

AFZAL AND ANR,
v.
STATE OF HARYANA AND ORS.

JANUARY 17, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Indian Penal Code, 1860 :

Ss.191, 192, 193—Giving false evidence and fabricating false evidence—Police officials—Giving false affidavits in Court and inducing one of their colleagues to forge signature of another officer on counter affidavit—Held liable to be punished under s. 193 and accordingly sentenced.

Contempt of Courts Act, 1971 :

S.2(c)—Criminal contempt—Filing of false affidavits in Court—Held amounts to criminal contempt.

Constitution of India, 1950 :

Article 129—Contempt of Court—Deputy Superintendent of Police—Filing false affidavit in Court and instructing his junior to forge his signature on affidavit to be filed in Court —Held Police Officer Committed contempt of Court—Sentenced accordingly.

Notaries Act, 1952 :

Ss.2(d), 8—Notary—Functions of—Affidavit to be attested after properly identifying signatory.

Affidavit :

Affidavit—Attestation of—Notary should attest affidavit after properly identifying signatory.

A police party put two minor boys in wrongful confinement in order to coerce an accused involved in an offence of fraud and forgery of railway receipts. In the writ petitions filed for release of the minor boys, two counter affidavits dated 30.10.1993 were filed in this Court on 1.11.1993 denying the fact of wrongful confinement of the minor boys by

A the police. One of the affidavits was sworn by respondent no. 4, A.S.I. incharge of the police station concerned and a member of the raid party, and the other was purported to be sworn by respondent No. 3, the Superintendent of Police, G.R.P. incharge of the investigation. The Court, being not satisfied with the averments made in the counter affidavits, directed an inquiry to be made by the Home Secretary and, in his absence, by the Director General of Police. The Director General of Police submitted the report which was contrary to the versions given in the counter affidavits filed in the Court on 1.11.1993. When the case was listed on 5.11.1993, respondent no. 3 filed another affidavit stating that a Head Constable 'K' had forged his signature on the counter affidavit dated 30.10.1993. This Court directed the District Judge Faridabad, and later the C.B.I., to enquire into the forgery. The Report of the C.B.I. indicated that respondent no. 3, who at the relevant time was stationed at Rewari, instructed Sub-Inspector 'S' and others to meet the Standing Counsel of State of Haryana in New Delhi and to get counter affidavits of respondents no. 3 and 4 drafted; Sub-Inspector 'S' accordingly got the counter affidavits drafted in accordance with the instructions of respondent no. 3; Head constable 'K' in the presence of Sub Inspector 'S' forged the signature of respondent no. 3 on the carbon copy of the affidavit dated 30.10.1993 which was filed in the Court on 1.11.1993; respondent no. 4 also sworn the affidavit dated 30.10.1993, and got the same filed in the Court on 1.11.1993; the fact of wrongful confinement of the two minor boys was in the knowledge of respondent no. 3. This Court issued notices to respondent no. 4 and the Head Constable 'K' as also to the Sub-Inspector 'S' to show cause as to why they should not be convicted for forgery of signature of respondent no. 3 on the counter affidavit dated 30.10.93 and also for contempt of court for filing false affidavits in this Court. Respondent no. 4 and Head Constable 'K' filed their respective affidavits before this Court stating that the affidavits dated 30.10.1993 were filed at the instance of respondent no. 3 and on his instructions Sub-Inspector 'S' asked Head Constable 'K' to forge the signature of respondent no. 3 on the carbon copy of the counter affidavit dated 30.10.1993 which was filed in the Court on 1.11.1993; thereupon the Court issued notice to respondent no. 3 to show cause as to why proceedings should not be initiated against him for forgery and making false statement in this Court, as also contempt of this Court.

H Respondent no. 3 and the Sub Inspector of Police 'S' filed affida-

vits denying their roles in filing the forged affidavit dated 30.10.1993. The Standing Counsel for the State of Haryana also filed an affidavit narrating the events and her statement corroborated the stand taken by Head Constable 'K' and respondent no. 4.

On the basis of the report of the CBI and the various affidavits filed by the parties, the Court concluded that respondent no. 3 while stationed at Rewari, had instructed Sub Inspector of Police 'S' and others to meet the standing counsel for the Government of Haryana to instruct her to draft the counter affidavits on his behalf and on behalf of respondent no. 4 denying the wrongful confinement of the minor boys; the counter affidavits were accordingly drafted on the instructions given by the Sub-Inspector of Police 'S' as the senior most of the team, denying the wrongful confinement of the minor boys; on the instructions of respondent no. 3, Sub Inspector 'S' asked Head Constable 'K' to forge the signature of respondent no. 3 on the carbon copy of the counter affidavit; Sub Inspector 'S' got the forged affidavit filed in this Court; respondent no. 4 filed false counter affidavit dated 30.10.1993 in the judicial proceedings before this Court and abetted Head Constable 'K' to forge the signature of respondent no. 3 on the counter affidavit; respondent no. 3 again filed false affidavit in the Court on 5.11.1993.

Disposing of the matters, this Court

HELD : 1.1. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings, and would amount to "criminal contempt" as defined in s.2(c) of the Contempt of Courts Act.

1.2. Respondent No. 3, being in-charge of the criminal administration, with his connivance, caused two minor boys' wrongful detention. He made an averment in the counter-affidavit dated October 30, 1993 that the boys were not in wrongful detention nor were they taken into custody; the said averment was later found to be false. He first used fabricated counter-affidavit, forged by Head Constable 'K' in the proceedings to obtain a favourable order; but when he perceived adverse atmosphere to him, he filed another false affidavit dated 5.11.1993 stating that the averments made in the counter affidavit dated

A 30.10.1993 were not in his knowledge; he fabricated further false evidence and sought to use an affidavit evidence to show that head constable 'K' had forged his signature without his knowledge and filed the fabricated document. He has no regard for truth. From stage to stage, he committed contempt of the Court by making false statements. B Being a responsible officer, he is required to make truthful statements before the Court, but he made obviously false statements. He committed an offence punishable under s.193, I.P.C. He also committed contempt of this Court under Article 129 of the Constitution. He is unworthy to hold any office of responsibility.

C 1.3. Respondent no. 4 had sworn a false affidavit on 30.10.1993 and got the same filed on 1.11.1993 in the judicial proceedings before this Court. His version that the minor boys were not taken into custody and kept in wrongful confinement cannot be accepted. He also abetted Head Constable 'K' to forge the signature of respondent no. 4. He would stand to gain by it as his version would get corroborated from that of respondent no. 3; he is liable to conviction under s.193 IPC for intentionally giving false affidavits in the judicial proceedings in this Court and abetting Head Constable 'K' to forge the signature of respondent no. 3. D

E 1.4. Sub-Inspector of Police 'S' filed false affidavits before this Court and acted in concert with respondent no. 3 to fabricate counter affidavit with facts false to his knowledge that minor boys were not in wrongful confinement or illegal custody; he abetted Head Constable 'K' to forge the signature of respondent no. 3 on the carbon copy of the counter affidavit; he had taken the custody of the forged carbon copy of the affidavit and sent the same to the standing counsel for being filed in the Court; he was present on November 1, 1993 in the Court premises along with respondent no. 3; though he disclaimed knowledge of the forged documents having been filed in the court, in view of evidence on record that he appeared in the Court when the proceedings were going on, he had seen through the filing of the same in the Court. F G Sub-Inspector 'S' thus committed an offence punishable under s.193 I.P.C.

H 1.5. Head Constable 'K' had no intention to forge the signature of respondent no. 3 on the carbon copy of the counter affidavit dt. 30.10.1993 filed in this Court on 1.11.1993.

2.1. None of the respondents made any candid admission nor tendered unqualified contrite apology. Police officers who are supposed to be the so-called disciplined force, have deliberately fabricated false records placed before this Court without any compunction. It is, therefore, of utmost importance to curb this tendency, particularly, when they have the temerity to fabricate the records with false affidavit and place the same before the highest Court of the land. Their depravity of the conduct is writ large.

2.2. Respondent no. 3 is convicted and sentenced under Section 193 IPC to undergo rigorous imprisonment for a term of one year. He is also convicted and sentenced to undergo rigorous imprisonment for a term of 6 months under Article 129 of the Constitution. Respondent no. 4 and Sub-Inspector 'S' are convicted and sentenced under Section 193 IPC, to undergo rigorous imprisonment for a term of 3 months and 6 months respectively.

Afzal & Anr. v. State of Haryana & Ors., [1994] 1 SCC 425 and *Afzal & Anr. v. State of Haryana & Ors.*, JT (1994) 7 SC 167, cited.

3. From the evidence on record it is clear that the affidavit dated October 30, 1993 purported to be sworn by respondent no. 3 was attested by the Notary on October 31, 1993 and he obliged the police officials to give the date of his attestation as October 30, 1993. The CBI Officer has fairly commented upon the Notary on his abdication of duty to have the signatory identified to be the deponent and in allowing the people to sign without proper verification of their identity.

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 356-57 of 1993.

(Under Article 32 of the Constitution of India.)

B.K. Mehta, U.R. Lalit, S.B. Sanyal, Mahinder Singh Dahiya (NP), Prem Malhotra, R.K. Khanna, Rajan Mahapatra, Surya Kant, D.B. Vohra, K.C. Bajaj, Sarvesh Bisaria, Ms. Nidhi Bisaria, S.K. Bisaria and Ms. Asha Jain Madan for the appearing parties.

The Judgment of the Court was delivered by

A **RAMASWAMY, J.** FIRs were registered with Government Railway Police, Faridabad by the Station House Officer, Ambala Cantonment, Randhir Singh (ASI) against the prime accused, Rahim Khan for offences of fraud and forgery of the railway receipts and cheating and misappropriation. In connection therewith, a police team headed by Ishaq Ahmad, Inspector, C.I.A. G.R.P., Ambala had gone to Agra to apprehend Rahim Khan.

B When he alluded the investigation team, they took away two minor boys, viz., Afzal son of Rahim Khan and Habib son of Ahmad and kept them in wrongful confinement at different places. Consequently, above writ petitions under Article 32 of the Constitution were filed in this Court for *habeas corpus* of the minor boys. This Court issued rule nisi on October 29, 1993 and to Ms. Indu Malhotra, Standing Counsel for State of Haryana and directed the matter to be listed on November 1, 1993. On November 1, 1993, this Court directed the Home Secretary, Government of Haryana to personally examine the complaint of illegal detention of two minor boys and to submit a report by November 5, 1993 and the matter was directed to be posted on that day at 2.00 p.m. On November 2, 1993, when Ms. Indu

C had pointed out to the Court that the Home Secretary was on leave, this Court had modified the order and directed the Director General of Police (DGP) to make investigation and to submit the report on November 5, 1993. In the meantime, on November 1, 1993, Ms. Malhotra wrote a letter to the Home Secretary thus:

E "..... Two minor children namely Afzal and Habib have allegedly been illegally detained at Ambala. Respondents No. 3 and 4 i.e. the Superintendent of Police G.R.P. (G.I.A.), (Haryana) have filed two separate affidavits stating that the children are not in illegal custody.

F However, an affidavit of an Advocate of U.P. has been filed in support of the Hebeas Corpus petition in the Supreme Court stating that inspector Ishaque Ahmad, G.R.P. (C.I.R.) Ambala Cantt. had informed him that the minor children would be released only if their father surrenders. He has stated that he saw the children in the custody of Ishaque Ahmad."

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She enclosed in the said letter complete copy of the petition along with the copy of the affidavits etc. She also informed that the case was posted "for hearing on 5.11.93" and that the Court had directed him to personally investigate into the case and file an affidavit before the Court.

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She requested him to be present in Delhi with the above details by November 5, 1993. On November 2, 1993, she wrote another letter to Shri Kalyan Rudra, DGP, Haryana wherein while reiterating the facts of earlier letter, she stated thus :

"The Court had issued notice to the Standing Counsel for the State of Haryana on 29th October, 1993. On receiving a copy of the said petition, we contacted the 3rd and 4th Respondents and filed affidavits on their behalf. The affidavits filed on behalf of Respondents No. 3 and 4 along with the copy of the Habeas Corpus petition are enclosed herewith for your ready reference. The Court, However, was not satisfied with the facts stated by Respondent No. 3 and 4".

She further stated that the Court had directed him to personally investigate into the matter and file an affidavit by November 4, 1993 and that the case would be heard on November 5, 1993. She also requested him to talk to her personally on the telephones and numbers thereof had been given. This Court by order dated December 8, 1993 in *Afzal & Anr. v. State of Haryana & Ors.*, [1994] 1 SCC 425 noted that the first affidavit of M.S. Ahlawat, Superintendent of Police was filed in this Court on November 2, 1993 and another affidavit was filed on November 5, 1993. The Court also had noted that Inspector Ishaq Ahmad was primarily responsible for wrongful and illegal confinement of two minor boys. This Court opined that a detailed enquiry was necessary to find out the truth and the tenor of the averments made in two affidavits of Ahlawat and that the forgery of his signature was made in the first one; veracity of allegations and counter-allegations by the officers and the role played by each of the respondents would be ascertained. Therefore, this Court had directed the District Judge, Faridabad to make an enquiry and to submit the report within six weeks from the date of the receipt of that order. The District Judge had given opportunity to all the persons and he opined and concluded that "the assertion of Ishwar Singh, S.I. did not appear to be veracious and impeccable. The trend and tenor of the statements made by various police officers/officials during the course of the enquiry tended to suggest that they tried to toe the line of one or the other group of two factions of the Railway Police branding each other with charges and countercharges. The manner in which Ishwar Singh the seniormost in the group of police officials concerned with the preparation of counter-affidavits and briefing the Standing Counsel did not object to the filing of a forged affidavit, spoke volumes of

A the tendentious nature of the stand taken by him". He also held that M.S. Ahlawat was not responsible in the episode. On receipt of the report, by order dated October 19, 1994 in *Afzal & Anr. v. State of Haryana & Ors.*, JT (1994) 7 SC 167 this Court opined that "the affidavit of Ahlawat dated September 5, 1993, his evidence before the Dist. Judge and the report of the latter do establish that the signature of Ahlawat is forged on the affidavit dated September 30, 1993 and the question as to who had forged it needs thorough investigation to take deterrent action. It cannot be lightly brushed aside of the tendency to file false affidavits or fabricated documents or forgery of the document and placing them as part of the record of the Court and they are matters of grave and serious concern. Therefore, we are of the view that a thorough investigation is necessary in this behalf". Accordingly, Director of Central Bureau of Investigation (CBI) was entrusted with the task of investigation, if necessary, with the assistance of hand-writing expert and report was directed to be submitted as expeditiously as possible within three months from the date of the receipt of this Court's order.

D Shri V.K. Khanna, Senior Scientific Officer, Grade-I examined the documents, and assisted the CBI in the enquiry conducted by Shri N.K. Pathak, Inspector. He stated in the report submitted to this Court that Head Constable, Krishan Kumar forged the signatures of Shri M.S. Ahlawat on the carbon copy of the counter-affidavit dated 30th October, 1993 and that "it was committed in the presence of S.I. Ishwar Singh and ASI Randhir Singh" on October 30, 1993. It is also stated in that report that "It may be added that they first visited the chamber-cum-residence of Ms. Indu in the evening of 30th Oct., 1993, and not on the evening of 31st Oct., 1993, as stated by them in their statements. The junior officers had nothing to gain by forging the SP's signature on the counter-affidavit. There is evidence to indicate that it was within the knowledge of Shri MS Ahlawat, SP, Railways that 2 boys had been detained illegally. His conduct raises a strong suspicion that the junior officers acted with his consent either implied or express". During examination by Shri N.K. Pathak, Ms. Indu had stated that after getting a copy of the impugned writ petition, she had instructed her junior Smt. Dania Pradhan to brief Shri MS Ahlawat, SP about the said writ petition and the five police officials named in paragraph 1 of the writ petition. The five officials met her in the evening of October 30, 1993. On their instruction, she had vetted the counter-affidavits to be filed on behalf of MS Ahlawat impleaded as third respondent and ASI, Randhir Singh

impleaded as fourth respondent and handed them over to the aforesaid police personnel. In the morning of November 1, 1993, one of her personal staff informed her that two counter affidavits affirmed on behalf of MS Ahlawat and ASI Randhir Singh has been received for being filed in this Court on the same day. Accordingly she tendered the aforesaid two counter-affidavits in the Court on November 1, 1993 but directed to be filed in the Registry which were filed accordingly. This Court was not satisfied with the averments made in the counter affidavits of respondent Nos. 3 and 4 and had directed the DGP, Haryana to personally investigate into the matter and to file a report. She further stated that on November 2, 1993 Shri G.S. Malhi, DIG (Railways) Haryana contacted her in the Court chamber and she told them that this Court was not satisfied with the counter-affidavits filed by Ahlawat and Randhir Singh. She also wrote a letter to DGP, Haryana in that behalf and handed over the same to Shri Malhi requesting him to fax the letter immediately since time was very short. The said letter was dictated in the presence of MS Ahlawat. He did not tell her that he did not sign the counter-affidavit in which the allegation of illegal detention of the two boys had been denied. She also stated that MS Ahlawat did not even faintly hint that he had not affirmed the counter-affidavit filed in this Court and as such she filed extra copies of the aforesaid two counter-affidavits as required under the rules in the Registry of this Court on November 4, 1994.

Randhir Singh, ASI, GRP, Faridabad, respondent No. 4 was also examined by the CBI and he admitted that he had gone to Ambala on October 30, 1993 to attend Crime meeting convened by MS Ahlawat who later directed him to proceed to Delhi and contact Ms. Indu and have the counter-affidavits of him and MS Ahlawat prepared. He stated that "Shri Ahlawat had told him to deny the allegations regarding illegal detention of two boys in the counter-affidavit". As such, he met Ms. Indu, got the counter-affidavits vetted. He, however, did not tell anything about the preparation of counter-affidavit to be filed on behalf of MS Ahlawat and did not reveal the names of the personnel who had accompanied him to Delhi on October 30, 1993.

Head Constable, Krishan Kumar during his examination admitted that he attended the Crime meeting held at Ambala Cantonment on October 30, 1993 along with Randhir Singh. He also stated that in his presence ASI Randhir Singh was directed by Ahlawat to deny allegations of illegal

A detention of the two boys in the counter-affidavit to be filed in this Court.

Ishwar Singh, being the In-charge of CIA Staff, GRP, Ambala Cantt. had stated during his examination that he was called by Shri Ahlawat on October 30, 1993 and instructed him to meet Ms. Indu to assist her in the preparation of the counter-affidavit to be filed in this Court. He stated that he reached Delhi on October 31, 1993 and contacted Ms. Indu, "Two counter-affidavits were drafted, vetted and typed at the residence-cum-office of Ms. Indu. After the preparation of the above two counter-affidavits, he sent a folder containing original counter-affidavit in the name Shri M.S. Ahlawat through HC Kartar Singh to Rewari as Shri Ahlawat was camping at Rewari". He admitted that in his presence and in the presence of Randhir Singh and Constable Paras Ram, "HC Krishan Kumar forged the signatures of Shri M.S. Ahlawat on the carbon copy of the counter-affidavit to be filed in the Supreme Court on behalf of Shri Ahlawat" and that "forgery was committed by HC Krishan Kumar on the instructions of ASI Randhir Singh. HC Krishan Kumar had used his right hand while signing".

When MS Ahlawat was examined, he reiterated all what he had stated in his second affidavit. He also stated that "he had directed SI Ishwar Singh and ASI Randhir to brief Ms. Indu at her residence in Delhi on 31.10.93. On the evening of 31st Oct., 1993, he had gone to Rewari for official work". It is not necessary to reiterate his version since he has stated the same as in the second affidavit. But he admitted that he reached Delhi on the evening of November 1, 1993 and contacted Ms. Indu and requested her for a meeting. She called him to her chamber next day morning. On the evening of November 2, 1993, he, along with Shri G.S. Malhi, DIG, Railways met Ms. Indu in her chamber and he stated to her that "*he had not filed any counter affidavit in the Supreme Court on 1.11.93*". On smt. Malhotra's asking as to who had signed the counter-affidavit on his behalf, *he could not answer the same* as he knew nothing about it. Ms. Malhotra called him again on 4.11.93 and he had signed the Vakalatanama" and gave the "affidavit dated November 5, 1993" and asked her to file next day. In that counter-affidavit he had disowned the earlier counter-affidavit dated October 30, 1993 purported to have been signed by him. He further stated that she refused to file the same in the Court as his signature in the vakalatanama and other documents did not tally with the signature he had put in the counter-affidavit dated October 30, 1993.

In paragraph 19 of the report, CBI Officer has stated that "SI Ishwar Singh took the forged counter affidavit from HC Krishan Kumar and kept it with him. Subsequently, he handed it over to HC Paras Ram with the instructions to deliver it to Ms. Indu, knowing fully well that the counter-affidavit was a forged one. HC Paras has confirmed that SI Ishwar Singh handed him an envelop on 1st Nov., 1993 and that he delivered the same at the residence of Ms. Indu as instructed. His conduct becomes all the more questionable as he was responsible for the delivery of the forged affidavit at Ms. Malhotra's residence. SI Ishwar Singh, ASI Randhir Singh, HC Krishna Kumar, HC Kartar Singh, and HC Paras Ram have admitted that they met Ms. Indu on October 31, 1993 at her residence and got the counter affidavit vetted by her. This statement is inconsistent with the statement of Ms. Malhotra that they visited her on October 30, 1993. The police officers seem to have manipulated the Daily Diary entries to support their contention. It appears that all of them had met Ms. Indu on 30th October, 1993. She is an independent witness and is a Govt. Standing Counsel and has no axe to grind in the matter. Further, she had, as per the practice, noted down the names of the persons who visited her on the reverse of the office copy of the writ petition and that document was handed over by her to the CBI Investigating Officer". In paragraph 22 of the report, he concluded that there are indications to show that detention of the two boys in the GRP was within the knowledge of Ahlawat, though none of the concerned police officer has stated that Ahlawat had instructed them to sign on his behalf. "There is no explanation by Shri Ahlawat not signing, the counter affidavit which was to be submitted in the Hon'ble Supreme Court on 1.11.1993. In the statement he has stated that he received the counter-affidavit at 2.00 a.m. on 1.11.1993 while he was in Rewari..... Further, he was aware that his counter-affidavit was necessary. Although Ms. Malhotra had discussed the case with Ahlawat and Malhi, at no stage had Ahlawat informed her that he had not signed the counter affidavit which was submitted before the Court on November 1, 1993. This was also corroborated by G.S. Malhi's statement. It is also a moot point as to why subordinate officers like SI Ishwar Singh, HC Krishan Kumar and ASI Randhir Singh would take decision to forge their SP's signature on document being submitted to the Court. As Ahlawat was not in Delhi, these officers may have taken his instructions on telephone. There is, however, no evidence as to what transpired".

On receipt of the report, notices were issued on April 17, 1995 to HC

- A Krishan Kumar and SI Ishwar Singh and ASI Randhir Singh as to why they would not be convicted for forgery of signature of MS Ahlawat and counter-affidavit dated October 30, 1993 and also for the contempt of the Court for filing false affidavit. Pursuant thereto, they appeared before the Court. Randhir Singh had stated that : "On November 1, 1993 I along with Krishan
- B Kumar reached Delhi and met Ishwar Singh who gave a carbon copy of the affidavit of Shri M.S. Ahlawat to Krishan Kumar. The said affidavit was to be filed in this Hon'ble Court in connection with the writ petition filed by one Afzal". Ishwar Singh asked Krishan Kumar to sign the affidavit on behalf of Ahlawat who was not able to reach Delhi. Krishan Kumar refused to sign
- C the affidavit. Ishwar Singh thereafter phoned Shri MS Ahlawat and asked Krishan Kumar to talk to Shri MS Ahlawat. After talking to MS Ahlawat on phone, Krishan Kumar took the carbon copy of the affidavit of Shri MS Ahlawat and signed it and both of them went away. They met only on November 1, 1993 in this Court.
- D HC Krishan Kumar has stated in his affidavit that Ishwar Singh, SI directed him, in the presence of Randhir Singh, to sign the carbon copy of the affidavit typed in the name of Ahlawat for official use. "When I refused to sign the carbon copy Shri Ishwar Singh contacted Shri Ahlawat on phone and Shri Ahlawat ordered me over telephone to sign the carbon copy of the
- E affidavit in his name on the plea that the said carbon copy is only for official use while the original is to be filed before the Hon'ble Supreme Court. In these circumstances, I had no alternative except to sign the carbon copy of the said affidavit in the name of Ahlawat and handed it over to Shri Ishwar Singh Sub-Inspector, thereafter I got no information about the said
- F affidavit". He has also stated that on November 1, 1993 he along with other police constables went to Haryana Bhavan, New Delhi at 12:45 p.m. Shri Udey Singh Head Constable, Driver of the staff car of Sh. Ahlawat was in Haryana Bhavan. All the team assembled at the rear side of Haryana Bhavan. "Shri M.S. Ahlawat discussed about the pending writ petition with
- G Ishwar Singh and Randhir Singh and assured me not to worry about signature on the carbon copy of his counter affidavit". He has further stated that Shri Ahlawat remained in Delhi on November 1, 1993. He was in the premises of this Court from 2.30 p.m. onwards when the hearing of the case took place. To substantiate his version, he has also filed the affidavit of the Driver of Ahlawat, which is marked as Annexure 2 before the District
- H Judge. He had explained for his omission to state these facts of forgery

before the District Judge, Faridabad in paragraph 13 stating that MS Ahlawat threatened him that if he would disclose the truth before the District Judge, he would make an enquiry and then would terminate his service and dismiss him from service. Due to that threat he had kept mum.

After reading these averments in the affidavits, by order dated September 10, 1995 this Court issued notice to MS Ahlawat to show cause as to why he would not be considered for conviction for forgery and making false statements at different stages in this Court and also for contempt of the proceedings of this Court. MS Ahlawat and Ishwar Singh, SI have filed the affidavits. Ishwar Singh has denied all the allegations. He has, however, admitted that he attended the Crime meeting on October 30, 1993 at Ambala Cantt. along with Randhir Singh, Krishan Kumar etc. He has also admitted that he was asked by Ahlawat to go to Delhi and brief Ms. Indu. According to him, he reached Delhi on October 31, 1993 and proceeded to meet Ms. Malhotra along with others. At about 6.30 p.m. Ms. Indu handed over the cover to Randhir Singh containing two affidavits, one to be filed by him and the other to be filed by Ms. Ahlawat. Randhir Singh handed over the original draft to Kartar Singh and asked him to proceed to Rewari immediately and contact MS Ahlawat for his signature as the case was listed the next day, i.e., November 1, 1993. Kartar Singh left Delhi at 6.35 p.m. Thereafter, Randhir Singh asked Krishan Kumar to append the signature of Ms. Ahlawat on the carbon copy of the draft affidavit. Krishan Kumar then forged the signature of MS Ahlawat on the said carbon copy. He has further stated that he objected to the same but Randhir Singh and Krishan Kumar did not pay any heed to it. He did not inform about this to any one thinking that MS Ahlawat had already sent instructions to them.

MS Ahlawat in his affidavit filed on November 5, 1993 has denied his role in the wrongful confinement of two minor boys. He has stated that he received the counter-affidavit at 2.00 a.m. on November 1, 1993. He had gone through the affidavit and found them to be not correct. On coming to know of the forgery of signature he informed the same to Ms. Malhotra on November 2, 1993. He also informed the Director General of Police on the same day, about the forgery of his signature committed by Krishan Kumar. On November 4, 1995 he brought these facts to the notice of this Court and filed an affidavit. In the departmental enquiry conducted against Krishan Kumar, he was found to have committed forgery of his signature and

A accordingly disciplinary action was taken against him.

B We have elaborately narrated the facts and the proceedings of this Court from which it would emerge that initially Afzal and Habib, two minor boys were taken into custody by Ambala Cantonment police party consisting of Ishaq Ahmad and others who put the boys in wrongful confinement to coerce the accused Rahim Khan to surrender. On filing writ petitions under Article 32, this Court had issued notice and directed investigation at highest level in the State. MS Ahlawat, the Superintendent of Police, Railways, Ambala, in-charge of the investigation, and SHO Randhir Singh, ASI were impleaded as respondent Nos. 3 and 4. They were required to file counter-affidavits in this Court on November 1, 1993. Ahlawat directed SI Ishwar Singh, ASI Randhir Singh and HC Krishan Kumar and others to go over to Delhi and contact Ms. Malhotra and to instruct her to draft the counter-affidavits. On the basis of instructions given to her, she had drafted the counter-affidavits and handed them over to Ishwar Singh, he being the senior-most among the police personnel. Randhir Singh signed it. The original counter-affidavit was sent to Rewari where MS Ahlawat was camping. Ahlawat along with Randhir Singh was required to file the counter-affidavit by November 1, 1993. Ahlawat attended the Court on November 1, 1993 and was in the Court premises from 2.30 p.m. onwards. The carbon copy of the counter-affidavit on behalf of Ahlawat and counter-affidavit of Randhir Singh was tendered in the Court. They were filed in the Registry. The Court was not satisfied with the averments made therein. Therefore, an enquiry was directed to be made initially by the Home Secretary, Haryana and in his absence by the DGP, Shri Kalyan Rudra. Ms. Malhotra wrote a letter first to Home Secretary and then to the DGP enclosing the copies of the counter-affidavits filed on behalf of Ahlawat and Randhir Singh informing that the Court was not satisfied with the averments made therein and an independent personal investigation was directed to be made by DGP who was required to file an affidavit and report on or before November 4, 1993 and writ petitions were directed to be posted for hearing at 2.00 p.m. on November 5, 1993. On November 2, 1993, Ahlawat and G.L. Malhi, DGP had met Ms. Indu and in their presence she had dictated the letter to the DGP, Shri Kalyan Rudra stating that she had already filed two counter-affidavits on behalf of Ahlawat and Randhir Singh. Though Ahlawat was present when the letter was dictated, he did not point out that he had not signed any counter-affidavit already filed in the Court on his

behalf. The copy thereof along other material was handed over to Shri Malhi for onward transmission to the DGP. The letter was desired to be faxed immediately to the DGP. When Ahlawat met Ishwar Singh after the Court proceedings on November 1, 1993 they had discussed the matter. Ahlawat appears to have thought that things were not going on the lines he had charted out and he thought he would be required to retract from his stand in the counter-affidavit dated October 30, 1993 and to file another affidavit with a different version. When he got prepared another affidavit dated November 5, 1993 and asked Ms. Malhotra to file it along with Vakalatnama she refused to do the same. She had already filed copies of the counter affidavits dated October 30, 1993 in the Registry of the Court as per the rules on November 4, 1993 as directed by this Court. On November 5, 1993 Ahlawat filed another affidavit in which he stated that HC Krishan Kumar had forged his signature and has filed the counter-affidavit on his behalf.

Admittedly, Krishan Kumar has not been made a respondent to the writ petitions, though he was a member of the investigation team which had gone to Agra to apprehend the accused Rahim Khan. In the enquiry conducted by Shri Kalyan Rudra, DGP, Ahlawat did not come out with the version that he had not signed the counter-affidavit prepared on October 30, 1993 and filed on November 1, 1993 nor did he point out the forgery committed by Krishan Kumar. His counter affidavit filed on November 5, 1993 would, therefore, obviously be an after-thought to ditch his subordinate and save his skin. When this Court directed the enquiry by the District Judge, Faridabad to find out the truth or the counter-version in the matter, all the persons including Ahlawat were examined. In the said enquiry, the main thrust was the forgery and as to who had committed the forgery. But it was not clear to the District Judge. Therefore, he castigated the conduct of Ishwar Singh but exonerated Ahlawat. This Court as well as the District Judge *prima facie* were impressed with the averments made by Ahlawat in his second affidavit filed on November 5, 1993 and his version was acted upon. This Court then directed the CBI to enquire into as to who actually was responsible for the forgery which was registered as a crime on November 11, 1994 and the task was entrusted to Shri N.K. Pathak, Inspector.

In the enquiry conducted by Shri N.K. Pathak, Ms. Malhotra, as a strict professional practitioner has stated the facts that had transpired in her office and the action taken by her in defending the officers and the

A affidavits filed by the officers etc. The CBI officer has concluded that HC
Krishan Kumar had nothing to gain by forging the signature of Ahlawat. It
was forged in the presence of Ishwar Singh who had kept the carbon copy
in his custody and directed Paras Ram to deliver the signed copies in the
office of Ms. Malhotra for being filed in the Court. Before Shri Pathak,
B Ishwar Singh admitted that Krishan Kumar had forged the signature in his
presence and he had custody of the forged documents. Had he not had any
prior instructions from Ahlawat, as a responsible officer to whom the duty
of getting the counter-affidavit drafted on behalf of Ahlawat was entrusted,
he would not have permitted Krishan Kumar to forge the signature and
should have proceeded to Rewari to have the counter-affidavit approved and
C brought the same back and given to Ms. Indu to be filed in the Court.
Ahlawat being a respondent in the writ petition, he was bound to file the
counter-affidavit by November 1, 1993 and had he not instructed his junior
officers to forge his signature and to file the counter-affidavit, he would
have instructed Ms. Malhotra to seek further time for filing the counter-
D affidavit. What is more, he himself was present in the Court premises on
November 1, 1993. These circumstances clearly would indicate that Ahlawat
had instructed Ishwar Singh to have the counter affidavit of him and
Randhir Singh drafted and that the two affidavits must be consistent. Since
he knew that two minors were in wrongful confinement, he did not want to
commit himself by signing the counter-affidavit and had instructed Ishwar
E Singh to direct Krishan Kumar to forge his signature. When Ahlawat
attended the chambers of Ms. Indu on November 2, 1993 along with Shri
G.L. Malhi, D.I.G., a letter was dictated in their presence to D.G.P. to the
effect that counter affidavits on behalf of Ahlawat and Randhir Singh were
already filed on November 1, 1993 and that the Court was not satisfied with
F the tenor of the averments made therein. If Ahlawat really had not
instructed the junior officers to forge his signature on the counter-affidavit
and file an affidavit on his behalf, nothing prevented him to mention to her
that he had not signed any counter-affidavit and that he had not instructed
anyone to sign the same on his behalf; he would have asked her as to why
she had allowed filing such counter-affidavit without any instructions from
G him. He did not do that. The version of Randhir Singh and of Ahlawat in
the counter-affidavits dated October 30, 1993 was consistent, namely, minor
boys were not in wrongful confinement. On the other hand, when the report
submitted by Shri Kalyan Rudra, the DGP was found against them, he
thought that he must salvage himself from the earlier stand to avoid charge
H of perjury and decided to file another counter-affidavit making his

subordinate office a scape-goat.

In this background, we have to consider the averments made by HC Krishan Kumar and ASI Randhir Singh that when Ishwar Singh asked Krishan Kumar to sign the affidavit of Ahlawat on his behalf on the carbon copy, he objected to sign and immediately Ishwar Singh contacted Ahlawat who had ordered Krishan Kumar on the phone to sign the counter-affidavit. There is nothing intrinsically improbable to disbelieve the version of Krishan Kumar that he was asked by Ahlawat to forge his signature assuring him that he would not be in trouble for forging his signature. In view of the admitted facts that Ahlawat was in supervision of the investigation of the cases registered against Rahim Khan, it would be obvious that minor boys brought by Ishaq Ahmad from Agra were kept in wrongful confinement with his connivance and that he thought that by denying the averments, the Court would prepared to accept his version, used this authority as Superintendent of Police and directed his subordinate Krishan Kumar to forge his counter-affidavit. When Ishwar Singh asked Krishan Kumar to sign the counter-affidavit forging the signature of his senior officer, he might have thought that it would not be proper to do so but when Ishwar Singh contacted, obviously on phone and had informed Ahlawat of unwillingness of Krishan Kumar to forge his signature on the carbon copy of the counter-affidavit, obviously on his instructions, Krishan Kumar forged his signature and, as seen, that the same was filed in the Court on November 1, 1993. When things were not going on the line charted out by Ahlawat and the report of the DGP was contrary to the stand taken by Ahlawat, he obviously thought over and decided to file another counter-affidavit making Krishan Kumar a scape-goat. Without his prior knowledge that Krishan Kumar had forged his signature, how was it possible for him to conclude that Krishan Kumar had forged the carbon copy of the counter-affidavit to be filed by him. It is not his case nor of Ishwar Singh before this Court that Ishwar Singh informed Ahlawat of forging his signature on the carbon copy of the counter-affidavit or that he made an enquiry in which he came to know that Krishan Kumar had forged his signature. Though Krishan Kumar was a member of raiding party headed by Inspector Ishaq Ahmad, which had taken into custody two minor boys and kept them in wrongful confinement, he being not a party to the writ petitions, there was nothing for him to gain by forging the signature of Ahlawat on the carbon copy of the counter-affidavit and filing the same in the Court. Under these circumstances, our inescapable conclusion is that

- A Ahlawat had instructed Ishwar Singh and others to meet Ms. Malhotra, to instruct her to draft the counter-affidavit on his behalf and Randhir Singh denying the wrongful confinement of minor boys and when counter-affidavits were drafted it was obviously only on the instructions given by Ishwar Singh as the seniormost of the team, denying the wrongful confinement of the minor boys. The letters written by Ms. Indu and her professional conduct is transparently consistent with professional duty and she had truthfully and promptly discharged it in defending the officers.

- C When Ms. Indu expressed her inconvenience to continue as Standing Counsel for the State and sought permission of the Court to withdraw from the case due to the stand of Ahlawat and orally stated that the averments made in the affidavit of Ahlawat filed on November 5, 1993, were not correct, we directed her to file an affidavit stating as to what actually had transpired when she dealt with the cases. She has filed the affidavit to which Ahlawat has also filed another counter-affidavit to it. In her affidavit she has narrated the facts that had transpired in this case. She has also produced correspondence she had with the officials. Ahlawat even did not make any averment against Ms. Indu's actions and conduct. Her affidavit is consistent with the conclusion we have reached and it corroborates the stand taken by Krishan Kumar and Randhir Singh.

- E As regards the directions issued by Ahlawat to Krishan Kumar pursuant to a telephonic call made by Ishwar Singh to forge his signature his counter-affidavit dated October 30, 1993 to be filed in this Court on November 1, 1993 the CBI officer has also concluded in his report that Ahlawat having had a duty to file the counter-affidavit and his not signing the affidavit prepared by Ms. Malhotra is highly unbecoming of a responsible officer and Krishan Kumar had nothing to gain by forging his signature and it appears to have been done on instructions from Ahlawat. We approve of his conclusion.

- G Shri Sanyal, learned senior counsel appearing for Krishan Kumar contended that in view of the affidavit of Ms. Indu and the circumstances of the case the stand taken by Krishan Kumar is correct as he was threatened not to disclose these facts during the enquiry conducted by the District Judge, Faridabad at the pain of dismissal from service. Consequently, he did not come out from the red at that stage but when, after enquiry, the CBI in its report found against him, he had necessarily to come out with the

truth. Consequently, he has truthfully stated in his affidavit whatever had transpired. His version and statement, therefore, is more probable and consistent and he had no intention to forge the signature of Ahlawat and to fabricate the record for being filed in this Court since he had nothing to gain from the proceedings before this Court. He was not a respondent. We find that there is justification in his contention. Though, Krishan Kumar was a member of the investigation team which visited Agra headed by Ishaq Ahmad who had played principal role in abducting the minor boys and kept them in wrongful confinement to coerce Rahim Khan to surrender, he was not made a respondent to the writ petitions. Being a member of the investigation team and having been asked to attend the Crime meeting at Ambala Cantonment convened by Ahlawat on telephone who directed him, Randhir Singh, Ishwar Singh and two others to go over to Delhi and brief Ms. Indu to have the counter-affidavits drafted, he had accompanied the party and accordingly followed the instructions issued by Ahlawat. When counter-affidavit of Ahlawat was drafted, as per the instructions, Ishwar Singh had asked Krishan Kumar to forge the affidavit of Ahlawat and when he had refused to do so, Ishwar Singh had contacted Ahlawat who had directed Krishan Kumar to sign the carbon copy of the counter-affidavit and assured him that nothing would be done to him. In these circumstances, Krishan Kumar came to forge signature of Ahlawat on the carbon copy of the counter-affidavit, but not with an intention to forge the signature of Ahlawat but in obedience to the command of Ahlawat. Thereafter SI Ishwar Singh had taken custody of the carbon copy of the counter-affidavit and instructed Paras Ram to hand it over to Mrs. Indu Malhotra for being filed in the Court. We, therefore, hold that he had no intention to forge the signature of Ahlawat on the carbon copy of the counter-affidavit dated October 30, 1993 filed in this Court.

The question then is : What is the role played by ASI Randhir Singh? Shri Mehta, learned counsel appearing for him contended that Randhir Singh had no intention to fabricate the affidavit of Ahlawat nor had he filed in the Court. Though Randhir Singh was a member of the raid party headed by Ishaq Ahmad, which illegally took two minor boys into custody and wrongfully confined them, as regards forgery of signatures of Ahlawat by Krishan Kumar, from the circumstances of the case, admittedly he being 4th respondent to the writ petitions, he and Ahlawat obviously have taken a consistent stand in their counter-affidavits dated October 30, 1993 tendered on November 1, 1993 that they had not taken the minor boys into custody

A nor had they wrongfully confined them. That statement is now proved to be false from two enquiries conducted by Shri Kalyan Rudra, DGP and the District Judge, Faridabad. He was present along with SI Ishwar Singh at the time Krishan Kumar had forged signature of Ahlawat on the carbon copy of the counter-affidavit of Ahlawat. Consequently, it must be held and that
B it is difficult to accept his version that the minor boys were not taken into custody and kept in wrongful confinement. He also abetted Krishan Kumar to forge the signature of Ahlawat. He would stand to gain by it as his version gets corroborated from that of Ahlawat. He thus filed false counter-affidavit dated October 30, 1993 in the judicial proceedings before this
C Court. Thereby he is liable to conviction under Section 193, Indian Penal Code, 1860 (IPC) for intentionally giving false affidavit in the judicial proceedings in this Court and abetting Krishan Kumar to forge the signature of M.S. Ahlawat.

D Ishwar Singh in his affidavit dated July 10, 1995 filed in this Court on July 11, 1995 has stated that he neither forged the signature of Ahlawat in the counter-affidavit dated October 30, 1993 nor filed any counter-affidavit before this Court as he had no motive for committing the act of forgery. He denied to have any knowledge that the carbon copy of the counter-affidavit of Ahlawat signed by Krishan Kumar was given to Ms. Indu for being filed in this Court and he believed that it was not filed. He
E has come out with false version toeing the line of Ahlawat. He deliberately omitted certain crucial facts relevant for the decision. He appears to have thought that ditching his subordinates and being consistent with the stand taken by Ahlawat would accelerate his promotional prospects and accordingly he had fallen in line with Ahlawat which is now found to be false. He admitted that he was asked by Ahlawat to go along with the party to
F instruct Ms. Indu to draft the counter-affidavits. He handed over the counter-affidavit given by Ms. Indu to Kartar Singh, and asked him to immediately proceed to Rewari whereat Ahlawat was camping, for his signature on the counter-affidavit since the case was posted for hearing on November 1, 1993. He stated that he had met Ms. Indu on October 31, 1993
G which on its face is false. The counter-affidavits of Randhir Singh and Ahlawat bear the said date and were attested with that date. Ahlawat received draft on October 31, 1993 at 2.00 a.m. He went to Ms. Indu to instruct her to draft the counter-affidavit. He admitted that Krishan Kumar forged the signature in his presence and in the presence of Randhir Singh. He has further stated that he had no motive to abet the forgery committed
H by Krishan Kumar. It is contended by his learned counsel that since he was

not a member of the raid party who took the minor boys into illegal custody and put them in wrongful confinement, there is no reason for him to file false evidence or to commit forgery of signature of Ahlawat. There is nothing to show that he committed any offence nor is he liable for contempt of this Court.

At the cost of repetition, we may reiterate that to the Crime meeting held on October 30, 1993 at Ambala Cantonment, convened by Ahlawat, Ishwar Singh had admittedly attended. Ahlawat had instructed him to proceed along with Randhir Singh, Krishan Kumar and two others to meet Ms. Malhotra and have the counter-affidavits drafted. Admittedly, he proceeded and met Ms. Malhotra. She drafted the counter-affidavits on October 30, 1993 and handed them over to the parties. He being senior-most officer among the party, obviously he had taken the originals of the counter-affidavits to be signed by Ahlawat and Randhir Singh and directed Kartar Singh to proceed to Rewari and deliver the same to Ahlawat. It is now an admitted fact that Krishan Kumar forged the signature of Ahlawat in the carbon copy in his presence. On what date it was forged is not the material point. But it is the definite case that after the counter-affidavit was handed over to them in the office of Ms. Indu, Ishwar Singh had sent the original draft. When he asked Krishan Kumar to forge but he refused to forge the signature of Ahlawat, he contacted Ahlawat who had directed Krishan Kumar to sign the carbon copy of his counter-affidavit. On command from Ahlawat, Krishan Kumar had forged it. From these facts, it is clear that Ishwar Singh acted in concert with Ahlawat to fabricate counter-affidavit with facts false to his knowledge that minors were not in wrongful confinement or illegal custody and induced Krishan Kumar to forge the signature of Ahlawat on the carbon copy of the counter-affidavit to be filed on behalf of Ahlawat and after forgery, as admitted before the CBI officer, he had taken custody of the forged carbon copy of the counter-affidavit, sent them to Ms. Malhotra through Paras Ram for being filed in the Court. He was present on November 1, 1993 in the Court premises along with Ahlawat. Though he disclaimed knowledge of the forged document having been filed in the Court, in view of the evidence on record that he appeared in the Court when the proceedings were going on, he had seen through the filing of the same in the Court. When this Court was not satisfied with the tenor of the averments made in the counter-affidavits filed by Ahlawat and Randhir Singh, he informed of the same with a disturbed

- A mind to Ahlawat. Thus he is a party to the fabrication of false record and abetted Krishan Kumar to forge the signature of Ahlawat and after taking custody of the carbon copy of the counter-affidavit with forged signature, he had entrusted the same to Paras Ram for delivery in the office of Ms. Indu and the same was filed in this Court. He falsely denied the facts in this
- B affidavit filed in this Court. Thus he not only actively participated in the fabrication of the false counter-affidavit dated October 30, 1993 with false averments that minors were not in wrongful detention or illegal custody but also entrusted the same for being filed in the judicial proceedings of this Court. He abetted Krishan Kumar to forge the signature of M.S. Ahlawat. Thus he committed an offence under Section 193, IPC.
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- The question then is : Whether Ahlawat has committed contempt of the proceedings of this Court and has committed the offence under Section 193, IPC by making false statement and directing forgery of his signature and filing of forged documents in this Court? Shri U.R. Lalit, his learned senior Counsel, strenuously contended that immediately on coming to know that his signature was forged on the carbon copy of the counter-affidavit purported to be dated October 30, 1993, he had informed the learned counsel Ms. Indu on November 2, 1993. He also informed the same to the D.G.P., Shri Kalyan Rudra on the same day. He also had brought to the notice of this Court on the first available opportunity, namely, on November 5, 1993. He had also taken disciplinary action against Krishan Kumar and Randhir Singh respectively for forging his signature and filing the affidavit with false averments in this Court. He had stated in his counter-affidavit filed on November 5, 1993 the true facts. The allegation that he instructed Krishan Kumar, when Ishwar Singh had contacted him on phone to forge his signature on the counter-affidavit, is a fabricated version to buttress the stand of Randhir Singh and sought shelter behind the shadow of superior officer. Since Ahlawat had already taken disciplinary proceedings against Randhir Singh and Krishan Kumar, the version set up by Krishan Kumar and Randhir Singh is to defend themselves in those proceedings. The version that Ishwar Singh telephoned to Ahlawat on October 31, 1993 informing Ahlawat that Krishan Kumar refused to sign in the carbon copy of the counter affidavit is *ex facie* false for the reason that the affidavit was attested by the Notary on October 30, 1993 which tends corroboration from the counter-affidavit dated October 30, 1993, filed by Randhir Singh. They have an axe to grind against Ahlawat. Therefore, they have made false averments to implicate Ahlawat. In the representation made by Krishan
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Kumar to the Government to expunge the adverse remarks made by Ahlawat against him, this version has not been stated. The story of authorising to file an affidavit dated October 30, 1993 is inconsistent with the true state of facts. He was not a party to the raid at Agra at the house of Rahim Khan and he would not have filed an affidavit with such a wrong fact. When original counter-affidavit was received by M.S. Ahlawat at 2 a.m. on November 1, 1993 on going through the contents thereof, he found them to be incorrect since he was not a member of the raid party to take the minors into the illegal custody and for wrongful detention. Therefore, he would not have instructed to make such an averment in his counter-affidavit. Therefore, he instructed Ms. Indu to file another counter-affidavit with the correct averments which was not done. Consequently, he had engaged another counsel and got the counter-affidavit filed on November 5, 1995 with true facts. He contends that from these circumstances, it is clear that Ahlawat has not made any false averment nor instructed anybody to forge his signature. He did not commit any contempt of the Court. He fairly conceded that he has no argument on the contents of the affidavit filed by Ms. Indu in this Court. He says that Ahlawat may be of mistaken impression in not correcting Ms. Indu, at the time, when she had dictated in her letter addressed to D.G.P., Shri Kalyan Rudra that a counter-affidavit on behalf of Randhir Singh and Ahlawat were already filed. But, in view of the facts stated and the above circumstances, Ahlawat had not committed any offence nor is he liable for contempt proceedings nor has he pleaded with any false averment in the affidavits filed in this Court.

As to when, for the first time, Ahlawat had come to know that his signature was forged in the affidavit dated October 30, 1993, has been kept delightfully vague. He brought to the notice of this Court at the earliest opportunity, namely November 5, 1995, the date to which this Court had posted the case for hearing of the factum of forgery of his signature.

We have given our anxious and careful consideration to his forceful contention. On October 29, 1993, this Court had taken up the case upon motion on Board and had issued notice to the respondents. Dasti Service in addition was ordered. Dasti service to the standing counsel was also ordered. The case was directed to be posted on November 1, 1993. Ms. Indu on November 1, 1993 wrote a letter to the Home Secretary informing that minor children by name Afzal and Habib were illegally detained at Ambala by the 3rd respondent, Ahlawat, and the 4th respondent Randhir Singh. Two separate

- A counter-affidavits stating that the children were not in their illegal custody were filed by Randhir Singh and Ahlawat. On the basis of the Affidavit of an advocate of U.P. (copy enclosed thereto), the Court was not inclined to believe the statements made by Ahlawat and Randhir Singh. She enclosed all the records since the Court had directed the Home Secretary to conduct an enquiry and to submit his report by November 5, 1993. She requested him to be personally present in the Court on the date of posting. On information that he was availing leave, a mention was made to the Court and the Court by proceedings dated November 2, 1993 directed enquiry by D.G.P. and to submit the report by November 5, 1993 at 2.00 p.m. She also wrote on the same day a letter reiterating the entire earlier contents and enclosed the counter-affidavits filed on behalf of 3rd and 4th respondents. This letter admittedly was dictated in the presence of M.S. Ahlawat and D.I.G., G.S. Malhi. No denial on the part of Ahlawat, i.e., he did not authorise anybody to file a counter-affidavit on his behalf, was made at that time. It is already seen that on perusing the affidavits, the Court was not inclined to accept their stand and ordered an enquiry. On November 1, 1993, on which date the case was posted these counter-affidavits were tendered and were later filed into Court. It is clear from the record and affidavit of his driver that Ahlawat was present in the Court premises on October 31, 1993. His driver made the affidavit long before our issuing the notice produced before enquiry held by the District Judge, Faridabad that Ahlawat was present in the Court premises. There is nothing to disbelieve the version of the driver which corroborates the statement of Krishan Kumar and Randhir Singh. As a responsible officer, he was to file a counter-affidavit with true and correct facts. Instead, since he knew that two minor boys were in illegal and wrongful confinement, he did not want to commit himself to that position and by signing the counter-affidavit with false facts, he would be exposed to perjury etc. So, he disowned responsibility and directed Krishan Kumar to forge his signature so as to use the same in judicial proceedings. The CBI Officer also has commented upon the conduct of Ahlawat. When Ahlawat was required to file an affidavit on November 1, 1993 being a respondent unless he had already got filed a counter-affidavit, the legitimate thing that could be done was to seek time to file a counter affidavit as he was not satisfied with the averments in the draft counter-affidavit received at Rewari which was not according to his stand. The least that can be said is that having allowed the counter-affidavit filed on his behalf, he was watching the proceedings to know how the things were going on and whether they are on the lines which he

had charted out.

Admittedly, he deputed Ishwar Singh and 4 Constables to proceed to Delhi from Ambala to meet Ms. Indu and to give instructions to draft the counter-affidavits. The counter-affidavit filed by Randhir Singh is consistent with the one filed on behalf of Ahlawat dated October 30, 1993. It would thus be clear that Ms. Indu, obviously prepared the counter-affidavits on the basis of information furnished by Ishwar Singh which contain denial of taking the minors into custody and wrongfully confining them at Ambala etc. From these facts, we can unerringly draw the conclusion that as per his instructions which receive corroboration from the stand of Randhir Singh that the counter-affidavit dated October 30, 1993 was drafted with false averments that the minor boys were not taken into custody nor are they kept in illegal detention.

The question then is: whether Ahlawat had given any instruction to Ishwar Singh to direct Krishan Kumar to forge his signature on the carbon copy of the counter-affidavit and on refusal, whether he had directed Krishan Kumar to forge the same. It stands to reason that he had given such directions. Admittedly Ishwar Singh had taken the counter-affidavit of Ahlawat drafted by Ms. Indu and sent the original through Kartar Singh to Rewari for delivery to M.S. Ahlawat and Krishan Kumar forged the signature of Ahlawat on the carbon copy of the counter-affidavit in his presence. We have already held that Krishan Kumar had nothing to gain in forging the signature of M.S. Ahlawat. Unless Ishwar Singh had prior instructions in this behalf from Ahlawat, as responsible officer, he would have prevented Krishan Kumar to forge the signature of Ahlawat or immediately would have contacted and put Ahlawat on notice of it. That was not the case of either of Ishwar Singh or Ahlawat. It stands to reason to accept the version stated by Krishan Kumar and Randhir Singh that Ishwar Singh had asked Krishan Kumar to forge signature of Ahlawat on the carbon copy of the counter-affidavit for being filed in this Court on behalf of Ahlawat. When M.S. Ahlawat was duty-bound to file the counter-affidavit in this Court before November 1, 1993, in the absence of any request for extension of time, it would be obvious that he had decided to get the counter-affidavit, as instructed by him, drafted by Ishwar Singh and to have the same filed in the Court. He did not want to commit himself by signing the counter-affidavit to the false version, viz., that minor boys were not taken into illegal custody and were not in wrongful confine-

A ment. He had also used his office as a Superintendent of Police and directed his subordinate Krishan Kumar to forge his signature. When the record was admittedly in the custody of Ishwar Singh, obviously Ishwar Singh had asked Krishan Kumar to sign it. Otherwise, how it would be possible for Krishan Kumar to take it into his custody and to forge the signature of Ahlawat? It would, therefore, be likely that on the instructions by M.S. Ahlawat, Krishan Kumar had forged it. In the absence of any explanation for not seeking adjournment to file his counter-affidavit on November 1, 1993 and, as to when, for the first time, he had come to know of the forgery committed by Krishan Kumar, it stands to reason that Ishwar Singh must have informed him that Krishan Kumar had forged his signature and got his counter-affidavit filed in the Court and that he was satisfied that it would be sufficient to buttress the stand he had taken. When the things were not going on the lines charted out by him, due to the report of the D.G.P., after November 4, 1993, he obviously must have thought that he must come out from the red and make a statement before this Court by filing yet another counter-affidavit which was accordingly filed on November 5, 1995. He had stated in the second counter-affidavit that on November 2, 1993, he informed Shri Kalyan Rudra, D.G.P., that he did not sign the counter-affidavit. It is *ex facie* false since neither in the report filed by Shri Kalyan Rudra nor in the affidavit sworn by him and filed on November 5, 1995, we find such an averment having been made. It is an obvious falsehood. It would be clear that he abused his office as a Superintendent of Police, directed his subordinate Head Constable Krishan Kumar to forge his signature or at least abetted it and got the carbon copy of the counter affidavit filed with forged signatures in the Court while he retained the original draft with him. The reason is obvious that he did not want to commit himself to the false stand which he had taken in the earlier affidavit, since he knew that the minors were illegally detained and were in wrongful confinement. Therefore, he filed the second counter-affidavit on November 5, 1993 with false averments pretending of the forgery of his signature.

G The question then is : whether the averments made in the counter-affidavit dated November 5, 1993 are correct? In view of the above conclusion, the obvious answer would be that since he knew that the report submitted by Shri Kalyan Rudra, D.G.P. that the minor boys were wrongfully detained and were in wrongful confinement, the averments made in the counter-affidavit dated October 30, 1993 were obviously false to escape

strictures to be passed against him or to avoid prosecution for perjury. He came with the version in the counter-affidavit making Krishan Kumar a scape-goat. If he really had no knowledge of Krishan Kumar forging the signature and he had not directed to file the carbon copy of the counter-affidavit earlier, as found earlier, though he was available in the Court, one would expect that he would have sought further time on November 1, 1993 to file his counter-affidavit which was not done. Therefore, his counter-affidavit dated November 5, 1993, to the effect that the averments made in counter-affidavit dated October 30, 1993 were not in his knowledge, is also a false affidavit. Here one more circumstance that could be taken note of is that, as rightly remarked by CBI Officer, whether subordinate officer could be dare enough to fabricate the counter-affidavit to be filed by Ahlawat and forge signature of his superior officer, particularly, in judicial proceedings of this Court and for what gain? It is highly unbecoming on the part of responsible Superintendent of Police like Ahlawat to play hide and seek game in the judicial proceedings and make use of his subordinates to fabricate false affidavits and give instructions to forge his signature for use in the judicial proceedings. It is true that the affidavit dated October 30, 1993 was attested by a Notary on October 30, 1993 and the telephonic conversation with Ahlawat by Ishwar Singh made on October 31, 1993 was *ex facie* improbable. The CBI Officer has fairly commented upon the Notary Mr. Bhat of his abdication of duty to have the signatory identified to be the deponent and in allowing the people to sign without proper verification of the identity. When the counter-affidavit was prepared, admittedly, on October 30, 1993 and when the respondent Ahlawat was not in Delhi, it stands to reason that having sent draft through Kartar Singh to Ahlawat, who was camping at Rewari, Ishwar Singh was in-charge of this duty. Obviously he had a contact with Ahlawat to know as to what is to be done on the counter-affidavit. It would obviously be only on October 31, 1993, though exact time is not of material consequence, but the fact remains that it must have been signed only after Ahlawat perused the counter-affidavit he had ensured that it was drafted according to his instruction and thereafter he had obviously instructed Ishwar Singh to have his signature fabricated and forged by Krishan Kumar on the carbon copy and Ahlawat deliberately kept back the original counter-affidavit. Carbon copy after forged signature was admittedly filed in the Court on October 31, 1993 and Ahlawat was present in the lawn of this Court waiting for the result of the case. It would thus be clear that it was attested only on October 31, 1993 and the Notary had obliged them to give the date of his

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A attestation as October 30, 1993.

B The disciplinary action taken against Krishan Kumar and Randhir Singh by Ahlawat is only as a self serving step. The fact that he did not take any disciplinary action against Ishwar Singh, who was admittedly present at the time of forging the signature of M.S. Ahlawat itself is a positive proof that both Ahlawat and Ishwar Singh were in collaboration and used the subordinate to forge the signature of Ahlawat. It would thus be clear that Ahlawat made further false statement in his second affidavit.

C It is seen that the crucial evidence on record is the affidavit of Ms. Indu, the learned Standing Counsel for Haryana and her letters which bear great relevance. They are part of the record and they fully support the stand of Krishan Kumar as found by us earlier. She has no axe to grind against Ahlawat and in fairness Shri Lalit has nothing to comment upon the stand taken by Ms. Indu Malhotra and acted as a responsible and true professional practitioner. The fact that M.S. Ahlawat did not even mildly suggest, let alone violently protest to Ms. Indu Malhotra's filing a counter-affidavit on his behalf is a positive fact that he knew that his counter-affidavit was, as a fact, forged by Krishan Kumar. But he made a false averment in this affidavit which is called "fifth counter-affidavit" that he had objected and informed Ms. Indu Malhotra that he did object to her filing the counter-affidavit on November 2, 1993 and informed her that he had not sworn any counter-affidavit nor was he aware of the averments and the allegations made in the writ petition. These are obviously false averments which induced this Court and also the District Judge to believe that he was not responsible for the forgery of his signature and as to who had committed the forgery was not known to him. These statements are now proved to be false. Therefore, he intentionally gave false affidavit evidence from stage to stage in these judicial proceedings punishable under Section 193 IPC.

G The question then is: Whether he committed contempt in the proceedings of this Court? Section 2(b) defines "Contempt of Court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. It is seen that Ahlawat, respondent No. 3 to the main writ petition and in-charge of the criminal

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administration, with his connivance caused two minor boys' wrongful detention. He made an averment in the counter-affidavit dated October 30, 1993 that they were not in wrongful detention nor are they taken into custody which was later found to be false. He first used fabricated counter-affidavit, forged by Krishan Kumar in the proceedings to obtain a favourable order. But when he perceived adverse atmosphere to him, he fabricated further false evidence and sought to use an affidavit evidence to show that Krishan Kumar had forged his signature without his knowledge and filed the fabricated document. Thereby he further committed contempt of the judicial process. He has no regard for truth. From stage to stage, he committed contempt of the Court by making false statements. Being a responsible officer, he is required to make truthful statements before the Court, but he made obviously false statements. Thereby, he committed criminal contempt of judicial proceedings of this Court.

From the above discussion and conclusions the question is : what punishment is to be imposed on Randhir Singh (ASI), Ishwar Singh (SI) and M.S. Ahlawat (Superintendent of Police)? None of them made any candid admission nor tendered unqualified contrite apology. Police Officers, who are supposed to be the so-called disciplined force, have deliberately fabricated false records placed before this Court without any compunction. It is, therefore, of utmost importance to curb this tendency, particularly, when they have the temerity to fabricate the records with false affidavit and place the same before the highest Court of the land. Their depravity of the conduct is writ large. M.S. Ahlawat is unworthy to hold any office of responsibility. Therefore, Randhir Singh (ASI) and Ishwar Singh (SI) shall be punishable under Section 193 IPC and accordingly they are convicted and sentenced to undergo rigorous imprisonment for a term of 3 months and 6 months respectively. Ahlawat, the Superintendent of Police, is punishable under Section 193 IPC. He also committed contempt of the proceedings of this Court punishable under Article 129 of the Constitution. Accordingly, he is convicted and sentenced under Section 193 IPC to undergo rigorous imprisonment for a term of one year. He is convicted and sentenced to undergo rigorous imprisonment for a term of 6 months under Article 129 of the Constitution. Both the sentences are directed to run concurrently. Krishan Kumar, Head Constable is exonerated of the charge under Section 193 IPC with warning to show exemplary conduct hereafter. His bail bonds are discharged.

A The Director General of Police, Haryana is directed to take the convicts M.S. Ahlawat, Superintendent of Police, Ishwar Singh, Sub-Inspector and Randhir Singh, Assistant Sub-Inspector forthwith into custody and have them consigned to Central Jail, Chandigarh to undergo the sentences and submit a report of compliance to the Registry within one week from the date of the receipt of this order.

B We place on record our appreciation for prompt investigation conducted and the report submitted, within the time given, by the CBI Officers.

C Though this unfortunate episode has landed the police officers in conviction, we have no reason to believe that the real offenders in the original crime would be tried and dealt with according to law and these orders will not have any effect on the trial of those cases and must be dealt with according to law.

D The writ petitions stand closed.

R.P.

Matters disposed of.