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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL(Suo Moto)/5/2021

XXX
GUWAHATI, ASSAM

VERSUS

IN RE - STATE OF ARUNACHAL PRADESH AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY, CIVIL SECRETARIAT,
ITANAGAR - 791111

2:THE DIRECTOR GENERAL OF POLICE
ARUNACHAL PRADESH
POLICE HEADQUARTERS
CHANDRANAGAR
ITANAGAR - 791111

3:DEPARTMENT OF SOCIAL WELFARE
WOMEN AND CHILD WELFARE
REPRESENTED BY THE COMMISSIONER
D SECTOR
CONA
NAHARLAGUN
ITANAGAR - 791110

4:NANI MARIA CHILD CARE INSTITUTE
REPRESENTED BY ITS CHAIRPERSON
ROING
P.O. AND P.S. ROING
DIST. LOWER DIBANG VALLEY
ARUNACHAL PRADESH

5:CHILD WELFARE COMMITTEE
ROING

DIST. LOWER DIBANG VALLEY
ARUNACHAL PRADES

Advocate for the Petitioner : MR. U K NAIR, SR. ADV

Advocate for the Respondent : MR. A CHANDRAN, ADDL. SR. GA, AP

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 20.09.2021
(N. Kotiswar Singh, J)

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Heard Mr. U.K. Nair, learned Senior Advocate assisted by Mr. B. Bora, learned counsel for the petitioner. Also heard Mr. B.D. Goswami, learned Additional Advocate General, Arunachal Pradesh assisted by Mr. A. Chandran, Additional Senior Government Advocate.

2. On 06.09.2021, after considering the materials on record, we directed for submission of a report by the Special Court (POCSO), Tezu as regards the steps taken so far which are in tune with the provisions of the POCSO Act, 2012, more particularly, with reference to Section 35(1) of the POCSO Act which specifically provides that the evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court and also completion of trial within a period of 1 year as provided under Section 35 of POCSO Act.

3. We also sought for a report from the Arunachal Pradesh Legal Services Authorities as regards legal assistance to be given to the victim or the family or the guardian of the child, as the case may be.

4. Pursuant to the said order dated 06.09.2021 passed by us, the learned District and Sessions Judge-cum-Special Judge under POCSO Act, Tezu submitted a report

dated 13.09.2021. In the said report it has been mentioned that the court took cognizance of the offences in connection with Roing Police Station Case no. 22/2021 on 28.06.2021 and accordingly, fixed 26.07.2021 for appearance of the accused. In the said report it is also mentioned that summons to the accused and witnesses were served through post which takes at least a month and sometimes summons are not returned even in a month. In the present case, the accused appeared on 26.07.2021 but the lone stenographer and the Presiding Officer of the District and Sessions Court, Tezu were infected with Covid-19 and, as such, there was no Court sitting on 26.07.2021 as the Presiding Officer was required to remain in home quarantine. After the Presiding Officer resumed duty on 05.08.2021, the matter was fixed on 10.08.2021 for appearance of the accused on which date, the accused appeared. Thereafter, the court fixed 30.08.2021 for consideration of the charges against the accused but the Prosecuting Officer who is the lone Special Public Prosecutor engaged by the State was on leave for 20 days w.e.f. 02.08.2021. Thereafter, the charges against the accused was considered on 30.08.2021 and summons were issued to P.Ws. listed in Sl. No. 1, 2, 5 & 6 to appear before the court to give their evidence on 05.10.2021. In the report it has been mentioned that summons are sent to the prosecution witnesses and accused through the concerned Officer In-charge of the Police Station and in turn through postal service. It has been mentioned that the process servers of the court used to collect the summons and send these to the Officer In-charge of police station of different districts through postal service and thereafter, the concerned Officer In-charge of the police station on receipt of the summons from the post office served the same to the witnesses or the accused as the case may be. In the present case, summons were issued to the prosecution witnesses through Officer In-charge of the Namsai Police Station via postal service on 19.07.2021 but the summons were not returned till the next date on 19.08.2021. It has been submitted that as there had been similar delay on account of taking steps involving the postal authority, the postal authority, Tezu was asked to appear in person

and send his report as to why the said summons to the prosecution witnesses are not received in time. It has been mentioned that the Postal Department, Tezu submitted a report stating that summons or articles sent from Tezu are sent via Tinsukia Railway Mail Service (RMS) because of which this delay occurs.

We are unaware of any other jurisprudence where summons in criminal cases are routed through the postal authorities. Therefore, this is an aspect which will require further examination as to whether the present practice continued in the State of Arunachal Pradesh for utilizing the postal services for service of summons in criminal cases as well as civil cases should continue or any other more effective alternative method as adopted elsewhere should be adopted in the State of Arunachal Pradesh also, to prevent undue delay. The aforesaid exercise, however, will take some time as it would require necessary consultative process with all the relevant stake-holders and competent authorities.

5. However, for the purpose of this present case, since the trial is conducted at the Special Court (POCSO), Tezu we would require the Officer In-charge of Tezu Police Station to ensure that summons issued by the Court of Special Judge (POCSO), Tezu are served to the witnesses by special messengers consisting of police personnel only, without involving the postal department in this case, so that summons issued by the court are served in time without any undue delay to the concerned prosecution witnesses. It is made clear that in the case pending before Special Judge (POCSO), the Officer in-charge of the concerned police station has to take responsibility for ensuring proper service of summons on the prosecution witnesses/court witnesses without involving the postal department.

6. Since the matter has already been fixed for further consideration by the Special Court (POCSO), Tezu on 05.10.2021, we direct the Officer In-charge, Tezu to ensure service of summons to the prosecution witnesses so that the prosecution witnesses can appear before the Court on 05.10.2021. We also make it clear that the Officer In-

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charge, Tezu will not only ensure proper service of summons but also the presence of the witnesses before the court, however, without arresting the witnesses unless so directed by the concerned Court. As the accused is already attending the trial and appearing on the dates fixed by the trial Court, let him continue to appear on such date as may be fixed by this Court.

7. A copy of this order may be furnished to Mr. B.D. Goswami, learned Additional Advocate General, Arunachal Pradesh so that necessary instructions can be issued to the concerned Officer In-charge for doing the needful in terms of the order passed by this Court.

8. As regards the report dated 15.09.2021 submitted by the Arunachal Pradesh State Legal Services Authority, it mentions that necessary legal assistance have been given to the victim child through the Retainer Lawyer Advocate of the District Legal Services Authority, Lower Dibang Valley District, Roing.

In view of the above, we can only observe that the Arunachal Pradesh State Legal Services Authority will continue to do the needful for providing all necessary legal assistance to the victim child.

9. Let the matter be listed on 07.10.2021, by which date the learned Additional Advocate General will apprise this Court as to the status of the case, more particularly, as to the presence of the witnesses as well as the accused for the smooth conduct of the trial.

JUDGE

JUDGE

Comparing Assistant