

* HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

+ Writ Appeal No.925 of 2018

% Date: 02-8-2018

Dr. Eunice Lalnunmawii Chawngthu, Aged 35 years,
Flat No.F5, II Floor, Adarsh Vihar Apartments,
Adarsh Nagar, Hyderabad-500 022

... Appellant/Petitioner

Vs.

\$ 1. The State of Telangana, Rep. by its Prl. Secretary,
Home, High Court at Hyderabad

2. The Circle Inspector, Saifabad Police Station,
Saifabad, Hyderabad-500 004

3. The Commissioner of Police, Basheerbagh,
Hyderabad-500 029

... Respondents/Respondents

! Counsel for the Appellant: Appearing in person

Counsel for Respondents: Mr. S.Sarath Kumar,
Spl. Govt. Pleader appearing on
behalf of Addl. Advocate General
(Telangana)

< Gist:

> Head Note:

? Cases referred:

1. (2013) 14 Scale 209
2. 2017 SCC Online SC 86
3. 2013 (5) CTC 310

HON'BLE THE CHIEF JUSTICE
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AND
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Writ Appeal No.925 of 2018

Judgment: (per V.Ramasubramanian, J.)

Not satisfied with a limited direction issued by the learned single Judge in a writ petition filed by her, the writ petitioner has come up with the above writ appeal.

2. Heard the appellant appearing in person and Mr. S.Sarath Kumar, learned Special Government Pleader appearing on behalf of the learned Additional Advocate General (Telangana).

3. The appellant herein filed a writ petition in W.P.No.8697 of 2018, originally praying for certain reliefs. The reliefs sought for by the petitioner in her writ petition as it was originally filed, read as follows:

“Hence it is prayed that this Hon’ble Court may be pleased to issue a Writ of *mandamus* whereby the respondents may be directed to submit CCTV camera footage of Saifabad Police Station for 13-3-2018 from 7 p.m. to 11 p.m. today to this Hon’ble Court, to escort the petitioner back into her place of residence today, with the same being confirmed by the petitioner in person before this Hon’ble Court within a specific time period, to provide security to the petitioner, to register an FIR based on the petitioner’s complaint dated 12-3-2018 to the Circle Inspector, Saifabad, and 13-3-2018 to the Commissioner of Police under the correct provision of law, to arrest the accused immediately, to submit their charge-sheet within one week, to direct the Court concerned to dispose the matter within one month, to locate and return the petitioner’s movables to her, to submit copies of FIRs registered against the petitioner by the

2nd respondent from 2017 to date, and to pass such other order or orders as it may deem fit and proper in the facts and circumstances of the case.”

4. It appears that the writ petition was filed on 14-3-2018 and the same was listed before a learned single Judge of this Court for orders as to admission on 15-3-2018. It was directed to be posted on 16-3-2018. On 16-3-2018, it was adjourned to 19-3-2018 and later to 22-3-2018.

5. It appears that on 22-3-2018, the appellant made a mention before the learned single Judge to take the writ petition out of turn. The appellant seems to have said that a letter had also been circulated to the Registry to the said effect. But the learned single Judge, before whom the matter was listed on 22-3-2018, expressed the view that the letter circulated to the Registry was not placed before him. At that stage, the appellant appears to have requested the learned single Judge to list the matter before another Bench. Therefore, the learned single Judge, before whom the writ petition was listed on 22-3-2018, passed the following order:

“When a mention was made for taking up the matter out of order, this Court earlier directed the petitioner to file a letter before the Registry.

Today, the petitioner stated that such a letter has been filed before the Registry and again made a mention to take up the matter out of order.

This Court expressed that as and when the Registry places the letter before this Court, appropriate decision will be taken in the matter.

At this stage, the petitioner insisted that the matter may be directed to be listed before another Bench for disposal.

Having regard to the facts stated above, the Registry is directed to list this matter before another Bench, after obtaining necessary orders from the Hon'ble The Acting Chief Justice."

6. Thereafter, the writ petition was listed before another learned Judge on 27-3-2018. On the said date, the learned Judge seems to have directed the Government Pleader to preserve the footage of the CCTV camera of Saifabad Police Station relating to the period from 7 p.m. to 12 p.m. on 13-3-2018.

7. Thereafter, the appellant filed an application for amendment of the prayer made in the writ petition and the amendment was allowed on 02-4-2018. The amended prayer in the writ petition reads as follows:

"Hence it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, order or direction, one in the nature of a Writ of *mandamus* directing the 3rd respondent to produce the unedited CCTV footage of all the cameras in the Saifabad Police Station for 12-3-2018 from 7 p.m. to 12 p.m. to the satisfaction of this Hon'ble Court, failing which the same may be sent for expert analysis, also to produce the CCTV footage of the Saifabad – Secretariat traffic signal point for 12-3-2018 from 9 p.m. to 12 p.m., the petitioner's movables including her MacAir laptop, her car keys, her files, her Lenovo mobile be traced and returned to be petitioner forthwith, that all the accused be arrested immediately, that the 3rd respondent be directed to provide the petitioner an arms licence, provide her security and escort her back to her place of residence today as she, a single lady from the minority S.T. community is shelterless, extremely vulnerable and faces a serious threat to her life from the accused and to register a case against the 2nd respondent under Section 164A of IPC for wilfully failing to perform his duties, and to direct the CBI to

conduct a thorough investigation, to be completed within a fixed time, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

8. After the amendment was ordered, the writ petition was posted to 17-4-2018 and thereafter to 01-5-2018. On 01-5-2018, the learned Judge allowed the writ petition, on the basis of a statement made by the learned Government Pleader, directing the Investigating Officer to complete the investigation and to file a final report into Court within two months. Not satisfied with the said order, the appellant has come up with the above appeal raising various grounds such as –

(i) that under Section 228A(1) IPC, the name or identity of a lady victim should not have been revealed or made public, but the learned Judge failed to take note of this;

(ii) that when the Media published the name of Kathua rape victim the Delhi High Court awarded a compensation of Rs.10 lakhs, to be paid by each of the Media houses;

(iii) that the learned single Judge did not apply his mind when he refused to acknowledge the crimes committed by the respondents;

(iv) that the learned Judge failed to appreciate that Crime No.103/2018 was registered only on a specific direction issued by this Court in W.P.No.7150 of 2018;

(v) that the learned Judge neglected to see the Affidavit of the appellant to call upon the Adarsh Nagar Association to

give their version on the conduct of the residents of the Apartment Complex;

(vi) that the learned single Judge has completely neglected Section 166A of IPC;

(vii) that the learned single Judge failed to note that public servants framed an incorrect document and deliberately disobeyed the law with intent to cause injury, thereby committing the offences punishable under Sections 211, 217, 218, 220, 166 and 167 IPC;

(viii) that the learned Judge failed to provide Police protection, similar to the one ordered by the Supreme Court in the case of a lady advocate by name Deepika Rajawat;

(ix) that the learned Judge failed to take note of the heinous conduct of the respondents in avoiding the furnishing of the CCTV footage and allowing a counter complaint to be registered against a lady victim who is also a member of the S.T. community and in diluting the offences for which First Information Report (FIR) in Crime No.117/2018 was booked;

(x) that the failure of the respondents to find out the Jio Mobile Phone, Lenovo Laptop, MacAir Laptop, a high-end Apple Laptop etc of the appellant was also not taken note of by the learned Judge; and

(xi) that therefore this Court should allow the appeal directing the Registry to remove the name of the appellant, wherever it is mentioned and issue a direction to the Central

Bureau of Investigation (CBI) to investigate into her complaint and arrest the accused and to provide Police protection to her.

9. On 11-7-2018, when the above writ appeal came up for orders as to admission, it was represented by the learned Special Government Pleader that the investigation was almost complete and that the filing of a final report before the competent Court was under way. While recording his statement and adjourning the case, this Court passed the following order on 11-7-2018:

“Learned Special Government Pleader appearing for the learned Additional Advocate General for the State of Telangana submits, in answer to our query, that he has instructions that the investigation is almost complete and the presentation of the final report before the competent criminal court is under way.

Therefore, we require the learned Government Counsel to mention to us by the next date of hearing as to whether the final report has been submitted by that day or not. In the meanwhile, he will also obtain instructions as to what possible protective cover or efforts would be extended by the Police to defuse the appellant’s apprehension of threat to her life and limb.

Post on 19-7-2018.”

10. On 19-7-2018, this Court passed an order directing the Investigating Officer to be present in Court for the purpose of explaining certain things. The order dated 19-7-2018 reads as follows:

“The Investigating Officer, who has placed the final report pursuant to Crime No.117 of 2018 of the Saifabad Police Station before the First Additional Chief Metropolitan Magistrate, Nampally, is directed to be present when this

case is called tomorrow along with all records to explain any matter which this Court may deem it appropriate to ask.

Post on 20.07.2018 at the top of the list.”

11. On 23-7-2018, the case diary in Crime No.117/2018 was produced. A copy of the final report filed by the Investigating Officer before the First Additional Chief Metropolitan Magistrate’s Court was also produced before us. Thereafter, we heard arguments on both sides.

12. We have extracted in the first portion of this order, the prayer with which the appellant originally came up, in the writ petition. We have also extracted the prayer as it was amended on 02-4-2018. Since the reliefs sought in the writ petition are multiple but not necessarily consequential to each other, it would be better to segregate the amended prayer in the writ petition into different parts. The different limbs of the amended prayer made in the writ petition are:

(i) to direct the Commissioner of Police to produce the unedited CCTV footage of all the cameras in Saifabad Police Station, recorded from 7 p.m. to 12 p.m. on 12-3-2018;

(ii) to direct the Commissioner of Police to produce the CCTV footage of the Saifabad – Secretariat traffic signal point relating to the period from 9 p.m. to 12 p.m. on 12-3-2018;

(iii) to direct the respondents to trace and return to the petitioner, her moveables including the MacAir Laptop, car keys, files and Lenovo Mobile;

(iv) to direct the Commissioner of Police to provide the appellant with a licence to carry arms and to provide her security and escort her back to her place of residence;

(v) to direct the respondents to register a case against the Circle Inspector, Saifabad, who is the Investigating Officer, for wilfully failing to perform his duties; and

(vi) to direct the CBI to conduct a thorough investigation to be completed within a time frame.

13. In order to see whether the appellant was entitled to any or all of the reliefs prayed for in the writ petition, it may be necessary to look into her averments. The averments on the basis of which the appellant came up with the writ petition W.P.No.8697 of 2018, as seen from the Affidavit of the appellant were as follows:

(i) that on a particular day (date not mentioned) at about 6.30 p.m., when the appellant returned to her place of residence, after representing the papers in two other writ petitions that she had filed, she was attacked by a female wearing a *burkha*;

(ii) that the lady who attacked her when she parked her car and stepped out of the same, used to visit an advocate by name Sreelakshmi in the third floor of the same building;

(iii) that another female wearing an orange saree with her face covered by a handkerchief and one Mrs. Om Prakash Aggarwal came down from the third floor and headed towards the appellant;

(iv) that two men who had covered their faces with handkerchiefs also appeared from the first floor and headed towards the petitioner;

(v) that they all tied up the petitioner with a long rope held by the female in *burkha*;

(vi) that after tying the petitioner's hands and legs and blind folding her, they pushed her inside the lift;

(vii) that they took the appellant to the terrace and tortured her and was asked to sign blank white papers on knife point;

(viii) that the petitioner had already filed one more writ petition in W.P.No.7510 of 2018 seeking the registration of an FIR for the criminal attack on her life and also for the act of disconnecting the water supply;

(ix) that after the said writ petition was heard, the accused proceeded to block the appellant's car parking area with cubic stones and bags filled with garbage;

(x) that on 10-3-2018, the aforesaid ladies and their agents captured and arrested the appellant and her workers who came to install a CCTV camera;

(xi) that though the appellant complained about the same, the respondents ignored it;

(xii) that due to the deliberate inaction of the respondents on the previous occasion, the accused became emboldened to attack the appellant and kidnap her in an auto on 12-3-2018;

(xiii) that the terrified appellant jumped out of the running auto outside the Saifabad Police Station and managed to enter it;

(xiv) that in the auto-rickshaw, a woman in *burkha* sat on the right hand side and another male goonda sat to the right side of that lady;

(xv) that the auto-rickshaw was driven by an elderly Muslim wearing a white cap;

(xvi) that when the appellant entered the police station she saw the Assistant Commissioner of Police who was about to leave;

(xvii) that the time was 9.30 p.m. and the appellant wrote a short complaint and was sent for medical examination at Osmania Hospital at about 10.30 p.m.;

(xviii) that the appellant had to spend a night at a friend's place and reported the matter to this Court when W.P.No.7510 of 2018 came up for hearing;

(xix) that the appellant was later informed that a printed paper bearing her signature was pasted on the main door of her apartment as though she had vacated the flat;

(xx) that the flat belonged to the appellant who had no intention of leaving it; and

(xxi) that it was not possible to believe that the appellant who is the owner of the apartment, reached her place of residence between 6.30 p.m. and 7 p.m. from the High Court, removed all her belongings and thereafter jumped

out of a moving auto outside the Saifabad Police Station at 9.30 p.m. with her hands and legs tied up and her mouth gagged.

14. Now it has to be seen by this Court as to whether the aforesaid averments were sufficient for the learned Judge to have granted all the limbs of the prayer made by her in her writ petition, out of which the present appeal arises. The first limb of the prayer made by the appellant in her writ petition was to direct the Commissioner of Police to produce the unedited CCTV footage of all the cameras in the Saifabad Police Station, recorded from 7 p.m. to 12 p.m. on 12-3-2018 and also to produce the CCTV footage of Saifabad – Secretariat traffic signal, recorded from 9 p.m. to 12 p.m. on 12-3-2018. Though the appellant has not explained as to why she was asking for the CCTV footage at two places, we presume that the appellant wanted to establish the factum of her being kidnapped in an auto-rickshaw and the factum of her encounter in the police station with the Police. But the complaint lodged by her on 12-3-2018 has already been registered as an FIR in Crime No.117/2018 by the Saifabad Police for alleged offences under Sections 342, 509 and 323 IPC. Out of them, two offences are cognizable and bailable and one is non-cognizable but bailable.

15. Today, the Investigating Officer has filed a final report before the First Additional Chief Metropolitan

Magistrate, referring the complaint as false. The final report is actually dated 13-7-2018.

16. The CCTV footage that the petitioner is seeking could perhaps be a piece of evidence in support of her claim that she was tied up, bundled into an auto-rickshaw, tortured, kidnapped and wrongfully confined. This piece of evidence today may not be of any use to the appellant, since a final report has already been filed.

17. If the appellant is unhappy about the final report, she is entitled in law to file a protest petition. Upon receipt of a protest petition, there are 3 options available to the Judicial Officer. The first is that he may accept the Final Report and may reject the Protest Petition. The second option is that he may accept the Final Report but treat the Protest Petition as a complaint and proceed in accordance with Section 200 and 202 of the Code. The 3rd option is that he may accept the Protest Petition and reject the Final Report and take cognizance under Section 190(1)(b) of the Code. The law on this aspect is well settled as can be seen from the decision of the Supreme court in **B.Chandrika vs. Santhosh**¹.

18. In law the Magistrate is not bound to accept the final report submitted by the police officials. He can even order further investigation, under certain circumstances. Sub-section (8) of Section 173 Cr.P.C makes it clear that nothing contained in the other parts of the section shall be

¹ (2013) 14 Scale 209

deemed to preclude further investigation in respect of an offence, after a report under sub-section (2) has been forwarded to the Magistrate. In **Amrutbhai Shambhubhai Patel vs Sumanbhai Kantibhai Patel**², the Supreme court, after taking note of the amendment to section 173 pursuant to the recommendation of the Law Commission of India in its 41st Report, pointed out that it is no longer res integra that a Magistrate, if exigent to do so, to espouse the cause of justice, can trigger further investigation even after a final report is submitted under Section 173(8).

19. In fact, the offences for which FIR was registered at the instance of the appellant were under Chapters XVI and XXII that may be prosecuted by the State. If after the appellant objects to the final report and have a further investigation conducted under Section 173(8) Cr.P.C., she may even seek permission to assist the prosecution, in the event of the fresh final report disclosing the commission of any offence. Therefore, at this stage, it may not be open to the appellant to seek the CCTV footage, which may form part of the evidence that the concerned Magistrate is supposed to look into.

20. The second limb of the prayer made by the petitioner in her writ petition was to trace her moveables including car keys, Laptops, Lenovo Mobile etc. But a copy of the complaint given by the appellant on 12-3-2018 at

² 2017 SCC Online SC 86

Saifabad Police Station, does not state that these moveables were either lost or taken away by any named person. In fact, the petitioner has enclosed to the material papers filed along with the writ petition, a printout of the e-mail sent by her to the Commissioner of Police on 13-3-2018. Except making a request in the last paragraph of her mail to the Commissioner of Police to ensure the return of all her property including her Lenovo Mobile, the appellant has not even provided the list of articles allegedly lost. She has also not stated anything about how the articles went missing or when and who stole the same. Therefore, we do not know how the petitioner has made the second limb of the prayer.

21. The third limb of the prayer is to direct the Commissioner of Police to provide an arms licence to the appellant. But there is a separate procedure for applying for licence to carry arms. It is not every complaint of this nature that will entitle a person automatically to get an arms licence. Since arms and ammunition cannot be sold across the counter, the appellant ought to have followed the procedure prescribed by the Arms Act, 1959 and applied for a licence, before seeking a *mandamus*. Hence, this limb of the prayer could not also have been granted by the learned single Judge.

22. The next limb of the prayer made in her writ petition was to direct the Police to provide security to her and to escort her back to her place of residence. In fact, this prayer was confined to that particular day. The appellant has used

the expression “today”. But that day has passed long ago. For the past several months, the appellant who is also an Advocate and who has cases against her husband, parents, neighbours, Court staff etc., has been moving around and also appearing in this Court frequently, without any problem. Hence, the prayer for providing security and escort, was also not capable of being not granted.

23. The next limb of the prayer is to register a case against the Circle Inspector, Saifabad, under Section 166A of IPC for his wilful failure to perform his duties. But Section 166A of IPC deals with the offence of a public servant disobeying a direction under law. In this case, the Circle Inspector has conducted an investigation and also filed a final report. The correctness or otherwise of the final report is yet to be tested by the appropriate forum. Therefore, the question of directing the registration of a complaint against the 2nd respondent does not arise.

24. The last limb of the prayer of the appellant is to direct the CBI to conduct a thorough investigation. At the outset, we should point out that CBI is not a party to the writ petition. In any case, transfer of investigation to the CBI cannot be ordered as a matter of routine and merely for the asking. In ***K.V. Rajendran v. Superintendent of Police***³, the Supreme Court referred to all the earlier decisions in this regard and summarised the law. It was laid down therein that

³ 2013 (5) CTC 310

the Court could exercise its Constitutional powers for transferring an investigation from the State Investigating Agency to any other independent Investigating Agency like CBI only in rare and exceptional cases. Therefore, the last limb of the prayer made by the appellant in her writ petition could not also have been granted by the learned Judge.

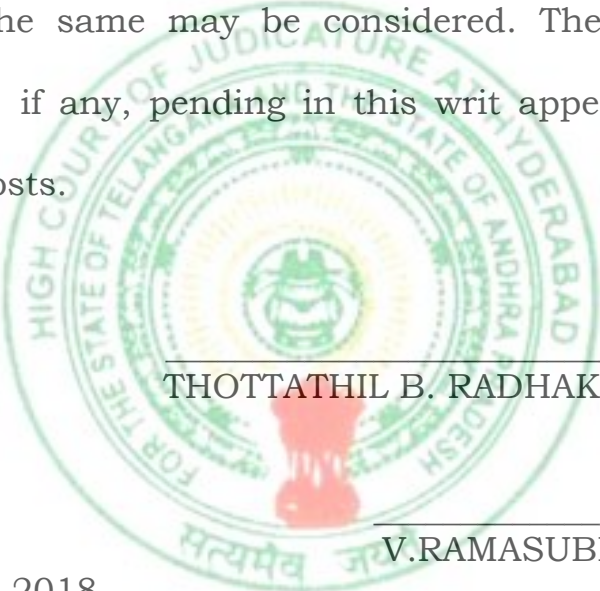
25. As we have pointed out earlier, the appellant has made out certain additional grievances in the writ appeal, one of which is the publication of her name in the copy of the judgment. According to her, it is violative of Section 228A(1) IPC and the orders passed by the Delhi High Court in relation to *Kathua* rape victim. We do not know how Section 228A IPC would apply to a case where the name of the writ petitioner is printed in the cause title of the judgment delivered in her case. The mentioning of the name of the party to a litigation in the copy of the judgment, would not tantamount to the commission of an offence under Section 228A IPC. In fact, the Explanation to Section 228A IPC reads as follows:

“*Explanation.*-- The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.”

26. It may be open to a lady in cases which are highly sensitive, to make a request to the Court to refer her as Mrs X or Ms X. As and when such requests are made, it may be open to the Court not to mention the name of the lady or child but to refer to her as Ms X or Mrs X. But no such

request was made by the appellant before the learned single Judge or even before us.

27. Therefore, in fine, we find no substance in the writ appeal and hence it is dismissed. It will be open to the appellant to work out her remedies before the Court in which the final report has been filed by the Investigating Officer, in accordance with the provisions of the Code of Criminal Procedure, 1973. If the appellant makes a request in writing to the Registry not to mention her name in the copy of the judgment, the same may be considered. The interlocutory applications, if any, pending in this writ appeal shall stand closed. No costs.



THOTTATHIL B. RADHAKRISHNAN, CJ.

V.RAMASUBRAMANIAN, J.

02nd August, 2018.

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