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(Judgment reserved on 27.07.2021)

(Judgment delivered on 01.10.2021)

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 4288 of 2021

Petitioner :- Resham Singh

Respondent :- State Of Uttar Pradesh And 2 Others

Counsel for Petitioner :- Syed Imran Ibrahim

Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Piyush Agrawal,J.

(Per: Surya Prakash Kesarwani, J.)

1. Heard Sri Arvind Verma, learned Senior Advocate assisted by Sri Jaspreet Singh Rai, Sri Anurag Bajapayee and Smridhi Sharma, learned counsels for the petitioner and Sri Raghvendra Singh, learned Advocate General assisted by Sri Shiv Nath Tilhari, learned A.G.A. for the State – respondents.

2. This writ petition has been filed praying for the following relief:

“a) Issue a writ order or direction in the nature of mandamus directing the respondent no.2 and 3 to conduct fair investigation with respect to the events that transpired on the fateful day of 03.05.2021; and

b) Issue a writ order or direction in the nature of Mandamus directing the Respondents to immediately arrest the erring Police Officials and proceed against them departmentally as per Rules, and

c) Issue a Writ order or direction in the nature of Mandamus directing the respondents to conduct free and fair investigation in the present matter and also this Honble Court may graciously be pleased to monitor the investigation so as to secure the ends of justice. and/or

d) Pass any such further order(s) as deemed fit and proper in the facts and circumstances of the case.”

3. Thus, the sole prayer of the petitioner is that a fair investigation be conducted in the matter of incident dated 03.05.2021 with respect to which the petitioner has lodged a First Information Report No.0272/2021 dated 08.05.2021 under Sections 147, 323, 342, 504 I.P.C., P.S. Puranpur, District Pilibhit and the FIR No.0264/2021 dated 03.05.2021, P.S. Puranpur, District Pilibhit lodged by the police. Initially, the police has registered FIR against the petitioner and his

family members under Section 147, 149, 188, 269, 332, 353, 427, 504 I.P.C. but subsequently, as per Para-3(xix) of the supplementary affidavit of Sweta Kumari Yadav, Circle Officer, Crime Bareilly, dated 16.07.2021 filed on behalf of Director General of Police, Uttar Pradesh, Lucknow, the names of the other family members of the petitioner namely Satyendra Singh, Harjindar Singh, Sukhvindar Singh and Rajendra Kaur relating to FIR No.264/2021 (lodged by the police) have been dropped and Sections 147 and 149, I.P.C. against the petitioner was also dropped and now the investigation against the petitioner is continuing for offences only under Section 188, 269, 332, 353, 427, 504 I.P.C.

Facts of the Case:-

4. Briefly stated facts of the present case are that according to the petitioner on 03.05.2021, the petitioner along with his mother and two sisters was going from Pilibhit to Lakhim Pur Kheri to pay homage to the departed soul, namely Karam Jeet Singh (brother-in-law) who expired on 02.05.2021. In the way, they were stopped by the police officials at around 9 A.M. at Anaj Mandi, Puranpur, Pilibhit. The police inquired from the victim and family members as to where they are going and also asked to produce papers of the car in which they were travelling. The police officials who stopped the vehicle and made inquiry, were Sub-Inspector Ram Naresh Singh, Sub-Inspector Raees Ahmad and 5-6 constables. According to the petitioner, in sorting out papers relating to the vehicle from the dash board of the car, there occurred some delay which caused annoyance to the policemen who started abusing the petitioner and his family members and when they resisted, they started beating the petitioner of which video clip was also taken. After beating the petitioner and his family members, the police officials forcefully took the petitioner and his family members to the Kotwali Puranpur without assistance of any lady police. Thereafter, the policemen disrobed the petitioner and then tied up on a cot and brutally beaten him for two hours using *dandas*, fist and leg blows,

gave him third degree torture and abused him. Sub-Inspector Ram Naresh Singh along with other police officials, inserted a danda/ lathi inside the petitioner's anus/ rectum to humiliate him and crush his self-respect and to scare the petitioner for life. Local people also gathered at the Police Station and recorded a video of the petitioner's torturing by the police, but the aforesaid policemen threatened them and got the videos deleted. To justify their illegal acts and as a matter of *peshbandi*, the aforesaid police officials got registered FIR No.264/2021 dated 03.05.2021 against the petitioner and his family members but subsequently they dropped the names of family members and also dropped few sections of I.P.C. against the petitioner. The petitioner was in severe pain and in a bad condition but under the influence of the aforesaid police officers and other police officers, the medical examination of the petitioner was not conducted in the government hospital. The video of atrocities of the police officials got viral on social media and only thereafter, the Superintendent of Police, Pilibhit assured that justice would be done. Even turban of the petitioner was removed by the police officials and other illegal acts were also done by them. This also annoyed the Sikh community. Therefore, a representation being letter No.4657/2-6 dated 06.05.2021 was submitted by Delhi Sikh Gurdwara Management Committee before the Ministry of Home Affairs, New Delhi about the incident dated 03.05.2021. Few paragraphs of the aforesaid representation of Delhi Sikh Gurdwara Management Committee, are reproduced below:

"2. The instant Representation/Criminal Complaint is addressed to you to bring to notice and to seek an immediate action against / appropriate direction errant officials of U.P. Police for the grave and inhuman torture of Sardar Resham Singh (a retired army official), alongwith his mother and two sisters on 03.05.2021 at Anaj Mandi, PuranPur Kotwali, District Pilibhit, Uttar Pradesh.

3. The entire incident has shaken the very conscience of the society and the brutality inflicted upon the victims by the Police is beyond imagination. The video of the torture and injuries inflicted on him are enclosed with this complaint.

4. Sardar Resham Singh (hereinafter referred to as 'Victim') who is a resident of Mathna Jabti, Pilibhit and is retired from the Indian Army in 2018 after 18 years of service and is currently re-employed in Pilibhit.

The identity card of Sardar Resham Singh is also enclosed with this complaint.

5. That on 02.05.2021 the Brother in Law of Sardar Resham Singh expired.

6. That on 03.05.2021 Sardar Resham Singh alongwith his Mother and Two sisters were on their way from Pilibhit to Lakhim Pur Kheri to offer their last respects to the departed soul.

7. That at around 9 a.m. they were stopped by the Police at Anaj Mandi, Puranpur, Pilibhit. The officials enquired as to where they were going and thereafter asked for the papers of the Alto car in which they were travelling.

8. When Sardar Resham Singh was taking out the papers of the car from the dash board a Police official started abusing him. The Victim requested them not to use abusive words since his mother and sisters were with him and that he is a respectable person who had retired from the Armed Forces.

9. The Police officials got further agitated and said that they will teach you a lesson of life and thereafter started giving him beating with lathis.

10. Then the Thander of Kotwali, Puranpur- Ram Naresh Singh alongwith other fellow colleagues also started brutally beating the Victim with Dandas, Fist and Leg blows. Even the mother and Sisters of Sardar Resham Singh were beaten up.

11. After brutally beating him there, Sardar Resham Singh and his mother and two sisters were taken to the Kotwali, Puranpur, Thana.

12. Thereafter Sardar Resham Singh was disrobed and then tied up and brutally beaten at the Kotwali, Puranpur, Thana for two hours with Dandas, Fist and Leg Blows, other deadly weapons and have given him a third degree torture. He was also abused with dirty and filthy abuses regarding his mother, sister and his religion.

His turban was removed, his hair was pulled apart by the officials there including Ram Naresh Singh and the officials told him that we will cut your hair and teach you a lesson.

13. Thereafter Ram Naresh Singh alongwith other police officials inserted a "Danda/ 'Lathi' inside his anus/rectum with an intention to humiliate and harm him to such an extent that his self respect is crushed and he is scarred for life. They all rejoiced at this carnal act and did not stop torturing him.

14. That Resham Singh was beaten up brutally. He was told that we will not let you get out alive today.

15. It is only after his family and few locals intervened and the Police realized that few locals had made a video as well of them torturing Resham Singh that the Police officials stopped the torture. The police officials also threatened the localites and got those videos deleted by threatening them of registering false cases against.

16. The Police officials have also registered; a false case against Sardar Resham Singh, his mother and 2 sisters and also challaned the victim to justify, the wrong doing despite the victim having all valid documentation being there.

17. Till date Resham Singh is in brutal pain, and even the local government hospital administration in connivance with other officials have refused to do his medical examination.

27. That the entire Sikh Community across the nation is also shaken and pained by the deliberate insult to our religion.

31. That an FIR ought to be registered immediately in present case in terms of the Judgment of the Hon'ble Supreme Court in the case of Lalita Kumari v. Govt. of U.P. [W.P.(CrI) No.68/2008] wherein it has been held that registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence.

32. That the concerned officials ought to be immediately arrested under sections 307, 377, 357, 354A, 354B, 295-A, 298, 153-A, 347, 323, 324, 325, 326, 327, 330 read with section 34 & 120B of the India Penal Code.

33. That we therefore urge that the following ought to be done on an immediate and urgent basis-

i. THAT AN FIR BE REGISTERED AGAINST THE ERRANT OFFICIALS OF U.P. POLICE FOR ATTEMPT TO MURDER, CUSTODIAL TORTURE, UNNATURAL OFFENCES AND INSULT TO RELIGION.

ii. THAT ALL THE ERRANT OFFICIALS BE IMMEDIATELY ARREST AND DISMISSED FROM SERVICE
iii. THAT HIS MEDICAL EXAMINATION BE CONDUCTED IMMEDIATELY BY A MEDICAL BOARD
iv. THAT AN INDEPENDENT JUDICIAL INQUIRY UNDER A HIGH COURT JUDGE, BE SET-UP IMMEDIATELY
v. THAT THE CASE REGISTERED AGAINST RESHAM SINGH AND HIS MOTHER AND SISTERS BE IMMEDIATELY WITHDRAWN.”

5. Since according to the petitioner, the police is neither fairly investigating the matter nor has yet registered cases under relevant provisions of the I.P.C. against the guilty police officers including for the offence of inserting *dandas* in anus/ rectum and the only as an eyewash the guilty police officers have been transferred or suspended who are influencing the investigation, therefore, the petitioner has filed the present writ petition praying for a fair investigation and to add appropriate sections of I.P.C. for offences committed by the police officers. The petitioner wants a fair investigation in the incident dated 03.05.2021, therefore, he has filed the present writ petition.

Submission on behalf of the petitioner:-

6. Learned Learned counsel for the petitioner has submitted as under:

“(i) Petitioner was brutally assaulted by the police on 03.05.2021 and a false first information report was registered by the police against him. Even higher officers have found that the charges levelled against him were not true as evident from averments made in paragraph 3(xix) of the affidavit of Sweta Kumari Yadav, Circle Officer dated 16.07.2021 in which it has been stated that "during investigation the complicity of accused Satyendra Singh, Harjinder Singh, Sukhvinder Singh and Rajendra Kaur having not been found, their names were dropped. Further the Sections 147 & 149 IPC were also dropped. The investigation against accused Resham Singh continued for the offences under Section 188/269/332/353/427/504 IPC." The above averments of the Circle Officer shows that Section 353 IPC was levelled against the petitioner which is a non cognizable offence. However, in paragraph 8 of the personal affidavit of Sri Mukul Goel, Director General of Police, U.P. Lucknow, dated 11.07.2021, it has been stated that "the arrested persons were taken to the police station Pooranppur and after completing paper formality and making endorsement in the G.D., the petitioner and 04 other were released on bail by the Station House Officer about two hours, as

the offences were bailable".

(ii) In paragraph 13 of the aforesaid personal affidavit of the D.G.P., it has been stated that "Superintendent of Police Pilibhit vide its order dated 08th May, 2021 directed to Circle Officer, City, Pilibhit to conduct a preliminary enquiry in respect of negligence in their official duty and placing the incorrect facts before the higher officers in respect of the incident dated 03rd May, 2021. It was directed to submit the preliminary enquiry report within 07 days" and yet preliminary inquiry report has not been submitted inasmuch as the said preliminary inquiry report has not been brought on record of the present writ petition by the respondents either by means of their personal affidavit or the counter affidavit.

(iii) In paragraph 16 of the personal affidavit the D.G.P. has stated that "Medical Examination of petitioner was conducted on 08.05.2021 in Community Health Center, Pooranpur and thereafter on 10.05.2021 in District Hospital, Pilibhit.

(iv) In paragraph 5 of the supplementary affidavit dated 20.07.2021 of Sweta Kumari Yadav, Circle Officer Crime, Bareilly, it has been stated that "petitioner Resham Singh was medically examined at CHC, Puranpur, Pilibhit and the injury report reveals as under:

1. Injury No. 1 = Abraded contusion on both gluteal region 5.3 cm Transverse and 20 cm. Vertical, reddish blackish brown colour.
2. Injury No. 2 = A contusion right posterior lateral thigh 17 cm x 8 cm oblique in size blackish, brownish in colour. 30 cm. Above right knee.
3. A contusion on left lateral thigh 17 cm x 16 cm oblique in size, blackish brown in colour. 7 cm. above left knee.
4. A contusion on right side lower back 2.5 x 2.5 cm round in shape, blackish brown in colour. 5 cm. Above right gluteus.
5. A contusion on left lower orbit 4 cm x 2 cm, lunar in shape, Blackish brown in colour. 1.5 cm from left side of nose.
6. A contusion right lower orbit 3 cm x 5 cm in size, blackish brown in colour 1 cm. from right nose.
7. C/o pain on right 4th metacarpal phalynx region.
8. C/o Bleeding per rectum.

Duration : fresh

Injury No. 1 to 6 simple in nature and injury no. 7 and 8 are not confirmed.

Injury No. 1 to 6 are about 4 days back, injury No. 7 and 8 are not confirmed.

Injury No. 1 to 6 are hard blunt object and 7 and 8 are not confirmed.

Refer to District Hospital for X-Ray Injury No. 7 and 8."

This shows the grievous injury received by the petitioner and caused by the accused police officers and yet neither investigation is being fairly done nor the accused policemen have yet been arrested and simply they have been transferred to some other places or have been suspended as per details given in paragraphs 18 & 27 of the personal affidavit of the D.G.P. dated 11.07.2021.

(v) The relief as sought deserves to be granted inasmuch as the accused policemen have committed heinous crime. The Military Hospital report dated 18/21.05.2021 also clearly indicates injury in rectum which is being completely overlooked.

(vi) The accused police officers are still free and no action under criminal law has been taken against them while on the other hand the petitioner has been falsely implicated. Therefore, for free and fair investigation, an action under criminal law against the police officers is the need of the hour as well a statutory duty of the respondent authorities and failure to perform the statutory duty requires appropriate action/order to be passed by this court to preserve the fundamental rights of the petitioner under Article 14 and 21 of the Constitution of India.

(vii) Petitioner has merely prayed for fair investigation irrespective of the FIR by police or the petitioners, therefore, such a relief can be granted by this Court under Article 226 of the Constitution of India.”

Submission on behalf of the State:-

7. Learned Advocate General has submitted as under:

“(i) The petitioner was admitted in Military Hospital on 18.05.2021 where no endoscopy was done and the report of the Military Hospital does not indicate any injury to the petitioner in rectum.

(ii) The police has taken action immediately as evident from the details given in the personal affidavit of the Director General of the Police dated 11.07.2021. Therefore, no relief can be granted to the petitioner.

(iii) The conduct of the police has always been fair. Therefore, no interference is required by this Court.

(iv) The conduct of the petitioner is such that he did not even produce himself for further medical examination even when required by the police.

(v) The fair investigation is going on. SIT has been constituted. Therefore, no indulgence is required by this Court under Article 226 of the Constitution of India.

(vi) The petitioner is an accused, hence he is not entitled to relief No.1.

(vii) The writ petition for fair investigation can not be entertained by this Court as held by Hon'ble Supreme Court in the case of Sakiri Vasu Vs. State of U.P. and others (2008) 2 SCC 409 (para 28) inasmuch as after investigation if the petitioner is not satisfied then he may approach the Magistrate under Section 156 (3) Cr.P.C.

(viii) The petitioner is trying to create pressure upon the investigating agency. Such a person should not be granted any relief. The FIR has been lodged by the petitioner to exert pressure on police.”

Discussion and Findings:-

8. We have carefully considered the submissions of the learned counsels for the parties and perused the record of the writ petition.

9. It is undisputed that an incident occurred on 03.05.2021 in respect of which the police has registered the First Information Report No.0264/2021 against the petitioner and the petitioner has lodged First Information Report No.0272/2021 dated 08.05.2021 against the police personnels. From the records of the writ petition, it appears that although the petitioner was injured, yet the police had not even brought him to hospital for medical examination of the injuries received by him on 03.05.2021. It is only after video of the incident dated 03.05.2021 reflecting atrocities of the police, got viral on social media and a representation dated 06.05.2021 was submitted by the Delhi Sikh Gurdwara Management Committee through its President before the Ministry of Home Affairs, New Delhi, the Superintendent of Police Pilibhit took some

action.

10. The personal affidavit of Sri Mukul Goel, Director General of Police, Uttar Pradesh, Lucknow dated 11.07.2021 has been filed in the present writ petition, which would *prima facie* reflect that when video of the atrocities of the accused police officers became viral on social media, and Delhi Sikh Gurdwara Samiti submitted a representation before the Home Ministry, the Superintendent of Police suspended the Sub-Inspector Ram Naresh Singh, P.S. Puranpur, Pilibhit.

11. As per supplementary affidavit of Sweta Kumari Yadav, Circle Officer-Crime, District Bareilly dated 20.07.2021 filed before this court, the petitioner Resham Singh was brought to the C.H.C., Puranpur, Pilibhit on 08.05.2021 and was medically examined and the injury report reveals as under:

“1. Injury No. 1 = Abraded contusion on both gluteal region 5.3 cm Transverse and 20 cm. Vertical, reddish blackish brown colour.

2. Injury No. 2 = A contusion right posterior lateral thigh 17 cm x 8 cm oblique in size blackish, brownish in colour. 30 cm. Above right knee.

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6. A contusion right lower orbit 3 cm x 5 cm in size, blackish brown in colour 1 cm. from right nose.

7. C/o pain on right 4th metacarpal phalynx region.

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Duration : fresh

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Injury No. 1 to 6 are hard blunt object and 7 and 8 are not confirmed.

Refer to District Hospital for X-Ray Injury No. 7 and 8.”

12. However, as per supplementary affidavit of the aforesaid Circle Officer, a supplementary medical report dated 10.05.2021 was obtained which indicates that the injury Nos.7 and 8 as afore-quoted are simple and duration and object are not confirmed and the petitioner has complained about pain only.

13. The Director General of Police has filed a personal affidavit dated 11.07.2021, in Paragraph-27 of which, he has stated the action taken, as under:

“27. That in short, till date the following actions have been taken in respect of the incident dated 03 May, 2021:-

*(i) A **preliminary enquiry** is being conducted by Sri Virendra Vikram, Circle Officer City, Pilibhit, which is under progress.*

(ii) S.I. Ram Naresh was suspended on 06th May, 2021.

(iii) Inspector Sunil Kumar Sharma was attached to Police Line on 08th May, 2021.

(iv) S.I. Raees Khan was suspended on 15th May, 2021.

(v) Constable 795 Mohit Khokhar was attached to Police Line on 14th May, 2021.

(vi) Constable 1610 Rajan Tomar was attached to Police Line on 14th May, 2021.

(vii) Constable 1619 Mohit Kumar was attached to Police Line on 12th June, 2021.

(viii) Inspector Sunil Kumar Sharma, S.I. Ram Naresh and S.I. Raees Khan have been transferred to other districts on

(ix) The departmental proceedings have been initiated against the police persons allegedly involved in the incident, in accordance with the departmental Rules.

(x) The SIT has been constituted and the investigation is under progress by SIT Crime Branch, Bareilly under the supervision of Superintendent of Police, Crime, Bareilly.

(xi) The investigation team is conducting the investigation in a fair manner and has taken the evidence/video clips on record for its examination in accordance with law.

(xii) The Medical Board was constituted on the request of the petitioner but he did not appear before the board for his examination.”

14. Perusal of the facts and circumstances as noted above reveals that the petitioner has made various allegations against the accused policemen including the allegations constituting offence under Section 377 and various other sections of I.P.C. However, it *prima facie* appears that the investigating officer is trying to disprove somehow the allegation of offence under Section 377 I.P.C., instead of investigating the matter properly. No action or steps as permissible under the criminal law has yet been taken against the accused policemen. This brings us to remind the police authorities their statutory and constitutional duty for fair investigation which is rule of law.

15. In our order dated 08.07.2021, which has been reproduced by the respondent No.2 in his personal affidavit filed on 11.07.2021; we have reproduced paragraphs 5 and 6 of the writ petition as under:

"5. The entire incident which took place on the fateful day of 03.05.2021 has shaken the conscience of the society and the atrocities and brutality committed by the erring officials is beyond imagination, which can be seen from the video as enclosed herein, which shows the torture and injuries inflicted on the Petitioner and his mother and two sisters were humiliated and harassed.

6. That the brief facts which led to filing of the present petition is enumerated herein below:

a) That on 02.05.2021 the brother-in-law of the Victim, namely Late Karam Jeet Singh expired due to which the Victim along with his mother and two sisters was going from Pilibhit to Lakhim Pur Kheri on 03.05.2021 to pay their homage to the departed soul.

b) That while travelling to Lakhim Pur Kheri, the Victim and his family were stopped by the Police Officials at around 9 am at Anaj Mandi, Puranpur, Pilibhit.

c) The Police Officials enquired from the Victim and his family members as to where they were going and also asked for the papers of the car (Maruti Suzuki - Alto) in which they were travelling. The Police Officials who were involved were:

(i) Inspector Ram Naresh Singh;

(ii) Inspector Raees Ahmed;

(iii) 05-06 unknown Police Constables, who can be identified by the Victim (hereinafter referred to as 'erring Police officers' or 'Police Officers').

d) That when the Victim was trying to do as told, i.e., was taking out the papers from the dashboard of the car and it took some time to sort out the papers, as the Victim was having all the requisite papers which were asked by the Police Officials, the Police Officials out of the blue started abusing the Victim and his family members, which included his mother and two sisters. The Victim on hearing the abuses calmly asked the Police Officials to not abuse them as there were woman as well who were travelling with him. It was also informed by the Victim that he is a retired member of the armed forces of India and is also a respectable member of the society.

e) That the Police Officials got infuriated on the same and threatened the Victim and his family members that they will teach them a lesson for life and then started abusing him and beating the Victim with lathis.

(f) That Inspector Ram Naresh Singh, who is the Thanedar of Kotwali, Puranpur, started beating the Victim up along with his fellow colleagues using fist blows, kicks and lathis. The said Police Officials also started beating the mother and sisters of the Victim. A video clip showing the Police Officials beating the Victim is with the petitioner, however as the present petition is being filed through e-filing mode the video clip cannot be annexed. The same can be handed over to his Hon'ble Court in a Pen Drive or CD as per the direction of this Hon'ble Court as and when required.

g) That the Police Officials did not stop at that but after brutally beating up the Victim and his family members, the erring Police Officials thereafter forcefully took the Victim and his family members to the Kotwali, Puranpur - Police Station, without taking the assistance of any woman Police officer, i.e., to say the mother and two sisters of the Victim were taken to the Police Station disregarding the well laid down principle recognized by the Hon'ble Supreme Court of India in several Judgments. A video clip showing the Police Officials forcefully taking the Victim, her mother and sisters without assistance of women police constables is with the petitioner, however as the present petition is being filed through e-filing mode the video clip cannot be annexed. The same can be handed over to his Hon'ble Court in a Pen Drive or CD as per the direction of this Hon'ble Court as and when required.

h) That after forcefully being taken to the said Police Station, the Victim was disrobed and then tied up on a cot and brutally beaten up by the said police officials for two continuous hours using "Dandas", Fist and leg blows and gave him third degree torture only to satisfy their ego. The Victim was physically abused, and the Police Officials also used filthy and abusive language towards the Victim and his family members which was humiliating for the Victim and his entire family.

i) That the Police Officials did not stop at physical torture of the Victim, but in order to further humiliate the Victim, they threatened the Victim that they will cut his unshorn hair in order to teach him a lesson of his life.

j) That the atrocities committed by the Police Officials crossed all limits when Inspector Ram Naresh Singh along with the other Police Officials inserted a 'Danda/Lathi' inside the Victim's anus/rectum with an intention to humiliate him and crush his self-respect and to scar the Victim for life. The most disturbing fact about the said incident was the fact that the erring Police Officials seemed to rejoice and enjoy while doing this carnal act at the expense of the Victim and continued with their torture.

k) That the erring Police Officials were made to stop their illegal act by the intervention of family members and few local personnel gathered at the Police Station. The said local personnel not only intervened but also shot a video of their torture. The Police Officials on realizing that the locals had shot the video of their atrocious acts, the said police officials threatened them and got the videos deleted by threatening to implicate them in false cases.

l) That the erring Police Officials in order to save their skin registered a false case against the Victim in order to falsely implicate him and further to "justify" their illegal acts got a "challan" issued in respect of the car of the Victim despite the fact that the Victim had all the necessary documents with him at the said time. A copy of the FIR No. 264 dated 03.05.2021 registered at PS Puranpur against the Victim is being filed herewith and marked as Annexure No. 2 to this writ petition.

m) That the Victim till date is living a life of humiliation due to atrocities committed upon him, as his life flashed before his eyes, while he was being tortured by those very people who swore to protect his life and to uphold the law.

n) That the atrocities for the Victim were not over as the Police officials using their clout even influenced the Government Hospital not to conduct the medical examination of the Victim.

o) That the atrocities of the Police Officials got viral on social media and Respondent No. 3 thereafter got active and called the Victim to his office and assured him that justice would be done to him. Video clip uploaded by the Victim on social media is with the petitioner, however as the present petition is being filed through e-filing mode the video clip cannot be annexed. The same can be handed over to his Honble Court in a Pen Drive or CD as per the direction of this Honble Court as and when required.

p) That the Respondent No. 3, thereafter, sent the Victim to a doctor for medical examination on 08.05.2021 but no physical examination was conducted, and the doctor confessed to the Petitioner that they are under tremendous pressure due to the accused being Police Officials. That as, injuries were apparent and even after 5 days of the incident, the Petitioner was having constant pain and despite that the doctors did not examine him and he further overheard the doctors discussing that they have to give a report favouring the Police Officials as otherwise, they have to face the music. The victim was completely shattered to watch the working of the doctors and clout of the Respondents was very obvious. The medical examination though refers to an injury in rectum/anus, but the conclusion was deliberately done in such a way only to help the erring officials. The copy of the medical report ascertaining the injury caused to his rectum dated 08.05.2021 is being filed herewith and marked as Annexure No. 3 to this writ petition.

q) That due to the pressure mounting on the Police to act as per law, the Respondent No. 3 in order to make an eye wash registered an FIR bearing

no. 0272 of 2021 dated 08.05.2021 in all bailable offences and when prima-facie an offence under section 295A and 377 were deliberately left out. The Copy of the FIR bearing No. 0272 of 2021 dated 08.05.2021 registered with PS Puranpur, Pilibhit is being filed herewith and marked as Annexure No. 4 to this writ petition.

r) That the Victim was finding lot of difficulty in passing stool and was having lot of swelling and pain in his rectum. Thereafter, the Victim on 13.05.2021 met a doctor at S.S. Hospital, Pilibhit in order to seek remedy for his ailment, the doctor got Endoscopy done and it was found that the Victim suffered serious injuries, which included swelling in the anus / rectum of the Victim. Copy of the photographs and medical reports of the Victim dated 13.05.2021 are being filed herewith and marked as Annexure No. 5 to this writ petition.

s) That it is clear that the Police is influencing the investigation and investigation is being conducted in a biased manner with the intention to save the erring Police Officials and the entire investigation was merely an eyewash as prima-facie case was made out under Sections 295A and 377 IPC against the erring Police Officials which they were trying to botch up in order to save the erring Police Officials.

t) That the Victim on 18.05.2021 went to the Military Hospital, Bareilly as after so many days also, the Petitioner was in excruciating pain in his injuries and thereafter the Victim was admitted on 18.05.2021 and after treatment of 3 days, he was discharged from the Hospital on 21.05.2021 and before his discharge, Endoscopy was once again conducted, and it was found that injuries have subsided after extensive treatment for 3 days. In the medical examination while treating the Victim, it was found that there were injuries in his rectum/anus. Copy of medical reports conducted by doctor Sanjay Sharma at the Military Hospital, Bareilly dated 18.05.2021 is being filed herewith and marked as Annexure No. 6 to this writ petition.

u) That the Victim approached the investigating officer and handed over the report dated 13.05.2021 and 18.05.2021 and the investigating officer assured the Victim that he shall act as per law and till date, Sections 295-A and 377 have not been included in the FIR No. 272 dated 08.05.2021 at Police Station Puranpur, Pilibhit which clearly shows that the investigation is biased against the Victim and justice can never be done by local Police who are working hand in glove with the erring Police Officials.

v) That the erring Police Officials not only insulted, humiliated, threatened and demeaned the Victim and his mother and sisters, but also the Victim was humiliated and tortured on the basis of his religion and the Police Officials have not registered an FIR under Section 295A IPC as clearly wounded the religious sentiments of the Sikh Community at large.

w) That the turban (pagri) of a Sikh man, is considered a religious symbol and is universally accepted as a symbol of respect. Pulling the unshorn hair (Kesha) or knocking off or causing to knock off or even touch or pull the Turban of a Sikh is considered as a religious sacrilege and insulting to the beliefs held by the Sikh Community. The actions of the Uttar Pradesh Police personnel, using uncalled for brutal force against an unarmed, innocent

Sikh, that too an army veteran, disrespecting and his family members, which included women, and also disrespecting his religious beliefs has shaken the conscience of the people associated with not only the Indian army but general public at large.

x) That the brutality and the atrocities committed by the Uttar Pradesh Police personnel is in utmost violation of the secular nature of the constitution of India and in utter disregard of the fundamental rights of the Victim and his family members. The various acts committed by the erring officials are violative of the rights guaranteed by Articles 21, 22 and 25 of the Constitution of India amongst various others. "

16. By our above referred order dated 08.07.2021, we directed the respondent No.2 to file a counter affidavit by means of his personal affidavit. The relevant portion of the order dated 08.07.2021 is reproduced below:

“The matter is serious and requires a serious consideration by this Court.

In view of the aforesaid, we direct the respondent no.2 to file a counter affidavit by means of his personal affidavit. In his counter affidavit he shall also indicate the action taken in the matter, if any.

We request the learned Advocate General to assist this Court in this matter on the next date fixed.

Put up as a fresh case at 10:00 a.m. on 12.07.2021 for further hearing..”

17. The respondent No.2 has filed his **personal affidavit** on 11.07.2021. **In paragraph-1** of his personal affidavit, the respondent No.2 has stated that *“The deponent has read the contents of the writ petition as well as the order passed by this Hon’ble Court and understood the same.”* Thereafter, in paragraph-3, he reproduced the prayer clause of the writ petition. **In paragraph-5**, he reproduced the order dated 08.07.2021 passed by this court by which the respondent No.2 was directed to file a counter affidavit by means of his personal affidavit. **Thus, even after having gone through the contents of the writ petition and the order of this court dated 08.07.2021 directing him to file a counter affidavit**, the respondent No.2 has filed his personal affidavit on 11.07.2021 in which he has not denied any of the averments of the petitioner

in the afore-quoted paragraphs of the writ petition. He, however, stated in paragraphs 31, 32 and 33 of his personal affidavit as under:

“31. That the deponent assures this Hon’ble Court that investigation will be concluded expeditiously in a fair and transparent manner. The evidence produced before the investigation team either it is in the form of oral evidence, documentary evidence or electronic evidence etc. shall be taken on record in accordance with law and shall be taken into consideration by the investigation team. On the basis of the collected evidence the proper sections may be added or dropped in accordance with law.

32. That the deponent is duty bound to maintain the majesty of law, irrespective of position/status of any person and in case it is found on the basis of the enquiry/ investigation that the officers have been indulged in illegal act, the deponent shall not allow him to go unpunished. The Rule of law is supreme and the deponent is duty bound to ensure the strict compliance of law.

33. That in view of the aforesaid facts and circumstances, the present affidavit may be taken on record by this Hon’ble Court and may pass such, other and further order, which this Hon’ble Court may deem fit and proper.”

18. It shall not be out of place to mention that when public resentment started against the illegal and arbitrary acts of the local police, then the **Superintendent of Police, Pilibhit issued an order dated 08.05.2021** to the Circle Officer, City, Pilibhit acknowledging the police atrocities and directed for preliminary inquiry, as under:-

“श्री वीरेन्द्र विक्रम,
क्षेत्राधिकारी नगर,
पीलीभीत।

कृपया थाना पूरनपुर में दिनांक 03-05-2021 को भूतपूर्व सैनिक श्री रेशम सिंह पुत्र गुरुनाम सिंह निवासी ग्राम मथना जत्ती, थाना माधोटाण्डा के साथ उ०नि०श्री रामनरेश सिंह थाना पूरनपुर व अन्य पुलिस कर्मियों द्वारा चैकिंग के दौरान गाड़ी रोककर मारपीट करने व बाद में थाने में लाकर दुबारा प्रताड़ित करने की घटना में श्री सुनील कुमार शर्मा, प्रभारी निरीक्षक पूरनपुर द्वारा अपने कर्तव्य पालन में लापरवाही बरते हुये प्रख्यापित विधिक प्रक्रिया का अनुपालन नहीं किया गया।

तदोपरान्त उक्त घटना को झुठलाया गया एवं उच्चाधिकारियों को घटना की सही वस्तुस्थिति से अवगत नहीं कराया गया। इस तरह इस घटना में इनके द्वारा आवश्यक वैधानिक कार्यवाही करने के बजाय उच्चाधिकारियों को लगातार भ्रमित करते रहे, जिसकी वजह से यह प्रकरण सोशल मीडिया यथा फेसबुक व ट्विटर पर काफी वायरल हुआ। फलस्वरूप आमजन मानस में पीलीभीत पुलिस की कार्यशैली के प्रति रोष की भावना प्रकट हुई। अगर यह समय रहते कार्यवाही करते, तो आमजन मानस में पुलिस की नकारात्मक छवि बनने से रोका जा सकता था।

अतः आपको निर्देशित किया जाता है कि उपरोक्त संबंध में आप गहनता से प्रारम्भिक जांच कर अपनी आख्या निर्धारित अवधि 07 दिवस के अन्दर प्रेषित करना सुनिश्चित करें।

पत्रांक:एसटी-99/2021(40)

ह०अप०

दिनांक: 08 मई, 2021

8/5/21

पुलिस अधीक्षक,
पीलीभीत।

प्रतिलिपि:- प्रधानलिपिक पुलिस कार्यालय, पीलीभीत को इस निर्देश के साथ कि "प्रारम्भिक जांच" शीर्षक के अन्तर्गत पत्रावली खोलकर क्षेत्राधिकारी नगर को पत्रावली उपलब्ध कराये तथा जांच आख्या प्राप्त कर समय से मेरे समक्ष प्रस्तुत करना सुनिश्चित करें।"

19. Although as per afore-quoted order dated 08.05.2021, preliminary inquiry was to be completed by the Circle Officer within 7 days but as per para-11 of the supplementary affidavit dated 20.07.2021 filed on behalf of the respondent No.2, the preliminary inquiry is still under progress. This reflects that even time bound order of preliminary inquiry passed by the Superintendent of Police, Pilibhit, is not being complied with by the local police including the Circle Officer.

Fair Investigation - Rule of Law:

20. The criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders escaping punitive course of law. These are important facets of the rule of law. Breach of rule of law amounts to negation of equality under Article 14 of the Constitution of India. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must be right, just and fair and not arbitrary, fanciful or oppressive, vide **Menka Gandhi vs. Union of India**¹ (para-7) and **Vinubhai Haribhai Malviya and others vs. State of Gujrat**

1 AIR 1978 SC 597

and another² (paras-16 and 17) and **Subramanian Swamy vs. C.B.I.**³ (para-86). Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. **The assurance of a fair trial is the first imperative** of the dispensation of justice, vide **Commissioner of Police, Delhi vs. Registrar, Delhi High Court, New Delhi**⁴ (para-16). 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. This is the minimal and fundamental requirement of Article 21 of the Constitution of India. Interpretation of provisions of Cr.P.C. needs to be made so as to ensure that Article 21 is followed both in letter and in spirit. A fair trial includes fair investigation as reflected from Articles 20 and 21 of the Constitution of India. If the investigation is neither effective nor purposeful nor objective nor fair, the courts may if considered necessary, may order fair investigation, further investigation or reinvestigation as the case may be to discover the truth so as to prevent miscarriage of justice. However, no hard and fast rules as such can be prescribed by way of uniform and universal invocation and decision shall depend upon facts and circumstances of each case.

21. Fair and proper investigation is the primary duty of the investigating officer. In every civilized society, the police force is invested with powers of investigation of a crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and **not resort to fabricate false evidence or create false clues only with a view to secure conviction because such acts shake the confidence of the common man** not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice. Proper result must be

2 AIR 2019 SC 5233

3 (2014) 8 SCC 682

4 AIR 1997 SC 95

obtained by recourse to proper means, otherwise it would be an invitation to anarchy, vide **Rampal Pithwa Rahidas vs. State of Maharashtra**⁵ (para-37). Investigation must be fair and effective and must proceed in the right direction in consonance with the ingredients of the offence and not in a haphazard manner more so in serious case. Proper and fair investigation on the part of the investigating officer is the backbone of rule of law vide **Sasi Thomas vs. State**⁶ (para-15 and 18).

Investigation under the Cr.P.C.:-

22. No investigating agency can take unduly long time in completing investigation. There is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. There is clear need for time line in completing investigation for having in-house oversight mechanism wherein accountability for adhering to lay down timeline, can be fixed at different levels in the hierarchy, vide **Dilawar vs. State of Haryana**⁷ (paras-4 to 8), **Menka Gandhi** (supra), **Hussainara Khatoon (I) vs. State of Bihar**⁸, **Abdul Rehman Antulay vs. R.S. Nayak**⁹ and **P. Ramchandra Rao vs. State of Karnataka**¹⁰.

23. For the purposes of investigation, offences are divided into two categories “cognizable” and “non-cognizable”. When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. **Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected**

5 1994 Suppl. (2) SCC 73

6 (2006) 12 SCC 421

7 (2018) 16 SCC 521

8 (1980) 1 SCC 81

9 (1992) 1 SCC 225

10 (2002) 4 SCC 578

offender, (iv) **collection of evidence** relating to the commission of the offence and (v) **formation of opinion** as to whether on the material collected therein to place the accused before a Magistrate for trial and if so to take necessary steps for the same by filing a chargesheet under Section 173, Cr.P.C., vide **H.N. Rishbud vs. State of Delhi**¹¹.

24. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it.

25. In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated which erodes the credibility in the system.

26. All the facts noted in paragraphs above and the discussion made

¹¹ AIR 1955 SC 196

above, *prima facie* reveals that some action was taken against the accused policemen on administrative side. The preliminary inquiry report directed by the Superintendent of Police has not yet been submitted even after three months. This, *prima facie*, indicates casual, illegal and arbitrary approach of the respondents for the reasons best known to them.

27. For all the reasons aforesaid, **the writ petition is allowed** with directions to the respondent Nos.1, 2 and 3, as under:-

(i) **to ensure fair investigation in the matter of the above noted both the first information reports**, namely FIR No.0264/2021 dated 03.05.2021, P.S. Puranpur, District Pilibhit and FIR No.0272/2021 dated 08.05.2021, P.S. Puranpur, District Pilibhit,

(ii) **take immediate action in accordance with law against the accused policemen**, and

(iii) conclude the investigation and departmental proceeding expeditiously, preferably within three months.

28. The writ petition is allowed to the extent indicated above, with costs.

Order Date :- 01.10.2021

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