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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) NO. 2738/2006

Reserved on 22 November, 2007

Date of decision : 28th January , 2008

Ms.X

.... Petitioner

(Substituted as per directions in para 26 of this judgment)

Through: Mr.Mukesh Anand, Advocate

:: VERSUS ::

STATE OF NCT & Another

..... Respondents

Through : Mr.Digit Saikia, Advocate for

Mr. Rajeev Mehra, Advocate for R-2

Mr. Amitabh Marwah, Advocate for R-1

CORAM:

Mr. Justice S. Ravindra Bhat

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| 1. | Whether reporters of local papers may be allowed to see the judgment.? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat:

1. The Petitioner in this writ proceeding seeks directions and also claims compensation from the respondents for its failure to protect her fundamental rights, for the delay in investigating the

crime committed on her and in bringing the perpetrator to justice.

2. The Petitioner avers that, on 14th September 2005 she went to Safdarjang Hospital, New Delhi along with her sister-in-law for the latter's medical treatment. After leaving the patient, her sister-in-law at room No.555 on 5th floor for a blood test, the petitioner went to the toilet on the same floor at about 1130 hrs. She went inside the toilet hall and while approaching the toilet room inside, the perpetrator aged about 28-30 years wearing red shirt, dark blue jeans and sport shoes pushed the Petitioner towards the wall and threatened her with dire consequences if she opposed him. It is averred that the petitioner was nervous and scared after she was trapped inside the toilet and threatened using a knife. The accused then took away her gold chain and thereafter forcibly disrobed and raped the Petitioner. After sexually assaulting her, the accused bolted the toilet room from outside and fled. She avers that after regaining composure, she wore her clothes and raised an alarm by banging the toilet door. Someone heard her cries and opened the door. The petitioner narrated the whole episode to a person, whom she thought was a hospital staff member posted on the first floor, and he claimed that he had seen a person in red shirt and blue jeans, but thereafter he did nothing to help her.

3. It is averred that the petitioner narrated to her sister in law about the incident and also informed the police. On the basis of the petitioner's statement, a First Information Report (FIR) was registered being No.480/2005 on 14th September 2005 that is the same day, under Sections

376/392/397/342/506 of the Indian Penal Code, 1860. On the same day her medical examination was conducted in the same hospital, which was a traumatic experience by itself. She avers that the during the examination the doctor kept telling her that there was no injury mark on her body, thus implying that she had consented to the sexual assault. She also avers that the police investigation was a farce and no sincere efforts were made by them to nab the culprit. Further, she alleges that she was harassed several times by the Police and forced to admit that the person arrested by the police was the accused, though the reality was otherwise.

4. The Petitioner thereafter, represented repeatedly to various authorities, including National Human Rights Commission, Chief Minister of Delhi, etc. In the representations she had stated that the case was not being investigated properly and that her report was not properly recorded. It was also stated that no medical report was given to the Petitioner, nor was she informed about the developments in the case and that a lady constable of the Sarojini Nagar Police Station went to meet her and posed as Member of the National Commission for Women. The petitioner also alleges that the wrong person was arrested, despite her protestations and that the overall conduct of the investigations by the second respondent is indifferent and apathetic. She claims to be suffering from trauma arising out of the incident, even now. It is further averred that the petitioner was not provided with any legal assistance, and that this was in violation of the orders of the Supreme Court. She alleges to suffering from severe depression and is under a lot

of mental stress.

5. The Petitioner, troubled by absence of legal assistance, laxity in investigation and psychological trauma, claims an order directing the Respondents to pay compensation of Rs.15 Lakhs or any other appropriate amount, direct the Respondents to provide appropriate legal assistance to the petitioner as early as possible, as well as direct the first Respondent to take suitable measures to set up institutions such as Criminal Injuries Compensation Board for providing relief to the victims of the cases like sexual assault, rape etc.

6. Mr. Mukesh Anand, learned counsel for the Petitioner contended that the respondents did not discharge their duty and diligently investigate the matter, thereby violating her right to lead a dignified life. Further, no legal assistance whatsoever was provided to the petitioner as per the decision of the Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14 and *Bodhisattwa Gautam v. Shubra Chakraborty* (1996) 1 SCC 490. Placing reliance on *Chairman Railway Board v. Chandrima Das*, (2000) 2 SCC 465, it was contended that the Petitioner was entitled to compensation because the rape perpetrated upon her, took place in a public hospital which is under the control and supervision of the first Respondent, due to inadequate safety measures.

7. The first Respondent avers that on 15th September 2005, the Police arrested one Mr. Sanjay at the Safdarjung Bus Stop, for assaulting a lady and a FIR was duly registered. He was

sent to Safdarjung Hospital for Medical Examination and the Petitioner who was present in the Hospital, identified him as the accused-rapist. Consequently, he was arrested for the offence and the Petitioner and the former signed the arrest memo on 16th September 2005. The accused also made a disclosure statement stating he had raped the petitioner and he sold her gold ornaments to one Mr. Hari Om, which was recovered. They also aver that when Smt. Nirmala Venkatesh, Member of National Commission for Women, visited the Police Station and questioned the accused and Petitioner, the latter admitted that she was raped by Sanjay. The accused subsequently retracted his admission of rape, was sent to judicial custody and the case transferred to Crime Branch.

8. The first respondent also avers that when the petitioner's clothes and blood samples of the accused were sent for examination to CFSL, Rohini, it was found that the DNA samples did not match. After receipt of the reports from CFSL, Rohini, the Police moved an application for discharge of accused. The Petitioner retracted her statement of 16th September 2005 before Sessions Court at Patiala House and stated that the accused had not raped her. The samples were again sent for confirmation to CDFD, Hyderabad whose report discloses that the samples did not match. The accused was released on bail in June 2006 but was however not discharged from the case against him. It is submitted by the learned counsel for the first Respondent that the investigation was carried out properly, and with diligence; no attempt what so ever was made to subvert the due process. Since the matter is pending trial, the petitioner's grievances are

premature and that she was not entitled to the relief claimed.

9. The second Respondent submits that the Police were informed immediately after the incident took place and that they fully co-operated with the investigation. The Police conducted an identification parade on the staff of the Safdarjung Hospital and some of them were taken to the Police Station for purpose of interrogation. They also submit that pursuant to a meeting of the Chief Medical Officer (Security), Safdarjung Hospital and the Deputy Commissioner of Police (South), held on 13th September 2005, the following measures for augmenting security were initiated;

“(a) Sensitizing the police staff to improve the presence and visibility in and around Safdarjung Hospital Complex;

(b) Deputing police personal in OPD & Motor Cycle and PCR for effective patrolling outside the Hospital;

(c) ACP Vasant Vihar and SHO Sarojini Nagar to keep liaison with CMO (Security) for effective co-ordination;

(d) Two Security Guards deputed at Gate NO.1 and 7, so that visitors to the Hospitals are properly regulated with a view to keep an eye on anti social elements;

(e) The Hospital authority had issued stickers for hospital/staff vehicles to ensure that only authorized vehicles enter the hospital and more parking places be identified for safeguarding the vehicles;

(f) All the officials have been directed to display their identify Cards prominently. Further, processes for new Identity Cards (Smart Cards) to all officials have been initiated.

(g) All the contractors have been directed to get verified the antecedent of the persons posted as security guards, canteen employees and Sulabh employees;

(h) Separate Registration counters are running for males and females in the OPD; and

(i) A proposal for installation of CCTVs with a centralized control room has been initiated.

10. The occurrence of the incident is not disputed. Though the first respondent, in its pleadings insinuated that the petitioner had made out a false case, during hearing its counsel, Shri Marwah, did not pursue that argument. The police records, including the medico-legal documents were produced. They reveal that the petitioner's statement under Section 161, Code of Criminal Procedure, was recorded two days after the event. The medical report shows that the petitioner was examined; according to the doctor who saw her, the examination revealed that her allegation of sexual assault was positive. He also recorded that swabs were not taken, due to the petitioner undergoing her menstrual cycle at that time. These establish that the petitioner's allegations about rape stand established. The petitioner has alleged that despite her repeated requests, the second respondent wrongly implicated someone who was not the perpetrator of the attack; she explains that despite protests, her signatures were taken at the time of his arrest.

11. The State and its agencies are under a duty to protect the rights of all persons to meaningful life; dignity is an inalienable part of that right, guaranteed under Article 21 of the Constitution. The second respondent, as a public hospital, established and administered by the Government and maintained out of public funds, was and is always under a duty to ensure that those who visit it as patients or employees are adequately protected. The building and precincts

of the hospital, though public property, by their nature, cast an almost fiduciary obligation on the hospital authorities to ensure safety and security of individuals in it. This court is therefore of the opinion that the respondents, particularly the second respondent had a positive obligation to ensure the safety and security of the patients visiting it. The affidavit filed on its behalf does not dispute the incident; it also does not dispute the lack of any effective measures to prevent the occurrence of such incidents, at the time when the petitioner was assaulted. Its averments show that some action has been taken, too late; for the petitioner it is of no use – it cannot even afford her cold comfort.

12. In the judgment reported as *Bodhisattwa Gautam v. Subhra Chakraborty* 1996 (1) SCC 490 the Supreme Court held that rape as an offence violates the fundamental right of a woman, guaranteed under Article 21 of the Constitution. The Court held that:

“Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21.”

13. The concept of compensation under public law, for injuries caused due to the negligence inaction or indifference of public functionaries or for the violation of fundamental rights is not a novelty in Indian jurisprudence. The power of the High Courts and the Supreme Court under Article 226 and Article 32 respectively, to mould the relief so as to compensate the victim has

been affirmed by the Supreme Court on numerous occasions including *Common Cause, A Registered Society v. Union of India*, (1999) 6 SCC 667, *Chairman Railway Board v. Chandrima Das*, (2000) 2 SCC 465, *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14, *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416, *Rudul Shah v. State of Bihar*, (1983) 4 SCC 141. The concept of compensation under public law must be understood as being different from the concept of damages under private law. Compensation under public law must not be merely seen as the moneyed equivalent of the injury caused, but must be understood in the context of the failure of the State to protect the valuable rights of the citizens, more so in the case of the marginalized and the oppressed.

14. It has long been established that the right to life enshrined in Article 21 is not a right to mere vegetative (“animal”) existence, but to a life with dignity and a decent standard of living. Rape is criminalized not just because it violates the bodily integrity of a woman, but also because it is an affront to her dignity as well. The physical scars may over a time, heal; the scars on the psyche and the trauma caused by the assault may well alter the personality of the woman. The road from being a victim suffering paying for what is not her doing, to a survivor awakening to a new existence is long; many seldom cover it fully, if at all. In this background the failure of the State to prevent the occurrence of such crime within premises under its control and the subsequent indifference as well as insensitivity displayed in bringing the perpetrator to justice,

strikes at the very root of the right guaranteed under Article 21 of the Constitution of India.

15. In *Chandrima Das (supra)* the Supreme Court, noticing that the General Assembly of the United Nations, while adopting the Declaration on the Elimination of Violence against Women, by its resolution dated 20-12-1993, mentioned about obligation of the States to ensure that women are not victims of violence, including rape (Article 2) held that this right is consistent with the right to life under Article 21, of all who are protected by our Constitution. In that case, the aggrieved was a victim of rape committed upon her in a railway compartment. The court brushed aside the Central Government's disclaimer of liability, and declared that the right of the victim under Article 21 had been violated. It awarded Rs. 10 lakhs as public law damages.

16. The Supreme Court, in *Delhi Domestic Working Women's Forum (supra)* laid down the following guidelines in relation to legal assistance for rape victims:

- 1) *The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well- acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.*
- 2) *Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a*

distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

- 3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.*
- 4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.*
- 5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.*
- 6) In all rape trials anonymity of the victim must be maintained, as far as necessary.*
- 7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.*
- 8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.*

17. Criminal jurisprudence has moved beyond the traditional domains of retributive and deterrent values. The shift is increasingly towards victim centric compensatory models of justice.

Many societies have forged mechanisms to address these issues. The idea underlying

compensatory justice is not merely to rehabilitate the victim, but also leads to a *regime* where societal values in seeing such crimes as aberrations, entitling the victim to some form of compensation due to the stark intensity of the crime. Therefore, the concept of a publicly funded and administered body to compensate victims of violent crime has been in practice in many countries across the world for quite a while. Compensation is granted not merely when the State is at fault but also when the crime is violent and serious; and thus the role of the State assumes the welfare hue. It would not be inappropriate to mention the characteristics of some such initiatives.

18. Set up in 1964 the Criminal Injuries Compensation Authority is responsible for administering the Criminal Injuries Compensation Scheme throughout England, Wales and Scotland. Under the scheme victims of violent crime are awarded compensation, according to what they would be entitled to in a successful civil action. From 1996 each injury was awarded a specific fixed compensation ranging from 1000 UK Pounds to 250000 UK Pounds. Apart from these; the applicants are also eligible to get compensation for earnings and special expenses for up to UK 250000 Pounds. The Ministry of Justice now funds the entire scheme; it was formerly funded by the Home Office. Victims as well as their relatives/dependants are entitled for compensation for personal injuries as well fatal injuries. Compensation is awarded to cover costs of medical expenses, funeral expenses, and loss of earnings, mental stress and trauma, medical

expenses for special care and also for loss of reputation. While arriving at the decision to award compensation the Authority looks into the previous criminal record of the applicant, the relevant police reports, and medical reports among other criteria. A right to appeal against the decision of the Authority is also provided.

19. Several provinces in Canada have enacted laws ensuring victims of crimes are compensated. The Ontario Compensation for Victims of Crime Act, 1990 provides for the establishment of a Criminal Injuries Compensation Board. In its terms, victims their dependants or by persons looking after them can claim compensation. Heads of compensation cover expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death; pecuniary loss incurred by the victim as a result of total or partial disability affecting the victim's capacity for work; pecuniary loss incurred by dependants as a result of the victim's death; pain and suffering; support of a child born as a result of rape and other pecuniary loss resulting from the victim's injury and any expense that, in the opinion of the Board, it is reasonable to incur. Apart from these, the Board is also entitled to award compensation in lieu of any common law rights accruing to the victim. Interestingly, under this enactment, compensation can be awarded irrespective of the *factum* of conviction, thereby signaling the change from a deterrent/retributive model to a rehabilitative one. The compensation can be administered through a lump sum payment or installments or under directions of the Board; thus, giving the

Board sufficient leeway to ensure that no misappropriation of the compensation takes place.

20. A similar regime is prevalent through state legislations in the United States and Australia as well, where several states have enacted legislations and through their respective budget allocations ensured that victims of crimes are compensated accordingly. In Western Australia for example, under the *Criminal Injuries Compensation Act 2003*, compensation can be sought for an incident reported to the police regardless of whether a person has been identified, charged or convicted of the offence. An application can be lodged by a victim of an offence where they were injured and/or experienced financial loss as a result or a close relative of a person killed as the result of an offence. Compensation can be awarded for suffering bodily harm, mental or nervous shock, or pregnancy, resulting from an offence. Compensation may cover: pain and suffering; *loss of enjoyment of life*; loss of income; medical expenses and other incidental expenses, such as travel for medical treatment or damage of clothing.

21. In India, pursuant to the Supreme Court directive in the *Delhi Domestic Working Women's Forum* case (supra), the National Commission for Women drafted the Scheme for the Rehabilitation for Victims of Rape, 2005. The scheme provided for the setting up of Criminal Injuries and Rehabilitation Board at the District and State level and a National Criminal Injuries and Rehabilitation Board. The scheme gives details about the constitution, functions and the budgetary allocation of the Authorities constituted under it. It provides for compensating rape

victims, irrespective of whether the perpetrator has been brought to justice. It provides for legal aid and other measures that will help such victims. However, there is nothing suggestive of any further thinking on these issues, or executive will to take the thought further.

22. Crime statistics in the recent past have shown that 22% of all the crime against women is rape; in absolute terms, the figure reported for the year 2005 for India was 18,359; 34,175 cases of molestation were reported and 9,984 incidents of sexual harassment were reported. There is an upward trend in the reporting of these crimes, which poses a serious challenge to our boast of achieving a safe and secure society, committed to securing justice and equality.

23. In view of the above discussion, there cannot be any doubt that the petitioner's right to life and dignity were violated in the second respondent's premises. The latter failed to ensure a safe and secure environment; it is also evident that the directions in the *Delhi Domestic Working Women's Forum* were not observed. The liability of the first respondent to therefore, compensate the petitioner stands established.

24. As observed in this judgment, the impact of a complex offence such as rape upon its victim is not merely physical; in effect it robs and violates the personality, undermining her confidence and affronting her dignity, even self esteem. Any quantification of damages as compensation would be a peripheral attempt. At best it can have only a palliative effect. Nevertheless, in the absence of any other mechanism or judging in any empirical or actuarial

manner, the extent of damages, the court has to fall back on an attempt to approximating the measure of damages. Having seen the facts of this case, and the circumstance that the criminal trial has not concluded as yet, this court is of opinion that the petitioner should be compensated by the second respondent, to an extent of Rs.5,50,000/-. She should also be paid costs.

25. As far as the larger question of implementation of the *Delhi Domestic Working Women's Forum* judgment is concerned, a direction is issued to the first respondent to prepare and implement a scheme in line with the directions of the Supreme Court. The first respondent shall prepare the guidelines and file an affidavit in this regard within two months, indicating compliance. The first Respondent is also directed to prepare a scheme/ blueprint towards ensuring compensation for victims of violent crimes, in consultation with the National Human Rights Commission. An affidavit disclosing compliance and the steps to effectuate the measures recommended by the National Human Rights Commission shall be filed within six months.

26. In accordance with the spirit of the Supreme Court guidelines, The Registry of the High Court is directed to substitute the name of the petitioner in the cause title with "Ms. X", and carry out the necessary corrections in the relevant records also. Certified copies of this judgment shall also reflect this direction and the identity of the petitioner shall not be revealed under any circumstances whatsoever.

27. The writ petition has to succeed. The second respondent, is, therefore directed to pay

Rs.5,50,000/- as compensation to the petitioner. In addition, it shall also bear the costs of this petition, quantified at Rs.30,000/-. Both these amounts shall be paid within 6 weeks. The petitioner's right to claim and recover further, additional damages or compensation from the perpetrator of the crime, in accordance with law, is also expressly reserved. The writ petition is allowed in these terms.

DATED:
28th January, 2008

(S. RAVINDRA BHAT)
JUDGE