

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPW) NO. 229/2022 IN CRIMINAL W.P NO. 759/2022

(DR.KSHIPRA KAMLESH UKE & ANOTHER **VERSUS** THE PRINCIPAL SECRETARY, GOVT. OF
MAHARASHTRA, DEPARTMENT OF SOCIAL JUSTICE & SPECIAL ASSISTANCE, MUMBAI & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Petitioners in person.

Shri M.K. Pathan, Additional Government Pleader for the R-1 to 4.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 12, 2023.

By the present application the petitioners who appear in person have prayed that the conduct of the present proceedings in this Court be video recorded in the light of the provisions of Section 15A(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989').

2. In the said application it has been stated that the petitioners are the victims of caste atrocities and police atrocities for which offence has been registered *vide* Crime No. 155 of 2018 at Police Station Bajaj Nagar, Nagpur under the provisions of the Act of 1989. It is then stated that by the present proceedings the petitioners seek a direction to be issued for implementation of the recommendations of the National Commission for Scheduled Castes as per the minutes of the meeting recorded on 12.04.2022 and emphasized in the letters dated 19.09.2022 and 22.09.2022. Other ancillary prayers have also been sought in the writ petition. A prayer has thus been made in this criminal application that while considering the aforesaid criminal writ petition the proceedings of this Court be video recorded.

3. Reply has been filed to the aforesaid application by the State of Maharashtra, through its Department of Social Justice and Special Assistance, Mantralaya, Mumbai. It has been stated therein that the proceedings of the criminal writ petition before this Court do not fall within the purview of Section 15A(10) of the Act of 1989 and therefore no case is made out to direct the video recording of the proceedings in the writ petition as prayed for.

Thereafter, a rejoinder affidavit has been filed by the petitioners replying to the stand taken by the respondent no.1. In addition, reliance is placed on the decisions in *Hema Suresh Ahuja & Others Versus The State of Maharashtra & Another* [**Criminal Appeal No.911 of 2019**] and the judgment of the learned Single Judge of the Kerala High Court in *The State of Kerala Versus Nowfal Wahid* [**CRL.MC No.3970 of 2021**] decided on 07.01.2022.

4. We have heard the petitioners in person as well as learned Additional Public Prosecutor for the respondent nos.1 to 4. To consider the prayer made in this application, it would be necessary to refer to the prayers made in the criminal writ petition filed by the petitioners. The said prayers read as under :

“(i) Respondent Nos. 1, 2, 3 and 4 to implement all the recommendations of the Hon’ble National Commission for Scheduled Castes, New Delhi in File No. Maha./30/2019-APCR as mentioned in its minutes of the hearing held on 12.04.2022 (Annexure-F) and emphasized again in its letters dated 19.09.2022 & 22.09.2022 (Annexure-I & J);

(ii) Respondent Nos. 1, 2 and 3 to submit action taken report to this Hon’ble Court in view of the recommendations of the Hon’ble National Commission for Scheduled Castes, New Delhi in File No. Maha./30/2019-APCR as mentioned in minutes of the hearing held on 12.04.2022 (Annexure-F) and emphasized again in its Letters dated 19.09.2022 & 22.09.2022 (Annexure-I & J);

(iii) Respondent Nos. 2 & 4 to complete the investigation by the Special Investigating Team (SIT) within a stipulated time and accordingly submit report in the trial court under CrPC 1973 against the accused policemen having 14 evidences of their involvement in the crime as revealed in a police-report dated 28.07.2020 (Annexure-A) and recommendation of the Hon’ble National Commission for Scheduled Castes, New Delhi in its letter dated 19.04.2022 (Annexure-F);

(iv) Respondent Nos. 2 and 4 to provide information to atrocity victims/petitioners in accordance with rights of the victims mentioned in Chapter IV, Section 15A(11)(i) of SC/ST (Prevention of Atrocities) Act, 1989 about the status of investigation by SIT constituted by Respondent No.2 (Annexure-G);

(v) For protecting the rights of the victims call for the augmentation report on each date of hearing before this Hon'ble Court about the action taken on every recommendation of the Hon'ble National Commission for Scheduled Castes, New Delhi (Annexure-F, I & J);

(vi) Respondent Nos. 2 and 4 (C.P and SIT Head) to take up the matter of assessment of loss/damage to property appropriately with the concerned authority (i.e. Respondent Nos. 3 & 1) to ensure restoration of petitioner's occupational rights & compensation within 7 days under SC/ST (Prevention of Atrocities) Rule 12(4) & (5) as instructed by the Hon'ble National Commission for Scheduled Castes, New Delhi vide its letters dated 22.09.2022 and 19.04.2022 (Annexure-J & F);

(vii) Grant ad-interim relief in terms of prayer clause (vi) above;

(viii) Pass any other order(s) as this Hon'ble Court may deem fit not specifically prayed but required to meet the ends of justice."

From the aforesaid prayers it is clear that the petitioners seek a direction to be issued to the respondent nos.1 to 4 to implement the recommendations of the National Commission for Scheduled Castes as contained in the minutes of the hearing held on 12.04.2022 and emphasized in the letters dated 19.09.2022 and 22.09.2022. Completion of investigation by the Special Investigating Team within a stipulated time frame has also been prayed for. The petitioners seek restoration of their occupational rights and also compensation in terms of the observations of the Commission.

5. The petitioners place reliance on the provisions of Section 15A(10) of the Act of 1989. Section 15A deals with the rights of victims and witnesses and sub-Section (10) reads as "All proceedings relating to offences under this Act shall be video recorded". Chapter II of the Act of 1989 deals with offences of atrocities and Sections 3 and 9 are part of the said Chapter. Emphasis is placed on sub-Section (10) of Section 15A to urge that since the present criminal writ petition is also a proceeding relating to offences under the Act of 1989 the conduct of the same should be video recorded.

6. We find that the relief sought in the criminal writ petition is in the nature of a mandamus. The expression 'all proceedings relating to offences under this Act' cannot be read in such a wide manner to even include a proceeding under Article 226 of the Constitution of India wherein a prayer is made to implement the recommendations of the National Commission for Scheduled Castes. Similarly, a prayer to direct the Special Investigating Team to complete the investigation within a time frame cannot be read in a manner so as to attract the provisions of Section 15A(10) of the Act of 1989.

To substantiate the prayer made in the application, reliance has been placed on the decision in *Hema Suresh Ahuja & Others* (supra). It is seen from the order dated 25.07.2019 that in the said proceedings the prayer for grant of bail to the applicants therein fell for consideration. It is in that backdrop the learned Single Judge has observed that bail proceedings were proceedings in relation to offences under Chapter II of the Act of 1989 and therefore also under the Act of 1989. In view of the nature of the said proceedings the direction to video record the proceedings was given. Such is not the case in hand. A writ of mandamus has been sought in the present criminal writ petition to implement the recommendations of the National Commission for Scheduled Castes. In *The State of Kerala* (supra) the Sessions Court passed an order rejecting an application for video recording the proceedings of the sessions case before the trial Court. The trial pertained to prosecution for offences punishable under various provisions of the Indian Penal Code as well as of the Act of 1989. It is in that backdrop that the learned Single Judge held that if a victim makes a request to video record the Court proceedings relating to offences under the Act of 1989 by invoking Section 15A(10) of the Act of 1989, that request cannot be turned down. The said application was accordingly allowed and the Sessions Court was directed to video record the proceedings in the trial. The ratio of the aforesaid two decisions cannot be made applicable to the facts of the present case.

7. The object behind inserting Chapter-IV-A in the Act of 1989 *vide* Act 1 of 2016 was to impose certain duties and responsibilities upon the State for making necessary arrangements for the protection of victims, their dependents and witnesses against any kind of intimidation, coercion, inducement or violence or threats of violence. The petitioners in the present application have not expressed any such apprehension or likelihood in that regard. At the cost of repetition considering the nature of relief sought in the criminal writ petition which is a writ for mandamus under Article 226 of the Constitution of India we are not inclined to hold that the present proceedings would fall within the ambit of sub-Section (10) of Section 15A of the Act of 1989 for the proceedings to be video recorded.

8. For aforesaid reasons, the criminal application stands dismissed with no order as to costs.

CRIMINAL WRIT PETITION NO. 759/2022.

Stand over 20.01.2023.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

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