

Court No. - 32

Case :- WRIT - C No. - 15531 of 2020

Petitioner :- Raj Kumari

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anil Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Shashi Kant Gupta,J.

Hon'ble Pankaj Bhatia,J.

1. This writ petition has been filed, inter alia, for the following relief:-

"(a) Issue a writ, order or direction in the nature of mandamus directing the respondents authority to take appropriate action on the application of the petitioner/applicant within stipulated time."

2. Heard Shri Anil Kumar Mishra, learned counsel for the petitioner, Shri Manish Goyal, learned Additional Advocate General assisted by Ms. Akanksha Sharma and Shri B.P. Singh Kachhawah, learned Standing Counsel appearing on behalf of the State.

3. In pursuance of the order dated 20.10.2020, counter affidavit has been filed on behalf of the respondent nos. 2 & 3 is taken on record.

4. On 15.10.2020, following order was passed by this Court:-

"Heard learned counsel for the parties.

The present petition highlights the laxity shown by the

officers in triggering the criminal justice system.

The present petitioner alleges that on 11.7.2020 she was raped by four persons and she tried to lodge the First Information Report (in short 'FIR') but the FIR was not lodged. On 22.7.2020, the petitioner claims to have submitted an application before the respondent no.2, Senior Superintendent of Police, Prayagraj highlighting that despite her best efforts, the FIR was not being registered. Once again the petitioner claims to have filed an application on 23.7.2020 informing the respondent no. 2 that despite best efforts the FIR was not being lodged. Ultimately, the petitioner has approached this Court by filing an application on 30.7.2020 stating that FIR is not being lodged.

This Court, vide order dated 12.10.2020, had called for instructions from the Standing Counsel. The Standing Counsel has produced the instructions dated 14.10.2020 wherein it has been admitted that a complaint dated 23.7.2020 was indeed forwarded by the petitioner before the respondent no. 2. It is further stated in the instructions that the said report was forwarded by the respondent no. 2 to the Police Station, Phoolpur for further action.

In pursuance of the said directions, an FIR claims to have been registered on 13.10.2020 in Case Crime No. 461 of 2020 under sections 376-D, 392, 328, 504, 506 IPC, Police Station Phoolpur, District Prayagraj. It is also brought on record that the statement of the petitioner has been recorded under section 161 Cr.P.C. on 14.10.2020 and the statement under section 164 Cr.P.C. shall be recorded soon. In the instructions the medico legal examination report of sexual violence was furnished, and in the said report, the medical examination of the prosecutrix is said to have been done on 14.10.2020.

The sequence of the evidence, as recorded above, on the basis of instructions, received highlights the sheer callousness of the police authorities in lodging the FIR after about three months of the alleged incident that to only after this Court had intervened and had called for instructions. It is well settled that the information disclosing a cognizable offence should be initiated with all expedition, the same is also necessary so as to bring the prosecution to its logical

conclusion fairly whereas, in the present case, laxity, which has been done at the behest of the police authorities, has not been explained at all. There is no explanation as to why three months was taken for lodging the FIR and for proceeding in accordance with the complaint made by the petitioner for such a long time there is nothing on record as to what action was taken by the Senior Superintendent of Police except merely forwarding the application of the petitioner before the Station House Officer, Police Station Phoolpur, District Prayagraj.

On a prima facie consideration, this Court is of the view that on account of the laxity of the police officials, the prosecution may be seriously affected, the action taken by the respondent no. 3 in the form of lodging of the FIR on 13.10.2020 and the subsequent medico legal examination of the petitioner on 14.10.2020, are prima facie a hogwash.

Considering the facts, which prima facie disclose the laxity on the part of the police authorities, this Court is of the view that the matter needs to be taken seriously. Needless to add that time and again the courts have emphasized about lodging of the FIR and conducting the medico legal examination with all expedition.

The respondent authorities, prima facie, have failed to take action as was expected of them, this Court is of the view that the liability for the lapses which are prima facie evident, should be fixed as such the the Senior Superintendent of Police, Prayagraj (respondent no. 2) and Station House Officer, Police Station Phoolpur, District Prayagraj (respondent no. 3) are directed to appear personally before this Court on 20.10.2020 on which date the Court proposes to pass further orders keeping in view the glaring facts, which have come to the knowledge of the Court.

Put up this case for further orders on 20.10.2020 as fresh.

The Standing Counsel shall inform the respondents no. 2 and 3 about this order."

5. In pursuance of the aforementioned order, personal affidavits have been filed by Shri

Sarvashresth Tripathi, posted as Deputy Inspector General of Police/Senior Superintendent of Police, Prayagraj and Shri Rakesh Chaurasia, posted as Station House Officer, Tharwai/Phoolpur, Prayagraj.

6. A personal affidavit was also filed by Smt. Kunti, mother of the girl (victim), wherein she has stated that the girl in question (victim) has been detained in the police station by the police authorities since 16.10.2020. It was further stated that the police is not permitting the family members of the petitioner to meet the girl (victim).

7. In view of the above, the Senior Superintendent of Police, Prayagraj was directed yesterday to produce the girl (victim) before this Court.

8. Today, the girl (alleged victim/petitioner) has been produced before this Court and on a specific query made by this Court, she has categorically stated that she was never detained by the Police Authority, as such, the affidavit filed by the mother of the victim girl appears to be false. The mother of the girl (victim) appears to be a poor, illiterate, helpless villager, as such, we do not propose to proceed against her for filing a false affidavit but we warn her against recurrence of similar conduct in future.

9. The main grievance of the petitioner is that the

first information report with regard to Gang rape was lodged after more than three months from the date of incident that too after the filing of the present writ petition.

10. In the affidavit filed on behalf of the Senior Superintendent of Police, Prayagraj, who is present before this Court in pursuance of the earlier order passed by this Court, it has been stated that Shri Sarvashreshth Tripathi (deponent) took over the charge of the post of Senior Superintendent of Police, Prayagraj on 09.09.2020. According to Shri Manish Goyal, learned Additional Advocate General, at the relevant point of time, (when the complaint was made) Shri Abhishek Dixit was the Senior Superintendent of Police, Prayagraj. He has further stated that the present S.S.P., Prayagraj was not aware about the incident, as such, no action could be taken by him in the matter promptly as he came to know about the incident only on 15.10.2020 when the order was passed by this Court in this regard.

11. Considering the facts and circumstances of the case, we have no reason to draw any adverse inference against the present Senior Superintendent of Police, Prayagraj Shri Sarvashreshth Tripathi.

12. In paragraph no. 11 of the aforesaid affidavit, it has been stated that after due inquiry, it was found that the Sub Inspector Pramod Kumar failed to inquire into the matter legally and

termed the matter as property dispute while the grievance of the petitioner was regarding sexual exploitation. The said report of the Sub Inspector Pramod Kumar was also forwarded to the Station House Officer, Phoolpur, Prayagraj, who also agreed with the report without examining its correctness. It has been further stated that the Sub Inspector Pramod Kumar, Police Station Phoolpur and Inspector Brijesh Kumar, the then Station House Officer, Phoolpur have been suspended by the present S.S.P., Prayagraj (deponent) vide order dated 18.10.2020 and both of them have been attached with the Police Line, Prayagraj during suspension period. The copy of the suspension order dated 18.10.2020 has been annexed as Annexure No. A-3 to the affidavit filed on behalf of the present S.S.P., Prayagraj. It has been further stated that on 18.10.2020, the deponent has set up a departmental inquiry against the abovementioned two Officers and directed the Additional Superintendent of Police, Soraon to inquire into the matter and submit a report within a week.

13. In pursuance of the earlier order passed by this Court, Shri Brijesh Kumar, then then Station House Officer, Tharwai/Phoolpur, Prayagraj is also present before this Court. On a specific query raised by this Court, as to why he did not register the first information report promptly despite specific direction given by the S.S.P., Prayagraj, he could not offer any explanation. Such gross negligence and laxity on the part of

the Police Department is highly deprecated and such gross negligence, and it we may say so 'callousness', is unbecoming of the conduct of a responsible officer entrusted with the obligation of performing the duties of a Public Office. Strict action is required to be taken against such persons in accordance with law.

14. Considering the facts and circumstances of the case, we direct the Senior Superintendent of Police, Prayagraj to provide proper protection to the victim girl as well as her family members. The S.S.P., Prayagraj is also directed to ensure that the investigation in the matter be concluded expeditiously in accordance with law and further ensure that the F.I.Rs. be registered promptly, particularly when the matters relates to women and children. Strict action be taken against the erring Officials, if any laches or laxity is found on their part.

15. The Senior Superintendent of Police, Prayagraj will monitor the investigation of the present case to ensure that the Investigating agency conducts the investigation in a free, fair and time bound manner without any external interference.

16. With the aforesaid observations and directions, this writ petition is finally disposed of.

Order Date :- 21.10.2020

Arun