

Case :- P.I.L. CIVIL No. - 16150 of 2020

Petitioner :- Suo-Moto Inre: Right To Decent & Dignified Last Rites/Cremat

Respondent :- State Of U.P. Thru Additional Chief Secretary, Home And Ors.

Counsel for Petitioner :- Abhinav Bhattacharya, Ajit Singh, Ashish Kumar Agarwal, Atul K. Singh, Atul Kumar Singh, Digvijay Singh Yadav, Jaideep Narain Mathur (Ac, Onkar Singh, Pradeep Kumar Singh, Seema Kushwaha

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal, J.

Hon'ble Rajan Roy, J.

Heard Shri Jaideep Narain Mathur, learned Senior Counsel along with Shri Abhinav Bhattacharya, learned amicus curiae; Shri S.V. Raju, learned Senior Counsel assisted by Ms. Sarica Raju, Shri Pranjal Krishana, Shri Venkatesh, Shri Guntur Promod Kumar, Advocates for the State; Shri V.K. Sahi, learned Senior Counsel along with Shri Manish Mishra and Shri Anurag Verma, Advocates for the State. Shri Luthra, learned Senior Counsel assisted by Shri Nitish Agarwal, Shri Ashok Kumar Shukla, Shri Sheejan Hasmi and Shri Anmol Kheta, learned counsel appearing for applicant seeking impleadment; Ms. Seema Kushwaha, learned counsel along with Shri Pradeep Kumar, Shri Sandeep, Shri Digvijai Singh, Advocates for the victim's family and Shri Anurag Kumar Singh, learned counsel for C.B.I.

Shri Prashant Kumar, Additional D.G. (Law and Order) and Special Secretary (Home), Govt. of U.P. are present in compliance of our order dated 12.10.2020. So is Shri Vikrant Veer erstwhile Superintendent of Police, Hathras.

An application has been filed by amicus curiae which is taken on record along with its annexures including order of the Supreme Court dated 27.10.2020 passed in Writ Petition (Crl.) No. 296 of 2020; Satyma Dubey and Ors. Vs. Union of India and Ors. We have perused the order dated 27.10.2020 referred above. Relevant extracts of the order are quoted below:-

"10. Though the petitioners had sought and the respondent State also through their affidavit had indicated that this Court can monitor the same, as already referred to above, a PIL(C)No.16150/2020 has been registered in the Allahabad High Court, Lucknow Bench, suo moto pursuant to its order dated 01.10.2020. From the order passed by the High Court it is noticed that the High Court has adequately delved into the aspects relating to the case to secure fair investigation and has also secured the presence of the father, mother, brother and sister-in-law of the victim and appropriate orders are being passed, including securing

reports from various quarters. In that circumstance, we do not find it necessary to divest the High Court of the proceedings and take upon this Court to monitor the proceedings/investigation. That apart, the incident having occurred within the jurisdiction of that High Court and all particulars being available, it would be appropriate for the High Court to proceed to monitor the investigation in the manner in which it would desire. In that view, it would be open for the writ petitioners/applicants herein to seek to intervene in the matter before the High Court subject to consideration of such request by the High Court and if it finds the need to take into consideration the contentions to be urged by the petitioners/applicants in that regard.

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13. On the aspect relating to the investigation, since we have indicated that the High Court would look into that aspect of the matter, the CBI shall report to the High Court in the manner as would be directed by the High Court through its orders from time to time. On the request of Ms. Indira Jaising, learned senior counsel for appointment of a Special Public Prosecutor we see no need to pass any specific order. This is an aspect which could be considered by the High Court in the light of the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the circumstance wherein the family members of the victim have chosen to engage Ms. Seema Kushwaha and Mr. Raj Ratan, Advocates, they would consider these aspects and make request on behalf of the victim in accordance with law if such need arises.

14. Therefore, without expressing any opinion on the merits of the rival contentions, all aspects of the matter are left open to be considered by the High Court in PIL(C) No.16150/2020 relating to the incident regarding which the investigation is to be conducted by the CBI and also with regard to the grievance put forth alleging illegal cremation.

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16. Before parting, we take note of the submission of the learned Solicitor General about the name and relationship of the family members with the victim being depicted in the face of the order dated 12.10.2020 passed by the High Court in PIL(C) No.16150/2020. Since it is a requirement of law to avoid such disclosure, the High Court is requested to delete the same and also morph the same in the digital records and avoid indication of such contents in future."

Let necessary impleadment of parties referred in Clause (b) of prayer clause of the said application be carried out by the Office in these proceedings and notice of the same be given to learned Assistant Solicitor General of India at Lucknow on behalf of Union of India. The Central Bureau of Investigation is already represented through Shri Anurag Kumar Singh as noticed hereinabove, therefore, fresh notice need not be given to it.

In furtherance of orders of the Supreme Court dated 27.10.2020 the concerned Officials of the High Court are directed to delete

the names of family members mentioned at page no. 1 of our dated 12.10.2020 at Serial Nos. (1), (2) (3) (4) and (5) under the heading '**present**' and the words 'family members of victim' shall be substituted in place of the recitals to be deleted. Further, name of deceased victim's father occurring in first line of paragraph 3 at page 3 i.e. second word in the first line of 3rd paragraph, shall also be deleted and after the words 'the father of the deceased' the words '(hereinafter to be referred as 'F')' shall be added in brackets. The name of deceased victim's brother mentioned as second word in third line of paragraph 3 at page 3 shall be deleted and after the words 'his younger son' the words '(hereinafter to be referred as 'B2')' shall be added in brackets. Further more at page 4 name of sister-in-law/Bhabhi of victim mentioned as first word of paragraph 3 shall be deleted and after the words 'the bhabhi of the deceased' the words '(hereinafter to be referred as 'WB')' shall be added in brackets. At page 3 of the order in first line of Para 4 after the words 'mother of the deceased' the words (hereinafter to be referred as 'M') shall be added in brackets. All actions necessary for carrying out these directions in compliance of orders of the Supreme Court dated 27.10.2020 shall be taken by concerned official/ registry etc. If, for carrying out the aforesaid corrections, copy of order dated 12.10.2020 as uploaded on official website of the High Court and/or 'elegalix' is required to be deleted/removed, the same shall be done and the corrected order as aforesaid shall be reloaded/ uploaded on the website. This shall be done forthwith.

The said application filed by Shri Abhinav Bhattacharya, learned amicus curiae is allowed in the aforesaid terms.

Three affidavits have been filed on behalf of State, one of the District Magistrate, Hathras, another of the then Superintendent of Police, Hathras and third on behalf of the State Government sworn by Shri Prakash Chandra Srivastava, Special Secretary (Home), Govt. of U.P. These documents are taken on record.

Two applications have been filed by applicants who are accused in the criminal case in respect to which the C.B.I. is conducting investigation. One of the applications bearing No. 62038 of 2020 seeks impleadment of applicants referred above as respondents in these proceedings. By means of the other application bearing No. 62039 of 2020 applicants seek appropriate directions restraining media houses and journalists from publishing any news/article or report in any manner whatsoever in respect of matters which would be subject matter of trial and any statement prejudicing the applicant's right to fair trial.

As regards the application seeking impleadment bearing No. 62038 of 2020, the scope of these proceedings after passing of order dated 27.10.2020 by the Supreme Court is two fold as of now, firstly, monitoring of C.B.I. Investigation into the alleged crime, secondly, issue of illegal cremation of the deceased victim and all matters related thereto. As regards the accused, they do not have much of a right/locus at this stage of investigation so far as its monitoring is concerned and also as regards the alleged illegal cremation. The above proposition is fairly accepted by Shri Luthra, therefore, they are not necessary parties to the proceedings, however, as pointed out by him that if at any stage of the proceedings any issue arises touching upon the rights of accused or an issue arises as to the scope of monitoring of investigation, then, they may be heard, therefore, considering the facts of the case, we dispose of this application with the observation that applicants shall have a right of hearing as and when, if at all, any of their rights are adversely affected or likely to be adversely affected in these proceedings in any manner.

As regards the other application bearing No. 62039 of 2020 seeking restraint order against media houses and journalists, we, in our order dated 12.10.2020 have already requested the media as also political parties to exercise restraint while expressing their views on the subject matter involved in these proceedings in a manner which does not disturb social harmony and/or infringe upon rights of victim's family and that of accused. No one should indulge in character assassination of victim just as accused should not be pronounced guilty before a fair trial. The Investigating Agency and the courts should be allowed to determine these issues. In continuation of what we have already said we expect the Media to be guided by the pronouncements of the Supreme Court in this regard in the case of ***Siddharth Vashisht @ Monu Sharma Vs. State (NCT of Delhi) (Paragraph No. 297, 298, 301, 303)*** reported in ***(2010) 6 SCC 1***; ***M.P. Lohia Vs. State of West Bengal and Anr. (Para No. 10)*** reported in ***(2005) 2 SCC 686***; ***State of Maharashtra Vs. Rajendra Jawnmal Gandhi (paragraph 36)*** reported in ***(1997) 8 SCC 386*** and other similar pronouncements on the subject. In our opinion these observations are, for the moment, sufficient, and no further directions are required unless of course any specific instance prejudicial to the rights of the victim's family or accused or the pending investigation as also these proceedings, is brought to our notice in which case we may take cognizance of the same at the appropriate stage. The application is disposed of accordingly.

Shri Vikrant Veer erstwhile Superintendent of Police, Hathras appeared before us today. We heard his version. He has also

filed an affidavit which we have taken on record. He mostly narrated what has already been stated by him in his affidavit. He made a statement that it is he and the District Magistrate who had taken the decision to cremate the victim's body in the night.

Shri S.V. Raju, learned Senior Counsel appearing for the State gave an outline of the events which took place on 29.09.2020 and in the night of cremation. He apprised us of the fact that the State Government had informed the Central Government about the order of the Supreme Court of India dated 27.10.2020 regarding provision of security for family members of the victim by the Central Reserve Police Force and that the CRPF had taken over security of the victim's family and witness. He also apprised us of the steps taken for providing compensation to the victim's family and in this context he invited our attention to relevant affidavits filed on behalf of the State. Shri Raju also informed us that process of preparing a SOP (Standard Operating Procedure) as ordered by this Court on 12.10.2020 was on and a draft SOP had been prepared which had been shared with the amicus curiae and as and when the same is finalized it would be placed before the Court for its consideration.

During course of arguments we asked Shri S. V. Raju, learned Senior Counsel appearing for State whether it was fair and reasonable to allow the District Magistrate to continue at Hathras during pendency of the investigation as also these proceedings before us regarding illegal cremation etc. when he was in the thick of things, and would it not be appropriate to shift him elsewhere during pendency of these proceedings without there being any stigma attached to such an action only to ensure fairness and transparency in the matter, Shri Raju assured us that he will convey it to the State Government and come back to us on this issue by the next date.

Ms. Seema Kushwaha, learned counsel appearing for the victim's family submitted that the family wanted to be shifted outside Uttar Pradesh to Delhi, for the sake of its security as it was apprehensive in this regard once the proceedings before the Courts etc. were over. Secondly, she apprised the Court about an alleged promise made by the State Government for providing employment to one member of the victim's family which had not been fulfilled as yet. Thirdly, she stated that although part of compensation had been received by the family some pressure was being exerted for returning it in view of some alleged statement made by some family members that the family did not want it. In this regard she referred to some letter of the District Magistrate but could not place it before us today.

The learned Senior Counsel appearing for the State refuted this contention and stated that there was no such move at all.

Ms. Seema Kushwaha, learned counsel appearing for the victim's family has already filed an affidavit on behalf of victim's family on 23.10.2020 through e-mode which is on record.

The C.B.I. is directed to file a status report with regard to the ongoing investigation, before the next date. It shall also indicate as to approximately how much time is likely to be taken to complete the investigation.

Considering the fact that under the orders of the Supreme Court of India it is the Central Reserve Police Force which is required to provide security to the family members of victim and witnesses in the criminal case, the Office/ Registry of this Court is directed to implead the Director General, Central Reserve Police Force, New Delhi as an opposite party in these suo motu proceedings and serve notice of these proceedings upon the learned Assistant Solicitor General of India at Lucknow on his behalf.

Let a responsible Officer of the Central Reserve Police Force file an affidavit indicating the nature of security provided and measures taken in this regard for the victim's family before the next date.

Shri Abhinav Bhattacharya, learned amicus curiae shall also communicate this order to the Assistant Solicitor General of India at Lucknow.

List this matter on 25.11.2020 at 3.15 p.m. showing names of counsel for respective parties.

The Officers, who are present, need not appear again unless called upon.

(Rajan Roy,J.)

(Pankaj Mithal,J.)

Order Date :- 2.11.2020

R.K.P.