

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No. 35591 of 2015 (O&M)
Date of decision: 28.10.2015

Shewata (minor) daughter of Sh. Rudarpal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Malik, Advocate for the petitioner.

Mr. Arun Luthra, AAG, Haryana.

Jitendra Chauhan, J. (Oral)

Prayer made in the instant petition is, inter alia, for issuance of direction to respondents No. 2 to 5, for protection of life and liberty of the petitioner which is allegedly threatened at the hands of respondents No. 6 & 7.

Brief facts of the case are that the mother of the petitioner, Shaweta (aged 14 years), made a statement before the Women Cell that the petitioner was raped by her tenant, Shaukeen s/o Sabudeen, aged 30 years. When the victim complained of stomach ache, she was examined, wherein it was confirmed that the

petitioner was pregnant. On the basis of this statement, FIR No. 58 dated 21.08.2015 under Section 376 IPC and Section 6 of POCSO Act was registered. Thereafter, the petitioner filed CWP No. 19343 of 2015 wherein, on the orders of this Court, the PGIMER opined that the pregnancy of the petitioner cannot be terminated. In these circumstances, the Hon'ble Court issued direction to the Director, PGI Rohtak for necessary care and treatment of the petitioner.

It is contended that the petitioner and her parents have been facing difficulties in the society on account of her being a rape victim and pregnant at the age of 14 years. It is further argued that the relatives of the accused, namely Yamin and Abid, respondents No. 6 and 7 in the present petition have been extending threats and pressurizing the petitioner and her family to compromise the matter. Both the parties have been residing in immediate proximity of each other, which further enhances and exposes the danger and threat to the life and liberty of the victim and her family. Therefore, it is prayed that the life and liberty of the petitioner be protected by issuing direction to the concerned Police officials (respondents 3 to 5).

Upon notice the learned counsel for the State of Haryana has apprised the Court by filing the reply through Sh. Sunil Kumar, HPS, Dy. Superintendent of Police (Traffic) Sonapat, wherein it averred that SI, Women Cell, Sonapat visited the house of the

petitioner on 22.10.2015 in order to provide shelter and protection to the victim. A statement of the father, namely Rudarpal, of the victim was recorded, Annexure R1 wherein it is stated that the petitioner is now 7 months pregnant and is being treated at PGIMS Rohtak and the parents of the petitioner did not want to keep their daughter in the shelter home and the parents, keeping in view her pregnancy, want her to be at home, where, they can look after her properly. It is also assured by the learned State counsel that the petitioner would be looked after as an indoor patient while at home.

I have heard the learned counsel for the parties and perused the record.

The mother of the petitioner made a statement before the Women Cell that her husband Rudarpal had given one room on rent to Shaukeen, son of Sabudeen, who had been residing there for the last five months. Taking advantage of the victim being alone, Shaukeen committed rape upon the victim. After medical check up it was confirmed that the petitioner is pregnant. The petitioner filed CWP No. 19343 of 2015 in which on the orders of this Court, the PGIMER opined that the pregnancy of the petitioner cannot be terminated. The petitioner is minor. The father of the petitioner is a casual worker earning his livelihood by installing submersible pumps. He is further saddled with the responsibility of raising three other minor children. As per reply filed on behalf of the State, the

petitioner is having pregnancy of about seven months and her treatment is going on at PGIMS, Rohtak.

Keeping in view the facts and circumstances, without expressing any opinion on the merits, especially in the light of helplessness of the petitioner, coupled with the deprivation of finances, the instant petition is disposed of with a direction to respondent No.4-Sr. Superintendent of Police, Sonapat, that, he will look into the matter and provide necessary protection to the petitioner and any other assistance required to facilitate the well being of the petitioner, her family and the unborn child in accordance with law, if he is satisfied that the life and liberty of the petitioner is threatened at the hands of respondents No.6 and 7. The respondents No.1, 4 and 5 are directed to take all necessary steps to ensure protection of the petitioner and her family.

Further, considering the age of the petitioner and peculiar circumstances of the instant case, this Court feels that it would be the most appropriate context in which jurisdiction under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure deserved be exercised to advance the cause of justice.

Section 357(A) Cr.P.C. reads as under:-

357A. Victim compensation scheme. - (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have

suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

The Hon'ble Supreme Court in Suo Motu Writ Petition (Criminal) No.24 of 2014 in re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014, has observed as under:-

"26) The crimes, as noted above, are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of

*discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the attitude of the people. Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner. Thus, we implore upon the State machinery to work in harmony with each other to safeguard the rights of women in our country. As per the law enunciated in **Lalita Kumari vs. Govt. of U.P & Ors** 2013 (13) SCALE 559, registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and the Police officers are duty bound to register the same.*

27) Likewise, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other, are statutorily obligated under Section 357C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326-A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC.”

In the instant case, the age of the victim, factum of her delivering the child and ignominy of parentage and the financial status of the victim's family are not in dispute. In the opinion of this Court, even if the family has the requisite financial capacity to bear the expenses, the State is under an obligation for payment to compensate and rehabilitate the victim so as to advance the cause of justice. Apart from this, the accused also can be burdened with fine to be paid as compensation to the victim but in the present situation, the Court feels that the exigencies of the situation demand that some immediate help deserves to be extended to the victim. Accordingly, the State of Haryana is directed to pay a sum of Rs.1 lacs, to the victim immediately, as a measure of interim relief. Further, it is

ordered that all the hospitalization expenses including medicines, attendant, special diet for the expected mother and post delivery expenses of the victim upto three years of the delivery shall be borne by the State. The hospital authorities are requested to make earnest endeavour to take up the case of the victim with various NGOs operating in the area to explore the possibility if the petitioner and her guardian chooses it as an option that the child could be adopted. In the opinion of the Court, the victim and her family do not have the required resources to facilitate physical, emotional and mental growth of the newborn. Even otherwise the child would always carry the stigma of disputed parentage which is to be obliterated.

Disposed of.

28.10.2015

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(JITENDRA CHAUHAN)
JUDGE