

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

Date of decision : 11.08.2020

(i) CRM-M-13861-2020

Robin Sharma		Petitioner
	Versus	
State of Punjab		Respondent

(ii) CRM-M-13870-2020

Rajnish Sharma		Petitioner
	Versus	
State of Punjab		Respondent

(iii) CRM-M-11015-2020

Rajnish Sharma		Petitioner
	Versus	
State of Punjab		Respondent

(iv) CRM-M-11016-2020

Robin Sharma		Petitioner
	Versus	
State of Punjab		Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Atul Goyal, Advocate
for the petitioners.

Mr. H.S. Multani, AAG, Punjab
for the respondent-State assisted by
Mr. Deepak Pareek, IPS, Additional
DCP Zone-1, Ludhiana

Mr. Ankur Ghai, Advocate and
Mr. Kunal Dawar, Advocate
for the complainant.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner-Robin Sharma has filed petition bearing **CRM-M-13861-2020** and the petitioner-Rajnish Sharma has filed petition bearing **CRM-M-13870-2020** under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR

No.137 dated 30.12.2019 registered under Sections 354-D, 503, 509, 384 and 511 of the Indian Penal Code, 1860 (for short 'the IPC') and Sections 66D, 67 and 67A of the Information Technology Act, 2000 (for short 'the IT Act') at Police Station Daresi, District Police Commissionerate, Ludhiana.

FIR No.137 dated 30.12.2019 has been registered on the basis of preliminary inquiry report dated 18.12.2019 submitted by Additional Deputy Commissioner of Police, P.B.I., O.C. and Narcotics, Ludhiana after conducting preliminary enquiry on written complaint dated 25.09.2019 submitted by Asha. In her complaint Asha alleged harassment/extortion by petitioner Rajnish Sharma and his accomplice by creating whatsapp group, initially admitting her in the same and subsequently making her group admin, sending objectionable, vulgar messages, forged, fabricated morphed photographs on whatsapp and making unwanted voice and video calls on her mobile phone No.9417052702 by using mobile phone numbers **78379535257**, 9988727395, 7009452439, 7087128038.

The petitioner-Rajnish Sharma has filed petition bearing **CRM-M-11015-2020** and the petitioner-Robin Sharma has filed petition bearing **CRM-M-11016-2020** under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.135 dated 26.12.2019 registered under Sections 354-D, 503, 509, 384 and 511 of the Indian Penal Code, 1860 (for short 'the IPC') and Sections 66D, 67 and 67A of the IT Act at Police Station Daresi, District Police Commissionerate, Ludhiana.

FIR No.135 dated 26.12.2019 has been registered on the basis of preliminary inquiry report dated 18.12.2019 submitted by Additional Deputy Commissioner of Police, P.B.I., O.C. and Narcotics, Ludhiana after conducting preliminary enquiry on written complaint dated 05.09.2019 submitted by Riya Aroa. In her complaint Riya Arora alleged that accused-Rajnish Sharma by creating fake Ids of complainant on Facebook, Snap Chat and Instagram posted objectionable photographs and defamatory messages to pressurize the complainant to get into physical relations with him regarding which

FIR No.44 dated 07.06.2019 under Sections 354D, 506, 341 and 509 of the IPC and Sections 43, 63B and 67 of the Information Technology Act, 2000 was registered at Police Station Daresi, District Police Commissionerate, Ludhiana. However, accused-Rajnish Sharma and his accomplice did not mend their ways and sent messages to newspapers including Jaagriti Lehar, Jagbani, Punjab Kesri and Dainik Sawera by creating fake ids on Instagram under the name of riyaarora1159 for publication of photographs showing accused-Rajnish Sharma to be married with the complainant. Despite representation dated 14.08.2019 of the complainant, the newspapers again published the photographs on 20.08.2019. Vulgar messages were sent on mobile phone No.9815547356 of her father Suresh Kumar and mobile phone of her brother Dheeraj Arora by the accused by using mobile No.9888762736 and 6280534826.

Status report by way of affidavit of Sh. Gurbinder Singh, PPS, Assistant Commissioner of Police, North Ludhiana was filed on 17.07.2020. Thereafter, reply status report by way of affidavit of Deepak Pareek, IPS, Additional DCP Zone-I Ludhiana was filed on 07.08.2020. Due to filing of reply (status report) without requisite documents, this Court directed vide order dated 07.08.2020 filing of copies of the Consumer Application Form, extract of call details for mobile phones used for the commission of the offences and other documents regarding the particulars of the users obtained by the police and the FIR registered regarding issuance of SIMs on fake Ids. In compliance of order dated 07.08.2020, copies of the relevant documents have been filed today by way of affidavit of Deepak Pareek, IPS, Additional DCP Zone-1, Ludhiana through e-mail, print out of which are taken on record.

In the said affidavit, it has been mentioned that mobile phone number **78379535257** was obtained on fake ID of Satwinder Singh regarding which FIR No.186 dated 28.11.2019 has been registered under Sections 420, 465, 468, 471 and 120-B of the IPC at Police Station Basti Jodhewal, Ludhiana and that mobile phone

8557807832 of petitioner Robin Sharma in the same device, that mobile phone number 9988727395 of petitioner-Rajnish Sharma was used to create fake Facebook ID in the name of Amrita Arora, that mobile phone number 6280534826, which was used to send photographs to the newspapers was used in mobile phone handset in which mobile phone number 9988727395 of Rajnish Sharma and mobile phone number 8558002629 of Robin Sharma were used. However, no documents have been filed in respect of the other mobile phone numbers alleged to have been used in commission of the alleged offences.

In the course of arguments, learned Counsel for the petitioners has, on instructions from the petitioners, submitted that the petitioners do not want to continue with the present petitions and the same may be dismissed as withdrawn.

In view of statement of learned Counsel for the petitioners, both the petitions are dismissed as withdrawn.

However, before parting with the case it may be observed that the police is expected to take prompt action for registration of FIR and investigation of the case where complaint discloses commission of cognizable offence but in the present case there was unreasonable delay in registration of FIR as well as investigation of the case which warrants interference by this Court in exercise of its inherent jurisdiction.

In the present case written complaint was made to the police by Riya Arora on 05.09.2019 and by Asha on 25.09.2019. The written complaints disclosed commission of cognizable offences but the Police, instead of registering the FIR proceeded to conduct preliminary inquiries regarding the allegations made in the said complaints. As per law laid down by Hon'ble Supreme Court in **Lalita Kumari Vs. Government of U.P. (2014) 2 SCC 1** such preliminary inquiry could be made only to ascertain whether the complaint disclosed commission of cognizable offences and was required to be completed within forty five days. The preliminary inquiry was conducted by making an 'investigation' in 'mini trial' mode by joining the complainant, accused and witnesses. FIRs were registered on

26.12.2019 and 30.12.2019 on the basis of preliminary inquiry report submitted by Additional Deputy Commissioner of Police, P.B.I., O.C. and Narcotics, Ludhiana approved by higher Police Officers but even after registration of the FIRs the matter is pending for investigation and nothing substantial appears to have been done to collect the further evidence and conclude the investigation despite expiry of more than six months. Even the mobile phone handsets allegedly used for commission of the alleged offences have not been seized by the Police.

On registration of FIR, the officer in charge of the police station is mandatorily required under Section 157 (1) of the Cr.P.C. to forthwith send a copy of the same to the Magistrate empowered to take cognizance of such offence upon a police report and proceed in person or depute one of his subordinate officers, not below such rank as the State Government by general or special order prescribes in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender.

In this land of ancient civilization and rich culture governed by fundamental principle that no society can prosper without respect for women expressed by sanskrit shalok '*Yatra naryastu pujiyante ramante tatra Devata*' women are now victims of heinous crimes and subjected to domestic violence, cruelty/maltreatment and sexual harassment and due to these evils, need effective protection of law administered by all agencies of State with an iron hand. Unwanted intrusion into privacy of a woman by sending vulgar/objectionable/obscene messages, photographs and making unwanted voice and video calls to her and others and thereby subjecting her to harassment and defamation prompted the legislature to enact the provisions for punishment of voyeurism and stalking (Sections 354-C and 354-D of the IPC) and publishing or transmitting obscene material- and publishing or transmitting material containing sexually explicit act etc. (Sections 67 and 67A of the IT Act) besides others.

The police is expected to adopt sensitive approach and take prompt action for expeditious investigation of such cases. Although

there is no specific provision in the Cr.P.C. mandatorily specifying the time limits for completion of investigation yet Section 173 (1) of the Cr.P.C. mandates that every investigation under Chapter 12- **INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE** shall be completed without unnecessary delay. Legislature's concern and mandate for expeditious completion of investigation is manifested by the provisions made in section 167 (2) of the Cr.P.C. for grant of default bail in case of non completion of investigation in 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and 60 days where the investigation relates to any other offence and section 167 (5) of the the Cr.P.C. for stopping of investigation in summons cases where investigation is not completed within six months. Law commission in its 239th report recommended that if investigation in respect of serious crimes i.e. cognizable and punishable with imprisonment of 5 years or more is not completed within 6 months, SHO shall submit a report to SP/SSP who shall take necessary action to ensure completion of investigation.

In ***Shashi Thomas Vs. State and others : (2007) 1 RCR Criminal 695*** proper and fair investigation on the part of the Investigating Officer was held to be the backbone of rule of law. In ***State of A.P. Vs. Sarma Rao and other : (2007) 1 RCR (Criminal) 146*** Hon'ble Supreme Court observed that the investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Hon'ble Supreme Court observed in ***Zahira Habibullah H. Sheikh and another Vs. State of Gujarat and others : 2004 (2) RCR (Criminal) 836*** that justice may become a victim if the investigation is not fair.

It follows that investigation has to be fair, prompt, transparent and judicious to both the victim as well as the accused. Ineffective, unfair, obscure, inexpedient and delayed investigation negates and is the antithesis of the rule of law affirmed by Article 21 of the Constitution of India.

Question arises whether the complainant/victim of a crime

is remedy less against deliberate inaction, unreasonable delay, failure to collect evidence, undue sympathy with/shielding of the offenders by the concerned Police Officers?

**In Sakiri Vasu Vs. State of U.P. and others : 2008(1)
RCR (Criminal) 392)** Hon'ble Supreme Court observed as under :-

“ 29. In Union of India v. Prakash P. Hinduja and another, 2003(3) RCR(Criminal) 556 : 2004(1) Apex Criminal 325 : 2003(6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Criminal Procedure Code is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).

30. It may be further mentioned that in view of Section 36 Criminal Procedure Code if a person is aggrieved that a proper investigation has not been made by the officer-in-charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer-in-charge of the police station and such superior officer can, if he so wishes, do the investigation vide CBI v. State of Rajasthan and another, 2001(1) RCR(Criminal) 574 : 2001(3) SCC 333 (vide para 11), R.P. Kapur v. S.P. Singh, AIR 1961 Supreme Court 1117 etc. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence registered at a police station vide State of Bihar v. A.C. Saldanna (supra).”

The complainant/victim of a crime may accordingly apply to the Judicial Magistrate, empowered to take cognizance of the offences in question on police report, for monitoring of investigation who can issue appropriate directions for expeditious completion of investigation. The complainant/victim of a crime may also file complaint under section 166A (b) of the IPC against the Investigating Officer for knowingly disobeying, any direction of the law regulating

the manner in which he shall conduct such investigation. In view of explanation to Section 197 (1) of the Cr.P.C. no sanction is required in case of a public servant accused of any offence alleged to have been committed under Section 166 A of the IPC. The complainant/victim of a crime may alternatively file petition in the High Court for transfer of investigation to an independent agency such as CBI etc.. However, it may be observed here that in substantial number of such cases the complainant/victim of a crime is not able to pursue these remedies due to lack of awareness and legal aid at the initial stages.

Under Section 12 (c) of the Legal Services Authorities Act, 1987, a woman victim of a crime is entitled to legal aid at State expenses and the State Legal Services Authority and District Legal Service Authority are under an obligation to provide legal aid to a woman victim of a crime at all stages of investigation and trial. Since a woman victim of a crime may not be aware regarding availability of legal aid to apply for the same, the State Legal Service Authority, Punjab may with approval of its Hon'ble Executive Chairman devise suitable scheme/mechanism for this purpose by providing for giving of information regarding registration of FIR at the instance of woman victim of a crime by the police or the concerned Judicial Magistrate to the State Legal Service Authority/District Legal Service Authority, informing woman victim of a crime about availability of legal aid and providing such legal aid (if so applied for by a woman victim of a crime) by the State Legal Service Authority/District Legal Service Authority for redressal of her grievances by appropriate consultation, filing of appropriate proceedings before appropriate forum/authority and legal representation before the Court.

In view of the unreasonable delay on the part of the Police in the present case in registration of the FIR and also investigation of the case, appropriate directions for expeditious completion of investigation and providing of legal aid to women victims of crime if so applied for by them on being informed about the same are required to be issued, in exercise of inherent powers of the Court, to secure the ends of justice and to prevent abuse of process.

Accordingly, Commissioner of police Ludhiana is directed to ensure expeditious completion of the investigation preferably within sixty days from the date of receipt of a copy of the order and to send a report to this Court in this regard. Secretary, District Legal Services Authority, Ludhiana is directed to inform the complainants regarding their entitlement to legal aid at State expenses and to provide legal aid to them, if so applied for by them. The Chief Judicial Magistrate, Ludhiana/concerned Judicial Magistrate 1st Class, Ludhiana (empowered to take cognizance of the offences in question on police report/to whom the police station has been assigned under the order of Chief Judicial Magistrate, Ludhiana) is directed to monitor investigation by periodically calling for status report from the police and to issue appropriate directions for expeditious completion thereof, if so required.

A copy of the this order be sent to the Director General of Police, Punjab, Member Secretary, Punjab State Legal Services Authority, District and Sessions Judge, Ludhiana, and Commissioner of Police, Ludhiana for information/requisite compliance.

11.08.2020

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**(ARUN KUMAR TYAGI)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No