

SUPREME COURT OF INDIA

Nishu

Vs.

Commissioner of Police, Delhi

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

24.04.2014

JUDGMENT

RANJAN GOGOI, J.

1. This writ application under Article 32 of the Constitution seeks directions from the Court for registration of first information report under Sections 376-C, 376-D, 376(2)(n) of the Indian Penal Code; for the arrest of the accused and for their prosecution after investigation of the case by the Central Bureau of Investigation. Appropriate action against the officers of the Delhi and Haryana police by way of departmental proceedings for their refusal/failure to register the FIR under the aforesaid sections of the Indian Penal Code as well as the provisions of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act) has also been prayed for.

2. The facts, in short, are as follows.

The petitioner, who is represented by her father, claims to be a minor (17-1/2 years) and a resident of village Sundana, Tehsil Kalanaur, District Rohtak. According to the petitioner, she was kidnapped on 25.10.2013 by a group of nine persons who had kept her confined upto 8.11.2013. It is alleged that during the aforesaid period, the accused persons, in different combinations, had repeatedly raped her and that one of the accused, named, Pradeep is a constable in Haryana Police. The petitioner claims that after her recovery from village Sirol, Sector 18, Gurgaon, Haryana on 8.11.2013 she was produced before the

Judicial Magistrate First Class, Rohtak for recording her statement. As she was under threat and intimidation she did not level any allegation of rape against the accused. The petitioner alleges that despite her medical examination by the doctor on 10.11.2013, a copy of the report of medical examination was not furnished to her; neither was any FIR under Section 376- D of the Indian Penal Code or the provisions of the POCSO Act registered against the accused persons who have been named in para 18 of the writ petition. It may be noted at this stage that the aforesaid writ petition was filed on 29.11.2013 seeking the reliefs earlier noted alongwith direction for payment of compensation to the petitioner and her family.

3. The respondent No. 1 i.e. Commissioner of Police, Delhi has filed an affidavit stating that inquiries have revealed that initially a FIR (319/2013) under Sections 363/366A dated 26.10.2013 was registered in Police Station Kalanaur, District Rohtak, Haryana on the written complaint of the father of the petitioner. It is further stated that on the basis of the statement made by the victim before the learned Judicial Magistrate First Class, alleging commission of rape by the accused named by her, a case has been registered and the accused persons have been arrested. As the matter is under investigation by the Haryana Police, the first respondent has contended that no order/direction is warranted insofar as the said respondent is concerned.

4. Respondents 2 and 3 have filed an affidavit on 8.1.2014 through the Superintendent of Police, Rohtak. In the said affidavit it is stated that initially FIR No. 319/2013 dated 26.10.2013 was registered at police station Kalanaur, District Rohtak under Sections 363, 366A and 120-B of the Indian Penal Code on the written complaint of the father of the petitioner. On the basis of the investigations carried out by the police, the petitioner was recovered from village Sirol, Sector-18, Gurgaon and produced before the Duty Magistrate (Judicial Magistrate First Class) Rohtak on 9.11.2013. Her statement, which was to the effect that she had herself left the house, was recorded by the learned Magistrate on 9.11.2013. The respondents 2 and 3 have further stated that subsequently the petitioner desired to make a further statement which was refused by the learned Magistrate, Rohtak on two occasions i.e. 13.11.2013 and 29.11.2013. As the petitioner persisted with the said request another statement made by her was recorded under Section 164 Cr.P.C. by the learned Magistrate on 30.11.2013 wherein she had implicated the accused persons in the commission of rape during the period of her alleged confinement. In view of the said statement of the petitioner, Section 376-D

of the Indian Penal Code and Sections 4/6 of the POCSO Act were added to the FIR No. 319/2013 which was already registered. According to the Superintendent of Police, Rohtak all the nine accused persons have been arrested and are in custody.

5. We have heard Mr. R.K. Kapoor, learned counsel for the petitioner, Mr. Rakesh K. Khanna, learned Additional Solicitor General for the respondent No. 1 and Mr. Ankit Swarup, learned counsel for respondents 2 and 3.

6. Learned counsel for the petitioner has vehemently urged that the petitioner, after being recovered from village Sirol, Sector-18, Gurgaon, Haryana on 8.11.2013, was unlawfully detained in the police station till her statement was recorded by the learned Judicial Magistrate First Class on 9.11.2013. It is further submitted that offences under the POCSO Act have been committed against the petitioner in addition to the offence under Section 376-D of the Indian Penal Code. Despite the seriousness of the matter the investigation, it is alleged, has not been conducted impartially which would justify appropriate intervention of the Court.

7. Shri Rakesh K. Khanna, learned Additional Solicitor General appearing for the first respondent has submitted that no order or direction to the first respondent would be justified in view of the fact that the case has been registered by the Haryana Police and has been investigated by the authorities of the State of Haryana. Shri Ankit Swarup, learned counsel for the respondents 2 and 3 has submitted that on completion of investigation chargesheet has been filed against all the nine accused who are in custody and are presently lodged in Rohtak Jail. It is also submitted that charges have been framed by the Trial Court against the accused inter alia under Section 376-D IPC and Section 4/6 of the POCSO Act; in fact, according to the learned counsel, the trial has also commenced in the meantime.

8. In view of what has been stated by the Superintendent of Police, Rohtak in the counter affidavit filed on 8.1.2014 and as chargesheet has been filed against all the nine accused and the trial has commenced in the meantime it will be wholly inappropriate to exercise our jurisdiction under Article 32 of the Constitution. The allegations and apprehensions expressed in the writ petition are not borne out by the subsequent facts, as stated on behalf of the respondents 2 and 3, which are not disputed. In view of the above, we will have no occasion to pass any order save and except that the trial against the accused persons, which has already commenced, be

concluded by the Trial Court with utmost expedition. We make it clear that we have not expressed any opinion on the merits of the case of the respective parties. Beyond the above, no further direction will be called for or justified.

9. The writ petition consequently stands disposed of in the above terms.