KHATRI & ORS. ETC.

v.

STATE OF BIHAR & ORS.

March 10, 1981

[P.N. BHAGWATI AND BAHARUL ISLAM, JJ.]

Constitution of India, 1950, Article 32—Production by the State of certain documents called for by the Supreme Court, whether barred by sections 162 to 172 of the Criminal Procedure Code, 1973, when the State does not claim privilege in regard to them under section 123 or section 124 of the Indian Evidence Act—Scope of writ jurisdiction under Article 32 of the Constitution—Section 162 of the Criminal Procedure Code, object and scope, explained—Whether investigation ordered by the State Government under section 3 of the Indian Police Act, 1861 is an investigation under Chapter XII of the Criminal Procedure Code, 1973 and the reports submitted pursuant thereto, form part of "case diary" within the meaning of section 172 of Criminal Procedure Code.

The petitioners are certain undertrials in the State of Bihar. In the Writ Petitions filed by them under Article 32 of the Constitution they complained that after their arrest, whilst under police custody they were blinded by the members of the police force, acting not in their private capacity but as police officials and their fundamental right to life guarnteed under Article 21 was therefore, violated and for this violation the State is liable to pay compensation to them. On an application made by the petitioners, several documents including C.I.D. Reports submitted by Shri L.V. Singh, D.I.G., C.I.D, (Anti Dacoity) on December 9, 1980 and other dates were called for by the Court. The State raised an objection to the production of these documents on the ground that they are protected from disclosure under sections 162 to 172 of the Code of Criminal Procedure, 1973 and that the petitioners are not entitled to see them or to make any use of them in the present proceedings.

Overruling the State objection and directing the Registry to supply copies of these documents produced before the Court, to the petitioner's advocate and the advocate appearing as *amicus curiae*, the Court

HELD : 1:1. The reports submitted by Shri L.V. Singh setting forth the results of his investigation cannot be shut out from being produced and considered in evidence either under section 162 or 172 of the Criminal Procedure Code, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under the provisions of the Indian Evidence Act. In a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in custody, the State Government cannot resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by the State Government. [163 B-D]

1:2. All the other reports covered by Items 2 to 5 of the Court's order dated 16th February, 1981 are equally relevant and must, therefore, be produced and taken on record in the writ petition. [164 B-C]

A 2:1. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed under order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the *rule nisi* if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 of the Constitution provided it is relevant under the Indian Evidence Act and neither section 162 nor section 172 can be urged as a bar against its production or use. [153 C-E]

C 3:1. When the Court trying the writ petition proceeds to inquire into the issue whether the petitioners were blinded by police officials at the time of arrest or whilst in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. The nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue D cannot have any relevance much less any binding effect, in criminal proceeding which may be taken against a particular police officer. [160 G-H, 161 A-B]

4. The pendency of a criminal proceeding cannot be urged as a bar against the Court trying a civil proceeding or a writ petition where a similar issue is involved. The two are entirely distinct and separate proceedings and neither is a bar against the other. It may be that in a given case, if the investigation is still proceeding, the Court may defer the inquiry before it until the investigation is E completed or if the Court considers it necessary in the interests of Justice, it may postpone its inquiry even after the prosecution following upon the investigation is terminated, but that is a matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it merely because the investigation or prosecution is pending. [161 D-E]

F 5. The fact in issue in the inquiry before the Court in the present writ petition is whether the petitioners were blinded by the members of the police force at the time of the arrest or whilst in police custody. The several reports called for by the Court cleary relate to the issue as to how, in what manner and by whom the twenty-four undertrial prisoners were blinded, for that is the matter which Shri L.V. Singh was directed by the State Government to investigate. If that be so, the State cannot resist the production of these reports and their use as G evidence in the present proceeding. These reports are clearly relevant under section 35 of the Indian Evidence Act since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. [161 F, 162 A-D]

P.C.P. Reddiar v. *S. Perumal,* [1972] 2 S.C.R. 646 ; *Kanwar Lal Gupta* v. *Amar Nath Chawla,* [1975] 3 S.C.C. 646 ; followed.

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Jagdat v. *Sheopal,* A.I.R. 1927 Oudh 323 ; *Chandulal* v. *Pushkar Rai,* A.I.R. 1952 Nagpur 271 ; *Lionell Edwards Limited* v. *State of West Bengal,* A.I.R, 1967 Cal. 191, quoted with approval.

6. Section 4 of the Criminal Procedure Code, 1973 makes it clear that the provisions of the Criminal Procedure Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into tried or otherwise dealt with. [151 B-C]

7. Section 162 bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but, by the express terms of the Section, this bar is applicable only where such statement is sought to be used "at any inquiry or trial in respect of any offence under investigation at the time when such statement was made". If the statement made before the police officer in the course of an investigation under chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of section 162 would not be attracted. [152 A-C]

7:2. Section 162 has been enacted for benefit of the accused and to protect him against overzealous police officers and untruthful witnesses. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evinence Act. [152 D, H, 153 A-B]

Tehsildar Singh and Another v. *The State of Uttar Pradesh,* [1959] Supp. 2 S.C.R. 875 at 890, applied.

Emperor v. *Aftab Mohd. Khan,* A.I.R. 1940 All. 291 ; *Baliram Tikaram Maratha* v. *Emperor,* A.I.R. 1945 Nagpur 1 ; *Malakalaya Surya Rao* v. *Janakamma,* A.I.R. 1964 A.P. 198 ; approved.

8:1. Sub-section (2) of section 172 of the Criminal Procedure Code empowers the criminal court holding an inquiry or trial of a case to send for the police diary of the case and the criminal court can use such diary, not as evidence in the case, but to aid it in such inquiry or trial. But, by reason of sub-section (3) of section 172, merely because the case diary is referred to by the criminal court, neither the accused nor his agents are entitled to call for such diary nor are they entitled to see it. If however the case diary is used by the police officer who has made it to refresh his memory or if the criminal court uses it for the purpose of contradicting such police officer in the inquiry or trial, the provisions of section 161 or section 145, as the case may be of the Indian Evidence Act would apply and the accused would be entitled to see the particular entry in the case diary which has been referred to for either of these purposes and so much of the diary as in the opinion of the Court is necessary to a full understanding of the particular entry so used. [156 C-D]

Queen-Empress v. *Mannu,* [1897] 19 All. 390, quoted with approval.

State of Bihar v. *J.A.C. Saldhana,* [1980] 2 S.C.R. 16, referred to.

8:2. The bar against production and use of case diary enacted in section 172 is intended to operate only in an inquiry or trial for an offence and even this

A bar is a limited bar, because in an inquiry or trial, the bar does not operate if the case diary is used by the police officer for refreshing his memory or the criminal court uses it for the purpose of contradicting such police officer. This bar can obviously have no application where a case diary is sought to be produced and used in evidence in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and particularly when the party calling for the case diary is neither an accused nor his agent in respect of the offence to which the B case diary relates. The present writ petition which has been filed under Article 32 of the Constitution to enforce the fundamental right guaranteed under Article 21 is neither an "inquiry" nor a "trial" for an offence nor is this court hearing the writ petition a criminal court nor are the petitioners, accused or their agents so far as the offences arising out of their blinding are concerned. Therefore, even if the reports submitted by Shri L.V. Singh as a result of his investigation could be said to form part of "case diary" their production and use in the present writ C petition under Article 32 of the Constitution cannot be said to be barred under section 172 of the Criminal Procedure Code. [156 D-G, 157 A-B]

9:1. It would not be right to extend the prohibition of section 172 to cases not falling strictly within the terms of the section, by appealing to what may be regarded as the principle or spirit of the section. In fact to do so would be inconsistent with the constitutional commitment of the Supreme Court to the D rule of law. Either production and use of case diary in a proceeding is barred under the terms of section 172 or it is not, it cannot be said to be barred on an extended or analogical application of the principle supposed to be underlying that section, if it is not covered by its express terms. In order that truth may emerge from the clash between contesting parties under the adversary system, it is necessary that all facts relevant to the inquiry must be brought before the Court and no relevant fact must be shut-out, for otherwise the Court may get a distorted E or incomplete picture of the facts and that might result in mis-carriage of justice. It is imperative to the proper functioning of the judicial process and satisfactory and certain ascertainment of truth that all relevant facts must be made available to the Court. But the law may, in exceptional cases, in order to protect more weighty and compelling competing interests, provide that a particular piece of evidence, though relevant, shall not be liable to be produced or called in evidence. Such exceptions are to be found, *inter alia*, in sections 122, 123 124, 126 and 129 of the F Indian Evidence Act and sections 162 and 172 of the Criminal Proceedure Code But being exceptions to the legitimate demand for reception of all relevant evidence in the interest of justice, they must be strictly interpreted and not expansively construed, "for they are in derogation of the search for truth". [157 E-H, 158 A-C]

United States v. *Nixon*, 418 US 683 : 41 Lawyers Edition (2nd series) 1039, G quoted with approval.

10. The Court did not express any opinion regarding the two interesting questions, (i) whether an investigation carried out by a superior officer by virtue of a direction given to him by the State Government under section 3 of the Indian Police Act, 1861 is an investigation under Chapter XII so as to attract the H applicability of section 172 to a diary maintained by him in the course of such investigation and (ii) whether the report made by such officer as a result of the investigation carried out by him forms part of case diary within the meaning of section 172 of the Criminal Procedure Code. [155 D-G]

ORIGINAL JURISDICTION : Writ Petition Nos. 5670 and 6216 of 1980. A

(Under Article 32 of the Constitution)

Mrs. K. Hingorani, Mr. Hingorani, Mukul Mudgal and *Damodar Prakash* for the Petitioners.

B

K.G. Bhagat and *D. Goburdhan* for the Respondent.

Miss A. Subhashini for the Union of India.

The Order of the Court was delivered by,

BHAGWATI, J. The question which arises before us for consideration is whether certain documents called for by the Court by its Order dated 16th February, 1981 are liable to be produced by the State or their production is barred under some provision of law. The documents called for are set out in the Order dated 16th February, 1981 and they are as follows : C D

1. the CID report submitted by L.V. Singh, DIG, CID Anti-Dacoity) on December 9, 1980 ;

2. the CID reports on all the 24 cases submitted by L.V. Singh and his associates between January 10 and January 20, 1981 ; E

3. the letters number 4/R dated 3rd January, 1981 and number 20/R dated 7th January, 1981 from L.V. Singh to the IG, Police ;

4. the files containing all correspondence and notings exchanged between L.V. Singh, DIG and M.K. Jha, Additional IG, regarding the CID inquiry into the blindings, and F

5. the file (presently in the office of the IG, S.K. Chatterjee containing the reports submitted by Inspector and Sub-Inspector of CID to Gajendra Narain, DIG, Bhagalpur on 18th July or thereabouts and his letter to K.D. Singh, SP, CID, Patna which has the hand written observations of M.K. Jha. G

The State has objected to the production of these documents on the ground that they are protected from disclosure under Sections 162 and 172 of the Code of Criminal Procedure 1973 and the petitioners are not entitled to see them or to make any use of them in the present H

A proceeding. This contention raises a question of some importance and it has been debated with great fervour on both sides but we do not think it presents any serious difficulty in its resolution, if we have regard to the terms of Sections 162 and 172 of the Criminal Procedure Code on which reliance has been placed on behalf of the State.

B

We will first consider the question in regard to the reports submitted by Sh. L.V. Singh, Deputy Inspector General CID (Anti-Dacoity) on 9th December, 1980 and the reports submitted by him and his associates Sh. R.R. Prasad, S.P. (Anti-Dacoity) and Smt. Manjuri Jaurahar, S.P. (Anti-Dacoity) between 10th and 20th C January, 1981. These reports have been handed over to us for our perusal by Mr. K.G. Bhagat learned advocate appearing on behalf of the State and it is clear from these reports, and that has also been stated before us on behalf of the State, that by an Order dated 28-29th November, 1980 made by the State Government under Section 3 of the Indian Police Act 1861, Sh. L.V. Singh was directed D by the State Government to investigate into 24 cases of blinding of under- trial prisoners and it was in discharge of this official duty entrusted to him that he with the assistance of his associates Sh. R.R. Prasad and Smt. Manjuri Jaurahar investigated these cases and made these reports. These reports set out the conclusions reached by him as a result of his investigation into these cases. The question is whether E the production of these reports is hit by Sections 162 and 172 of the Criminal Procedure Code. It may be pointed out that these are the only provisions of law under which the State resists production of these reports. The State has not claimed privilege in regard to these reports under Section 123 or Section 124 of the Indian Evidence Act. All that is necessary therefore is to examine the applicability F of Sections 162 and 172 of the Criminal Procedure Code in the present case.

Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a G few relevant provisions of that Code. Section 2 is the definition Section and clause (g) of that Section defines 'Inquiry' to mean "every inquiry other than a trial conducted under this Code by a Magisitrate or Court". Clause (h) of Section 2 gives the definition of 'investigation' and it says that investigation includes "all the proceedings under this H Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf". Section (4) provides:

"4 (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating inquiring into, trying or otherwise dealing with such offences.

It is apparent from this Section that the provisions of the Criminal Procedure Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into tried or otherwise dealt with. Then we come straight to Section 162 which occurs in chapter XII dealing with the powers of the Police to investigate into offences. That Section, so far as meterial, reads as under :

"162 (1) No statement made by any person to a police officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness. but for the purpose only of explaining any matter referred to in his crossexamination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of claues(1)

A of section 32 of the Indian Evidence Act, 1872, or to affect the provisions of section 27 of that Act."

It bars the use of any statement made before a police officer in the course of an investigation under chapter XII, whether recorded in a police diary or otherwise, but by the express terms of the Section B this bar is applicable only where such statement is sought, to be used 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made'. If the statement made before a police officer in the course of an investigation under chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other C than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in *Tehsildar Singh and Another* v. *The State of Uttar Pradesh*(1) it is intended "to protect the accused against the user of statements of witnesses made before the police during D investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence." This Court, in *Tehsildar Singh's case* approved the following observations of Braund, J. in *Emperor* v. *Aftab Mohd. Khan*(2)

> "As it seems to us it is to protect accused persons from E being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are F prepared to tell untruths."

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe* v. *Emperor*(3) that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses." Protection against the use of statement made before G police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under in-

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(1) [1959] Supp 2. S.C.R. 375 @ 890
(2) AIR 1940 All. 291
(3) AIR 1945 Nagpur 1

vestigation at the time when such statement was made. But this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constituion and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy J. in *Malakalaya Surya Rao* v. *Janakamma*(1) The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how section 162 can be invoked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the *rule-nisi*, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act.

We now turn to section 172 which is the other section relied upon by the State. That section reads as follows :—

"172. Diary of proceedings in investigation--

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investi-

(1) AIR 1964 A,P. 128

A gation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

B (2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

C (3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872) shall apply.

D

The first question which arises for consideration under this section is whether the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates could be said to form part of case diary within the meaning of this section. The argument of Mrs. Hingorani and Dr. Chitale was that these reports did not E form part of case diary as contemplated in this section, since the investigation which was carried out by Shri L.V. Singh was pursuant to a direction given to him by the State Government under section 3 of the Indian Police Act 1861, and it was not an investigation under Chapter XII of the Criminal Procedure Code which alone would attract the applicability of section 172. Mrs. Hingorani sought to F support this proposition by relying upon the decision of this Court in *State of Bihar* v. *J.A.C. Saldhana*(1) Mr. K.G. Bhagat, learned counsel appearing on behalf of the State however, submitted that even though Shri L.V. Singh carried out the investigation under the direction given by the State Government in exercise G of the power conferred under section 3 of the Indian Police Act, 1861, the investigation carried out by him was one under Chapter XII and section 172 was therefore applicable in respect of the reports made by him setting out the result of the investigation. He conceded that it was undoubtedly laid down by this Court in *State of Bihar* v. *J.A.C. Saldhana* (supra) that the State Government has power to H direct investigation or further investigation under section 3 of the

(1) [1980] 2 S.C.R. 16

Indian Police Act 1861, but contended that it was equally clear from the decision in that case that "power to direct investigation or further investigation is entirely different from the method and procedure of investigation and the competence of the person who investigates." He urged that section 36 of the Criminal Procedure Code provides that police officers superior in rank to an officer in-charge of a police station may exercise the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station and Shri L.V. Singh being the Deputy Inspector General of Police, was superior in rank to an officer in-charge of a police station and was, therefore, competent to investigate the offences arising from the blinding of the under-trial prisoners and the State Government acted within its powers under section 3 of the Indian Police Act 1861 in directing Shri L.V. Singh to investigate into these offences. But, "the method and procedure of investigation" was to be the same as that prescribed for investigation by an officer in charge of a police station under Chapter XII and therefore the investigation made by Shri L.V. Singh was an investigation under that Chapter so as to bring in the applicability of section 172. These rival contentions raise two interesting questions, first, whether an investigation carried out by a superior officer by virtue of a direction given to him by the State Government under section 3 of the Indian Police Act, 1861 is an investigation under Chapter XII so as to attract the applicability of section 172 to a diary maintained by him in the course of such investigation and secondly, whether the report made by such officer as a result of the investigation carried out by him forms part of case diary within the meaning of section 172. We do not, however think it necessary to enter upon a consideration of these two questions and we shall assume for the purpose of our discussion that Mr. K.G. Bhagat, learned counsel appearing on behalf of the State, is right in his submission in regard to both these questions and that the reports made by Shri L.V. Singh setting out the result of his investigation form part of case diary so as to invite the applicability of section 172. But, even if that be so, the question is whether these reports are protected from disclosure under section 172 and that depends upon a consideration of the terms of this section.

A B C D E F G H

The object of section 172 in providing for the maintenance of a diary of his proceedings by the police officer making an investigation under Chapter XII has been admirably stated by Edge, C.J. in *Queen-Empress* v. *Mannu*[1] in the following words :

(1) [1897] 19 All. 390

A "The early stages of the investigation which follows on the commisson of a crime must necessarily in the vast majority of cases be left to the police, and until the honesty, the capacity, the discretion and the judgment of the police can be thoroughly trusted, it is necessary, for the protection of the public against criminals, for the vindication of the law and for the protection
B of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for investigation or for trial should have the means of ascertaining what was the information, true, false, or misleading which was obtained from day to day by the police officer who was investigating the case and what such police officer acted."

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The criminal court holding an inquiry or trial of a case is therefore empowered by sub-section (2) of section 172 to send for the police diary of the case and the criminal court can use such dairy, not as evidence in the case, but to aid it in such inquiry or trial. But, by
D reason of sub-section (3) of section 172, merely because the case, diary is referred to by criminal court, neither the accused nor his agents are entitled to call for such diary nor are they entitled to see it. If however the case diary is used by the police officer who has made it to refresh his memory or if the criminal court uses it for the purpose of contradicting such police officer in the inquiry or trial, the
E provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act would apply and the accused would be entitled to see the particular entry in the case diary which has been referred to so far either of these purposes and so much of the diary as in the opinion of the Court is necessary to a full understanding of the particular entry so used. It will thus be seen that the bar against
F production and use of case diary enacted in section 172 is intended to operate only in an inquiry or trial, for an offence and even this bar is a limited bar, because in an inquiry or trial, the bar does not operate if the case dairy is used by the police officer for refreshing his memory or the criminal court uses it for the purpose of contradicting such police officer. This bar can obviously have no
G application where a case diary is sought to be produced and used in evidence in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and particularly when the party calling for the case diary is neither an accussed nor his agent in respect of the offence to which the case diary relates. Now plainly and unquestion-
H ably the present writ petition which has been filed under Article 32 of the Constitution to enforce the fundamental right guaranteed under Article 32 is neither an 'inquiry' nor a 'trial' for an offence

nor is this Court hearing the writ petition a criminal court nor are the peitioners, accused or their agents so far as the offences arising out of their blinding are concerned. Therefore, even if the reports submitted by Shri L. V. Singh as a result of his investigation could be said to form part of 'case diary', it is difficult to see how their production and use in the present writ petition under Article 32 of the Constitution could be said to be barred under section 172.

Realising this difficulty created in his way by the specific language of section 172, Mr. K.G. Bhagat, learned advocate appearing on behalf of the State, made a valiant attempt to invoke the principle behind section 172 for the purpose of excluding the reports of investigation submitted by Sh. L.V. Singh. He contended that if, under the terms of section 172, the accused in an inquiry or trial is not entitled to call for the case diary or to look at it, save for a limited purpose, it is difficult to believe that the Legislature could have ever intended that the complainant or a third party should be entitled to call for or look at the case diary in some other proceeding, for that would jeopardise the secrecy of investigation and defeat the object and purpose of section 172 and therefore, applying the principle of that section, we should hold that the case diary is totally protected from disclosure and even the complainant or a third party cannot call for it or look at in a civil proceeding. This contention is in our opinion wholly unfounded. It is based on what may be called an appeal to the spirit of section 172 which is totally impermissible under any recognised canon of construction. Either production and use of case diary in a proceeding is barred under the terms of section 172 or it is not it is difficult to see how it can be said to be barred on an extended or analogical application of the principle supposed to be underlying that section, if it is not covered by its express terms. It must be remembered that we have adopted the adversary system of justice and in order that truth may emerge from the clash between contesting parties under this system, it is necessary that all facts relevant to the inquiry must be brought before the Court and no relevant fact must be shut-out, for otherwise the Court may get a distorted or incomplete picture of the facts and that might result in miscarriage of justice. To quote the words of the Supreme Court of United States in *United States* v. *Nixon*(1) "The need to develop all relevant fact in the adversary system is both fundamental and comprehensive. The ends of ...justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity

(1) 418 U.S. 683 : 41 Lawyers Edition (2nd Series 1039)

of the judicial system and public confidence in the system depend on full disclosure of all the facts within the frame work of the rules of evidence.", it is imperative to the proper functioning of the judicial process and satisfactory and certain ascertainment of truth that all relevant facts must be made available to the Court. But the law may, in exceptional cases, in order to protect more weighty, compelling and competing interests, provide that a particular piece of evidence, though relevant, shall not be liable to be prduced or called in evidence. Such exceptions are to be found, *inter alia*, in sections 122, 123, 124, 126 and 129 of the Indian Evidence Act and sections 162 and 172 of the Criminal Procedure Code. But being exceptions to the legitimate demand for reception of all relevant evidence in the interest of justice, they must be strictly interpreted and not expansively construed, "for they are in derogation of the search for truth". It would not, therefore, be right to extend the prohibition of section 172 to cases not falling strictly within the terms of the section, by appealing to what may be regarded as the principle or spirit of the section. That is a feeble reed which cannot sustain the argument of the learned advocate appearing on behalf of the State. It would in fact be inconsistent with the Constitutional commitment of this Court to the rule of law.

That takes us to the question whether the reports made by Sh. L.V. Singh as a result of the investigation carried by him and his associates are relevant under any provision of the Indian Evidence Act so as to be liable to be produced and received in evidence. It is necessary, in order to answer this question, to consider what is the nature of the proceeding before us and what are the issues which arise in it. The proceeding is a writ petition under Article 32 for enforcing the fundamental right of the petitioners enshrined in Article 21. The petitioners complain that after arrest, whilst under police custody, they were blinded by the members of the police force, acting not in their private capacity, but as police officials and their fundamental right to life guaranteed under Article 21 was therefore violated and for this violation, the State is liable to pay compensation to them. The learned Attorney General who at one stage appeared on behalf of the State at the hearing of the writ petition contended that the inquiry upon which the Court was embarking in order to find out whether or not the petitioners were blinded by the police officials whilst in police custody was irrelevant, since, in his submission, even if the petitioners were so blinded, the State was not liable to pay compensation to the petitioners first, because the state was not constitutionally or legally responsible for the acts of the police officers outside the scope of

their power or authority and the blindings of the under-trial prisoners effected by the police could not therefore be said to constitute violation of their fundamental right under Article 21 by the State and secondly, even if there was violation of the fundamental right of the petitioners under Article 21 by reason of the blindings effected by the police officials, there was, on a true construction of that Article, no liability on the State to pay compensation to the petitioners. The attempt of the learned Attorney General in advancing this contention was obviously to preempt the inquiry which was being made by this Court, so that the Court may not proceed to probe further in the matter. But we do not think we can accede to this contention of the learned Attorney General. The two questions raised by the learned Attorney General are undoubtedly important but the arguments urged by him in regard to these two questions are not prima facie so strong and appealing as to persuade us to decide them as preliminary objections without first inquiring into the facts. Some serious doubts arise when we consider the argument of the learned Attorney General. If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the Court for injuncting the State from such officer in violation of his fundamental right under Article 21 ? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action ? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would *ex concessionis* be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the Fundamental Right guarnteed under Article 21, the petitioner who is aggrieved can move the Court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the Fundamental Right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the Fundamental Right under Article 21 by deprivation of some limb of the petitioner, would the petioner have no remedy under Article 32 for breach of the Fundamental Right guaranteed to him ?

A Would the court permit itself to become helpless spectator of the violation of the Fundamental Right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the Fundamental Right to him and has also given him the Fundamental Right of moving the court for enforcement of his Fundamental Right, the court cannot give him any relief. These are some of the B doubts which arise in our mind even in a *prima facie* consideration of the contention of the learned Attorney General and we do not, therefore, think it would be right to entertain this contention as a preliminary objection without inquiring into the facts of the case. If we look at the averments made in the writ petition, it is obvious that the petitioners cannot succeed in claiming relief under Article C 32 unless they establish that their Fundamental Right under Article 21 was violated and in order to establish such violation, they must show that they were blinded by the police officials at the time of arrest or whilst in police custody. This is the foundational fact which must be established before the petitioners can claim relief under Article 32 and logically therefore the first issue to which we D must address ourselves is whether this foundational fact is shown to exist by the petitioners. It is only if the petitioners can establish that they were blinded by the members of the police force at the time of arrest or whilst in police custody that the other questions raised by the learned Attorney General would arise for consideration and it would be wholly academic to consider them if the petitioners E fail to establish this foundational fact. We are, therefore, of the view, as at present advised, that we should first inquire whether the petitioners were blinded by the police officials at the time of arrest or after arrest, whilst in police custody, and it is in the context of this inquiry that we must consider whether the reports made by Sh. L.V. Singh are relevant under the Indian Evidence Act so as F to be receivable in evidence.

We may at this stage refer to one other contention raised by Mr. K.G. Bhagat on behalf of the State that if the Court proceeds to hold an inquiry and comes to the conclusion that the petitioners were blinded by the members of the police force at the time of arrest or whilst in police custody, it would be tantamount G to adjudicating upon the guilt of the police officers without their being parties to the present writ petition and that would be grossly unfair and hence this inquiry should not be held by the Court until the investigation is completed and the guilt or innocence of the police officers is established. We cannot accept this contention of Mr. H K.G. Bhagat. When the Court trying the writ petition proceeds to inquire into the issue whether the petitioners were blinded by police officials at the time of arrest or whilst in police custody, it does so,

not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. The nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police officer. A situation of this kind sometimes arises when a claim for compensation for accident caused by negligent driving of a motor vehicle is made in a civil Court or Tribunal and in such a proceeding, it has to be determined by the Court, for the purpose of awarding compensation to the claimant, whether the driver of the motor vehicle was negligent in driving, even though a criminal case for rash and negligent driving may be pending against the driver. The pendency of a criminal proceeding cannot be urged as a bar against the Court trying a civil proceeding or a writ petition where a similar issue is involved. The two are entirely distinct and separate proceedings and neither is a bar against the other. It may be that in a given case, if the investigation is still proceeding, the Court may defer the inquiry before it until the investigation is completed or if the Court considers it necessary in the interests of Justice, it may postpone its inquiry even until after the prosecution following upon the investigation is terminated, but that is a matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it merely because the investigation or prosecution is pending.

It is clear from the aforesaid discussion that the fact in issue in the inquiry before the Court in the present writ petition is whether the petitioners were blinded by the members of the police force at the time of the arrest or whilst in police custody. Now in order to determine whether the reports made by Shah L.V. Singh as a result of the investigation carried out by him and his associates are relevant, it is necessary to consider whether they have any bearing on the fact in issue required to be decided by the Court. It is common ground that Sh. L.V. Singh was directed by the State Government under Section 3 of the Indian Police Act, 1861 to investigate into twenty four cases of blinding of under-trial prisoners where allegations were made by the undertrial prisoners and First Information Reports were lodged that they were blinded by the police officers whilst in police custody. Sh. L.V. Singh through his associates carried out this inves-

tigation and submitted his reports in the discharge of the official duty entrusted to him by the State Government. These reports clearly relate to the issue as to how, in what manner and by whom the twenty-four undertrial prisoners were blinded, for that is the matter which Shri L.V. Singh was directed, by the State Government to investigate. If that be so, it is difficult to see how the State can resist the production of these reports and their use as evidence in the present proceeding. These reports are clearly relevant under section 35 of the Indian Evidence Act which reads as follows :

> "35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact."

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh. L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in *Kanwar Lal Gupta* v. *Amar Nath Chawla*(1). There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under section 35 and this Court held that they were, on the ground that they were "made by public servants in discharge of their official duty and they were relevant under the first part of section 35 of the Evidence Act, since they contained statement showing what were the public meetings held by the first respondent." This Court in fact followed an earlier decision of the Court in *P.C.P. Reddiar* v. *S. Perumal*(2) also in *Jagdat* v. *Sheopal*(3) Wazirhasan J. held that the result of an inquiry by a Kanungo under section 202 of the Code of Criminal Procedure 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admis-

(1) [1975] 3 S.C.C. 646
(2) [1972] 2 S.C.R. 646
(3) AIR 1927 Oudh. 323

sible in evidence under section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in *Chandulal* v. *Pushkar Rai*(1) where the learned Judges held that repots made by Revenue Officers, though not regarded as having judicial authority where they express opinions on the private rights of the parties are relevant under section 35 as reports made by public officers in the discharge of their official duties, in so far as they supply information of official proceedings and historical facts. The Calcutta High Court also held in *Lionell Edwerds Limited* v. *State of West Bengal*(1) that official correspondence from the Forest Officer to his superior, the conservator of Forests, carried on by the Forest Officer in the discharge of his official duty would be admissible in evidence under section 35. There is therefore no doubt in our mind that the reports made by Sh. L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer persuant to the direction issued by the State Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates are relevant under section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the Court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government it may possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ petition. We may point out that though in our order dated 16th February 1981, we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981, it seems that there has been some error on our part in mentioning the outer date as January 20, 1981,

A B C D E F G H

(1) AIR 1932 Nagpur 271
(2) AIR 1967 Cal. 191

for we find that some of these reports were submitted by Shri L.V. Singh even after January 20, 1981 and the last of them was submitted on 27th January 1981. All these reports including the report submitted on 9th December, 1980 must therefore be filed by the State and taken as forming part of the record to be considered by the Court in deciding the question at issue between the parties.

What we have said above must apply equally in regard to the correspondence and notings referred to as items three and four in the Order dated 16th February 1981 made by us. These notings and correspondence would throw light on the extent of involvement, whether by acts of commission or acts of omission, of the State in the blinding episode and having been made by Shri L.V. Singh and Shri M.K. Jha in discharge of their officials duties, they are clearly relevant under section 35 and they must therefore be produced and taken on record in the writ petition, so also the reports submitted by Inspector and Sub-Inspector of CID to Gajendra Narain, DIG, Bhagalpur on 18th July and his letter to Shri K.D. Singh, Superintendent of Police, CID, Patna containing hand-written endorsement of Shri M.K. Jha must for the same reasons be held to be relevant under section 35 and must be produced by the State and be taken as forming part of the record of the writ petition.

Since all these documents are required by the Central Bureau of Investigation for the purpse of carrying out the investigation which has been commenced by them pursuant to the approval given by the State Government under section 6 of the Delhi Special Police Establishment Act, we would direct that five sets of photostat copies of these documents may be prepared by the office, one for Mrs. Hingorani, learned advocate appearing on behalf of the petitioners, one for Mr. K.G. Bhagat, learned advocate appearing on behalf of the State one for Dr. Chitale who is appearing *amcius curiae* at our request and two for the Court, and after taking such photostat copies, these documents along with the other documents which have been handed over to the Court by the State shall be returned immediately to Mr. K.G. Bhagat, learned advocate appearing on behalf of the State, for being immediately made available to the Central Bureau of Investigation for carrying out its investigation so that the investigation by Central Bureau of Investigation may not be impeded or delayed. We hope and trust that the Central Bureau of Investigation will complete its investigation expeditiously without any avoidable delay.

S.R. *Application allowed.*