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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 08.07.2015
Judgment Pronounced on: 21.07.2015

+ W.P.(C) 4320/2014 & CM No. 9192/2015

AVADH KAUSHIK Petitioner

Through: Petitioner-in-person.

Versus

UNION OF INDIA AND ORS.Respondents

Through: Mr.Anil Soni, Adv. for R-1.
Mr.Ayushman Motwal, Adv.for
Mr.Rajshekhar Rao, Adv. for R-5.
Mr.Raman Duggal, Standing
Counsel along with Ms.Ayushi
Gupta, Adv. for GNCTD.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed by the petitioner, an advocate by profession, seeking a writ of mandamus to direct the respondents to implement the directions of the Hon'ble Supreme Court passed in the case of *Sheela Barse vs. State of Maharashtra, 1983(2) SCC 96* and to set up separate police lock-ups in reasonably good localities in Delhi where only female suspects should be kept and who should be guarded by female police personnel only. A writ of mandamus is also sought to direct

respondent No.5, namely, the Delhi High Court to appoint and nominate one Additional Sessions Judge preferably a lady judge to make periodical, surprise and random visits to lock-ups especially at nights to see the condition of the female suspects. Other reliefs are also sought.

2. In the writ petition it is averred that to prevent sexual abuse, harassment and torture of women in police lock-ups, the Supreme Court in the case of *Sheela Barse vs. State of Maharashtra (supra)* considered all the facts and laid down various guidelines regarding the manner and the procedure for arresting a woman particularly in the night. Amongst the directions and guidelines given, were that 4 to 5 lock-ups should be selected in reasonably good localities where only female suspects should be kept and should be guarded by female constables. Interrogation of female suspects should be carried out only in the presence of female police officials/constables. Various other such directions were also given. It is averred that though the said directions were given in connection with the State of Maharashtra, various other High Courts have reiterated the same. The same have also been incorporated in the guidelines issued by the National Human Rights Commission regarding arrest and detention of woman. However, no details in this regard are given.

3. It is further averred that despite the said clear directions of the Supreme Court and despite there being clear provisions in the Cr.P.C., the Delhi Police is still not complying with the same and the Delhi Police continues to be not bound by any law. To support and buttress the said contention, reliance is placed on certain facts connected to two separate criminal cases i.e. FIR No. 191/2013 dated 05.07.2013 and FIR No.

265/2013 dated 14.09.2013 that were registered in the police station at South Rohini, Delhi against female accused persons for committing separate offences. It is stated that the common facet of both the cases was that the female accused were arrested in the night without permission of the concerned magistrate. They were arrested by male police personnel and were not produced before the concerned magistrate's court immediately but were produced on the next date. In both the cases, the female accused have made allegations that they were sexually abused, harassed and humiliated at the hands of the male police personnel in police lock-ups in the respective nights. However, background details of only one case are given in the petition.

4. At the same time, it is also averred that in one of the cases, namely, in respect of Smt. Sunita, a accused in FIR No.265/2013 an application under Section 46(4) of Cr.P.C. was moved before the Metropolitan Magistrate and permission was granted to arrest her in the night. However, it is averred that the Metropolitan Magistrate did not apply his mind while granting permission to arrest the accused and he left the arrest of the accused entirely on the wisdom of the investigating officer.

5. In the course of trial in FIR No. 265/2013, the Additional Sessions Judge, North West Rohini recorded the statement of the accused Smt. Sunita who levelled serious allegations of sexual abuse, harassment, humiliation and torture in police lock-ups against the police personnel. It is averred that the said statement shows a shocking state of affairs which are shameful and humiliating. The statement as recorded by the court is reproduced in the writ petition.

6. Based on a preliminary enquiry conducted by the ASJ, the ASJ on finding the allegations prima facie correct is said to have passed two separate orders dated 07.03.2014 and 14.03.2014 where she is said to have observed that the provisions of Section 46(4) Cr.P.C. and the directions of the Supreme Court in the case of *Sheela Barse vs. State of Maharashtra (supra)* have not been complied with.

7. Subsequent to the said orders of ASJ dated 7.3.2014 and 14.3.2014, on the directions of the competent court of ACMM an FIR No.220/2014 dated 25.03.2014 was registered at police station, Maurya Enclave, Pitampura in which a police sub-inspector, namely, Ravi Kumar and few other unknown police personnel were made accused. The ASJ also sent a report and reference dated 11.04.2014 to this court for necessary orders and directions.

8. It is further pointed that SI Ravi Kumar has challenged the order passed by the ASJ and the ACMM directing the registration of FIR against him by filing an appropriate petition before this court which is pending as CrI.M.C. No. 1757/2014 for quashing of FIR No. 220/2014. The accused of FIR No.265/2013 i.e. Smt. Sunita has been arrayed as a party in the petition before this Court. It is averred that the said Smt. Sunita has engaged the petitioner as her legal counsel in the said case.

9. It is further stated that the petitioner on being engaged by the said Smt.Sunita filed an application under Section 6 of the RTI Act to the Registry of this Court seeking information with regard to the outcome of the report dated 11.04.2014 sent by the ASJ to this court. It is stated that no response whatsoever has been given by the public information officer

despite expiry of the period of 30 days. It is further averred that the Registry of this court or the Delhi Legal Services Authority has not taken note of such a serious issue and hence, the petitioner being an officer of this court and being a public spirited person, has felt compelled and duty bound to take up the matter before this court and hence, the present petition has been filed.

10. In this case notice was issued to the respondents. Respondents No.2 to 4, namely, Government of NCT of Delhi and the Commissioner of Police have filed a status report. The status report gives a detailed report about the manner in which female inmates are being taken care in Tihar Jail. The status report does not deal with female accused who are kept in lock-ups in police station.

11. We have heard the learned counsel for the petitioner and have gone through the record of the writ petition. Though the petition makes serious allegations against Delhi Police, but these allegations are only sought to be supported by the facts of the case of FIR No.265/2013 where Smt.Sunita is the accused.The genesis of the petition is the statement of Smt. Sunita recorded by ASJ. Based on this statement and order of ASJ dated 07.03.2014 and 14.03.2014 and the direction of the ACMM, an FIR was registered against the concerned police official. The police officer has filed a petition before this court challenging the order of the ASJ and the FIR, which petition is pending. Hence appropriate action has been taken based on the allegations of Smt.Sunita i.e. an FIR has been registered. The matter is sub-judice.

12. Further, it is an admitted fact that the petitioner is the counsel for accused Smt. Sunita in CrI.M.C.1757/2014 filed before this Court by ASI Ravi Kumar. The petitioner is not a disinterested person in the matter. In our opinion the petition lacks bona fide. Though the petition ostensibly seeks to implement directions of the Supreme Court in the case of *Smt. Sheela Barse vs. State of Maharashtra (supra)* the petition is more or less centered around the allegations levelled by Smt. Sunita before the ASJ which are already subject matter of judicial proceedings. We do not feel it necessary, in these facts, to interfere in the matter. Reference may be had to the guidelines relating to PIL laid down by the Supreme Court in *State of Uttaranchal vs. Balwant Singh Chaufal & Ors., (2010) 3 SCC 402*.

13. The above observations are being made in the special facts of this case. We have not in any manner gone into the obvious duty of the respondents to ensure due protection of female accused when in police lock-up.

14. The writ petition and the application are dismissed.

JAYANT NATH, J.

CHIEF JUSTICE

JULY 21, 2015

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