss of Rs. 700/- and he thus threatened to turn him out without even settling the accounts and this behaviour on the part of Ishwar Lal annoyed him (Padam Dev) and out of anger he then lodged this false complaint against him.

11. After the application was made before the Magistrate concerned for cancellation of the challan, the Judicial Magistrate, Shimla, called said Padam Dev and recorded his statement on January 28, 1987, wherein he stated that he was made to sign the report under duress (on the part of the police) and that he had no objection if the challan of the case is cancelled and the Judicial Magistrate then permitted the cancellation of challan on the same day, vide a written order.

12. After giving due consideration to these facts and circumstances touching the point in hand we are inclined to hold that the registration of the case against

Ishwar Lal u/s 342 of the I.P.C. at the instance of his worker/employee, co-petitioner, Padam dev, is far from being bona fide and genuine. It is a notorious fact that the police is usually apathetic and averse to the registration of even a genuine case. In the instant case, however, we feel that no police official worth the name could have registered a case u/s 342 of the I.P.C. on the facts alleged. The story set out in the F.I.R. appears to be ridiculous on the very face of it. Admittedly, even if the story is believed, the 17 bottles of whisky had been brought not only by Ishwar Lal but also by the informant Padam Dev as well and they both had kept them in a dilapidated house at Dhaliara while on their way back to Junga. Under these circumstances, admittedly, both were pari delicto in the commission of this illegal act and as such there could be no apprehension in the mind of Ishwar Lal that his employee Padam Dev would try to involve him in any criminal offence on that account. Further one fails to understand as to how said Ishwar Lal would have become so desperately apprehensive and suspicious of Padam Dev on a mere information that the police was likely to make excise raids in Junga town when he knew that these raids would not affect him as the bottles of whisky were lying safe at a far off place in a dilapidated house in village Dhaliara Even then in the F.I.R. this knowledge that the police were coming to make excise raid is not imputed to Ishwar Lal but rather to the informant Padam Dev himself. The respondents also do not appear to have ascertained from this informant, as is the usual practice of police in such matters, as to whether there was any eye-witness to the incident or he raised any alarm to get himself released from the unlawful confinement. It is also apparent that from August 1, 1986 right up to August 16, 1986 the respondents do not appear to have taken any steps towards the investigation of this case. It was expected that after the registration of the case the respondents should have gone to the spot and ascertained as to which was the room in which Padam Dev was allegedly confined and interrogated the accused Ishwar Lal with regard to the crime in question. As the police ziminis, however, disclose, they had done precious little in the matter till August 16, 1986, on which date, as the concerned zimini entry would show all that the respondent A.S.I. Girdhari Lal has done is to record the fact that said Padam Dev was owning that he had made a false complaint against Ishwar Lal and that he should now be prosecuted u/s 182 of the I.P.C. Strangely enough, he does not, even on that date, record the statement of Padam Dev with regard to his alleged volte-face.

13. Then even after the registration of the case, the respondents do not take any steps towards the tracking down of 17 bottles of whisky which, as per the record, were lying in a dilapidated house at Dhaliara and which would have been the natural conduct on the part of the respondents had they genuinely believed the story in the so-called FIR to be true.

14. On the face of these facts and circumstances there is no reason why the assertion of the petitioner Padam Dev be not accepted that he was made to sign this false report under duress after being dragged to the police post by the two respondent constables and also the version of the petitioner, Ishwar Lal, that

after this case was registered against him, he was called to the police post by the respondents and was abused and threatened by them and they did so even to the members of his family when the respondents came to his house. It appears that for one reason or the other, petitioner Ishwar Lal had incurred the wrath of the respondents and they intended to rope him in a false case and a case of the present nature could be registered only when they set up his employee Padam Dev as the informant and for that purpose the respondents resorted to this dubious method to obtain his signatures.

15. This is further fortified by another very clinching circumstance on record as set out below.

16. Although as per record, petitioner Padam Dev appears to have categorically stated before respondent Girdhari Lal on August 16, 1986 that he got a false case registered against Ishwar Lal in a fit of anger but the said A.S.I. did not record the statement of Padam Dev elucidating from him as to what were the circumstances under which he got this false case registered on account of anger, In fact, as the zimini entry of August 16, 1986 would disclose, this Padam Dev petitioner had categorically refused to apologise for this act of his part in writing. However, respondent Girdhari Lal purports to have recorded a very detailed statement of the petitioner Padam Dev u/s 161 of the Cr. P.C. on December 12, 1986 wherein he has not only stated as to what were the circumstances which impelled him to institute a false case against Ishwar Lal but also purports to have apologised for doing so. It is clear from the facts stated above that this Padam Dev had made a complaint to this Court against the respondents which is the subject matter of this petition, as far back as September 23, 1986 wherein he had alleged that this case was a result of duress, torture and subterfuge on the part of the respondents to harass the petitioners Ishwar Lal and Padam Dev. Under these circumstances, it can be safely presumed that he could not have made a statement to respondent Girdhari Lal on December 12, 1986, that is, three months thereafter of the nature ascribed to him, which is at page 12 of this F.I.R. No. 122/86 against Iswar Lal u/s 342 of the I.P.C. which was later cancelled, especially when on August 16, 1986 he had categorically refused to apologise in writing. There is thus no doubt that this statement of December 12, 1986 was forged by the A.S.I. Girdhari Lal after he came to know that a complaint against him had been made by the petitioners to the High Court. This, once again proves, the truth universally known that in order to cover up one lie one has to tell many lies.

17. Now we come to the second incident. Here as already stated, the case of the petitioner Padam Dev is that on Sept. 10, 86 at about 10 p.m. the respondents came to the shop of Ishwar Lal where he was working as a tailor, caught hold of him by the neck and dragged him to the police post Junga where they handcuffed him and took him to the Medical Officer in the Civil Hospitalat Junga for medical examination and thereafter he was kept in chains in the police post throughout the night and was released only in the morning at 8 a.m. The

respondents, on the other hand, assert that they had not arrested the petitioner Padam Dev nor handcuffed him but they had taken him for medical examination when they found during the patrol duty in Junga town that this Padam Dev, in a drunken state, was abusing the public outside the hotel of Ranjit Singh and was thus causing annoyance and nuisance to the customers in the said hotel and that thereafter he was challaned u/s 510 of the I.P.C. before the Gram Panchayat, Junga, as Section 34 of the Police Act was not applicable to Junga Bazar.

18. Now in view of this, the question that, arises is as to which of the two rival versions is correct and assuming that the version given by the respondents is correct, is there action in conformity with law and procedure ?

19. Now assuming that the story as set out by the respondents is correct, it is clear that the respondents admittedly took the petitioner, Padam Dev, from Junga Bazar to the Civil Hospital Junga on the night of September 10, 1986 and his arrival at the Civil Hospital, Junga in the police custody has been shown at 11.20 p.m. This by itself is sufficient to constitute the arrest known to law as spelled out by Sub-section (1) of Section 46 of the Cr. P.C. which reads as under:

In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

It thus follows that when the respondents took Padam Dev petitioner from Junga Bazar to Civil Hospital Junga and thereafter to the police post, he was under the custody of the police. Then the very fact that he was released on his personal bond also is indicative of the fact that said Padam Dev was arrested by the Respondents. Now the question is whether this arrest of the petitioner, Padam Dev, was legal? The answer to this poser has to be in the negative for the following reasons;

20. The relevant provisions of Section 34 of the Police Act reads as:

Any person who on any road or in any (open place or) street or thoroughfare within the limits of any town to which this section shall be specially extended by the (State Government), commits any of the following offences, to the obstruction or inconvenience, annoyance, risk, danger or damage of the (residents or passengers) shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment (with or without hard labour) not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely:

First to Fifth xxx xxx xxx xxx

Sixth- Any person who is found drunk or riotous or who is incapable of taking care of himself.

This means that the police can arrest a person without warrant when the police

officer finds a person drunk or riotous or who is incapable of taking care of himself or causes any obstruction, inconvenience, annoyance, etc, within the limits of any town provided that this Section has been specially extended to that town by the State Government through a notification. The respondents have admitted that this section has not been made applicable to Junga town and it was for this reason that instead of challaning said Padam Dev u/s 34 of the Police Act, they have challaned him for the offence u/s 510 of the I.P.C. which reads as follows:

510. Misconduct in public by a drunken person -

Whoever, in a State of intoxication, appears in any public place, or in any place which it is a trespass in him, to enter, and there conducts himself in such manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty four hours, or with fine which may extend to ten rupees, or with both.

21. Thus the difference between the two Sections, namely, Section 34 of the Police Act and Section 510 of the Penal Code is that whereas u/s 34 of the Police Act the fine can be extended to Rs. 50/- and imprisonment for eight days, under the latter Section the fine can be only up to Rs. 10A and the maximum imprisonment can be of 24 hours. Then Section 34 of the Police Act categorically laysdown that the police can arrest a person challaned under that Section without warrant whereas in the case of an offence u/s 510, IPC there is no such power. In fact it is a non-cognizable bailable offence and the police has no power to arrest without a warrant. In other words while arresting a person for an offence it is the duty of the police to ask the person concerned to furnish surety. This is the mandate of Section 50, Sub-section (2) of the Cr. P.C. as well which is as under : --

50. Person arrested to be informed of grounds of arrest and of right to bail:

(1) xxx xxx

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

22. In the instant case admittedly the respondents had obtained no warrant for the arrest of the petitioner, Padam Dev, and as such his arrest is palpably illegal at the hands of the respondents. They, in fact, do not justify such arrest on legal ground but rather deny that they arrested the petitioner, Padam Dev, which is incorrect,

23. There are, however, facts and circumstances on record which make it impossible to hold that this Padam Dev was in a state of intoxication before the hotel of Ranjit Singh at Junga, that is, a public place, and was conducting himself in such a manner as to cause nuisance to the customers of the hotel In the first

place it is apparent that Junga is very small town to which it was not considered worthwhile even by the State to extend. 34 of the Police Act. The petitioner, Padam Dev, is alleged to have committed this act roundabout 10.45 p. m. It is, however, highly improbable that at that hour of night there would have been any such number of members of public in that public place so as to feel annoyance on account of the conduct of the petitioner Padam Dev. Then Medical certificate issued by the Medical Officer of Civil Hospital after examining the petitioner Padam Dev clearly shows that although he (Padam Dev) had consumed liquor but he was not under intoxication at all, since "he was conscious and well oriented to time and space and his speech and gait were normal", He has given a clear finding that though the petitioner had consumed liquor but he was not intoxicated. In our considered opinion, the Medical Officer had no data before him to opine that Padam Dev had consumed alcohol. Admittedly, the blood of Padam Dev was taken by the Medical Officer at the time of his examination but there is nothing to show as to what was the result of the blood test. To say that he had consumed liquor simply because he was smelling of alcohol would not lead to the irresistible inference that Padam Dev had consumed alcohol.

24. It is also clear from the record that the report in the daily diary register maintained in the police post Junga was recorded with regard to this incident at 12.30 a.m. It would, therefore, not be improper to rely upon the version as given by the petitioner, Padam Dev, that he was kept confined in handcuffs by the respondents in the police post, Junga, throughout the night and was released only the next morning at about 8 am. We are fortified in this opinion by the fact that there was no love-lost between Padam Dev petitioner on the one hand and the respondents on the other since Ishwar Lal had complained to the Inspector General of Police against the respondents with regard to the false case instituted against him in the police post Junga u/s 342 of the I.P.C on August 1, 1986 by torturing Padam Dev prior to this incident, i.e. August 7, 1986 and this had been subsequently confirmed by said Padam Dev himself who continued working with the petitioner, Ishwar Lal. This entire case against Padam Dev petitioner, therefore, was nothing but a "frame up" on the part of the respondents out of a sense of vendetta. As a matter of fact in the face of the medical opinion referred to above there was no justification with the respondents to have challaned this Padam Dev u/s 510 of the I.P.C. Moreover, in the report of the daily diary and the one made before the Gram Panchayat u/s 510 of the I.P.C., the petitioner, Padam Dev, is alleged to have conducted himself under intoxication in a manner causing annoyance to the customers of the hotel of Ranjit Singh but from the calendar submitted therewith to the panchayat, it is clear that respondent Girdhari Lal failed to even record the statement of either said Ranjit Singh or any of his customers who had felt annoyance on account of the conduct of Padam Dev and the only witnesses cited therein are the respondents themselves and the Doctor K. Kashyap who had medically examined said Padam Dev. Under these circumstances, the proceedings before the Gram Panchayat, Junga, registered as case No. 4 of 1986 dated January, 3(?) 1987, being illegal are hereby quashed.

25. We have perused the daily diary maintained in the police post at Junga for the period from August 5, 1986 to September 15, 1986. The relevant entries therein with respect to the incident in question are Nos. 10 and 12 between the period from September 10, 1986 (8 a.m.) to September 11, 1986 (8 a.m.). The entry No. 10 shows that at 9 a. m. on September 10, 1986, the respondents went on patrol duty in Bazar Junga. The entry 12 shows that the same was recorded at 12.30 a.m. and to the effect that while the respondents were on patrol duty, petitioner Padam Dev was found to be in an intoxicated condition outside the hotel of Ranjit Singh and was conducting himself in such a manner as to cause annoyance to the incoming and outgoing customers at the said hotel and he was then got medically examined and has been released on his personal bond and the complaint against him has been prepared which shall be presented before the competent Court.

26. We have scanned the entire daily diary but barring this entry at No. 10 showing that the respondents had gone on patrol duty in Junga Bazar, there is not a single entry anywhere throughout this register to show that the respondents or any other police official of the police post Junga ever went on such patrol duty in Junga Bazar either prior or subsequent thereto. We also feel that this entire leaf containing page No. 45 was subsequently pasted to this register after removing the earlier one and it is doubtful whether the earlier page contained any such entry with regard to the incident of September 10, 1986. Our suspicion in this behalf has been aroused by a number of factors. In the first place this register itself is not in its original shape. It originally appears to have been bound by iron/steel wires as some of the wires are still found in the bound portion. It has now been bound by putting a news-paper flap thereon and stitched with a cord. Further, it is clear from the rest of the leaves in this diary that each page in duplicate in form and while original remains on the register, its copy in the duplicate page is removed and sent to the quarter concerned under police Rules and that the remnant of the duplicate page remains on the register itself in clear shape. This is the case throughout the register except page No. 45 containing the impugned entries wherein those torn pages on either side of the page in question are not clearly free and visible but it appears as if this page-45 has been inserted in between the two reminders of torn pages and pasted with gum which gives a clear impression that it was inserted subsequently. Further its place of paging and also its size does not actually tally with the place of paging and the size of the other leaves.

27. It may also be noted that this incident took place on the night of September 10, 1986 and the report in the daily diary shows that the complaint with regard to the case to be presented before the concerned forum was also prepared on the same day. This complaint, however, was received by and registered in the Nayaya Panchayat, Junga, only on January 3, 1987. The record also clearly shows that the petitioners had made the complaint against the respondents to this Court on September 23, 1986 and this Court had even ordered the issuance of notices to the respondents on December 29, 1986. Thus we are inclined to hold

that the respondents manipulated and manoeuvred these proceedings only after they learnt about the fact that this Court was seized of the complaint against them and thus forged the daily diary entries at page 45 and inserted the same into the register to show to this Court that their action in this episode was legal and bona fide which actually was not so.

28. It may further be stated here that as the CMP No. 178 of 1987 on the file of this Court would disclose, during the pendency of this writ petition, respondents Girdhari Lal ASI and Hem Raj constable searched the house of the petitioner Ishwar Lal but nothing was found during the search and the petitioners have alleged that this was by way of harassment to the petitioners. The petitioners have also placed on record a certificate prepared by the respondent, Girdhari Lal, to the effect that search of the residential house of Ishwar Lal was conducted by him for the purpose of recovery of illicit liquor but nothing incriminating was found during the search. This Court, however, as per order of May 13, 1987 declined to take any action on this CMP on the ground that the petitioners did not supply the copy of the application to the respondents in time. However, the fact remains that even during the pendency of this writ petition, the respondents have not allowed the petitioners to rest in peace but continued to harass them.

29. In view of the above discussion, we have no doubt that the respondents have abused their position as police officials and have committed illegal acts by way of registering false case against the petitioner, Ishwar Lal, and effecting illegal arrest of the petitioner, Padam Dev and they kept the latter in unlawful confinement which is a flagrant violation of the fundamental right of the petitioners guaranteed by Article 21 of the Constitution of India which clearly lays down that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

30. It may be stated that towards the end of the proceedings in this Court the concerned respondents have tendered unconditional written apologies for these acts of commission and omission on their part inasmuch as they claim to have acted in a bona fide manner. In view of the facts and circumstances set out above, however, we are not inclined to accept the version that they acted bona fide since they have flagrantly abused their powers to harass and terrorise the petitioners.

31. Under such circumstances, following the decision in Rudul Sah Vs. State of Bihar and Another, , we could have ordered the respondents to pay compensation to the petitioners. We could have also directed the registration of a criminal case against respondents 4 to 6 under Sections 465 and 218 of the Code, after following the prescribed procedure. However, in view of the fact that this is the first known lapse, albeit of a serious nature, on the part of respondents 4 to 6 and also in view of the penitence shown by them, we think that the interest of justice would be met if the competent disciplinary authority is directed to hold a departmental enquiry against respondents 4 to 6 on the strength of the findings recorded in the course of this judgment and to deal with them in accordance with

law in the exercise of disciplinary jurisdiction. Needless to clarify that the findings herein recorded after affording an opportunity of hearing to the respondents shall be treated as binding in the course of the departmental proceedings. The competent disciplinary authority is, therefore, directed to take appropriate action pursuant to this direction and to initiate and complete the departmental enquiry within a period of three months from the date of the receipt of a certified copy of this judgment. We also consider it expedient in the interest of justice to direct that the cost of this petition, which are quantified at Rs. 500/- shall be personally borne by respondents 4 to 6 and that this amount shall be deposited by them in the Registry of this Court within four weeks and that upon such deposits being made, a sum of Rs. 300/- and Rs. 200/- respectively shall be paid to the first and second petitioner respectively, if they appear personally, or through money order, if they do not appear, after deducting the money order charges.

32. Rule made absolute accordingly.

33. A copy of this judgment be forwarded to the Director, General of Police, Himachal Pradesh as well as to the Superintendent of Police, Shimla, for necessary follow up action and compliance.