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RASHMI BEHL

v.

STATE OF U.P. & ORS.

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(Writ Petition (Criminal) No. 218 of 2013)

FEBRUARY 17, 2015

(M.Y.EQBAL AND SHIVA KIRTI SINGH, JJ.)

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Constitution of India, 1950 – Articles 14, 21 and 32 – Writ Petition under Article 32 – Seeking enforcement of rights under Articles 14 & 21 in as much as FIR lodged by the petitioner u/ss. 366, 323, 504 and 376

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IPC neither statements u/s. 164 CrPC were recorded nor her medical examination u/s.164A CrPC was done

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– Petitioner alleged of her abduction, assault and rape by her father and his accomplices – She also alleged that her family was forcing her for flesh trade

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(prostitution) and that she was forcibly taken by her parents alongwith others including police personnel from the custody of the custodian appointed by the Court – Statement of the petitioner recorded u/s. 164

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CrPC on the direction of Supreme Court – Held: The facts of the case show that police has acted in a partisan manner and has not investigated the case in a forthright manner – In view of the serious allegations

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made against the respondents as well as police officials, it is a fit case where investigation needs to be

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handed over to an independent agency like CBI – Investigation.

Allowing the appeal, the Court

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HELD:1. The facts, sequence of events and inordinate delay in the investigation of the case show that the investigation by the State police authorities has not been conducted in a proper direction. More than two years have passed but the police failed to conclude the investigation, which itself goes to show that police have not acted in a forthright manner in investigating the case. *Prima facie* the police has acted in a partisan manner to shield the real culprits and the investigation of the case is not being conducted in a proper and objective manner. [Para 15] [459-A-C]

2. Since local police is allegedly involved as per the statement of the petitioner recorded under Section 164 CrPC, there may not be fair investigation. In such a case, however faithfully the local police may carry out the investigation, the same may lack credibility since the allegations are against them. In view of the entire facts of the case and very serious allegations made against all the respondents including police officers, it is a fit case where the investigation has to be handed over to an independent agency like CBI for the purpose of fair and unbiased investigation. [Paras 15 and 16] [459-C-F]

R.S. Sodhi v. State of U.P., 1994 Supp (1) SCC 143 – relied on.

Case Law Reference

1994 Supp (1) SCC 143 Relied on Para 15

CRIMINAL ORIGINAL JURISDICTION: Writ Petition
(Criminal) No 218 of 2013

A Under Article 32 Of The Constitution Of India

Pravin H. Parekh, , Lalit Chauhan, Ekansh Mishra, Aditya Sharma, S. Lakshmi Iyer (for Parekh & Co.) for the Petitioner.

B Maninder Singh, ASG, Ratnakar Dash, Kumar Parimal, Ranjana Narayan, M. Khairati, B. V. Balram Das, Abhishth Kumar, Som Raj Choudhury, Dinesh Kr. Tiwary, Chandan Kumar, Jaya Kumari, R. C. Aggarwal, C Rajesh Tiwary, Praneet Ranjan for the Respondents.

The Judgment of the Court was delivered by

D **M.Y.EQBAL**, J. 1. Petitioner, a young girl of 22 years who hails from the State of Uttar Pradesh, has filed this writ petition under Article 32 of the Constitution of India for the enforcement of her fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India inasmuch as even though her FIR was E registered on 21.1.2013 neither statements of the petitioner or her witnesses had been recorded nor her medical examination under Section 164A of the F Criminal Procedure Code had been done by the Uttar Pradesh Police despite repeated notices and reminders sent to the authorities. Petitioner has alleged to the extent that she was abducted, repeatedly assaulted and G raped by her own father and his accomplices for not accepting their demand to enter the flesh trade in which her family is actively involved.

H 2. The writ petition before us shows that the ordeal of the petitioner began in the year 2010 when the father and her family alleged to have started coercing her to

join the flesh trade/prostitution. Upon realizing petitioner's A
unwillingness, father and the family tried to sell her off to
an elderly man of about 65 to 70 years in Punjab. Upon
becoming aware of the nefarious designs of the accused
persons, petitioner somehow managed to escape from B
her parental home in Meerut and escaped to Haridwar,
from where she was brought back by some Samaritans
to the office of DIG Meerut, where she narrated her
ordeal. Petitioner was sent to the custody of her parents
with a stern warning, which was not complied. As such, C
she was then given into the custody of Ms. Asha Madho,
who was an ex-teacher of the petitioner. However, in the
midnight of 1/2.9.2011 in the absence of the custodian,
her parents along with their relatives with police
assistance said to have forcibly took her away. Thereafter, D
petitioner complained to the Police that she was held in
captivity by her father and anything can happen to her in
such circumstances. Taking action on the said letter, the
SHO produced the petitioner before the City Magistrate
on 5.9.2011, where the petitioner stated that she was a E
major and should be allowed to stay free as per her
wishes and her custody should not be given to her father
and family. Father of the petitioner also moved an
application before the City Magistrate stating that his F
daughter was mentally unstable on which an order was
passed to refer the petitioner to a hospital for mental
medical examination, in which she was declared mentally
sound. The City Magistrate passed an order giving the
custody of the petitioner to Ms. Asha Madho. It was also G
ordered that Ms. Asha Madho will produce the petitioner
before the Court as and when required.

3. Aggrieved by the order, father of the petitioner

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A preferred a Revision Petition before the Additional District Judge, Meerut seeking custody of the petitioner. Petitioner was produced before the court and when being asked about her choice, she refused to go with her father and told the court that her father had earlier raped her and wanted to sell her. By way of a letter Ms. Asha Madho showed her unwillingness to take custody of the petitioner on the ground of her own sickness and criminal background of petitioner's parents. Hence, the petitioner further showed her desire to go along with Ms. Aparna Gautam, sister-in-law of Ms. Asha Madho. On 15.10.2011, the Additional District Judge partly allowed the revision petition and set aside order dated 16.9.2011 regarding the custody of the petitioner being given to Ms. Asha Madho and held that the petitioner being an adult is free to reside wherever she decides to live.

4. It is alleged by the petitioner that after the Court had risen, accused persons forcibly dragged her out of the Court and took her to various places within Meerut and thereafter to Ludhiyana, Punjab, and throughout this period the petitioner was repeatedly assaulted and raped by her father and his accomplices. Subsequently, in November 2011, Mrs. Aparna Gautam filed a writ of Habeas Corpus before the Allahabad High Court. Consequently, the petitioner was produced before the High Court on 16.1.2012, where she gave details of assault, rape and abduction. On 30.1.2012, consequent to petitioner's statement, learned Single Judge of the High Court disposed of the writ petition setting her at liberty to go anywhere including the opportunity to go along with Mrs. Aparna Gautam.

5. On several occasions the petitioner tried to lodge

a FIR with regard to abduction, repeated assault and rape while she was in illegal custody of the respondents. On 16.1.2013, the petitioner wrote a complaint to the SSP Meerut, Uttar Pradesh for registering her FIR against the respondents. On 21.01.2013, finally FIR No.31/2013 was registered against the respondents under Sections 366, 323, 504 and 376 of IPC at Lisadi Gate Police Station, Meerut instead of Civil Lines Police Station.

6. Mr. P.H. Parekh, learned senior counsel appearing for the petitioner, contended that all the relevant sections applicable to the present case have not been applied by the police and neither statement of the petitioner had been recorded nor medical examination was done as per mandate of Section 164A, Cr.P.C. Since no action had been taken by the police against the named accused nor any security had been provided to the petitioner despite grave and imminent threat to her life and liberty and she being not in a position to approach Allahabad High Court by way of writ petition under Article 226, the petitioner has approached this Court seeking indulgence under Article 32 read with 142 of the Constitution of India.

7. We have elaborately heard learned counsel for the parties. Mr. P.H. Parekh, learned senior counsel appearing for the petitioner, submitted that the petitioner was first abducted from the house of the custodian Ms. Asha Madho and second time from the court premises with the active connivance of the police officials. The accused persons are influential people and certain police officers (who are also named in FIR) are also actively involved with the family. The influence of the father and family is so much that although the

A petitioner was abducted from the Court premises
situated under the jurisdiction of Civil Line Police
Station, Meerut, yet the accused managed to get the
FIR recorded not in the Civil Line Police Station but at
the Lisadi Gate Police Station, Meerut, within
B jurisdiction of which most of the accused reside.

8. Mr. Parekh further contended that due to the
influence of the accused persons, the investigation in
the case has not even begun, which has resulted in
C disappearance of material evidence including medical
examination report under 164A of Cr.P.C. which ought
to have been done after being raped. Learned senior
counsel further contended that accused persons are
roaming free influencing and delaying investigation and
D threatening witnesses and have been on the look out
of the petitioner since the date of lodging of the FIR
forcing the petitioner to be in hiding under imminent
threat to her life and liberty. On account of this, the
petitioner is hiding in Delhi, but is prevented from freely
E going out in Delhi or going to place of lodging of FIR
(Meerut) and it has forced her to knock the doors of
the Apex Court by hiding her in Delhi.

9. After the notice was served upon the
F respondents, learned counsel for the State of Uttar
Pradesh and other respondents appeared and the
matter was heard. From the side of the petitioner, it
was submitted that no steps have been taken for
recording the statement of the petitioner under Section
G 164, Cr.P.C. Whereas learned senior counsel
appearing for the State of Uttar Pradesh contended
that despite all efforts, the petitioner is not making her
appearance for the purpose of recording statements.
H Hearing submissions, this Court vide order dated

30.1.2015 directed the petitioner/prosecutrix to appear before the Chief Judicial Magistrate, Saket Courts, Saket, New Delhi along with her photograph and one person to identify her on 31.1.2015 so that her statement shall be recorded by the Chief Judicial Magistrate, who shall forward the same to this Court.

10. In compliance of the aforesaid order, the petitioner appeared before the Chief Judicial Magistrate and her statement was recorded and the same was forwarded to this Court. We have gone through the statement made by the petitioner before the Chief Judicial Magistrate. In her statement, she has made serious allegations against her father allegedly committing rape since 2007. She also stated that when she was residing with her Asha Madam, her parents along with many persons including Police personnel (which did not have any lady police) forcibly took her away from there to the Police Station, from where she was handed over to her parents. She stated that her parents used to misbehave with her. She has also stated that on 15.10.2011, after the decision of the Magistrate declaring her major and could reside at her will, her aunt Anjana Malik and Ranjana Vasudeva dragged her outside Court, where more than 15 persons were present including her father Ravinder Behl, Safar Borgia, Ravinder Singh, Advocate, Tarun Behl, Reeta Behl, Roma Behl, Sanjay Aggarwal, Dharamveer Narang, Inderjeet, Harvinder Singh, Harsh Behl, Rakesh Vasudeva and all of them including police personnel took her dragging up to the main door of the Court and put her in white colour Santro Car, which had been driven by Pawan Malik.

11. In her statement she has alleged that she was

- A kidnapped and taken to the house of her aunt (Bhuwa) and then to the house of Harsh Behl, where she was abused and her father forcing her for prostitution told that in their business goods once sold is never taken back and they are bound to hand it over dead or alive.
- B Harsh Behl stated to her that they would have also kidnapped Aparna Gautam if gathering would not have saved her. Thereafter, Harsh Behl raped her. She has also alleged sexual assault by Dharamveer Narang, Constable Dayashankar, DIG Prem Prakash, Manish
- C Mishra, Sunny Ahuja, Deshraj Ahuja, Tilak Narang and Toofan alias Raj Kumar. She amended her statement saying that name of Manish Mishra was taken by mistake as he was not present there and the name of
- D the man was Dr. B.P. Ashok. She has also alleged that on 17.10.2010 Inderjeet and Harvinder raped her in the presence of Preety Khurana and Urmila Kathuria, who did not save her despite repeated prayer. Thereafter, she was taken to Ludhiyana, where as alleged by her,
- E father used to rape her. Upon filing of Habeas Corpus petition by Aparna Gautam, she was produced by her parents in the High Court, where she stated that she did not want to go with her parents since she was being raped by her father and his accomplices. She
- F has also alleged that when Aparna Gautam had gone to DIG with a request letter to meet petitioner, DIG physically assaulted her and when she was conversing with Media at the Commissioner Square, she was taken away by the police and implicated her in false case
- G and was also imprisoned. She has submitted that many I.Os. have changed and despite various letters written by her, no I.O. turned up even on 18.3.2014, when she was sitting in the Chambers of her advocate in the Saket Courts. However, when her advocate had gone
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to attend other case, her parents entered into the Chamber and threatened her to keep quite. She stated that her Parvikar Aparna Gautam is being harassed since she helped her. A

12. As noticed above, as against the order passed by the City Magistrate on 5.9.2011, before whom the petitioner has stated that she was a major and should be allowed to stay free as per her wishes, the father of the petitioner filed a revision petition before the Additional District Judge, Meerut seeking custody of the petitioner on the ground that she was mentally unstable. The Additional District Judge by setting aside the order of the City Magistrate regarding custody of the petitioner being given to Mrs. Asha Madho held that the petitioner being an adult is free to reside where she decides to live. The City Magistrate, before passing the aforesaid order, got the petitioner medically examined in which she was declared mentally sound. The Additional District Judge in revisional order had observed that the father of the petitioner made a false statement that the petitioner was mentally unfit. B C D E

13. A perusal of the counter affidavit filed on behalf of Respondents nos.1 to 4 – State of Uttar Pradesh, Director General of Police, Deputy General of Police and Senior Superintendent of Police would show that after the case was registered being Crime Case No.31/2013, one Rajbir Singh, SI Lisadi Gate Police Station, Meerut, was entrusted with the case for investigation. So far the serious allegations made by the petitioner against the respondents including the police officials are concerned, it is stated in the counter affidavit that those allegations are subject matter of investigation. Admittedly, no action was taken against the persons F G H

A who have allegedly committed crime. On the basis of
complaint, in March, 2013, the investigation was
entrusted to another SI Janak Singh Pundir, SIS Cell,
Meerut. Two months thereafter, the said I.O. Janak
Singh was transferred and in his place one Pramod
B Kumar Singh, S.I., Crime Branch, Meerut was entrusted
with the case for investigation in June, 2013. Again in
August, 2013, the investigation was entrusted to
another SI Yogender Dikshit, Crime Branch, Meerut. It
is stated in the counter affidavit that the Investigating
C Officer was transferred from Crime Branch to Police
Station Durala, District Meerut. This itself shows that
the allegations made by the petitioner in the FIR
followed by several complaints was never taken
D seriously by the police authorities and in a routine
manner the investigation was entrusted to SI police
one after another. Moreover, the respondents in the
counter affidavit tried to justify the reason for not taking
E steps for the purpose of recording the statement of the
petitioner victim under Section 164, Cr.P.C. and also
failure in medically examining the petitioner as required
under Section 164A of the Code of Criminal Procedure.

14. One cannot ignore the fact that still, a class of
F women is trapped as victims of circumstances;
unfounded social sanctions, handicaps and coercive
forms in the flesh trade, optimised as 'prostitutes'. The
victims of the trap are the poor, illiterate and ignorant
sections of the society and are the target group in the
G flesh trade; rich communities exploit them and harvest
at their misery and ignominy in an organised
gangsterism, in particular, with police nexus. It is of
grave social concern, increasingly realised by
enlightened public spirited sections of the society to

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prevent gender exploitation of girl children.

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15. Having regard to the facts, sequence of events and inordinate delay in the investigation of the case, it would show that the investigation by the State police authorities is not being conducted in a proper direction. More than two years have passed but the police failed to conclude the investigation, which itself goes to show that police have not acted in a forthright manner in investigating the case. Prima facie the police has acted in a partisan manner to shield the real culprits and the investigation of the case is not being conducted in a proper and objective manner. Since local police is allegedly involved as per the statement of the petitioner recorded under Section 164, there may not be fair investigation. In *R.S. Sodhi vs. State of U.P.*, 1994 Supp (1) SCC 143, this Court in such a case observed that however faithfully the local police may carry out the investigation, the same may lack credibility since the allegations are against them.

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16. Taking into consideration the entire facts of the case and very serious allegations made against all the respondents including police officers, it is a fit case where the investigation has to be handed over to an independent agency like CBI for the purpose of fair and unbiased investigation.

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17. We, therefore, allow this petition and direct the Central Bureau of Investigation to investigate the case independently and in an objective manner and to conclude the same in accordance with law.

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