

WPIL No.124 of 2018

Hon'ble Rajiv Sharma, A.C.J.

Hon'ble Sharad Kumar Sharma, J.

Mr. Vivek Shukla, Advocate in the Court Room has brought to our notice the news item which appeared in the daily edition of "Amar Ujala", dated 30.08.2018, whereby the *panchayat* has issued "fatwa" for externment of the family of the rape victim in Laksar "Roorkee".

The Registry is directed to register the same as PIL.

Mr. Vivek Shukla, Advocate is appointed as Amicus Curiae, for the petitioner.

Mr. Paresh Tripathi, C.S.C. for the State.

This "fatwa" is against the letter and spirit of the Constitution. The *panchayat*, instead of sympathising with the rape victim, had the audacity to extern the family from the village.

Fatwa is nothing but extra-constitutional adventurism, not permissible under the Constitution. The constitution of *Panchayats* is provided under Article 243 of the Constitution of India. These are created under the Panchayati Raj Act. The *panchayats* are only required to discharge the duties and functions enshrined under the law. Issuing *fatwas* is no part of their statutory duties and functions. The *fatwas* causes immense agony and devastation to the victim, even if the same has been issued by local outfit/local panchayat/family panchayat like 'Khap Panchayat'.

Their Lordships of the Hon'ble Supreme Court in **2011 (6) SCC 405**, in the case of "*Arumugam Servai vs. State of Tamil Nadu*", have held that "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage

honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. This is wholly illegal and has to be ruthlessly stamped out. Further held that the administrative and police officials are required to take strong measures to prevent such atrocious acts. The persons who practicing it, must be criminally proceeded against and given harsh punishment if found guilty. Their Lordships have held as under:-

“10. We would also like to mention the highly objectionable two tumbler system prevalent in many parts of Tamil Nadu. This system is that in many tea shops and restaurants there are separate tumblers for serving tea or other drinks to Scheduled Caste persons and non-Scheduled Caste persons. In our opinion, this is highly objectionable, and is an offence under the SC/ST Act, and hence those practising it must be criminally proceeded against and given harsh punishment if found guilty. All administrative and police officers will be accountable and departmentally proceeded against if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits.

12. We have in recent years heard of “Khap Panchayats” (known as “Katta Panchayats” in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in Lata Singh case³, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.”

Their Lordships of the Hon’ble Supreme Court in **2014 (7) SCC 707**, in the case of “*Vishwa Lochan Madan vs. Union of India & others*”, have held that *fatwa* is not a decree and is neither binding on anyone nor enforceable. Further held, that *fatwa* issued by whatever body, not emanating from any judicial system recognized by law has no legal value. Their Lordships have held as under:-

14. As observed earlier, the *fatwa* has no legal status in our constitutional scheme. Notwithstanding that it is an admitted position that *fatwas* have been issued and are being issued. The All India Muslim Personal Law Board feels the “necessity of establishment of a network of judicial system throughout the country and Muslims should be made aware that they should get their disputes decided by the Qazis”. According to the All India Muslim Personal Law Board “this establishment may not

have the police powers but shall have the book of Allah in hand and sunnat of the Rasool and all decisions should be according to the book and the sunnat. This will bring the Muslims to the Muslim courts. They will get justice”.

15. The object of establishment of such a court may be laudable but we have no doubt in our mind that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the corpus juris of the State. A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the fatwa gets strength from the religion; it causes serious psychological impact on the person intending not to abide by that. As projected by Respondent 10 “Godfearing Muslims obey the fatwas”. In the words of Respondent 10 “it is for the persons/parties who obtain fatwa to abide by it or not”. He, however, emphasises that “the persons who are Godfearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the fatwa”. Imrana’s case is an eye-opener in this context. Though she became the victim of lust of her father-in-law, her marriage was declared unlawful and the innocent husband was restrained from keeping physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, the victim has been punished. A country governed by rule of law cannot fathom it.

16. In our opinion, one may not object to issuance of fatwa on a religious issue or any other issue so long it does not infringe upon the rights of individuals guaranteed under the law. Fatwa may be issued in respect of issues concerning the community at large at the instance of a stranger but if a fatwa is sought by a complete stranger on an issue not concerning the community at large but individual, then the Dar-ul-Qaza or for that matter anybody may consider the desirability of giving any response and while considering it should not be completely unmindful of the motivation behind the fatwa. Having regard to the fact that a fatwa has the potential of causing immense devastation, we feel impelled to add a word of caution. We would like to advise the Dar-ul-Qaza or for that matter anybody not to give any response or issue fatwa concerning an individual, unless asked for by the person involved or the person having direct interest in the matter. However, in a case the person involved or the person directly interested or likely to be affected being incapacitated, by any person having some interest in the matter. Issuance of fatwa on rights, status and obligation of individual Muslims, in our opinion, would not be permissible, unless asked for by the person concerned or in case of incapacity, by the person interested. Fatwas touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, would be absolutely uncalled for. It shall be in violation of basic human rights. It cannot be used to punish the innocent. No religion including Islam punishes the innocent. Religion cannot be allowed to be merciless to the victim. Faith cannot be used as the dehumanising force.

The declaration of *fatwa* is declared unconstitutional and illegal.

The writ petition is disposed of by issuing following mandatory directions at the admission stage:-

- A. In the entire State of Uttarakhand all the religious outfits/bodies and statutory *panchayats/local panchayats/group of people* are banned from issuing *fatwas*, since it infringes upon the statutory rights, fundamental rights, dignity, status, honour and obligation of individuals.

- B. The Senior Superintendent of Police, Haridwar is directed to depute the Circle Officer to immediately reach the village and to ensure that the family of the victim is traced and in no circumstance it is externed from the village.
- C. The Senior Superintendent of Police, Haridwar shall ensure round the clock safety of the victim and her close family members. The Senior Superintendent of Police, Haridwar is also directed to initiate criminal proceedings against all the Members of the Panchayat/local panchayat/local outfit/ group of people who have issued the Fatwa.

The Court places on record its appreciation of Mr. Vivek Shukla, Advocate for bringing to the notice of Court this unsavoury incident.

Let a certified copy of this order be issued to all concerned, today itself, on payment of usual charges.

(Sharad Kumar Sharma, J.) (Rajiv Sharma, A.C.J.)
30.08.2018