

Siddaiah and anr. Vs. State of Andhra Pradesh and ors.

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Court : Andhra Pradesh

Decided On : Jan-30-1997

Reported in : 1997(2)ALT99; 1997CriLJ2599

Judge : Prabha Shankar Mishra, C.J. and ;D.H. Nasir, J.

Acts : [Constitution of India](#) - Articles 19, 19(1), 21 and 226; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 41

Appeal No. : Writ Petn. No. 24269 of 1996

Appellant : Siddaiah and anr.

Respondent : State of Andhra Pradesh and ors.

Advocate for Def. : Govt. Pleader for Home and ;Adv. General

Advocate for Pet/Ap. : K.G. Khannabhairan, Adv.

Judgement :

P.S. Mishra, C.J.

1. Two advocates on the rolls of the Andhra Pradesh State Bar Council have invoked this Court's jurisdiction under Article 226 of the [Constitution of India](#) for an appropriate writ, order or direction, including declaration that the action of the respondents herein in detaining the petitioners on 30-10-1996 at Itarsi in the State of Madhya Pradesh and for compensation for the injury and hardship caused to

them on account of the said illegal detention.

2. Facts which appear to us relevant for the issues involved in the instant proceeding are as follows :- Petitioners reached Itarsi at about 10 p.m. in the late evening on 29-10-1996 by A.P. Express from Secunderabad to attend a case on behalf of the Srikant Jalagam (Criminal Case No. 183 of 1995). On 30-10-1996, they attended the Court, on which date the Court by its judgment, in the said case, acquitted Srikant Jalagam of all the charges levelled against him. Petitioners, as desired by Srikant Jalagam, intended to see him in Bhopal Central Jail on 31-10-1996. Srikant was, however, taken to Railway Station in a bus. Petitioners travelled in the same bus and by their reaching Bhopal, checked in a lodge. The first petitioner, however, intended to pass on the message of acquittal to Hyderabad. When he and the second petitioner were accosted by as many as seven policemen in mufti carrying revolvers, they (policemen) wanted to forcibly lift the petitioners and questioned them about their identity. Petitioners informed them that they were advocates from Hyderabad City and had come to Itarsi and from Itarsi to Bhopal in connection with Srikant Jalagam's case. Policemen, however, prevented the petitioners from calling Hyderabad on phone, abused them in filthy language and forcibly took them in a Jeep car to Itarsi Police Headquarters. First petitioner has stated in the affidavit, which has been filed on behalf of the petitioners as follows :

'I asked the Police Officer who was leading the Group as to why they were being taken away and insisted upon the reason for the illegal detention and the police gave a simple reply that they wanted to know whether we were Advocates or not. Both of us have shown our identity cards but still they were reluctant to hear anymore from us. They have taken the Pocket Diary from my possession and also opened our briefcase and found our professional uniform and some letters written by the undertrial prisoners at Bhopal. The police personnel have noted down the Phone Numbers and took away the letters from the briefcase. In the Police Headquarters of Itarsi, we were not allowed to speak to each other and were detained separately. We were taken back to the Lodge at about 9 p.m. where a thorough raid was conducted by them and when they could not find anything they started putting us questions like whether we have any acquaintance with the

Supremo of P.W.G. Naxalites like Muppala Laxmana Rao alias Ganapathi. They asked us whether we know anybody from the P.W.G. Cadre in Warangal District and what is the ongoing situation there. We were further asked as to why we are assisting the Naxalites in the legal matters. Then they warned us not to entertain the cases of Naxalites in future and threatened further that our movements will be watched and we have to pay a heavy price for our service. They have suggested to us that they may end our life in an Encounter and picture it as a mistaken identity. They further said that how they ended Narra Prabhakar Reddy, Advocate and A.P.C.L.C. Convenor of Warangal District. They reminded us that we must think of our dependents and children and take proper care in future by keeping ourselves away from the extremists. They did not stop at that and added that the judiciary is a combination of rogues and fools who do not know the reality, as a result of which all the extremists are being set at liberty. They added that if the magisterial powers are conferred on them they would end the extremism and the burden on the State would be relieved by way of eliminating all the undertrials.'

Petitioners have further stated that they were subjected to the above for more than six hours ending only at the early hours of the following morning at about 2 a.m. Policemen told them that unless they receive proper orders from the Hyderabad City Police, they would not set them at liberty. Added further that if the instructions were otherwise; their (petitioners) fate would be different. Affidavit further states :

'We were in a state of panic throughout the night. We requested them to allow us to go over to Jabalpur to file a petition in the High Court, but our plea was turned down and we were forced to come back to Hyderabad. The only reason for our securing the release was that we could identify some of the personnel as we have some acquaintance with them since we saw them number of times in the Criminal Courts Complex, Hyderabad. Though we were scheduled to Jabalpur to file a Habeas Corpus Petition seeking the liberty of Sushant Kumar Saha, the Executive Member of All India League for Revolutionary Culture, a literary and cultural organisation and his brother and a reporter of Andhra Bhoomi of Bilai, Mr. Babu Rao and we could not do so on account of the inhuman treatment meted out by the Police Personnel on us.'

The cause, however, of making the petition before this Court, is stated in the affidavit in the following words :

'The Staff of the anti-Naxalite Squad having its headquarters at Hyderabad assisted by the Special Intelligence Bureau (S.I.B.) under the control of the respondent No. 2 herein are said to have participated in the incident. The moment register of the aforesaid wings of the respondents organisation, the Station Diary and General Diary maintained by them between 28-10-1996 to 31-10-1996 would reveal the identity of the actual number of police that participated in the incident. The number of calls the Headquarters Office at Hyderabad had received from Itarsi between 29-10-1996 to 30-10-1996 would reveal the fact relating to the incident. That the fact will come to light if the duty chart in the offices of the respondents herein are summoned the truth will be unearthed. In this context, the Organising Secretary of National Peoples Union for Civil Liberties (PUCL) of Madhya Pradesh has sent a Telefax Message to the Chief Minister of Madhya Pradesh and the Hon'ble Chief Justice of Madhya Pradesh at Jabalpur narrating the circumstances under which the Advocates from Hyderabad who are the petitioners herein could not appear before the High Court of Madhya Pradesh, Jabalpur Branch, at Jabalpur on 31-10-1996.'

3. Counter and additional counter-affidavit have been filed on behalf of the respondents in which it is stated that there is no officer designated as Officer-in-Charge, Anti-Naxalite Squad, Police Headquarters, Lakiddi-ka-pool, Hyderabad and that the deponent Sri S. R. Tiwari monitors, coordinates and integrates the Anti-Naxalite Operation in the State with the Superintendents of Police of Districts of Andhra Pradesh, that no Police Officer under his control proceeded to Itarsi or dealt with the petitioners as alleged. The affidavit further states as follows :

'..... it is true that the Special Cells under Special Intelligence Branch are functioning at Hyderabad. This Branch is mostly connected with collection of Intelligence and monitoring extremists activities and dissemination of information to the concerned authorities. No Officer of this branch has participated in the above incident nor any movement register or station diaries are being maintained in this office except the T.A. Bills. No records are also maintained regarding the number

of telephone calls received at the Head Quarters, Hyderabad from various places in the State or more particularly from outside the State except that any information received regarding Naxalite activities is noted by duty officer in the register if told to him. To the best of my knowledge no information was conveyed to me or to my office from Itarsi on 29-10-96 to 30-10-96. No duty charts mentioning the day to day duties of the officer and men are being maintained in this Office. No message is recorded as received from Itarsi by the duty officers on 29-10-86 and 30-10-96. The Railway Warrants and Bus warrants have been checked and no officer from Special Intelligence Branch has utilised them for performing journey to Itarsi the petitioners right from their student career and are also continuing to have leanings towards CPI (ML) and PWG after their enrollment as Advocates. The Officers of the Special Intelligence Branch of Hyderabad know them as Advocates representing the extremists in cases in Courts and therefore there is no need for them to verify the antecedents of the petitioners.

In view of the fact that this branch is monitoring extremists activities such false and baseless allegations are made against this branch to malign and to deter us from discharging our duties.'

4. In the additional counter-affidavit, the Deputy Inspector General of Police, who monitors, co-ordinates and integrates the Anti-Naxalite Operation in the State, has stated as follows :

'..... according to the Andhra Pradesh Police Standing Order No. 764, General Diary will be maintained in every police station and out posts in Form-93 wherein the departure for, or return from enquiry of the investigating officer must be entered. Therefore only in regular police stations the General Diary and Duty Roster (contemplated under police standing order No. 776 for Rural and Town Police Stations separately) are maintained. Such registers are not contemplated to be maintained in Intelligence and other offices. The duties to the police officers are also not assigned every day in writing in these offices as done in regular police stations. Thus as a matter of procedure and practice the General Diary and Duty Roster is not maintained in Intelligence Branch. The duty of collection of Intelligence is assigned to the officers in respect of areas and subjects allotted to

them and they are periodically tasked by the superior officers both in writing and some times orally. After the completion of the task reports are submitted by the concerned to their superior officers. Moreover in view of the nature of work assigned, it is essential that the movements of the police officers who are deputed for collection of intelligence should not be known by all and made public before they perform the said duty. However, after the performance of duty, travelling record is maintained in T.A. bills of officers and men which are duly processed and submitted to higher officers besides other Government department such as Government Treasury etc., for drawing T.A. no officer of S.I.B. has obtained permission to proceed to Itarsi nor any instructions were given by superior officers to any of subordinate officers to go to Itarsi on 29-10-96 or 30-10-96.'

5. A reply affidavit has been filed on behalf of the petitioners, in which it is stated that the petitioners could identify some of the police personnel, who detained them at Itarsi, as they had some acquaintance at the City Criminal Courts at Nampally, Hyderabad and added.

'..... the Police are on the rampage and resorting to brutal killing of innocent people by virtue of the unlimited powers accrued to them after the issuance of the ban orders on the Peoples War Group. The contends in the counter do not reveal any credible information and more so it exhibits the irresponsible style of functioning of the respondents as may be seen from the stereo type denial.

..... The Police in mufti rushed in a numberless jeep to the lodge, where these rang up to these respondents more than twice from the STD Booth located in the premises of the lodge. The computer chart of the telephones Department would reveal the exact number of calls made from Itarsi to Hyderabad on 30-10-1996 between 9 p.m. to 11.30 p.m. The calls were made in the very presence of the petitioners. Further these petitioners were taken to the Divisional Police Headquarters at Itarsi at about 6.30 p.m. on 30-10-1996 and as such the identity and the movements of the respondents should have been maintained by the Divisional Police Headquarters at Itarsi. There should have been prior intimation to the Police, Itarsi as the respondent police came from a different state and more so moving in mufti in a numberless jeep and as such these respondents suppressed

the truth and made a deliberate and wilful attempt to play fraud on the Court.

..... the respondents on a number of occasions interfered in the lawful Court duties of some senior advocates like Mr. K. G. Kannabiran which may be visualised from the fact that his office was ransacked by the police in mufti who went on rampage with intent to cause panic among the champions of the civil liberties movement. In the case of Madhusudhan Raj Yadav, the respondents played the usual role as they play in the case of these petitioners. The illegal detention of an Advocate and the subsequent threats thrown to the Bar Association of Jadcherla is another glaring example to show how the police in Andhra Pradesh misuse their lawful authority.

..... the motive of the respondents is established when they themselves came out with a statement that the petitioners were found leaning towards CPI (ML) and PWG after their enrolment as Advocates. It is also stated that the respondents are aware that these Advocates have been representing the extremists in cases in Courts which itself shows that the respondents kept a close watch on the petitioners. As the respondents cannot administer their modus operandi in the State of A.P., they chose to handle them outside the State. The very statement of the respondents that they do not maintain General Diary, movement register etc., itself shows that they lack integrity as the maintenance of these records is a statutory duty and the respondents cannot seek lame excuse for this. The petitioners, on the other hand, who are Court Officers, have a lawful obligation to their clients irrespective of the fact whether the parties are extremists or terrorists. The petitioners being conscious citizens have another obligation to react whenever the fundamental right to freedom of movement of a fellow citizen is under threat.

..... the entire matter needs a thorough probe to bring the truth to light. The action of the respondents in as much as the lawful Court duties of the petitioners is concerned amounts to direct interference in the administration of Justice and as such a lenient view may not be taken. It is necessary that the entire records relating to the matter in question is called for and ends of justice would be met if the matter is entrusted to an independent agency more particularly the C.B.I.'

6. It is seen from the facts above that petitioners allegations that policemen from the State of Andhra Pradesh interfered with their liberty as well as their right to represent a client, even though accused of a heinous crime, are denied by the respondents and it is asserted on their behalf that nothing as alleged by the petitioners has been done by police belonging to the Special Intelligence Branch of the State of Andhra Pradesh. No verification, however, of the allegations of the petitioners is possible because respondents have stated that no records are maintained including any movement register or station diaries, except T.A. bills in the Branch under the control of the deponent - Deputy Inspector General of Police. It is thus not possible to verify the truth or otherwise of the statement in the counter-affidavit that no Officer of the Intelligence Branch or any other person on behalf of the Intelligence Branch of the Andhra Pradesh Police went to Itarsi or was or were instrumental in detaining or threatening the petitioners as alleged by them.

7. The Police establishment of the State of Andhra Pradesh is governed by the Andhra Pradesh (Andhra Area) District Police Act, 1859, Andhra Pradesh (Telangana Area) District Police Act, 1329 Fasli and the Hyderabad City Police Act, 1348 Fasli. Although provisions under the three Acts are divided in different sections, they have similar provisions with respect to the administrative hierarchy of the police, except the Hyderabad Police Act, which is also extended in its application to some other Metropolitan Cities of the State, where a Police Commissioner is designated as the head of the force. The administration of the police throughout the General Police District, covered by the District Police Acts, is vested in as Officer to be styled 'the Director General of Police' and in the City of Hyderabad and other Cities, to which the City Police Act applies, in the Officer styled 'the Commissioner of Police'. Subject to the superintendence of the State Government, the Director General was vested with the power to control the police force and subject to the approval of the State Government, empowered to frame such orders and regulations as he deems expedient, relative to the general Government and distribution of the force, the places or residence, the classification, rank and particular service of the members thereof. The District Police Act also declared that the entire police establishment shall, for the purposes of the Act, be deemed to be one police force and shall be formally enrolled, and

shall consist of such number of officers and men, and shall be otherwise constituted in such manner, as shall be, from time to time, ordered by the State Government. The hierarchy, it is not in dispute, if the police goes down from the post of Director General to that of a constable through and in that order, Additional Director General, Inspector General/Additional Inspector General, Deputy Inspector General, District Superintendent of Police, Additional/Assistant/Deputy Superintendent of Police, Inspector of Police, Deputy Inspector of Police and the Assistant Inspector of Police. The City police force has the hierarchy - the Police Commissioner, Deputy and Assistant Commissioners. Inspectors, Sub-Inspectors and Constables. These Acts envisage division of the police force for different police duties and their functioning, strictly in accordance with the rules, regulations and police orders issued from time to time in this behalf. These Acts have also recognised that all powers, not inconsistent with the provisions of these Acts, which, up to the passing of the Acts belonged by law to the existing police authorities appointed under the Act, would continue to be available and that every person, appointed as an Officer of the subordinate police shall receive on his enrolment a certificate under the seal of the Inspector General, by virtue of which shall be vested with the powers, functions and privileges of police Officers and that every Police Officer shall, as contained in the Act, be considered to be always on duty and shall have the powers of Police Officer in every part of General Police District and it shall be his duty to use his best endeavours, ability to prevent all crimes, offences and public nuisance; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him. These Police Acts originally contain a list of offences for which Police Officers could arrest without warrant, procedure of arrest, rules regarding bail and the cognizance, remands, power to enter drinking shops, etc., inspection of weights and measures, prohibition to receive complaints of petty offences, powers to inform and prosecute, provisions regarding execution of warrants and service of summons etc., which have since been repealed as it is not far to seek matters in respect of which police is empowered to act are taken care of by either special legislations, such as, inspection of weights and measures etc., and the Code of Criminal

Procedure of 1973 has covered all aspects of arrest by the Police Officers with or without warrant etc.

8. Chapter IV of the Code of Criminal Procedure, 1973 deals with powers of superior Officers of Police and aid to the Magistrates and the police, Chapter V deals with arrest of persons, search of places entered by persons sought to be arrested, pursuit of offenders into other jurisdiction, search of arrested persons, seizure of offensive weapons etc., Chapter X deals with the provisions in respect of unlawful assembly, public nuisance and the role of the police in these matters, Chapter XI deals with the preventive action of the Police and Chapter XII deals with the subject of information to the police and their powers to investigate cases. It is significant also to notice that a vital role is assigned by the Code of Criminal Procedure to the Officer in charge of a Police Station, which expression has been defined in Section 2(o) of the Act to include, when the Officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house, who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present and 'police station' is defined in Section 2(s) of the Act to mean any post or place declared generally or specifically by the State Government, to be a police station and to include any local area specified by the State Government in this behalf. A Police Officer superior in rank to an Officer in charge of a police station is recognised to have to powers of the Officer in charge of the police station through the local area to which they are appointed, as may be exercised by such Officer within the limits of his station (see Section 36 of the Code of criminal Procedure). By specific provisions in this behalf, the Code made the Police responsible to the Courts of Judicial Magistrates to report, of any arrest of any person, of registration of any case at the Police Station, about the progress of investigation, of the case search, seizure etc., and to take such orders as the Magistrate may deem fit and proper for all such purposes. It is difficult to visualise any act of the police under the Code or under any other law, which is not made subject to the scrutiny of the Court. All police actions, the Code leaves no ambiguity, are controlled by the Courts and the Courts commands in this behalf are final for the police. The above indeed is provided for the main role assigned to the police and the purpose for which the

police force is created is for prevention of crime, investigation of crime and maintenance of law and order, besides such roles which are referable to the police, providing security to various constitutional and statutory functionaries, the property of the State/States and all the people irrespective of their status and position. Establishment of the Indian democracy under the [Constitution of India](#) is a union of welfare States marked the end of any such existence of a police State in India and if there is anything of the past is still lingering, it is against the letter and spirit of the rights which are preserved, for the citizens and any person residing in India, in Part III of the [Constitution of India](#). Not only the police but all functionaries and authorities, including Officers and Executives, are made answerable to laws and to function within the bounds of laws and there can be no area of the duty of any Executive or Officer, whether belonging, to the police force of the State or to any other establishment of the State, which is without the bounds of law. Since law alone is the power, all constitutional and statutory functionaries have to function within such limitations which are prescribed for their functions by the laws made by the competent Legislature and no power is assigned or given to any person unless he or she has a duty to perform. Co-relating thus the duty assigned to a Police Officer for which power is given to him or her, when we look to the scheme of the law as above, we see no place for a Police Officer to interfere with the body of any person living in India, except in accordance with the prescribed procedure of law and if what is alleged by the petitioners is true, there is no other possible view, but to hold that the police have violated the right of the petitioners under Article 21 of the [Constitution of India](#). There could be no restriction upon the movement of the petitioners unless such movement is shown to have been prohibited by a law or an order made in exercise of the power by the competent authority, who is conferred with the power to issue such order to prevent the movement of the petitioners. The right under Article 19(d) of the [Constitution of India](#) to move freely through the territory of India is subject only to any law imposing reasonable restrictions on the exercise of the said power, either in the interest of the general public or for the protection of the interest of any Schedule Tribe. No such law has been pleaded or shown to us under which the petitioners' movement could be restricted. Police no doubt or in that matter any person could arrest without warrant issued by a competent Court provided

conditions under section 41 of the Code of Criminal Procedure, 1973 are existing. Respondents, however, have stated that the petitioners right from their student career and are also continuing to have leaning to CPI (ML) and PWG after their enrolment as advocates and that the Officers of the Special Intelligence Branch know them as Advocates, representing the extremists cases in Courts. 'Leaning towards' alone cannot bring one within the ambit of Section 41 of the Code of Criminal Procedure. Since Article 19(b) of the [Constitution of India](#) recognises as one of the rights to freedom, the rights to form associations, or unions, no association or union of individuals, muchless, leaning towards in such association or union, can ever be imagined to attract any part of Section 41 of the Code of Criminal Procedure. If there is a law, however, imposing in the interest of the sovereignty and integrity of India or public order reasonable restrictions on the exercise of the said right, the position may be different. The Court, however, is informed that under the Andhra Pradesh Public Security Act, 1992 CPI (ML) Peoples War Group was for some time declared as unlawful association and has once again been declared as unlawful association for a period of one year from June, 1996.

9. We have seen from the provisions of the [Constitution of India](#), the Police Acts and the Code of Criminal Procedure, 1973 that a Police Officer has to act within the limits prescribed for his or her actions by the law. When we test the veracity of the statements in the counter-affidavit filed on behalf of the respondents, we find ourselves substantially alarmed by the statements that the Special Cell under Special Intelligence Branch of the police, are functioning at Hyderabad and are connected with the collection of intelligence and monitoring extremists activities and dissemination of information to the concerned authorities and, 'no officer of this branch' and, '... nor any movement register or station diaries are being maintained in this office except the T.A. Bills. No records are also maintained regarding the number of telephone calls received at the Head Quarters, Hyderabad from various places in the State or more particularly from outside the State except that any information received regarding Naxalite activities is noted by duty officer in the register if told to him 'and,' according to the Andhra Pradesh Police Standing Order No. 764, General Diary will be maintained in every police station and out posts in Form 93 wherein the departure for, or return from enquiry

of the investigating officer must be entered. Therefore, only in regular police stations the General Diary and Duty Roster (contemplated under police standing order No. 776 for Rural and Town Police Stations separately) are maintained. Such registers are not contemplated to be maintained in Intelligence and other offices. The duties to the police officers are also not assigned every day in writing in these offices as done in regular police stations. Thus, as a matter of procedure and practice the General Diary and Duty Roster is not maintained in Intelligence Branch. The duty of collection of Intelligence is assigned to the officers in respect of areas and subjects allotted to them and they are periodically tasked by the superior officers, both in writing and some times orally'. Standing Order 1026 has contemplated that the Criminal investigation Department is under the direct control of the Deputy Inspector General with the following branches : (a) Crime Branch, (b) Special Branch, (c) Finger Print Bureau, and (d) Scientific Section. It provides that the Crime and Special Branches would be under the control of Superintendent of Police each, who is assisted by one or more Deputy or Assistant Superintendents of Police, Inspectors, Sub-Inspectors, Head Constables and Constables. The Crime Branch is sub-divided into three by Standing Order 1027 - (1) the Crime Investigation Staff, (2) the Criminal Intelligence Section, and (3) the Police Research Centre. Standing Order 1031 has specified the crimes which shall ordinarily be investigated by the Criminal Investigation Department, which include (a) Note forgery cases, (d) Theft of Government arms and ammunition and illicit trade in arms, (e) Important case in which foreigners are concerned (including cases of international criminals and traffic in women by foreigners), and (o) Pornography. These items of Standing Order 1031 are to be reported by the Criminal Investigation Department of the State to the Intelligence Bureau of the Centre. Standing Order 1036 says case diaries of Officers of the Crime Branch are subject to same rules as those of the district police. All other records of the branch are confidential. The Officers of the Criminal Investigation Department have the same right of inspecting records as the district police, and Standing Order 1037 speaks of Criminal Intelligence Section in these words, 'as regards crime intelligence, information will be collected and disseminated with regard to the following matters : (1) Serious crime; (2) property stolen, lost or detained as suspicious; (3) persons wanted by the police or persons arrested by the police,

who are suspected of being professional inter-district criminals; (4) foreigners, suspicious characters and strangers; and (5) criminal gangs. One of the class of crime assigned for investigation to the Criminal Investigation Department is stated in Standing Order 1031 in these words - 'Any serious crime which appears to have a political motive, including all offences connected with arms and explosives which are suspected to be of a political nature.' The only Government orders to which our attention has been drawn in the course of the hearing, which refers to Special Branch are Standing Orders 1949 and 1050, which read as follows :

'S.O. 1049. Special Branch :- Special Branch work is of a strictly secret nature. All special branch intelligence must be handled with the strict secrecy.

S.O. 1050. The details of the working of the Special Branch will be found in the 'Special Branch Manual', which deals with the organisation of the Branch at both the State and district levels as also its connections with the Special Branches of other States and Intelligence Bureau, New Delhi.'

10. Learned Advocate General has handed over to us for perusal a copy of the Special Branch Manual. We appreciate that the State Special Branch of C.I.D., which is established for the purpose of collecting, recording and distributing of sensitive information, must function in strict secrecy and all precautions must be taken to ensure that such activities, which need a careful watch, are taken care of by advance informations and intelligence to help in avoiding any threat to the security of a State, public order, public peace and tranquility and even some times threat to law and order. Incognito movements, however, of Police Officers are not that of a vagabond or some one who has no responsibility or accountability. There can hardly be any such freedom recognised for any State Official or functionary except on his or her private visits, which is not cast with responsibility and for each and every action, such a person shall account by keeping records even if such records are required to be kept secret and not made available to all and sundry. What is important in this scheme of things, as we have seen, is the fact that the Special Branch is a wing of the Criminal Investigation Department and Criminal Investigation Department for all police actions is a police station. It has the power to register a case, to investigate the case and Officers attached to Criminal

Investigation Department are arranged in the manner of hierarchy in regular police department and/or police station. We feel strongly, however, that the manual of instructions expands the role of the Special Branch of the C.I.D. much beyond the role police can be assigned and they appear to authorise without any cover of law surveillance of the teacher and students, youth and volunteers of any social and religious organisations as well as political parties. We do not find any support for anybody's eyes piercing through the privacy and dignity of the individuals as well as that of the associations of individuals, whether they are students, teachers, youth or religious groups and denominations and whether they are social and political organisations, unless there are reasons to think that activities of any of them are prejudicial to the interests of the State is as much as they constitute threat to the security of a State, public-order, peace and tranquility and create apprehensions and/or endangers any one of them and sometimes in case of grave and apprehended crimes pertaining to law and order. Stated, of course, in the context of the matter before the Supreme Court in the case of *D. K. Basu v. State of West Bengal*, : 1997 CriLJ743 the Supreme Court has said,

'We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among other the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug gangs, have taken strong roots in the society, it is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights. It would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scotfree without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself.'

11. After observing as above, the Supreme Court also stated,

'The latin maxim *salus populi est suprema lex* (the safety of the people is the supreme law) and *salus reipublicae est suprema lex* (safety of the State is the supreme law) co-exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be 'right, just and fair'.

12. The Supreme Court thus proceeded to record as the prime concern of the Court,

'Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of Law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorism has violated human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.'

13. We are thus not strained when we express that there can be no purpose of a Special Branch of the Criminal Investigation Department of the Police, which would serve the case of men in power by providing to them informations about the activities of their political opponents or by providing to some, who are close to power, informations about students, teachers or other organisations and their activities which are not unlawful. If, however, there are any unlawful activities of such organisations and deployment of a Special Branch Officer or Officers is felt necessary, there can be no objection as no one's individual right under Article 21 or freedom under Article 19 of the [Constitution of India](#) would extend to protection against unlawful activities. Records, however, of persons who are deployed on such work will be a security against any excesses by such person or persons as well as a check upon their activities in case they are found to have exceeded the powers of a police officer. We are not further elaborating the above except to refer

to the instructions on surveillance in respect of which there are assertions in counter-affidavit that records, as in regular police stations, are not required to be maintained. Learned Advocate General has placed reliance upon Instruction - 95, which is on investigation of cases and which says,

'Special Branch Officers should not ordinarily conduct the investigation of cases. Where necessary, the Deputy Inspector-General of Police, C.I.D., may depute one or more officers of the State Special Branch to assist the Crime Branch or the District Police as the case may be, in the investigation of crimes having a political motive or in which political suspects are involved, including offences connected with arms and explosives, suspected to be of a political nature. In such cases the Special Branch Officers will work in close co-operation with the investigating officer. As far as possible Special Branch Officers should not be cited as witnesses but where it is unavoidable they should not reveal the confidential nature of their duties.'

14. He has also referred to the instructions P.R. Nos. 88, 89 and 90, which read as follows :

'88. When a political suspect whose movements require to be surveilled leaves a district for another district in this State, intimation will be sent by radio, telegram or telephone direct by the Superintendent of the district from which the suspect leaves, to the Superintendent of the district to which the suspect is proceeding and through which he has to pass. The best means of surveillance in these cases would be for the shadowing officer to shadow the suspect to his destination and there hand over duties to local Special Branch.

Political suspects of other States who have to be kept under surveillance in this State should be shadowed in the manner provided above for political suspects of this State.

89. When any person is treated as a suspect and sent under surveillance in accordance with the provisions of paragraphs 73 and 78 the Superintendent from whose jurisdiction such suspect starts, should by the quickest possible means inform the officer in whose jurisdiction the suspect's presumed destination lies,

giving him full particulars of the suspect, and the special reasons for his having been placed under surveillance. Duplicate copies of such reports should be sent to the State Special Branch. The telegrams and radio messages sent in such case including messages for relief should be suitably worded without compromising secrecy.

90. In connection with the surveillance of starred suspects, within the State, identification slips in the prescribed form will be used. The forms will be in duplicate, one copy being retained in the District Special Branch of issue and the other will be taken by the shadowing officer to be handed over to the officer who relieves him. The slip will be eventually filed by the Special Branch of the district to which the suspect goes. The Suspect's number on the Starred List should alone be given but not his name. In the case of persons other than those on the suspects list travelling under surveillance according to the provisions in paragraphs 73 and 78 their names and addresses should be noted.'

15. It will be difficult to see in any one of the above anything objectionable and at the same time supporting the contention that for the above, no records are required to be maintained. Instruction P.R. 80 reads as follows :

'80. A duty roster will be maintained for the personnel on surveillance duty by the officer in charge of them. A watch report will be prepared by every watcher containing the information gathered by him during the period of his duty. From these reports the officer in charge will prepare his reports, and submit them to the State Special Branch for scrutiny. Those containing useful information will be retained for noting the particulars in the dossiers, history sheets or personal files of suspects while others will be destroyed.'

16. While case diaries are required to be maintained and provisions for it are referable not only to the standing orders issued in this behalf, including in respect of investigations conducted by the C.I.D. in Standing Order 1036, it is clear from the above that any Officer or person, who is deputed for surveillance or other intelligence works, is required to be shown in the duty roster, which, in our view, is not different from a duty roster as contemplated in police standing order No. 776, which reads as follows :

'S.O. 776 Duty Roster :- As prescribed in Order 807(5), a duty roster in Form 110 shall be maintained in all rural stations and as prescribed in Order 821(4), a duty roster in Form 113 in town stations. They shall be filled up as soon as the men are detailed for duty, which will ordinarily be at 5 p.m. in the evening for the coming period of 24 hours.

(2) Men should start on all duties from the station itself and not from their houses. Similarly, they must on return from duty report at the station before going home.'

17. One may find some anomaly as to whether a duty roster in Form 110 as prescribed in Order 807(5) shall be maintained or a duty roster in Form 113 as contemplated in Order 821(4) shall be maintained for the personnel on surveillance duty. The Officer-in-charge, in any case, however, is required to maintain a duty roster and conditions whether in respect of roster in Form 110 or roster in Form 113 are similar, they are required to be filled up as soon as the men are detailed for duty and all duties must start from the station itself and not from the house of the personnel. We are constrained to observe a senior Police Officer has made a careless statement without even caring for the orders in this behalf and it seems he has only casually seen the Manual of Instructions without going through the contents thereof. No casual statements should ever be made in a Court of law, more so when such statement is likely to be considered for interpretation and application of laws. An Officer who is incharge of such important establishment must have complete perception and total acquaintance with every aspect of the work that is under his charge. All personnel in the police establishment of the State and more so, who are assigned the delicate work of being Special Agents of the C.I.D. being in the Special Branch for surveillance and other intelligence work, are expected to know that they have to work for the assigned duty and exercise only such powers which are available to them under the law.

We do not propose, in the instant case, to proceed with the investigation of facts for finding out the truth or otherwise of the averments in the counter-affidavits not because we are persuaded to hold that petitioners have not been able to make out a case. We are doing so in the best interest of the administration and hoping that

the respondents shall respect the freedom of the people as enshrined under Article 19 of the [Constitution of India](#) and their life and liberty as guaranteed under Article 21 thereof, more particularly, when all the advocates who, amongst a chosen few, are specially trained for assisting the Courts on being so chosen by their respective clients and to act as Officers of the Court. Courts in India have taken the view that stopping a lawyer from appearing in a Court is an interference in the administration of justice and constitutes contempt of Court. In the case of the petitioners, of course, if their statements are accepted as true, respondents, but for their denial, can be held to have interfered in the administration of justice. In view of the above, we conclude as follows :

(1) No one can be suspected to be involved in activities of a banned organisation or any other kind of unlawful activity merely because he or she was associated as a counsel with persons who are stated to be members of a banned organisation.

(2) No one can also be suspected to be involved in any criminal or unlawful activity which is attributed to a banned organisation merely because he or she is leaning towards such banned organisation. Any person who has been a member of such a banned organisation cannot, because he has been a member in the past, be branded as one who has been indulging in unlawful activities which are prohibited by the ban put upon the organisation.

(3) The Special Cell or Special Intelligence Branch or Special Branch of C.B.C.I.D. is only a wing or a limb attached to the police station called 'C.B.C.I.D.' and if no other obligations, as provisions of the various Acts, Rules and Standing orders imposes upon personnel attached to the police stations are applicable to the personnel attached to the Special Branch, maintenance of duty roster and accordingly entry of movements of all such personnel in the said roster is obligatory and in all cases movements of all such Officers have to be maintained for verification, if necessary, and/or for any other action in accordance with law.

(4) It is necessary also that the Government of the State takes care and revised instructions are issued for the said Special Branch of C.I.D. to avoid the status of supercops who are free to pry in darkness without the knowledge of the person who is watched to confine their activities to keep surveillance and other

intelligence limited to persons and matters, who and which are connected with or related to activities which endanger or are likely to endanger security of the State, public order, peace and tranquillity and in grave cases when law and order is endangered but as an exception.

Since the petitioners' allegations of interference by the respondents or any person on their behalf have been disputed and we have not embarked upon any enquiry into the controversy or otherwise of the allegations or denials, no opinion need be expressed on the violation of the rights of the petitioners. It is, however, made clear that any activity of personnel belonging to the Special branch of C.B.C.I.D. of the nature of the complaint of the petitioners shall be violative of Articles 19(1)(c) and (d) and 21 of the [Constitution of India](#).

18. The petition is accordingly disposed of in terms of the law as declared by us today and with a direction that respondents and/or any person acting on their behalf shall refrain from indulging in any activities as above which are violative of the rights under Articles 19(1)(c) and (d) and 21 of the [Constitution of India](#). No costs.

19. Order accordingly.