

SUPREME COURT OF INDIA

Sudipta Lenka

Vs.

State of Odisha

(P.Sathasivam CJI., Ranjan Gogoi and N.V.Ramana JJ.)

12.03.2014

JUDGMENT

RANJAN GOGOI, J.

1. A young law student of Bangalore, who belongs to the State of Odisha, has filed the present application under Article 32 of the Constitution highlighting what she has perceived to be a serious infringement of the fundamental rights guaranteed by Article 21 consequent to a tragic incident wherein one Itishree Pradhan was set ablaze on 27.10.2013 at a place called Tikiri located in Rayagada District in the State of Odisha. The unfortunate victim of the incident died on 01.11.2013.

2. According to the petitioner, the aforesaid Itishree Pradhan (hereinafter referred to as “the deceased”) joined as a Siksha Sahayika (contractual government teacher) in the Tikiri Upper Primary School on 18.06.2011. As she was facing difficulty in finding accommodation, one Netrananda Dandasena, (now an accused and hereinafter referred to as “the accused”), who was then serving as Sub Inspector of Schools at Tikiri, offered her accommodation in his own house. It appears that the deceased was sexually harassed by the aforesaid accused which led to a complaint by the deceased before the local police on 18.07.2013. The petitioner alleges that no action on the said complaint was taken by the local police. On 30.07.2013 the deceased had approached the State Women Commission and Odisha Human Rights Commission for intervention but the said bodies did nothing more than to forward her petition to the Superintendent of Police, Rayagada for necessary action. According to the petitioner, on 31.07.2013, the deceased had approached the Director General of Police and on 05.08.2013 she had approached the Superintendent of Police, Rayagada; on the same day she had sent a representation to the Chief Minister of the State. It is also alleged that on the same date i.e.

05.08.2013 the deceased had filed a complaint before the Collector, Rayagada District. According to the petitioner all the aforesaid approaches made by the deceased to different authorities did not yield any result. In the meantime, emboldened by the lack of any action by any authority, some family members of the accused threatened the deceased to withdraw her complaint to the police. The deceased retaliated by lodging another complaint with the police on 19.09.2013. (date is disputed by the State) The petitioner has further claimed that from 05.08.2013 till 22.10.2013 no steps were taken by the concerned authorities to provide the deceased with any security; no action was taken against the accused and no steps were taken to transfer the deceased from her place of posting i.e. Tikiri to another location. The petitioner has further alleged that on 27.10.2013 the deceased was set ablaze and she was removed to the hospital with 90% burn injuries; eventually, the deceased succumbed to the burn injuries sustained by her in a hospital at Vishakhapatnam on 01.11.2013. Referring to the several newspaper reports published with regard to the incident in question the petitioner has alleged that perpetrators of the crime enjoyed political patronage and the accused had close proximity to a Member of Parliament and also a minister. The petitioner has stated that notwithstanding the several criminal acts committed, the accused was moving around freely; receiving his salary and had even been granted a promotion in service. Consequently, the petitioner has sought a direction for the transfer of the investigation of the case involving the death of Itishree Pradhan from the State agency to the Central Bureau of Investigation and the monitoring of such investigation by this Court.

3. The writ petition filed on 12.11.2013 has been responded to by the State of Odisha by means of a counter affidavit dated 02.01.2014. According to the State, on the basis of the complaint dated 18.7.2013 filed by the deceased against Netrananda Dandasena, Tikiri P.S. Case No. 60 dated 18.07.2013 under Sections 354/409 of the Indian Penal Code was registered. The State, in its counter affidavit, has set out in seriatim the action taken on the basis of the complaints/representations submitted by the deceased to different bodies and authorities of the State. It is also submitted that the complaints lodged by the deceased against the family members of the accused have been acted upon and Tikiri P.S. Case No. 62 dated 19.07.2013 and No. 70 dated 16.08.2013 have been registered against the family members of the accused. In the counter filed, it has been further stated that in respect of the incident involving the death of Itishree Pradhan, Tikiri P.S. Case No. 92 dated 28.10.2013 has been registered and Netrananda Dandasena was arrested in connection with the said case on 30.10.2013. According to the State, the promotion of Netrananda Dandasena was

pursuant to the recommendations of the Departmental Promotion Committee made some time in December, 2012. The dismissal of the Inspector-in-Charge of Tikiri Police Station and an Assistant Sub Inspector attached to the said police station from service; the dismissal of two officials of the Education Department posted at Rayagada and also the dismissal of accused Netrananda Dandasena from service by invoking proviso (b) to Article 311 (2) of the Constitution has also been highlighted as incidents of consequential action taken by the State besides the payment of extra gratia of Rs. 10 lakhs to the parents of the deceased.

4. Shri Suresh Chandra Tripathy, learned counsel for the petitioner has vehemently urged that the present case demonstrates the lack of concern for the rights of a young woman who was compelled by circumstances to accept employment at a place far away from her home. She had bravely resisted the attempts of the accused, Netrananda Dandasena, to sexually exploit her and mustered up courage to formally complain against the accused. Such complaints were lodged before the local police station and also made to the district police officials i.e. Superintendent of Police, District Collector as well as statutory bodies committed to protect human rights and her individual rights (State Human Rights Commission and State Women Commission). The deceased had even approached the Director General of Police and finally she had approached the Chief Minister of the State. Her repeated and frantic pleas failed to evoke requisite response from any of the aforesaid authorities. Despite the several complaints lodged by her the accused was roaming free. It is the inaction on the part of the authorities that had emboldened the accused to commit the acts resulting in her death. The sequence of events following the death of Itishree Pradhan have been, according to the learned counsel, equally appalling. Apart from some superficial and knee jerk actions like dismissing some lowly placed employees from service the investigation of the criminal case has not proceeded meaningfully. Though the accused, Netrananda Dandasena, had been arrested on 30.10.2013 no explanation has been forthcoming as to why he could not be apprehended earlier. The second person involved in the incident leading to the death of Itishree Pradhan i.e. the person who had poured kerosene on her is still at large and his identity is yet to be ascertained. According to the learned counsel, all this is on account of the fact that the accused enjoys political patronage; he is close to an elected Member of Parliament. It is also submitted that in her final dying declaration made in the hospital at Vishakhapatnam, which was recorded by a local TV channel, and thereafter telecast, the deceased had named the Chief Minister of the State as being involved/responsible for the incident leading to her death. All such facts are stated in the report of the Enquiry Committee of the National Commission of Women

which is a part of the record of the case. According to learned counsel, the present, therefore, is a fit case where the investigation should be transferred to the Central Bureau of Investigation and proceeded with under the close supervision of this Court.

5. In reply, Shri L. Nageswara Rao, learned Additional Solicitor General who has appeared for the State of Odisha, has, at the outset, submitted that the deceased had made three dying declarations. The first dying declaration was recorded at 10.45 p.m. on 27.10.2013 by the Medical Officer of the Public Health Centre at Tikiri, the second was recorded at 1.05 a.m. on 28.10.2013 in the District Headquarter Hospital at Rayagada and the third on the same day before the Tehsildar, Rayagada. The aforesaid three dying declarations are to the same effect, namely, that the deceased was set ablaze by a person whom she did not recognize and before doing so the person had asked her to withdraw the case against accused Netrananda Dandasena, which she refused. It is submitted that the above dying declarations make it clear that two persons are involved in the crime i.e. Netrananda Dandasena and another unknown person who had actually set the deceased ablaze. The learned counsel has submitted that on 22.02.2014 chargesheet had been submitted in Tikiri P.S. Case No. 92/2013 against Netrananda Dandasena under Sections 449/450/302/120-B of the Indian Penal Code and the investigation is being kept open to bring to book the other person who is alleged to have set the deceased ablaze. Learned counsel has further submitted that on a conspectus of the facts of the case, the persons associated with the incident can be categorized in three groups – the first being persons who are actually involved in the crime; the second are the officials and bodies before whom complaints were filed by the deceased and the third is the person(s) who had allegedly tried to protect the accused. Insofar as the persons involved in the crime are concerned, according to the learned counsel, Netrananda Dandasena has already been chargesheeted and presently he is in custody. The investigation is being kept open to bring to book the unidentified person who is stated to have set the deceased ablaze. So far as the officials and functionaries of the State, at different levels, who were approached by the deceased from time to time and who had allegedly not taken proper and prompt action, it is submitted by the learned counsel that the said aspect of the case not being relatable to the actual commission of the crime, cannot, in any case, be a subject matter of a reference to the Central Bureau of Investigation. At best, the aforesaid issue could be a matter of administrative inquiry and consequential action on that basis. Insofar as the issue of political or other influential persons shielding and protecting the offender(s) is concerned, Shri Rao has drawn the attention of the Court to the details of the

investigation with regard to the allegations of phone calls made by one Shri Jayaram Pangi, M.P., Karaput Constituency to the deceased to withdraw her case against the accused. The attention of the Court has been drawn to the report of the CFSL, Hyderabad to which place the seized mobile of the deceased alongwith the Sim card(s) were sent. The report, it is mentioned in the chargesheet, is in the negative. Insofar as the alleged involvement of the Chief Minister is concerned, Shri Rao has drawn the attention of the Court to the facts found on investigation as recorded in the chargesheet which show that the video recording of the statement of the deceased made in the hospital and telecast on 05.11.2013 being in Odiya was been sent to an Odiya Professor of Ravenshaw University, Cuttack and also to the State Forensic Science Laboratory, Bhubaneswar for transcription of the exact version of the said statement. On due examination and analysis, it was found that the deceased in her statement had stated that “SI YE” (meaning ‘he’ in Odiya), amongst others, was responsible for the incident. It is stated that the said expression has been understood to be a reference to C.M. i.e. the Chief Minister. It is further submitted by Shri Rao that there is no material, whatsoever, to even remotely connect the Chief Minister to the incident except the fact that the deceased had submitted a written representation dated 05.08.2013 to the Chief Minister also. Shri Rao has contended that the chargesheet in the case having been filed and the matter being before the Court and furthermore the investigation being kept open under Section 173 (8) Cr.P.C. to bring to book the other culprit there is no reason why the matter should be entrusted to the Central Bureau of Investigation which would virtually amount to reopening of the investigation. In this regard Shri Rao has relied on the judgment of this Court in *Disha vs. State of Gujarat and Others*[1] (para 21).

6. From the resume of facts stated above the following events leading to and surrounding the death of Itishree Pradhan would be significant to be taken note of.

(i) Prior to her death the deceased had submitted numerous complaints to different authorities complaining of different instances of unlawful conduct of the accused and expressing apprehensions of harm at the hands of the accused.

(ii) Tikiri P.S. Case Nos. 60, 62 and 70 had been registered on the basis of such complaints against the accused Netrananda Dandasena and his family members and chargesheets have been submitted in the said cases.

(iii) The accused however remained at large; no protection was offered to the deceased; neither was she posted out of Tikiri.

(iv) The deceased was set ablaze on 27.10.2013. Her dying declarations, three in number, implicates accused, Netrananda Dandasena and one unknown person as being the perpetrators of the crime leading to her death.

(v) Tikiri P.S. Case No. 92 has been registered in connection with the said incident. The accused, Netrananda Dandasena has been arrested on 30.10.2013. Chargesheet has been submitted on 22.2.2014 against Netrananda Dandesena and the investigation has been kept open under Section 173 (8) Cr.P.C. against the other unidentified accused.

(vi) Two police officials namely Sujit Kumar Say, Inspector-in-Charge and Muralidhar Pradhan, Assistant Sub Inspector, Tikiri Police Station have been dismissed from service by order dated 05.11.2013 of the Home Department, Govt. of Odisha.

(vii) Two officials of the Education Department namely Dharanidhar Behera, BEO Rayagada and IIC BEO Kashipur were dismissed from service by order dated 05.11.2013 of the School & Mass Education Department, Govt. of Odisha.

(viii) The promotion of accused Netrananda Dandasena was made alongwith 23 other officials by an order dated 15.10.2013 on the recommendations of the Departmental Promotion Committee dated 1.12.2012. He has since been dismissed from service by order dated 05.11.2013.

(ix) No material has been unearthed in the investigation of the case to show that Shri Jayaram Pangi, M.P., Karaput Constituency had made any phone calls to the deceased to withdraw the case lodged by her against Netrananda Dandasena.

(x) No incriminating material has been found in the course of investigation of the case nor any material has been laid before us to show the involvement of any other person, wielding political or bureaucratic power and influence, in connection with the incident that had occurred.

(xi) A sum of Rs. 10 lakhs as ex-gratia payment has been paid to the parents of the deceased which has been duly accepted.

7. Two issues arise for our consideration. The first-whether after filing of chargesheet under Section 302/120B IPC against the accused Netrananda Dandasena and keeping open the investigation under Section 173 (8) Cr.P.C. there is any justification to entrust further investigation of the case to the Central Bureau of Investigation. Irrespective of the above, the second issue that will require consideration is whether any direction for determination of the liability of any officer or authority of the State who had the occasion to deal with the matter is called for?

8. On the question whether a criminal case in which a charge sheet has been filed by the local/state investigating agency can/should be referred to Central Bureau of Investigation for further investigation there is near unanimity of judicial opinion. In Gudalure M.J. Cherian vs. Union of India[2] and Punjab & Haryana High Court Bar Association vs. State of Punjab[3], it has held that after the chargesheet is filed the power to direct further investigation by Central Bureau of Investigation should not be normally resorted to by the Constitutional Courts unless exceptional circumstances exist either to doubt the fairness of the investigation or there are compulsive reasons founded on high public interest to do so. Vineet Narain vs. Union of India[4], Union of India vs. Sushil Kumar Modi[5] and Rajiv Ranjan Singh 'Lalan' (8) vs. Union of India[6] are not decisions on the same line as the issue in the said cases was with regard to the exercise of jurisdiction by the Monitoring Court to order further investigation of a case after chargesheet had been filed by the Central Bureau of Investigation to which body the investigation already stood entrusted. Rubabbuddin Sheikh vs. State of Gujarat[7], really, carries forward the law laid down in Gudalure M.J. Cherian and Punjab & Haryana High Court Bar Association (supra) which position finds reflection in para 60 of the report which is in the following terms :

“.....Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.”

9. The position has also been succinctly summed up in *Disha* (supra) to which one of us (the learned Chief Justice) was a party by holding that transfer of the investigation to the Central Bureau of Investigation or any other specialised agency, notwithstanding the filing of the chargesheet, would be justified only when the Court is satisfied that on account of the accused being powerful and influential the investigation has not proceeded in a proper direction or it has been biased. Further investigation of a criminal case after the chargesheet has been filed in a competent court may affect the jurisdiction of the said Court under Section 173 (8) of the Code of Criminal Procedure. Hence it is imperative that the said power, which, though, will always vest in a Constitutional Court, should be exercised only in situations befitting, judged on the touchstone of high public interest and the need to maintain the Rule of Law.

10. The events relevant to the present adjudication may be conveniently divided into two compartments – one before the death of Itishree Pradhan and the second subsequent thereto. In this regard we would like to say that all human tragedies, man made or natural, may appear to be avoidable. To understand such phenomenon as pre-ordained is an attitude of self- defeat, if not self deception, and therefore must be avoided. At the same time determination of human culpability in not successfully avoiding an event of disaster must be made by the test of exercise of due care, caution and reasonable foresight. This, according to us, is how the events surrounding the case will have to be judged.

11. Insofar as the facts and circumstances following the death of Itishree Pradhan is concerned, in view of the chargesheet filed and the departmental action taken against the erring officials, we do not feel the necessity of any further direction in the matter, at this stage. We are, therefore, inclined to take the view that the power of this Court to refer a matter to Central Bureau of Investigation for further investigation, after filing of the chargesheet by the State investigating agency, ought not to be invoked in the present case. Instead, the course of action that would be now mandated by law against the accused Netrananda Dandasena should be allowed to reach its logical conclusion at the earliest. At the same time the investigation that has been kept open against the unidentified accused should be completed without delay. We direct accordingly and cast the responsibility in this regard on the Superintendent of Police, Rayagada. However, we make it clear that the trial of accused Netrananda Dandasena shall not be held up on that count or on any other count and the same shall proceed forthwith and be concluded within the earliest possible time.

12. The events preceding the incident of death, however, stand on a slightly different footing. The same, prima facie, disclose some amount of laxity and indifference. Therefore, even while noticing that disciplinary action has been taken against certain officials of the State, we are of the view that the State should hold a detailed administrative inquiry into the matter to ascertain whether any other official or authority, at any level, is responsible for not attending to the complaints, grievances and demands raised by the deceased either in the matter of action against accused Netrananda Dandasena or in providing security to her or in transferring her from Tikiri, Rayagada District. On the basis of the findings and conclusions as may be reached in such inquiry, we direct the State to take necessary action in the matter. We also make it clear that we have not expressed any opinion with regard to the liability or culpability of any official or functionary of the State in this regard.

13. We accordingly dispose of the writ petition and place on record our appreciation for the services rendered by the young law student in seeking to vindicate the fundamental rights of the deceased and for the painstaking efforts expended by her to uphold the Rule of Law.

- [1] (2011) 13 SCC 337
- [2] (1992) 1 SCC 397
- [3] (1994) 1 SCC 616
- [4] (1996) 2 SCC 199
- [5] (1998) 8 SCC 661
- [6] (2006) 6 SCC 613
- [7] (2010) 2 SCC 200