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MONICA KUMAR & ANR.

v.

STATE OF U.P. & ORS.

(Writ Petition (Crl.) No. 27 of 2012)

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AUGUST 08, 2017

**[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]**

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*Police Reforms – Misconduct by Police officials – Rights of citizens – Writ Petition u/Art.32 of the Constitution – According to Petitioners, they had some issues with the Chairman of a medical college and that Police acting under his influence had harassed them – Pursuant thereto, Court issued notice in the writ petition and ordered dasti service to the unserved respondents – Following the direction, the petitioners went to serve notice upon the SHO, but were assaulted by the police officials – Petitioners filed complaint to the Senior Superintendent of Police, who refused to accept the same – Against this, Petitioners filed an application in the pending writ petition – Writ petition was dismissed with direction to approach High Court u/Art.226 – High Court dismissed it with liberty to the petitioners to file application u/s.156(3) – Order of High Court was challenged by Petitioners by filing SLP – Supreme Court directed inquiry in the matter – Conduct of the police officials was found to be blemished – Supreme Court directed initiation of disciplinary proceedings against the concerned police officials – Immediately thereafter, Police officials went to the place of the petitioners, to put pressure on them to withdraw their cases; and one policeman again assaulted the petitioners and filed FIR against them u/ss. 324,332/353/504 IPC – Held: Police needs to be sensitized about the rights of citizens and the civilised manner in which police is required to maintain law and order – Training of police is required so that use of force on citizens is reduced and Police officials become more sensitive towards them and fulfill their role as protector of citizens – There is also a need to deal with erring police officials by taking stern measures whose actions amount to ‘misconduct’ or may be ‘criminal’ in nature – Letting off the erring officials by only administering a warning may not be appropriate as done in instant case – Besides the conduct of police*

*officials, version of the petitioners was also found to be exaggerated, regarding the incident when police had visited and assaulted them, therefore, suspension of police officials not directed – However, after assessing the situation, the FIR filed against the petitioners quashed and direction issued to provide adequate protection to them.*

### **Disposing of the petition, the Court**

**HELD: 1. Police needs to be sensitised about the rights of citizens and the civilised manner in which police is required to maintain law and order in this country. From time to time, various suggestions have been given by National Crime Records Bureau, National Police Commission as well as certain NGOs like Human Rights Watch, Amnesty International, Commonwealth Human Rights Initiative, etc. to bring in reforms in terms of amendments in Indian Police Act, appointing commissions to deal with cases of police brutalities, etc. Not that efforts are lacking in bringing police reform. But the humane face of the police is still to be seen. Police officials falling in this category are far and few. It is high time that training of police in this direction is given a concrete shape so that it brings about positive results, and the usage of force on citizens is reduced and police officials become more sensitive towards them and fulfill their role as the protector of citizens. The Indira Gandhi National Open University (IGNOU) has signed a memorandum of understanding (MoU) with the National Human Rights Commission (NHRC) to develop a new online advance programme on human rights for the police personnel. It is also intended to update the contents of the basic trainers' programme for police personnel. It is hoped that IGNOU with NHRC would be able to develop requisite programme of high quality which would be able to sensitise the police personnel. Further, the training under this programme shall be administered to the stake holders in great measures. In this context, there is also a need to deal with erring police officials by taking stern measures whose actions amount to 'misconduct' or may even be 'criminal' in nature. Letting these erring officials lightly, as has been done in the instant case, by only administering a warning may not be appropriate. [Para 24] [568-E-G; 569-A-C]**

A           2. When this Court ordered departmental inquiry against  
the erring officials, the Disciplinary Authority dealt with the matter  
in a lukewarm fashion by sparing those officials with a warning  
only. It seems that too was done just to complete the formalities  
as there was a direction by this Court for taking an action against  
B           them but for that, no action would have been taken by the  
Disciplinary Authority. Thus, atrocity committed by the police  
on the hapless citizens is brushed aside lightly. In contrast,  
incident of spraying pepper by a lady, faced with the situation  
when police officers had come to their premises and were  
threatening them to withdraw the cases coupled with slap given  
C           to her as well as her brother, is taken so seriously that not only  
FIR is lodged but chargesheet is also filed within ten days.  
Likewise, insofar as act of writing apology is concerned, maybe it  
was not extracted by putting any pressure. However, the very  
fact that the petitioners were taken to the police station and were  
D           in an atmosphere of fear that surrounded there, when this letter  
was written is sufficient to hold that it was not a voluntary act of  
the petitioners. No credence can be given to such a letter. Both  
the petitioners are Doctors by profession. The entire attempt is  
to put a pressure of another kind, once the police have found  
that their threats to the petitioners to withdraw the cases have  
E           not proved successful. [Para 19] [567-C-F]

3. (i) In the aforesaid circumstances, the prayer of the  
petitioners in this writ petition is accepted so far as it relates to  
quashing the proceedings arising out of FIR dated December  
20, 2011 and the chargesheet dated January 2, 2012 filed pursuant  
F           thereto. It is ordered accordingly.

(ii) Since, version of the petitioners in respect of incident  
of December 20, 2011, when the police officials had gone to the  
place of the petitioners to put pressure on the petitioners to  
withdraw their cases, is found to be exaggerated, it is not proper  
G           to direct respondent No. 1 to suspend respondent Nos. 2 and 3.

(iii) Also, respondent No. 1 is directed to provide an  
adequate protection to the petitioners after assessing the situation  
and to ensure that petitioners are not harassed or threatened by  
the police officials in any manner. [Paras 20-22] [567-G-H; 568-  
H           A-B]

*Nilabati Behera v. State of Orissa & Ors.* (1993) 2 SCC 746 : [1993] 2 SCR 581; *Rudal Shah v. State of Bihar* (1983) 4 SCC 141 : [1983] 3 SCR 508; *Joginder Kumar v. State of Uttar Pradesh* (1994) 4 SCC 260; *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 : [1996] 10 Suppl. SCR 284; *Anita Thakur & Ors. v. Government of Jammu & Kashmir & Ors.* (2016) 15 SCC 525 – referred to.

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Case Law Reference

[1993] 2 SCR 581                      referred to                      Para 23

[1983] 3 SCR 508                      referred to                      Para 23

(1994) 4 SCC 260                      referred to                      Para 23

[1996] 10 Suppl. SCR 284              referred to                      Para 23

(2016) 15 SCC 525                      referred to                      Para 23

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CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 27 of 2012.

Under Article 32 of the Constitution of India

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Prashant Bhushan, Devesa Kumar Agnihotri, Pranav Sachdeva, Advs. for the Petitioners.

D. K. Singh, Ardendumauli Kumar Prasad, Ms. Komal Mundhra, Saurabh Agrawal, Abhishth Kumar, Shibashish Misra, Kunal Verma, Advs. for the Respondents.

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The Judgment of the Court was delivered by

**A.K. SIKRI, J.** 1. This case depicts sordid state of affairs about the functioning of Police and demonstrates that much police reforms are still needed. The events that have occurred in this case which have forced the petitioners to approach this Court directly by filing instant petition under Article 32 of the Constitution of India show that proper police training with emphasis on sensitising them about the rights of the citizens is required.

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A           2. The present petition has its genesis in the incident that occurred  
on May 28, 2009. Rather, it goes a little earlier in point of time. The  
petitioners who are siblings did their MBBS course in the Santosh Medical  
College at Ghaziabad in Uttar Pradesh. They had certain issues with P.  
Mahalingam, Chairman of the Maharaji Educational Trust which has  
B established the aforesaid medical college. In order to redress their  
grievances, they filed Writ Petition (Criminal) No. 33 of 2009 in this  
Court under Article 32 of the Constitution of India. In the said writ  
petition, they had complained of the harassment meted out to them by  
the said Chairman as well as by the police which was acting under the  
influence of the said Chairman. On May 13, 2009, the Court issued  
C notice in the writ petition. An order was passed by the Registrar of this  
Court on May 22, 2009 directing service of dasti notice on the unserved  
respondents which included SHO of Police Station, Sector – 39, Noida,  
Gautam Budh Nagar, Uttar Pradesh who was arrayed as respondent  
No. 4 in the writ petition. In order to serve the notice upon the SHO, the  
D petitioners went to the Police Station on May 28, 2009 at 10:30 am. The  
SHO and his subordinates started brutally assaulting the petitioners with  
*lathis*, shoes and fists and caused numerous injuries on all parts of their  
bodies. The petitioners got themselves examined at Lok Nayak  
Government Hospital, New Delhi and an x-ray of petitioner No.1 was  
also taken which disclosed a fracture. A plaster was put on her left  
E hand. The petitioners made a written complaint to the Senior  
Superintendent of Police (SSP), Noida on May 29, 2009 itself. However,  
he refused to accept the complaint. Against this apathy and inaction on  
the part of SSP in not agreeing to register the case, the petitioners filed  
Criminal Miscellaneous Petition No. 9226 of 2009 in the aforesaid writ  
F petition. Order was passed in this Criminal Miscellaneous Petition that  
the same be placed along with the main matter. It is also observed that  
in the meantime, the petitioners may approach the District Magistrate,  
Noida regarding their grievances. The petitioners approached the District  
Magistrate, Noida, but they were informed that he was on vacation.  
The City Magistrate, however, called the petitioners to his office and  
G took the video recorded statements but did not do anything in the matter.  
On July 20, 2009, this Court dismissed the Writ Petition (Criminal) No.  
33 of 2009 and granted liberty to the petitioners to approach the High  
Court under Article 226 of the Constitution of India, if so advised.  
Thereafter, the petitioners filed Writ Petition (Criminal) No. 23839 of

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2009 in the High Court praying *inter alia* for a CBI inquiry into the incident which took place on May 28, 2009 when the petitioners had gone to serve dasti summons on respondent No. 4. The High Court, however, held in the impugned order that in this case, the FIR had not been registered and there was no question for considering any prayer for CBI inquiry at this stage and instead directed that the petitioners may file an application under Section 156(3) of the Code of Criminal Procedure, 1973 and in case any such application is filed, the Magistrate may pass appropriate orders thereon. With the aforesaid observations, the High Court dismissed the writ petition.

3. This order was challenged by the petitioners by filing Special Leave Petition (Criminal) No. 666 of 2010, which became Criminal Appeal No. 2323 of 2011 after the leave was granted in that matter. The interim direction dated May 11, 2010 was given by the Court, after hearing the counsel for the parties, whereby the District and Sessions Judge, Gautam Budh Nagar, Uttar Pradesh was directed to inquire into the incident of May 28, 2009, when the petitioners had gone to serve the dasti summons of this Court to the SHO of Police Station Gautam Budh Nagar. The District and Sessions Judge assigned the inquiry to Additional Chief Judicial Magistrate-III. He conducted the necessary inquiry and submitted his report dated November 16, 2010. Finding truth in the allegations made by the petitioners that they were mercilessly beaten up and thrashed by the police officials, objections to this report were allowed to be filed by the respondents, which were filed. Matter was heard thereafter and this Court decided Criminal Appeal No. 2323 of 2011 by detailed order dated December 16, 2011 accepting the report of the Additional Chief Judicial Magistrate. Since as per that report, conduct of some police officers were found to be blemished which also amounted to misconduct in performance of their duties, this Court directed the State of Uttar Pradesh/Disciplinary Authority to treat the report of the Additional Chief Judicial Magistrate as a preliminary report and initiate disciplinary proceedings against the concerned police personnel. Petitioners were also given liberty to file criminal complaint under Section 200 of the Code of Criminal Procedure, 1973 on the basis of conclusion in the said report. It would be apt to reproduce the relevant portion of the aforesaid judgment dated December 16, 2011 passed by this Court which also captures the conclusion of the inquiry conducted by the Additional Chief Judicial Magistrate as well:

A “7. After hearing learned counsel for the parties, we passed orders on 11.05.2010 directing the District and Sessions Judge, Gautam Budh Nagar, U.P., to enquire into the incident of 28.05.2009 when the appellants had gone to serve the dasti summons of this Court and pursuant to the aforesaid order dated 11.05.2010, the District and Sessions Judge, Gautam Budh Nagar, U.P., assigned the inquiry to the Additional Chief Judicial Magistrate III of Gautam Budh Nagar, U.P., who after conducting the enquiry has submitted the report dated 16.11.2010. We have considered the objections to the report and heard learned counsel for the parties. The conclusions in the report dated 16.11.2010 of the Additional Chief Judicial Magistrate III of Gautam Budh Nagar, U.P., are extracted hereinbelow:

D “1. Ms. Monica Kumar and Shri Manish Kumar had gone to Sector 39 Police Station in NOIDA on 28.05.2009 for serving a dasti notice of Hon’ble 6 Supreme Court upon Shri Anil Samania, Station House Officer, Sector 39 Police Station in NOIDA.

E 2. Ms. Monica Kumar and Shri Manish Kumar were subjected to brutality in Sector 39 Police Station, NOIDA by Shri Anil Samania, Inspector, Shri J.K. Gangwar, Sub Inspector and few Constables.

3. Tailored entries have been made on 28.05.2009 in the General Diary of the Police Station for cover up.

F 4. The complaint in the matter was made with serious allegations against Shri Anil Samania but the complaint was not dealt with properly and the matter was given a decent burial.

G 5. The Sub-Inspector, In-Charge of the Complaint Cell in the office of the Senior Superintendent of Police, Gautam Budh Nagar, Shri Rishi Pal Singh, failed in his duty to place the complaint before the higher authorities for proper action in the matter.

H 6. The Superintendent of Police (Traffic), Gautam Budh Nagara, Shri Ajay Sahdav, failed in his supervisory duty in as much as without perusal of the accusations in the complaint and the action taken/required thereon, allowed entombment of the grievance in the complaint.

[A.K. SIKRI, J.]

7. The Senior Superintendent of Police, Gautam Budh Bagar A  
Shri Ashok Kumar Singh appears to have shut his eyes to what  
had happened in the Police Station on 28.05.2009.

8. Involvement of Dr. P. Mahalingam in the incident on  
28.05.2009 could not be established. Thus, it cannot be said that  
the complainants were packed down at the will of the Chairman B  
of Santosh Medical College, Ghaziabad, Shri P. Mahalingam.”

8. Thus, the conclusions in the report dated 16.11.2010 of the  
Additional Chief Judicial Magistrate quoted above are that the  
appellants were subjected to brutality in Sector 39 Police Station,  
NOIDA, by Inspector Anil Samania (Respondent No.4), Shri J.K. C  
Gangwar, Sub-Inspector and few constables and tailored entries  
were made on 28.05.2009 in the General Diary of the Police Station  
for a cover up and when a complaint was made to the Senior  
Superintendent of Police, Gautam Budh Nagar, U.P., the Sub-  
Inspector, In-charge of the Complaint Cell Shri Rishipal Singh D  
failed in his duty to place the complaint before the higher authorities  
for proper action in the matter. The further conclusion in the report  
dated 16.11.2010 of the Additional Chief Judicial Magistrate is  
that the Superintendent of Police (Traffic), Gautam Budh Nagar,  
U.P., Ajay Sahdav, failed in his supervisory duty and allowed  
entombment of the grievance in the complaint and the Senior E  
Superintendent of Police, Gautam Budh Nagar, Ashok Kumar  
Singh appears to have shut his eyes to what had happened in the  
Police Station on 28.05.2009. The conclusions in the report dated  
16.11.2010 of the Additional Chief Judicial Magistrate prima facie  
establish acts and/or omissions of the various police personnel F  
which were committed when the appellants had gone 8 to the  
police station to serve the dasti summons issued by this Court and  
which amount to misconduct of serious nature. We, therefore,  
direct the respondent No.1 to treat the report dated 16.11.2010 of  
the Additional Chief Judicial Magistrate III of Gautam Budh Nagar,  
U.P., as a preliminary report and initiate disciplinary proceedings G  
against the police personnel named in the conclusions thereof and  
conduct the disciplinary proceedings in accordance with the  
relevant rules, giving to the police personnel reasonable opportunity  
of being heard in respect of the charges as provided in the Rules

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A and in Article 311(2) of the Constitution and complete the disciplinary proceedings within one year from today.

9. It will also be open for the appellants to file criminal complaint under Section 200 of the Cr.P.C. on the basis of the conclusions in the report dated 16.11.2010 of the Additional Chief Judicial Magistrate III of Gautam Budh Nagar, U.P., before the appropriate Magistrate for prosecuting only those police personnel who are alleged to have committed any offence, and if such a complaint is filed, the same will be dealt with in accordance with law.

10. The impugned order of the High Court is set aside and the appeal is allowed to the extent indicated above. No costs.”

4. The aforesaid facts are stated as background facts to understand the reason for filing the present petition by the petitioners predicated on subsequent events that would be noticed hereinafter. In order to complete the narration of this prologue, we would also like to mention that on the directions of this Court contained in its aforesaid judgment dated December 16, 2011, the Government of Uttar Pradesh had initiated disciplinary proceedings against the police officers who were indicted by the judicial inquiry for having committed brutalities on the petitioners. Inquiry was conducted and the conduct of the officers was found to be coloured with blemish. Thus, even in the disciplinary proceedings, incident of May 28, 2009 was found proved against these police officers. This Court, however, is dismayed to find that for this serious misconduct, the police officers were let off by extending warning/admonition.

5. With this prologue, we now advert to the facts which are the immediate cause of filing the present petition.

6. As mentioned above, on December 16, 2011, this Court passed the orders directing disciplinary proceedings against faulty police officers which included respondent Nos. 2 and 3. As per the petitioners, within four days of the passing of the judgment i.e. on December 20, 2011 at about 3 pm, the petitioners came to their home in Ghaziabad from Noida and were stopped by the policemen in front of their house. A police jeep with about five policemen came and stopped their car just behind the petitioners' car. Then, these policemen came down from their car and started abusing the petitioners and pressurised them to withdraw all cases against Mr. Anil Samania, respondent No. 2 and Dr. P. Mahalingam. The police even threatened them with serious consequences if they did

not withdraw the cases. The petitioners were slapped also. The police even came inside the petitioners house forcing their way through the main gate, abusing and threatening them. The petitioners ran inside their house and closed the doors. After sometime, 15-20 policemen including respondent No. 3/SHO of Vijay Nagar Police Station Mr. Anil Kumar came to the petitioners home. The SHO along with many policemen forced entry into the house of the petitioners by breaking the main and entry iron gates and wooden double doors of their house and barged inside the house. The SHO slapped the petitioners and dragged them outside their house and threw them in the police jeep. The police brought the petitioners to the Vijay Nagar Police Station. Further, the police (SHO) abused the petitioners and told them to withdraw all cases against the police – Mr. Anil Samania, others and Dr. Mahalingam and not to file anymore case. The police told the petitioners to see what they do if the petitioners keep on fighting with the police and said that they will detain the petitioners whole night and put attempted murder charges on them. Later in the night, the SHO called the petitioners into his cabin and told that he will only release them after they write an apology letter otherwise he will sent the petitioners to jail. They had no other option except to write an apology letter. The petitioners were detained in the Vijay Nagar Police Station until about 11 pm in the night. During this period, the police repeatedly kept on abusing and threatening them. The petitioners were released with the warning from the SHO that they see an end to all matters and compromise with Mr. Anil Samania and others and not make any more complaints/file any case against the police. The petitioners came to know on January 31, 2012 that an FIR and chargesheet has been filed against the petitioners under Sections 324/332/353/504 IPC. It is alleged that the Investigating Officer of the case has wrongly and malafidely conducted the investigation. The police have hurriedly submitted the chargesheet within ten days. The IO has not even taken statements of the petitioners contrary to what he is stating that he has taken the statements of the petitioners.

7. This chargesheet against the petitioners disclosed the version of the other side. It is alleged that petitioners had parked their vehicle in the middle of the road near Santosh Medical College which was causing obstruction in running of traffic on that road. It is stated that Annual Function was also going on in the College at that time and when traffic got stuck and high traffic jam was seen by the police patrolling party on

A duty, in order to maintain the law and order of that area, Constable Om Prakash, Batch No. 227 and Constable Dhruv Kumar, Batch No. 1895 and Head Constable Brij Kishore Sharma, Batch No. 288 had requested petitioner No. 1 to park the car in a proper manner so that it could not obstruct the traffic on the road. Petitioner No. 1 got annoyed and started arguing with Head Constable Brij Kishore Sharma in a very abusive manner. In the meanwhile, petitioner No. 1 went inside the house and called petitioner No. 2 and she also came along with pepper spray in her hands. On exhortation of her brother i.e. petitioner No. 2, petitioner No. 1 sprayed the pepper in the eyes of the Head Constable Brij Kishore Sharma. On that mishappening, the fellow duty Constable, namely, Constable Om Prakash and Constable Dhruv Kumar handled the Head Constable Brij Kishore and immediately rushed to the Medi Max Hospital, Sector – 12, Pratap Vihar, Ghaziabad, U.P. and admitted the Head Constable Brij Kishore Sharma in a critical condition. Thereafter, Constable Om Prakash lodged a FIR of the above incident, which was registered as FIR No. 609 of 2011 under Sections 324, 332/353/504 IPC dated December 20, 2011.

8. On coming to know of the aforesaid FIR and the chargesheet filed pursuant thereto, present writ petition dated February 16, 2012 is filed by the petitioners with the following prayers:

- E “(i) Issue appropriate writ directing respondent No. 1 to take appropriate action and punish the police – respondent Nos. 2 and 3 for assaulting/detaining/registering a false case against the petitioners and causing contempt of the Court and interfering with the course of justice.
- F (ii) Issue appropriate writ direct an independent investigation into the incident of December 20, 2011 by the CBI or SIT.
- (iii) Issue appropriate writ quashing the FIR No. 609 of 2011 dated December 20, 2011 and chargesheet No. 953 of 2011 dated January 2, 2012 filed against them.
- G (iv) Issue appropriate writ directing the State of U.P. to provide the petitioners protection as they are under immense and constant threat.
- (v) Issue appropriate writ restraining the respondents and police from causing the petitioners any further harassments, assaults and threats to them.
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(vi) Issue appropriate writ directing respondent No. 1 to suspend respondent Nos. 2 and 3 and also those indicted by the judicial inquiry pending disciplinary proceedings. A

(vii) To pass such other orders or directions as this Court may deem fit and proper in the facts and circumstances of the present case.” B

9. Show cause notice in this petition was issued pursuant thereto. Respondents have put in appearance and they have filed their reply affidavits, refuting the allegations made in the petition. Respondents have stuck to their versions on the incident of December 20, 2011 which has already been stated above. C

10. In view of the aforesaid conflicting versions about the occurrence on December 20, 2011, this Court after hearing the counsel for the parties, passed order dated July 5, 2016 directing the District and Sessions Judge, Ghaziabad to nominate a Judicial Officer to hold an inquiry into the said incident by following an appropriate procedure in consonance with the principles of natural justice and submit his/her report. D  
We would like to reproduce the said orders in its entirety hereunder:

“We have heard the learned counsel for the parties and perused the record.

This Court vide its order dated 16.12.2011, directed the Government of Uttar Pradesh to initiate disciplinary proceedings against respondent nos. 2 & 3 for having committed brutalities on the petitioners. We find that respondent no. 3, accompanied by several police officials, visited the petitioners at their home in Ghaziabad on 20.12.2011 at about 03.00 p.m., forced the m to withdraw all cases against the police, assaulted them and threatened to encounter them. It is alleged that the police dragged the petitioners outside their house, threw them in the police jeep, brought them to the Vijay Nagar Police Station and detained them in the Police Station till 11.00 p.m. During this period the police repeatedly kept on abusing and threatening the petitioners. E  
Respondent no. 3 released the petitioners after he got apology letter forcibly signed by the petitioners. It is further alleged that a false criminal case was also registered against the petitioners on the very same day to pressurize them. The petitioners reported the said incident in written complaint dated 22.12.2011 to the F  
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A Director General of Police, Lucknow, on which, till date, no action has been taken.

In view of the above, we feel that a prima facie case is made out by the petitioners for conducting an inquiry into the alleged incident that took place on 20.12.2011 in order to find out as to whether the version of the petitioners herein is correct and if any false FIR is lodged against them on the basis of which a chargesheet has been filed in the court.

We, accordingly, direct the learned District and Sessions Judge, Ghaziabad to nominate a Judicial Officer, preferably of the rank of Additional Chief Judicial Magistrate, to hold an inquiry into the said incident by following an appropriate procedure in consonance with the principles of natural justice. The concerned officer shall make an endeavour to complete the inquiry within the period of three months and submit his/her report to this Court before the next date of hearing.

D List the matter on 07.11.2016.”

11. The Additional Chief Judicial Magistrate, Ghaziabad conducted the inquiry and forwarded his report in a sealed cover. It was opened in the Court on November 7, 2016 and direction was given to the Registry of the Court to supply a copy of the said report to all the parties.

E 12. None of the parties have filed any objection to this report.

13. Perusal of the report shows that the Inquiring Officer recorded the statements of various persons including the petitioners who stuck to their versions of the incident. Statements of the parents of the petitioners were also recorded. The Inquiring Officer, thereafter, recorded the statements of many police officials and certain other independent persons/witnesses who had seen the occurrence on December 20, 2011 and also those who were privy to the happenings when the petitioners were taken to the Police Station on that day and had written the purported apology letter. The report further reveals that the concerned Judicial Officer focused on two incidents which took place on the fateful day. First incident was about the altercation which took place over the alleged parking of the car by the petitioners. Second incident has been divided into two parts – first part pertains to the spray of pepper in the eyes of the Constable. According to the petitioners, the police officials had come

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to their house and threatened to withdraw the cases when pepper was sprayed on Constable whereas version of the police officials was that it was an unprovoked attack on one of the Constables. Second facet of the second incident relates to happenings in the Police Station where the petitioners had written their apology. A

14. Insofar as the first incident is concerned, the Judicial Officer in its categorical finding accepts the version of the petitioners and has concluded as under: B

“Looking into the probability of cross versions and evidence laid down by the parties thereto, keeping in view the earlier complaints against the police made by the complainants the versions of EW 1 and EW 2 regarding first incident of abusing and threatening and accepted spray of obnoxious chilly spray. It is also observed that there was sufficient space as has been shown in the site plan of the place of occurrence annexed with this report through which the police vehicle was in a position to go ahead without making much hue and cry in the name of blockade of traffic. C D

Taking into account all the fact and circumstances cumulatively, it transpires that there is no reason to disbelieve the complainants versions supported by EW 3 and EW 4. Thus, it is concluded that the complainants version, regarding first incident appears to be correct and believable.” E

15. On the second incident, the findings are that there was unauthorised entry into the house of the petitioners. At the same time, version of the petitioners is found to be exaggerated. The report records:

“Two private witnesses, Hemant and Ajay Kumar (EW 20 and EW 21) have stated on oath that about 3.30 pm on 20<sup>th</sup> December 2011 he had seen some police personnel knocking at the main iron gate of the complainants and none was coming out from the house of the complainants to open the main gate. After 45 minutes one of the police personnel climbed on the boundary wall of the complainants house and went inside and opened the main iron gate and police personnel entered into the premises of complainants after bearing helmets to avoid any obnoxious spray. They entered in the house of complainants, caught hold Manish Kumar and came out of the house. Complainant Monica Kumar followed F G

A           **Manish Kumar.** The police went from the spot along with Monica and Manish Kumar.

The statements of EW 9, EW 12, EW 15, EW 20 and EW 21 reveal the following factual aspects:

B           (i) About 4.30 – 5.00 pm on 20<sup>th</sup> December 2011 police personnel have climbed over the boundary wall of the house of the complainants i.e. K-8, Pratap Vihar, Vijay Nagar and entered the main gate of the complainants to make entry in the premises of the complainants i.e. they did not climb over the roof of the complainants. Thus, the fact of climbing up over the roof of the complainants of police personnel is exaggeration of the complainants.

C           (ii) The police, during investigation had entered into the house of the complainants against their will but not broken the wooden doors of the complainants house. Thus, breaking of main gate and wooden doors of the complainants house is exaggeration of the complainants. However, it appears to be true that Manish Kumar was caught hold by the police personnel against his will.

D           (iii) The chilly spray bottle was recovered from the possession of the Monica Kumar at about 4.30-5.00 pm at her house.

E           (iv) Both the complainants were not only asked to appear before IO of PS Vijay Nagar, Ghaziabad rather they were forcibly brought to police station in the police jeep.

F           (v) Complainants were not dragged by using force to bring them to police station in the second incident. Thus, the facts, circumstances, time and place of first phase of the second incident which happened in the house of the complainants appears to be true upto some extent.”

G           16. Dealing with the first facet of the second incident, viz. spraying of the pepper, the findings are that spraying of pepper is admitted by the petitioners themselves. It is also recorded that they had written the apology of their own and they were not forced or compelled to do so. The Inquiring Officer, at the end of his report, has recorded his conclusions in the following manner:

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“CONCLUSION

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From the statements of EWs on oath and complaint made by the complainants to Director General of Police, following conclusions may be easily drawn:

- (i) Only one slap was made by one police wala on the body of both the complainants in the campus of their house not inside the closed room. B
- (ii) There was no instant danger of transgression to the body of Monica Kumar justifying her to spray liquid chilly in the eye of police personnel. C
- (iii) Complainants were already engaged in several rounds of cases/complaints against police in subordinate courts and in the Supreme Court. D
- (iv) In second round incident policemen had come in only one police jeep, it means they were not 20-25 in numbers. The number of police personnel appears to be exaggerated and varying in complainants statements and statements of EW 20 and EW 21. E
- (v) Although, complainants were taken to the police station Vijay Nagar in the same jeep but there is no reliable evidence that they were dragged from inside their house to the police jeep. F
- (vi) In the second round of incident police did not climb up to the roof of the complainants house or on the roof of neighbour's house rather one police wala entered in the campus by crossing over the boundary wall. He opened the main iron gate through which other police personnel could enter into the premises. G
- (vii) No iron or double wooden gate was broken. On this point story is exaggerated. H
- (viii) Complainants were not slapped in the police station. Further complainants have put an exaggerated story here also. I

From the statements of complainants and their parents, it transpires that police had certainly pressurised them to withdraw the cases against Anil Samania and Mahalingam. Thus, version of petitioners/complainants regarding 2<sup>nd</sup> set of incident despite

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A certain specific exaggeration appears to be true and correct, however, FIR on the basis of which chargesheet has been filed against the petitioners also appears to be based on the true facts.”

17. When we telescope the aforesaid report into the entire framework, we find that the case put up by the petitioners is broadly accepted though some exaggerations in their versions are found. Even after eschewing the exaggerations, the facts established on record are as under:

The police officials had gone to the place of the petitioners on December 20, 2011 i.e. immediately after the directions were given by this Court in its judgment dated December 16, 2011. Purpose was to put pressure on the petitioners to withdraw their cases against Anil Samania and P. Mahalingam. While exerting the pressure, one police official had even slapped both the petitioners, though they were not beaten up so badly as asserted by the petitioners. It also demonstrates that the purpose of visiting the house of the petitioners was only to force them to withdraw the cases and the version of the respondents that they wanted the petitioners to remove their car as it was blocking the road/passage has turned out to be a false story. Findings further reveal that these policemen came again though they may not be 20-25 in number as alleged by the petitioners. Fact remains that policemen came in one police jeep. They may not have climbed up the roof of the petitioners house. However, one of the policemen entered in the campus by crossing over the boundary wall and he opened the main iron gate through which other police personnel could enter into the premises. It is also established that these policemen took the petitioners to police station though it was not by dragging them from inside their house to the police jeep. We also proceed on the basis that in the police station, the petitioners were not slapped or maltreated and they had written apology letter without coercion.

18. When the entire incident is looked holistically, eschewing the exaggerated version thereof as projected by the petitioners, what emerges on record is that the police officers had come to the residence of the petitioners; they had pressurised the petitioners to withdraw the cases; and while doing so, one policeman had even slapped both the petitioners. Using of pepper spray by petitioner No. 1 at the policeman has to be taken in the light of what had happened on the spot and also in the past, particularly on May 28, 2009 when the police officers had badly thrashed

and beaten up the petitioners. A female person would naturally, in these circumstances, feel threatened that it may not turn into a repeat of what had happened on May 28, 2009. If under these circumstances, she tried to defend herself by warding off the policeman with the use of pepper spray, it cannot be said that she crossed the boundaries of self-defence. After all, matter has to be examined keeping in view the conduct of the police which provoked her to react in the aforesaid manner.

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19. We also feel disturbed by another conduct of the respondents. With regard to the incident of May 28, 2009, when this Court ordered departmental inquiry against the erring officials, the Disciplinary Authority dealt with the matter in a lukewarm fashion by sparing those officials with a warning only. It seems that too was done just to complete the formalities as there was a direction by this Court for taking an action against them but for that, we are afraid, no action would have been taken by the Disciplinary Authority. Thus, atrocity committed by the police on the hapless citizens is brushed aside lightly. In contrast, incident of spraying pepper by a lady, faced with the situation when police officers had come to their premises and were threatening them to withdraw the cases coupled with slap given to her as well as her brother, is taken so seriously that not only FIR is lodged but chargesheet is also filed within ten days. Likewise, insofar as act of writing apology is concerned, maybe it was not extracted by putting any pressure. However, the very fact that the petitioners were taken to the police station and were in an atmosphere of fear that surrounded there, when this letter was written is sufficient to hold that it was not a voluntary act of the petitioners. No credence can be given to such a letter. Both the petitioners are Doctors by profession. We feel that entire attempt is to put a pressure of another kind, once the police have found that their threats to the petitioners to withdraw the cases against Anil Samania and P. Mahalingam have not proved successfully.

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20. In the aforesaid circumstances, we are inclined to accept the prayer of the petitioners in this writ petition so far as it relates to quashing the proceedings arising out of FIR No. 609 of 2011 dated December 20, 2011 and the chargesheet No. 953 of 2011 dated January 2, 2012 filed pursuant thereto. It ordered accordingly.

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21. Since, version of the petitioners in respect of incident of December 20, 2011 is found to be exaggerated, we do not deem it proper to direct respondent No. 1 to suspend respondent Nos. 2 and 3.

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A 22. We also direct respondent No. 1 to provide an adequate protection to the petitioners after assessing the situation and to ensure that petitioners are not harassed or threatened by the police officials in any manner.

B 23. Before we part with, we are constrained to make certain comments about the manner in which police has acted in this case by siding with one of the parties and, in the process, harassing the petitioners by its coercive behaviour. This Court has, time and again, denounced police brutalities which occur in various forms and the most significant judgments in this behalf are:

- C (i) *Nilabati Behera v. State of Orissa & Ors.*<sup>1</sup>  
(ii) *Rudal Shah v. State of Bihar*<sup>2</sup>  
(iii) *Joginder Kumar v. State of Uttar Pradesh*<sup>3</sup>  
(iv) *D.K. Basu v. State of West Bengal*<sup>4</sup>  
D (v) *Anita Thakur & Ors. v. Government of Jammu & Kashmir & Ors.*<sup>5</sup>

E 24. Police needs to be sensitised about the rights of citizens and the civilised manner in which police is required to maintain law and order in this country. From time to time, various suggestions have been given by National Crime Records Bureau, National Police Commission as well as certain NGOs like Human Rights Watch, Amnesty International, Commonwealth Human Rights Initiative, etc. to bring in reforms in terms of amendments in Indian Police Act, appointing commissions to deal with cases of police brutalities, etc. Not that efforts are lacking in bringing police reform. But we have yet to see the humane face of the police.  
F Police officials falling in this category are far and few. It is high time that training of police in this direction is given a concrete shape so that it brings about positive results, and the usage of force on citizens is reduced and police officials become more sensitive towards them and fulfill their role as the protector of citizens. We understand that the Indira Gandhi

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<sup>1</sup> (1993) 2 SCC 746

<sup>2</sup> (1983) 4 SCC 141

<sup>3</sup> (1994) 4 SCC 260

<sup>4</sup> (1997) 1 SCC 416

<sup>5</sup> (2016) 15 SCC 525

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National Open University (IGNOU) has signed a memorandum of understanding (MoU) with the National Human Rights Commission (NHRC) to develop a new online advance programme on human rights for the police personnel. It is also intended to update the contents of the basic trainers' programme for police personnel. We hope that IGNOU with NHRC would be able to develop requisite programme of high quality which would be able to sensitise the police personnel. We also hope that the training under this programme shall be administered to the stake holders in great measures. In this context, there is also a need to deal with erring police officials by taking stern measures whose actions amount to 'misconduct' or may even be 'criminal' in nature. Letting these erring officials lightly, as has been done in the instant case, by only administering a warning may not be appropriate. We hope that desired attention shall be given at the right quarters from the perspective of human rights of innocent and hapless citizens, so that following words of Thomas Bernhard's become a reality:

"The anger and brutality against everything can readily from one hour to the next, be transformed into its opposite."

25. This writ petition stands disposed of.