

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16th July, 2013
Pronounced on: 25th July, 2013

+ **CRL.M.C. 2458/2013**

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through: Mr. Sidharth Luthra, Addl. Solicitor
General with Mr. Rajesh Mahajan, ASC
for the State, Mr. P.K. Dubey, Adv., Mr.
Aditya Singla Adv.,
Mr. Shiv Pande, Adv.,
Mr. Rajat Agnihotri, Advocate
Mr. Nitin Saluja, Adv.,
Ms. Nidhi Makhija, Advocate
Insp. Dinesh Kumar, IO
Mr. Kunwarjeet Singh, Advocate for the
Complainant.

versus

ARUNA CHADHA & ANR.

..... Respondents

Through: Mr. U.U. Lalit, Senior Advocate with Ms.
Meghna Sankhla, Adv. for R-1.
Mr. Kapil Sankhla, Adv. with
Mr. Rajiv Sirohi, Adv.,
Mr. Irshaan Kakar, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. By virtue of this Petition under Section 482 of the Code of Criminal Procedure(the Code), the State seeks expunction of the

observation/remarks made by the learned Additional Sessions Judge(ASJ) in his order dated 10.05.2013 while ordering framing of the charge against the Respondents. It is averred that while framing charge against the Respondents, the learned ASJ while exercising jurisdiction under Section 227/228 of the Code was duty bound to examine the entire material before it and to opine as to the offences for which the charge is to be framed against the Respondents. It is stated that the issue of sexual exploitation was brought to the notice of the Trial Court by the learned Public Prosecutor who referred to the material as stated in para 4 of the Petition. The State is aggrieved by the observations made in paras 76, 80, 82 and 92 of the order dated 10.05.2013, which are extracted hereunder:

“76. I have carefully gone through the suicide note evidence collected during the investigation of the case by the police, the medical records, statements of witnesses to prima facie gather the truth. The circumstances ‘a’ to ‘y’ above relied upon by prosecution looked to be part of the story and half-hearted revelation of true facts. These are unable to justify findings of Medical Board in postmortem report and statement of gynecologist Dr. Vishaka Munal. The facts of the case need proper scrutiny to know whether prima facie case for sexual exploitation of deceased exists.

*80. It appears that taking cue from the postmortem report dated 06.08.2012 the investigation progressed towards ascertaining sexual exploitation of the deceased. The disclosure statement of accused Aruna Chadha was recorded on 10.08.2012. The statement of Dr. Vishaka Munjal was recorded on 12.08.2012. Thereafter, it appears that for the reasons best known to the investigating agency further investigation in this direction has not been conducted to collect further evidence. **On bail application accused Gopal Goyal Kanda the report of above private gynecologist came to notice of this Court that the deceased visited the clinic of the said doctor on 09.03.2012 when she was pregnant and postmortem report also indicated that the deceased was habituated to***

vaginal and anal penetration so it was indicated in the order dated 20.09.2012 by this Court by dismissing the bail application of accused Gopal Goyal Kanda that the matter requires investigation whether victim decline the service with the accused or was being pressured to join it for the purpose of her sexual abuse or not. Still the investigating agency has chosen not to unearth further circumstantial or other credible evidence on this aspect to reach the truth. The investigation on this aspect of the case look tainted and stinking.

82. In the light of the findings of the above postmortem report, the deceased was habituated to vaginal and anal penetration and the evidence of private gynecologist Dr. Vishaka Munal regarding termination of early pregnancy of the deceased, the judicial conscious of this court does not permit to shut its eyes to this important aspect of this court so the facts and circumstance, in my view, need to be evaluated to come to a truthful prima facie opinion about this most important circumstance of this case notwithstanding of **the fact that the State as investigating officer/police has abruptly stopped investigation on this important aspect of sexual exploitation of deceased after some above stated initial efforts and State as Prosecutor also did not help this Court by addressing arguments on this aspect and thereby compounded the lapse on the part of investigating police.** In such a situation, State as impartial arbiter/Court must act sensibly to instill credibility and erosion of the public faith in the criminal delivery system.

92. This court would like to make an observation in relation to the manner in which the present case has been proceeded by the State agencies. The accused is an influential political person. He was Home Minister of State with affairs of State police under him. **Not only the investigation of the case has been tainted and stinking, the manner in which the confession of the other co-accused Chanshivroop was recorded under Section 164 of Cr.P.C. and the fact that the said co-accused Chanshivroop who was on police bail has run away to the United States and the investigating agency is not making any serious efforts to extradite him suggest the inference that the accused Gopal Goyal Kanda is still influencing the criminal justice administration by employing**

various indirect means and in my view, such a person will keep influencing the criminal process till the time the co-accused Chanshivroop is apprehended and brought back to India. Copy of this order be sent to the Commissioner of Police forthwith for information and necessary action.”
(emphasis supplied)

2. Notice of this Petition was issued to the Respondents; they preferred not to file any reply to the same.
3. I have heard Mr. Sidharth Luthra, learned Addl. Solicitor General for the State and Mr. U.U. Lalit, learned Senior Counsel on behalf of the first Respondent. No arguments have been advanced on behalf of the second Respondent.
4. It is urged by Mr. Sidharth Luthra that the scope of jurisdiction of the Court under Sections 227 and 228 of the Code was to take into consideration the record of the case and the documents submitted by the police therewith and after hearing the submissions of the parties to pass an order framing the charge if there was ground for presuming that the accused has committed an offence and to discharge them if there were no sufficient grounds for proceeding against them. The learned ASG urges that the Court can always order further investigation under Section 173(8) of the Code and it was not within the domain of the learned ASJ to reprimand the investigating agency without giving an opportunity to the State or calling for an explanation regarding any lapse in the investigation. The learned ASG very passionately contends that the investigating agency did whatever was in its power to collect all possible evidence in respect of the sexual exploitation of the deceased by examining all the family members and a number of colleagues of the

deceased including Mandeep Singh, Dipak Jindal, Aditya Mangla, Ankit Ahluwalia and Rajiv Parashar. There could not be any direct evidence of the deceased's sexual exploitation as only she could have stated about the same to her family members and colleagues, who would have stated so if the same had been disclosed by the deceased to them. The learned ASG submits that in the circumstances the adverse observations recorded against the investigating agency ought to be expunged. The learned ASG states that it is an admitted fact that Respondent No.2 was an influential person but the same would not necessarily mean that the investigating officer/officers had not carried out their job properly and effectively.

5. Mr. U.U. Lalit, learned Senior Counsel appearing on behalf of the first Respondent states that he has nothing to say with regard to the Petition. He, however, submits that the averments made in the Petition are contrary to the record inasmuch as in para 5 of the Petition it is stated that the issue of sexual exploitation was brought to the fore before the Trial Court by the learned Public Prosecutor who referred to the above material. The learned Senior Counsel urges that the averments made in para 5 of the Petition are factually incorrect which could be demonstrated from para 12 of the order dated 10.05.2013 wherein the Special Public Prosecutor has admitted that there is no direct allegation of sexual abuse of deceased by accused Gopal Goyal Kanda or her suicide was due to this sexual abuse. Mr. Lalit contends that Dr. P. Karunakaran, DCP(North-West) District was not personally present when the arguments were addressed and thus it is evident that the averments made by the State exhibits an act of irresponsibility on the part of a senior police officer.

6. I am in agreement with Mr. U.U. Lalit, the learned Senior Counsel that the averments made in para 5 of the Petition are contrary to para 12 of the order dated 10.05.2013. The affidavit in support of the Petition is sworn by Dr. P. Karunakaran who was not physically present in the Court and thus, such an averment could not have been made by him.
7. At the same time, the order dated 10.05.2013 does not reveal that the learned Special Public Prosecutor or even the Investigating Officer was confronted by the ASJ as to the investigation/lack of investigation in respect of the alleged sexual exploitation of the deceased or extradition of Chanshivroop. It has been pointed out by the learned ASG that efforts were made to examine all possible witnesses to collect the evidence but no direct evidence was forthcoming. Moreover, the language used by the learned ASJ that the investigation was stinking was not appropriate.
8. In the circumstances, the adverse observation of the Trial Court with regard to the lack of investigation on sexual exploitation and the fact that the investigating agency did not take any steps for extradition of Chanshivroop are ordered to be expunged.
9. The Petition is disposed of accordingly.

(G.P. MITTAL)
JUDGE

JULY 25, 2013
pst