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2022 LiveLaw (AB) 523

HIGH COURT OF JUDICATURE AT ALLAHABAD

Suneet Kumar; J., Syed Waiz Mian; J.

CRIMINAL MISC. WRIT PETITION No. 13325 of 2022; 07.12.2022

xxxxxx versus State of U.P. and 6 Others

Counsel for Petitioner: - Shiva Priya Prasad, Krishna Kanhaiya Soni; Counsel for Respondent: - G.A., Rohit Kumar Singh

1. Heard learned counsel for the petitioner and Sri Arnendu Kumar Singh, learned A. G. A. for the State respondent.

2. Pursuant to the order dated 25.11.2022, the fourth respondent Shri Rakesh Babu Yadav, S. H. O., Police Station-Sadabad Kotwali, District-Hathras, is personally present before the Court and has filed his personal affidavit. The order dated 25.11.2022 is extracted:

"Short counter affidavit filed on behalf of the respondent no.3, which is taken on record.

Heard learned counsel for the parties.

By the instant writ petition, the petitioner seeks the following relief:

"(a) Issue a writ, order or direction of nature of mandamus directing the respondent no.2 to take action on the representation of petitioner dated 05.09.2022 for changing the investigation officer with respect to impugned first information report dated 26.08.2022 lodged in Case Crime No.359 of 2022, under Sections 363, 376-D, 504, 506 I.P.C. & 3/4 POCSO Act & 67-A I.T. Act, Police Station Sadabad Kotwali, District Hathras."

It is stated that the respondent no.4 after recording the statement of the victim and other witnesses under Section 161 Cr.P.C. did not find the involvement of the respondent nos.6 & 7. Charge sheet has been filed against the respondent no.5. In this backdrop, learned counsel for the petitioner submits that the I.O./respondent no.4 was hand in glove with the accused persons. It is alleged that the statement recorded by the victim under Section 161 Cr.P.C. was not recorded by the I.O. as per her version; It is further submitted that in her statement under Section 164 Cr.P.C. recorded before the Magistrate, she has categorically supported the prosecution case and the complicity of respondent nos.5, 6 & 7. In this backdrop, it is submitted that filing of the charge sheet against the respondent no.5, exonerating the respondent nos.6 & 7 is gross misuse by the I.O./respondent no.4 of the position and power in the colourable exercise of power.

The contention that is being raised by the petitioner, if true, is serious, before any order is passed by the respondent no.4. He shall appear before the Court along with record of the case to show cause by filing his personal affidavit.

List on 07.12.2022 as fresh.

Learned A.G.A. is directed to communicate this order to the Senior Superintendent of Police, Hathras, for compliance."

3. The victim has approached this Court making serious allegations of misconduct and involvement of fourth respondent in overt act of sheltering the accused, thereby, exceeding his power under the garb of his official duty. The petitioner approached the police authorities to lodge an F. I. R. but the same was not lodged. Aggrieved, she approached the concerned Magistrate by filing an application under Section 156(3) Cr.P.C. alleging that on 15.03.2021 petitioner was a minor, aged about 17 years, her relative fifth respondent (Gaurav) along with his friends, respondent nos. 6 & 7, enticed her and had taken her to visit Hathras. At Hathras in the room where she was kept, on consuming the food brought by the accused, she fell

unconscious. Thereafter, all the three accused respondent nos. 5, 6 & 7 outraged her modesty and also prepared a mobile clipping of the incident. Thereafter, it is alleged that the petitioner was continuously being blackmailed by the accused and compelled her to enter into physical relationship with them or else, the clipping of the incident would be made viral. It is further alleged that the victim thereafter got married. Even thereafter, the accused continuously threatened and compelled her to forcefully enter into physical relationship on the threat of the video clipping and finally coerced and ruined her married life by sending the video clipping on the mobile phone of her husband.

4. Fourth respondent after investigation, filed police report against fifth respondent and discharged sixth and seventh respondents that since they were not seen in the video clipping, therefore, their presence at the time of incident was found doubtful. Petitioner filed a protest petition against the police report, which came to be rejected by the Magistrate concerned vide order dated 04.08.2022, relying upon the material, oral and documentary, which was made part of the prosecution case. Thereafter, the petitioner approached this Court making serious allegations against the respondent no. 4 that he was hand in glove with the accused, in particular, respondent nos. 6 and 7.

5. It is alleged that the statements recorded under Section 161 Cr. P. C. of the victim, her parents, landlord of the room at Hathras, where the incident is alleged to have occurred, was not recorded as per the statement given by them, rather, the statements were manipulated by the fourth respondent to aid and abet in the discharge of the accused respondent nos. 6 and 7 during the investigation. It is submitted that thereafter, landlord, Ratan Kumar Sharma, lodged a formal complaint on the portal of the State Government on 31.08.2022, making serious allegations against the fourth respondent alleging that he had coerced and pressurized the landlord, Ratan Kumar Sharma, not to give any statement against respondent nos. 6 and 7 or else, he would be compelled to face dire consequences, including, implication in false cases. Thereafter, a similar complaint was sent by registered post by the landlord addressed to the various officials including the police officials at Hathras and the Human Rights Commission. Notarized affidavits of all such persons, which include, the neighbours of the landlord, whose statements is said to have been recorded by the fourth respondent, were filed before the Superintendent of Police, Hathras, alleging that the statements was incorrectly recorded by the fourth respondent.

6. In the affidavit of compliance filed today, the fourth respondent has attempted to justify his conduct by stating that after recording the statement of the mother, father of the victim, landlord and other witnesses under Section 161 Cr. P. C. and on viewing video clipping, it transpired that the sixth & seventh respondent were not present at the time of incident. Further, a theory of some enmity between one advocate with respondent nos. 6 and 7 has been set up by the fourth respondent to falsify the version of the victim. It is not denied in the affidavit of compliance that the victim was presented before the Magistrate and in her statement recorded under 164 Cr. P. C., she has reiterated and supported the prosecution version implicating fifth, sixth & seventh respondents of having committed the offence at Hathras. In para 8 of the affidavit, it is stated that the statement of the victim recorded on 28.08.2022, her signature was obtained thereon. From the facts brought on record, it transpires that the fourth respondent is either not aware of the procedure of conducting the investigation in terms of the provision mandated in the Code of the Criminal Procedure or the fourth respondent deliberately and wilfully tried to ensure that the accused are discharged during the investigation for extraneous consideration. The fourth respondent has set at naught the statement of the victim recorded under Section 164 Cr. P. C., on the strength of the statements of her parents, landlord and other persons recorded under Section 161 Cr. P. C. The statement of victim before the Magistrate was sufficient, prima facie, to show the complicity of the accused, including, sixth and seventh respondents. The statement of all other witnesses are merely corroborative but is not sufficient to dislodge the statement of the victim.

The fourth respondent has thrown the Indian Evidence Act to the wind by himself arrived at a conclusion that the statement of the victim is per se, false. The fourth respondent has adorned upon himself the role of an investigating officer, as well, of a Court. The victim has been running from post to pillar but of no avail. In either case, the fourth respondent has exposed himself for civil and criminal consequence and is liable to be dealt with accordingly.

7. Investigation is for the purpose of collecting evidence by a police officer, and otherwise by any person authorized by a Magistrate in this behalf, and also pertains to a stage before the trial commences. Investigation which ultimately leads to a police report under the Cr.P.C. is an investigation conducted by the police, and may be ordered in an inquiry made by the Magistrate himself in complaint cases.

8. The statutory scheme of the Cr.P.C., therefore, puts "inquiry" and "trial" in distinct compartments, as the very definition of "inquiry" demonstrates. "Investigation" is for the purpose of collecting evidence by a police officer.

9. The expression 'fair and proper investigation' in criminal jurisprudence contemplates: Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

10. A fair trial must commence only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted.

11. Writ petition is being disposed of by passing the following directions:

(i) Director General of Police, Uttar Pradesh, Lucknow, shall initiate disciplinary proceeding against fourth respondent for major penalty, for dereliction of duty and exceeding his powers as Investigation Officer.

(ii) Fourth respondent until pendency of the inquiry against him, shall not be appointed Investigating Officer in any other case crime and in the event, the Officer has been appointed Investigating Officer for investigation he shall immediately be replaced by another Investigating Officer.

(iii) F. I. R. dated 26.08.2022, registered as Case Crime No. 359 of 2022, under Sections 363, 376-D, 504, 506 I.P.C. and Sections 3/4 P. O. C. S. O. Act and Sections 67-A I. T. Act, Police Station Sadabad, Kotwali, District Hathras, shall be further investigated by appointing another Investigating Officer.

(iv) The Investigating Officer so appointed shall inform the concerned Court by filing this order and shall make an endeavour to conclude the investigation expeditiously.