

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, Anjani Kumar Mishra, Ashish Kumar Agarwal, Atul K. Singh, Atul Kumar Singh, Digvijay Singh Yadav, Jaideep Narain Mathur (Ac, Nadeem Murtaza, Onkar Singh, Pradeep Kumar Singh, Seema Kushwaha

Counsel for Respondent :- C.S.C., Ashok Shukla, Dr. Ravi Kumar Mishra, Manjusha, Satyaveer Singh

Hon'ble Rajan Roy, J.

Hon'ble Jaspreet Singh, J.

Heard Shri Jaideep Narain Mathur, learned Senior Counsel assisted by Shri Abhinav Bhattacharya, learned amicus curie, Shri S.V. Raju, learned Senior Counsel assisted by Shri Pranjal Krishna, learned counsel appearing for State, Shri V. K. Sahi, learned Additional Advocate General for the State and Shri Anurag Singh, learned counsel for C.B.I., Shri Sharad Bhatnagar and Ms. Seema Kushwaha, learned counsel for victim's family as well as Shri S.B. Pandey assisted by Miss Akansha Dubey, learned counsel for the Union of India.

These proceedings have been initiated suo moto in public interest in respect of the unfortunate incident which recently happened in a village in District Hathras, wherein allegedly a 19 year old girl was said to have been gang raped who ultimately succumbed to her injuries on 29.09.2020 while under treatment at Safdarjung Hospital in New Delhi.

Subsequently, in a *Writ Petition (Criminal) No. 296 of 2020 (Satyama Dubey and Others Vs. Union of India & Others)* wherein the Supreme Court passed an order on 20.07.2020 by which all aspects of the matter were left open to be considered by the High Court in PIL (C) No. 16150 of 2020 i.e. the instant case relating to the incident regarding which the investigation is to be conducted by the CBI and also with regard to the grievance put forth regarding illegal cremation.

Thereafter a charge sheet was filed by the CBI before the Special Judge, SC/ST Act at Hathras against the accused.

Shri Sharad Bhatnagar, learned counsel has filed an application

on behalf of the victim's brother supported by an affidavit seeking certain interim directions.

Learned counsel informed the Court that during pendency of these proceedings, a transfer petitioner was filed before Hon'ble Supreme Court for transfer of the trial going on in District Court, Hathras, outside this State. The said petition has been dismissed on 12.03.2021. He informed that the said petition was filed on 25.02.2021 much prior to the incident of 05.03.2021 which was not an issue and found no mention in either the written or oral submissions before the Hon'ble Supreme Court of India. The order of Hon'ble Supreme Court dated 12.03.2021 has been placed before us, which is taken on record.

He further informs that on 05.03.2021 an incident took place when PW-1 and PW-4 presented themselves before the Special Court at Hathras where Session Trial No.583/2020, Case Crime No. 0005/2020 is pending trial. Learned counsel invited our attention to the affidavit of victim's brother wherein it has been stated that on 05.03.2021 the aforesaid trial was listed before the Special Court, Hathras for recording prosecution evidence. PW-1 and PW-4 had been summoned by the Court for the said purpose. The said PWs were accompanied by their counsel including Advocate Ms. Seema Kushwaha. Shortly after PW-1 began deposing before the learned Court of Sri B.D. Bharati, the Presiding Officer, Special Court (SC/ST Act), Hathras, an advocate named Tarun Hari Sharma, stormed into the court room and charged towards the applicant and the complainant counsel, shouting and issuing threats. Amongst the barrage of threats extended to the complainant Advocate Seema Kushwaha, he stated that in this case the complainant counsel could not represent the victim's family. It has been stated that when he aggressively approached them, it was evident that he was under the influence of alcohol. At the same time, a large mob, including lawyers, entered the courtroom and surrounded the applicant and the complainant's counsel in order to threaten and intimidate them. In these circumstances, the learned Presiding Judge was forced to stop the trial proceedings. On being ordered to leave the courtroom, the aforesaid Advocate threatened the applicant and his counsel.

The affidavit further goes on to narrate the incident which took place thereafter. The affidavit also states that on account of this ruckus created by the aforesaid Advocate and mob which included lawyers and others, the P.Ws could not properly depose on account of fear for their life and security.

After sometime the proceedings were resumed when another Advocate namely Hari Sharma who, as alleged, is the father of

Advocate Tarun Hari Sharma, entered the courtroom and he issued threats to the complainant's counsel. In these circumstances, the Presiding Officer was forced to stop the proceedings.

Acknowledging the real and grave threat to the counsel for the applicant, the Presiding Judge, ordered the police personnel present in the courtroom to provide her security cover within the court premises. The Court also ordered the S.H.O. of P.S. Kotwali to provide safe and secure passage to the complainant counsel, Advocate Seema Kushwaha, and to drop her at the Hathras border. It is only then that the counsel was able to leave Hathras district court premises and thereafter she has been unable to appear before the concerned court due to the risk to her safety and security.

As per the said affidavit, learned Advocate Seema Kushwaha has submitted a representation dated 18.03.2021 to the District and Sessions Judge, Hathras narrating the entire incident which took place on 05.03.2021, a copy of the said complaint is annexed as Annexure No. A-1 to the affidavit in support of the application.

In view of the aforesaid incident, the applicant has prayed that a report be called from the learned Presiding Officer, Special Court, SC/ST Act, Hathras regarding the incident alleged to have taken place on 05.03.2021 and also, to stay the trial proceedings in the interregnum, given the real and grave risk of miscarriage of justice, till such report by the Presiding Officer is received.

Sri Bhatnagar informed the Court that the trial was fixed before the Special Court at Hathras today, however, the counsel for the victim was unable to inform the Court what happened today, when the case was taken up before the Trial Court. P.W. 1, the brother of the victim is also present in the High Court. He was supposed to be before the Trial Court but considering the threat extended as mentioned in the affidavit, referred hereinabove, his counsel says that he was unable to appear before the Trial Court, today.

Sri Raju, learned Senior Advocate appearing for the State fairly submitted that if the facts as alleged are correct then it is a serious matter of which cognizance should be taken by this Court and every effort should be made to ensure fair trial as also security to the victim's family and the witnesses. He also submitted that he has no objection if a report is called for from the Presiding Judge and also if the trial is stayed by this Court.

Learned Amicus Curiae, Sri Jaideep Narayan Mathur also emphasized the necessity of ensuring free trial in the matter, given the circumstances in which the incident which has led to the trial, and the incidents which happened thereafter, including the incident which is alleged to have occurred on 05.03.2021, have unfolded.

Sri Bhatnagar, learned counsel for the victim' family along with Miss Seem Kushwaha informed the Court that a Special Prosecutor has already been appointed in terms of Section 15-A of the Act of 1989 for the trial.

Sri Anurag Singh, learned counsel for the CBI informed the Court that the CBI intends to file an application for transfer of the trial from District Hathras, elsewhere, within the State.

Considering the facts as noted hereinabove and as has been stated in the affidavit in support of the application bearing C.M.A. No. 46883 of 2021, we direct the District Judge, Hathras to inquire as to whether any such incident as has been alleged in the affidavit dated 18.03.2021 occurred or not, on 05.03.2021, and send his report in this regard to this Court in a sealed cover. He shall also send a report of the learned Presiding Officer, Special Court, SC/ST Act who is trying Sessions Trial No. 583 of 2020 as to the incidents which may have taken place in his presence in the Court Room or outside. The District Judge shall before preparing such report go through CCTV Cameras, if any, installed in the court premises. The report shall be made available to the Senior Registrar of this Court at Lucknow within 15 days who in turn shall place it on record of these proceedings.

We also direct the Inspector General, C.R.P.F. Central Sector, Lucknow to collect information in this regard from his personnel who have been deputed for security of the victim's family and who, in all probability, must have accompanied the family to the Trial Court, as to whether any such incident, as has been narrated in the affidavit dated 18.03.2021, referred herein above, took place in the Court premises. He shall submit his report along with a report of the concerned officer of CRPF who may have been present on the spot, in sealed cover, to the Senior Registrar of this Court within 15 days who shall place it on record.

To facilitate this exercise, a copy of C.M.A. No. 46883 of 2021 along with the affidavit in support thereof and its annexure shall be sent by the Senior Registrar of this Court to the District Judge, Hathras, Presiding Judge concerned, as also, to the Inspector General, CRPF, Central Sector, Lucknow.

After receipt of the aforesaid report, we will consider as to whether trial in question before the Special Judge, (SC/ST Act), Hathras is required to be stayed and is to be transferred elsewhere in exercise of powers under Section 407 Cr.P.C.

In the meantime, we provide that till the next date of listing whenever the trial is fixed before the Trial Court, the State Government and the District Authorities shall make all possible arrangements for security and smooth conduct of the trial within the court premises and outside it.

The CRPF, needless to say, shall continue to provide protection to the victim' family and the witnesses in terms of the Order of the Supreme Court of India dated 27.10.2020 passed in Writ (Criminal) bearing No. 296 of 2020.

The CCTV footage if any relating to the premises at Hathras where the Trial was being conducted on 05.03.2021 shall be preserved and shall not be weeded out without permission of this Court.

We further provide that till the next date of listing, the Trial Court shall conduct the proceedings in- camera in keeping with the letter and spirit of Section 327 Cr.P.C. and it shall adhere to this mandate strictly.

The District Judge is directed to ensure that the trial is allowed to be conducted before the Court concerned in a free and fair manner without any outside hindrance.

We also make it clear that if any person who is stranger to the trial as also anyone who may be involved in the trial, tries to disturb the proceedings before the Trial Court or in any manner attempts to threaten the life, liberty and property of the victim's family and the witnesses, we would be taking severe action against such person including contempt proceedings under the Contempt of Court's Act, 1971 read with Section 215 of the Constitution of India.

List this matter on 07.04.2021 at 03:30 PM.

The records of this case be placed before Hon'ble the Chief Justice / Hon'ble Senior Judge as the case may be for constitution of this Bench as aforesaid.

Order Date :- 19.3.2021

Asheesh