

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 12/2006

STATE Petitioner
Through: Mr. Pawan Behl, APP with
IO/Inspector Krishan Lal.
versus

RAMEEZ & ORS. Respondents
Through: Mr. Nikhil Bhalla, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

- | | |
|--|-----|
| 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 Digest? | Yes |

JUDGMENT
06.04.2009

1. This petition by the State under Section 482 Code of criminal Procedure 1973 (CrPC) raises important questions concerning the role of the State as a law enforcer and protector of the rights of citizens enshrined under the Constitution of India, particularly of young adults for whose care and protection the Parliament has enacted the Juvenile Justice (Care and Protection of Children) Act 2000 (JJ Act).

2. The State has challenged an order passed by the learned Principal Magistrate, Juvenile Justice Board (JJB) on 30th November 2005 holding that the statements made by the four respondents (who at that time were juveniles facing proceedings before the JJB in FIR No. 333 of 2005 registered at Police Station (P.S) New Usmanpur) disclosed the commission

of cognizable offences by the policemen of that P.S. and consequently directing the Station House Officer (SHO) of P.S. New Usmanpur to register an FIR and give a compliance report to the JJB. The State has also challenged in this petition the order dated 20th December 2005 passed by the learned Additional Sessions Judge (ASJ) dismissing the Criminal Revision Petition No. 138 of 2005 filed by it against the aforementioned order dated 30th November 2005 passed by the learned Principal Magistrate, JJB.

Background Facts

3. The background to this petition, according to the State, is that on 15th October 2005 the dead body of one Putti Lal was found with stab wounds at the Shastri Palace Park. FIR No.333 of 2005 came to be registered at P.S. New Usmanpur as a consequence thereof. On the information provided by one Riyazuddin, the four respondents i.e Rameez aged 15 years, Tahir aged 13 years, Abid aged 17 years and Imam Ali aged 15 years, all residents of Shastri Park were arrested, according to the State, between 10 and 10.50 a.m. on 19th October 2005. It must be noted here that according to the respondents they were arrested on 18th October 2005 in the evening itself and kept overnight at P.S. New Usmanpur and sexually abused. The State claims that after their arrest the four respondents confessed to the crime and led the police to discovery of the weapon of offence and the purse of the deceased. Offences punishable under Sections 392, 397, 411 read with section 34 IPC and Section 27 of the Arms Act were added to the FIR. The

State claims that after their arrest, each of their parents was informed of their arrest by the police and the signatures of the parents/relatives obtained on the arrest memos. It claims that their medical examination was performed at the GTB Hospital between 12.15 and 12.30 pm on 19th October 2005. They were produced before the Probation Officer of the Social Welfare Department on 19th October 2005 and thereafter the Duty Metropolitan Magistrate (MM) who gave orders that they should be sent to the Observation Home for one day. The juveniles were produced before the JJB on 20th October 2005 and their remand to the OH was extended till 31st October 2005. On the next date a bail application was filed by Tahir and was fixed for hearing on 16th November 2005. The remand of the respondents was extended till 14th November 2005. The bone age x-ray of the respondents was conducted at the GTB Hospital on 24th October and 10th November 2005. On 14th November 2005 the remand was extended till 28th November 2005. Tahir's bail application was rejected on 16th November 2005.

4. What happened on 28th November 2005 and soon thereafter is described in detail in the order dated 30th November 2005 passed by the Principal Magistrate, JJB which reads thus:

“30/11/05

Pr : APP for State

IO/SHO Inspector Krishan Lal has appeared with the complete file.

Sh. R.M. Bhardwaj, legal aid counsel.

File perused.

As per the arrest memos of all the four delinquents, they were arrested on 19/10/05 in between 10 am to 10.50 am from Shastri Palace Shastri Park. There is overwriting on the arrest memos of all the 4 delinquents about the time of arrest.

IO has submitted that immediately after arrest of delinquents, their parents were duly informed and they were medically examined.

Brief facts leading to the present proceedings are that all the delinquents in this case were produced before the undersigned on 28/11/05 pending investigation and they were ordered to be kept in the Observation Home for Boys till 3/12/05, on the application of IO. On that day all the delinquents orally submitted that they were sexually and physically abused by the police men at Police Station. A written submission by the 4 delinquents duly signed was also made. By that time, no sufficient time was left and so, the delinquents were directed to be produced on next date. On 29/11/05 Sh. R.M. Bhardwaj, legal aid counsel was appointed in the matter and statements of all the 4 delinquents were recorded, separately in the presence of Legal Aid Counsel.

It has come in their statement of delinquent Imam Ali, 15 Yrs. old boy that he was lifted from his house at about 7:30/8 o'clock by 4/5 police persons, on the pretext that his brother was calling him. He was taken to Police Station where he was beaten by the policemen. He also stated that in the police lock up, policemen made him to hold the male organ of other boys in the lockup and also asked him to suck. One policeman made him hold his own male organ. He stated that he was taken by one police man to another room and made to remove and pant

and asked him to unnatural act. Juvenile further stated that the 4 policemen pissed on the face of Juvenile Abid and forced him to confess.

It has come in the statement of Juvenile Abid that 2 policemen came and apprehend him while he was going to masjid for Namaj. They took him to Police Station where he was beaten. He stated that 3 policemen urinated (pissed) on his face. Policemen forced all the 4 of them to indulge in sexual act with each other. He stated that 2/3 policemen also made them massage their male organs. Similar statements have been made by the other Juveniles Tahir 13 Yrs old and Rameez 15 yrs. old that they were lifted by policemen on 18/11/05 at about 8.30 pm from their houses and than (*sic then*) kept in the police lock up overnight where they were sexually and physically abused.

Though, as per police record, all the delinquents were arrested on 19/10/05 in between 10 to 10:50 am, from the statements of the delinquents, it appears that their arrest has not been shown correctly in the record. Rather, it has been manipulated. The allegations made by the delinquents against the police officials are serious in nature. The revelations (*sic revelations*) are disgusting as well as shocking to any human conscience. On the basis of allegations made, following offence appears to have been made out:

- 1) Section 342 IPC ----- Wrongful confinement.
- 2) Section 348 IPC ----- Wrongful confinement to extort
Confession.
- 3) Section 355 IPC ----- Assault or criminal force with
intent to dishonour a person.
- 4) Section 367 IPC ----- Kidnapping or abducting in order to
subject such person to the unnatural
lust of any person.

- 5) Section 294 IPC ----- Obscene acts and
- 6) Section 23 of Juvenile ----- Punishment for cruelty to Justice (Care and Protection of juvenile or child. Children) Act, 2000.

Most of the offences are cognizable. SHO PS New Usman Pur is directed to register FIR and give compliance report on 1/12/05.

Since the allegations are made by the delinquents against the IO of this case/and other police personnels of PS Usman Pur, it would be expedient in the interest of justice and fair investigation that the matter be investigated by an independent agency. Area DCP is directed to transfer the Investigation of this case to any independent investigating agency.

Put up for compliance on 1/12/05.”

5. The State did not accept the above order and filed Criminal revision Petition No. 138 of 2005 before the learned ASJ who initially granted a stay of the order. By the final order dated 19th December 2005 the learned ASJ dismissed the revision petition. While directing notice in this petition by an order dated 3rd January 2006 this Court stayed the operation of the impugned orders.

6. On 17th January 2008 this Court passed a detailed order and posed a question “as to why the State alone and not the offenders has challenged the impugned orders by which a judicial officer has drawn the State’s attention to the commission of offences.” The learned APP sought time to examine that aspect and make submissions. The case was therefore adjourned to 27th

February, 2008. Thereafter four adjournments were taken by the learned APP for the State to address arguments on the question posed in the above order. The case was heard finally today. Counsel for the parties and Inspector Kishan Lal assisting the learned APP addressed arguments.

No prejudice to the State

7. This Court has failed to understand how the State could be a prejudiced in any manner by the order dated 30th November 2005 passed by the learned Principal Magistrate, JJB whereby its attention has been drawn to the commission of cognizable offences by policemen of P.S.New Usmanpur. The said order describes in some detail the statements made by the four juveniles which prima facie show that serious crimes have been committed by the said policemen against the four respondents who were in their custody. Is the State suggesting that no policeman can even be accused of committing a custodial offence? Is it completely identifying itself with the suspects, to the extent it will seek to challenge any order that directs that the allegations made against them for commission of serious crimes against children should be investigated? Can this Court be unmindful of the increasing instances of custodial crimes committed by the uniformed gentry which have been documented in detail in the reports of the National Human Rights Commission over the past fifteen years?

8. In our system of criminal justice, the victims of crime trust our police to

undertake a fair investigation and the State to prosecute the offenders. Therefore, in most criminal cases involving trial of cognizable offences there are only two parties: the State and the accused. The victims are participants in the trial only as witnesses. The trust reposed in the State that it will prosecute the offenders will stand betrayed if the State begins to identify itself with the accused and seek to defend them to the extent it will not even allow a case to be registered against them. The State in this case is doing precisely this. What is really disturbing is that it is in the process trying to shield policemen who are expected to be the enforcers of the law, the State is forgetting that there are several provisions in the Indian Penal Code (IPC) to deal with the offence of custodial violence. It is policemen who are invariably the accused when such offences are committed. And it is the State that has to be the prosecutor. It is incomprehensible that where policemen are accused of sexually abusing the children arrested by them and kept in police custody, the prosecuting agency (the State) will actually step into the shoes of the policemen and challenge the order of a court asking that a case be registered and the crime investigated. If this were to be permitted it would be a sad day for the rule of law as it militates against the scheme of criminal justice where trust is reposed by victims in the State that it will prosecute the perpetrators of crimes even if, and perhaps particularly if, they are policemen.

9. The extent of identification of the police with the policemen against

whom the accusations have been made is evident from the fact that this petition is supported by the affidavit dated 1st January 2006 of R.L.Meena, Deputy Commissioner of Police, North-East District, Seelampur, Delhi. It also shows how the State as a prosecuting agency sees itself no different from the accused policemen. What has compounded this is the conduct of Inspector Krishan Lal, who was the IO in FIR 333 of 2005 in which the four respondents are facing trial. Inspector Krishan Lal is now with the Bomb Detection Team, Central District, of the Delhi Police. Yet, he has taken time off to instruct the learned APP in the present case. He was also present before the learned ASJ who noticed it in his order dated 19th December 2005. That he has shown unusual interest in getting the impugned orders set aside was evident in the proceedings before this Court today. Despite the State being ably represented by the learned APP, Mr.Pawan Behl, Inspector Krishan Lal who was instructing him was unable to restrain himself and insisted on making submissions before this Court. Krishan Lal submitted that since the four juveniles did not name specifically the policemen involved, no action could have or should have been taken pursuant to the statements made by them before the Principal Magistrate JJB on 28th and 29th November 2005. This Court finds the submission preposterous. It is strange to expect the juveniles to know the names of each of the policemen who sexually abused them. This is precisely what has to be investigated. It is not unusual that information is received about the commission of a crime at a particular place. The names of the actual perpetrators may not be known

immediately and will become apparent as investigation progresses. Will the absence of accused being named relieve the police of registering the FIR and investigating the crime?

10. The fact that Kishan Lal has, despite no longer being the IO at P.S. New Usmanpur, taken unusual interest and himself come to this Court in the present proceedings to instruct the learned APP to defend this case on behalf of the accused policemen involved (as he did before the learned ASJ as well) is itself a pointer to the disturbing feature of the both the police and the State identifying themselves with the errant policemen who have been accused of committing serious violations of human rights of children.

11. This is as necessary an occasion as any other to remind ourselves of the following prescient observations of the Supreme Court in *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 at 423:

“The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the

victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society.”

Case is at the pre-cognisance stage

12. It is submitted by the State that in asking the police to register a case the learned Principal Magistrate has acted in terms of Section 156 (3) CrPC and reverted to the pre-cognisance stage, which was not permissible in law. This stems from a misreading of the said order. It only records that the statements disclose the commission of cognizable offences. But it is not an order taking cognisance. The learned Principal Magistrate JJB had all the powers of a magistrate in terms of Section 4 (2) read with Section 5 (2) and (3) JJ Act and rightly acted in terms of Section 156 (3) CrPC. The statements made by the Respondents made to the judicial officer indeed disclose the commission of cognizable offences. The judicial officer cannot be expected to be a mute spectator and ignore such statements. The logical course for that court to follow was to immediately draw the attention of the police concerned to the commission of the crime and to register a case on that basis. That is what has precisely been done. The case is at the pre-cognisance stage. The process of law will follow after the FIR is registered in terms of the impugned order and investigation undertaken.

13. The other submissions made in the petition are a complete defence of the accused policemen who are yet to be named. It is argued that the arrest was

made only on 19th and not 18th October 2005; that the learned Principal Magistrate “has given undue weightage to some minor overwriting in the arrest memo”; that there was no complaint made by any of the respondents prior to 28th November 2005; and the fact that there is no description of the police officer “clearly proves that the report is false and was made only to pressurize the IO of this case.” It is amazing that it is the State that is making these arguments at the pre-cognisance stage, which even the accused (who in any event are yet to be named) would not be permitted to. The State has also filed documents to show that one of the respondents was refused bail. One other was involved in another incident of crime for which an FIR was registered. This Court fails to understand how these subsequent developments can absolve the policemen who stand accused of committing acts of sexual and physical violence against the respondents after their arrest in FIR No. 333 of 2005.

14. The learned APP referred to the judgment dated 12th September 2008 passed by a learned Single Judge of this Court in Crl. M.C. No. 3425 of 2005 titled ‘*State v. Mohd. Iqbal Ghazi&Ors.*’ and submitted that it had a bearing on the issue arising for consideration in the present case. However, a careful perusal of the said judgment shows that it does not answer the issue raised in the order dated 17th January 2008 passed by this Court. Specifically it does not advert to the aspect whether the State can itself challenge an order whereby it has been directed to register an FIR and

investigate the commission of cognizable offences. In *Mohd. Iqbal* the relatives of the person who died in police custody were the complainants. The complaint specifically named the policemen involved. The complainant's initial application under Section 156 (3) was dismissed by the MM on 11th August 2003 as not pressed and the case was fixed for complainant's evidence. At a subsequent date a fresh application under Section 156 (3) CrPC was filed by the complainant. By an order dated 5th November 2003 the learned MM directed an FIR to be registered and a report to be filed by the police. The policemen named in the complaint then filed a petition in this Court under Section 482 CrPC challenging the order dated 5th November 2003. In the said petition the State filed an application seeking impleadment as co-petitioner. This Court dismissed the petition and the State, as well as the named policemen filed an SLP in the Supreme Court which was dismissed as withdrawn after recording the statement of the petitioners' counsel that "they would like to move before the Magistrate for appropriate relief in accordance with law." The State and the two policemen then filed applications before the learned MM praying that the order dated 5th November 2003 be recalled and the complainant be asked to lead evidence in terms of the earlier order dated 11th August 2003. By an order dated 25th July 2005 the application by the policemen was dismissed by the learned MM as not maintainable and the application by the State was deferred with a direction to register an FIR. This order was again challenged in this Court. By the judgment dated 12th September 2008 this Court set

aside the said order by holding that after the order of the Supreme Court the application by the policemen could not be dismissed as not being maintainable. The said application as well as the deferred application by the State was directed to be decided afresh. This Court finds that the said judgment in *Mohd. Iqbal* nowhere holds that the State was entitled to challenge an order directing it to register an FIR in a case of a cognisable offence. Further the facts there show that the Court doubted if the allegations made in the complaint disclosed the commission of a cognizable offence. In the instant case, there is no doubt that the statements by the respondents disclose the commission of cognizable offences. The case is at the pre-cognisance stage. The particular policemen involved are yet to be named. Even if they were they would not have locus to challenge the said order directing registration of the FIR since no process or summons has been issued to them.

15. Mr. Behl then refers to the judgment of the Supreme Court in *State Represented by Inspector of Police v. N.M.T. Joy Immaculate AIR 2004 SC 2282*. This Court finds that even the said decision is not relevant to the points that arise for consideration.

Conclusion

16. The statements made by the four respondents before the Principal

Magistrate JJB on 30th November 2005 disclose the commission of cognizable offences by the policemen concerned. The physical and sexual abuse of the respondents in the police station were certainly not acts performed by the policemen in the course of their official duty. There cannot be any question of the State trying to defend such policemen. Today the State stands before this Court on behalf of such accused, identifying itself with them. This is a disturbing aspect for which the Court has not received any satisfactory answer. The consequence that will ensue if the State's prayer in this petition were to be accepted is that the errant policemen will escape prosecution with impunity. Our Constitution does not permit this undermining of the rule of law; this Court too will not.

17. For the above reasons, the impugned orders dated 30th November 2005 passed by the learned JJB as well as the order dated 20th December 2005 passed by the learned ASJ, do not require to be interfered with. The direction to the area DCP to transfer investigation to any independent agency was also perfectly justified as the present petition itself shows. The State is directed to take immediate steps to set the criminal law in motion as has been directed by the learned Principal Magistrate JJB by the impugned order dated 30th November 2005. The petition is accordingly dismissed. The interim order dated 3rd January 2006 stands vacated.

18. The trial court record be sent back immediately together with a certified

copy of this order. A certified copy of this order be also delivered to the Commissioner of Police within a week.

S.MURALIDHAR, J

APRIL 06, 2009
dn