

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th JANUARY, 2023

IN THE MATTER OF:

+ **W.P.(C) 12787/2019 & CM APPL. 52252/2019**

YASHDEEP CHAHAL

..... Petitioner

Through: Mr. Chirag Madan, Mr. G Sai Krishna
Kumar, Ms. Ravleen Sabarwal, Ms.
Smirdhi Sharma, Mr. Deepesh
Bahadur, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Chetan Sharma, ASG with
Mr. Ajay Digpaul, CGSC, Mr. Amit
Gupta, Mr. Kamal Digpaul, Mr. Sahaj
Garg, Ms. Swati Kwatra, Advocates
for UOI

Mr. Nitin Sharma, Mr. Sumant
Narang, Mr. Ranjeet Singh Sindhu,
Ms. Nisha Bhambani, Mr. Rajat
Arora, Ms. Mariya Shahab,
Advocates for R-3

Mr. Atul Batra, Mr. Kundan Mishra,
Advocates for R-4

Mr. Shahrukh Ejaz, Ms. Harnek Kaur,
Advocates for R-5

Mr. Tejas Karia, Mr. Gauhar Mirza,
Ms. Amee Rana, Mr. Thejesh
Rajendran, Advocates for R-7

Mr. Saransh Jain, Ms. Shloka
Narayanan, Mr. Abhishek Kumar,
Ms. Sneha Dey, Advocates for R-8

Ms. Rebecca John, Senior Advocate

(*Amicus Curiae*) with Mr. Chinmay Kanojia, Ms. Praavita Kashyap, Ms. Adya R Luthra, Ms. Anushka Baruah, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant PIL has been filed highlighting the disclosure of the identity of a victim of gang-rape that took place in Hyderabad in November, 2019. It is stated that while covering the incident, the media houses have disclosed the name of the victim, her photographs along with other personal information. The Writ Petition has been filed with the following prayers:

"(i) To allow this Writ Petition;

(ii) To direct the respondents to initiate appropriate proceedings against the media houses and reported individuals in accordance with the law.

(iii) To issue fresh composite directions to the respondents to prevent the exposure of identity on online platforms, either directly or indirectly, extent of blurring required in publishing pictures and to ensure awareness regarding their due compliance.

(iv) To issue directions to prohibit the publication of pictures of the accused even before the trial has begun in the case.

(v) To direct the investigation authorities to conduct themselves in a restricted manner so as to prevent the supply of information on the merits of the case to the media and common public before the investigation is complete.

(vi) To order immediate inquiry against the officers who have failed to take cognizance of these violations taking place in their presence and notice and who have indulged in supply of information to the media.

(vii) Pass any other order as it deems fit."

2. The Courts have been concerned about the disclosure of the identity of a victim of rape and sexual harassment, and have been passing various orders to ensure the concealment of their identities so as to ensure they do not face any form of ostracisation. The 84th Law Commission Report, 1980, recommended introduction of a provision under the Indian Penal Code whereby the disclosure of identity of a victim of certain offences was made an offence. The Bill to amend the Indian Penal Code was introduced in August, 1980 and the Criminal Law Amendment Bill was moved in 1983. Various amendments have been made to the Indian Penal Code through the said amendment, including insertion of Section 228A which, after many amendments, as on date reads as under:

"228A. Disclosure of identity of the victim of certain offences etc.—

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may

make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

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"

3. Section 228-A IPC makes the offence of disclosing the identity of any person against whom an offence under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB and Section 376E has been committed, a cognizable, bailable, non-compoundable offence, and provides that the person committing such an offence shall be punished with imprisonment for two years and shall also be liable to fine.

4. Amendments have also been made to Section 327 Cr.P.C to ensure that the name of the victim of an offence under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB and Section 376E IPC is concealed. Section 327 Cr.P.C reads as under:

"Section 327: Court to be open

1. The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room building used by the Court.

2. Notwithstanding anything contained in Sub-Section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) shall be conducted in

camera1: Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court.

Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.

3. *Where any proceedings are held under Sub-Section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.*

Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties."

5. Though the general law is that the proceedings of a Court are always conducted in an open Court, however, inquiry or trial of offences under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB and Section 376E are to be conducted in camera to protect the privacy of the victim.

6. A Writ Petition was filed in the Apex Court seeking directions to ensure that victims of rape and children who are victims of sexual abuse should be protected so that they are not subjected to unfortunate ridicule, social ostracisation and harassment. The Apex Court, in Nipun Saxena v. Union of India, (2019) 2 SCC 703, after considering Section 228A IPC and Section 327 Cr.P.C, observed as under:

"11. Neither IPC nor CrPC define the phrase "identity of any person". Section 228-A IPC clearly prohibits the printing or publishing "the name or any matter

which may make known the identity of the person”. It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. We are clearly of the view that the phrase “matter which may make known the identity of the person” does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law-makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, we may make reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village, etc. is clearly visible. This also amounts to disclosing the identity of the victim. We, therefore, hold that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

16. The vexatious issue which troubles us is with regard to the next of kin of the victim giving an authority to the Chairman or the Secretary of recognised welfare institutions or organisations to declare the name. As per the materials placed before us till date neither the Central Government nor any State Government has recognised any such social welfare institutions or organisations to whom the next of kin should give the authorisation."

7. The Apex Court made it clear that the authorities to which identity is to be disclosed by the victims when samples are taken from her body, namely, when medical examination is conducted, when DNA profiling is done, when the date of birth of the victim has to be established by getting records from school, etc., are sent, are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court. The Apex Court also considered the issue with regard to the next of kin of the victim by providing that no such authorisation shall be given by the next of kin to anybody other than the Chairman or the Secretary of any recognised welfare institution or organisation. Since there was no regime in position, the Apex Court while exercising its jurisdiction under Article 142 of the Constitution of India, directed that if the Government wants to actually act under Section 228-A(2)(c) IPC, it must, before identifying such social welfare institution or organisation, clearly lay down some rules or clear-cut criteria in this regard as to what should be the nature of the organisation, how should the application be made, and in what manner that application should be dealt with. While discussing Section 228-A(3) of the IPC, the Apex Court has held that IPC clearly lays down that nobody can print or publish any matter in relation to any proceedings falling

within the purview of Section 228-A and in terms of Section 327(2) CrPC. It held that these are in-camera proceedings and nobody except the presiding officer, the court staff, the accused, his counsel, the public prosecutor, the victim, if she wants to be present or the witness should be present and that there can be no reporting of such cases. The Apex Court has categorically stated that the press can report that the case was fixed before court and some witnesses were examined, it can also report as to for what purpose the case was listed but it cannot report what transpired inside the court or what was the statement of the victim or the witnesses. The Apex Court was categorical in holding that the evidence cannot be disclosed. The Apex Court, thereafter, laid down the following directions:

"50. In view of the aforesaid discussion, we issue the following directions:

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under Pocso shall not be put in the public domain.

50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose

his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under Pocso, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

50.9. All the States/Union Territories are requested to set up at least one "One-Stop Centre" in every district within one year from today."

8. It transpires that even though the decision in Nipun Saxena (supra) was rendered by the Apex Court on 11.12.2018, the directions contained in paragraphs 50.7 and 50.9 have yet not been complied with. We are, therefore, directing the GNCTD to act under Section 228-A (3) IPC and lay down the criteria as directed by the Apex Court. The State is also directed to

set-up one-stop centres in every District in compliance of the judgment of the Apex Court in Nivedita Jha v. State of Bihar, **2018 SCC OnLine SC 1616**. In fact, the State Governments are already in contempt in not adhering to the time limit fixed by the Apex Court in setting up such centres within one year from the date of the judgment passed by the Apex Court which was passed on 11.12.2018.

9. Coming to the facts of this case, it has been informed by Ms. Rebecca John, learned Senior Advocate who has been appointed as an *Amicus Curiae* in the instant case to assist the Court, that a similar issue regarding compensation to the victims and criminal action under Section 228-A IPC is pending before the High Court of Telangana in a batch of petitions in Criminal Writ Petition No.182/2019 etc. Since a similar issue is pending before the Telangana High Court, this Court does not find it appropriate to initiate proceedings against media houses and reported individuals or to direct the investigating authorities to take cognizance of the offence.

10. We express our appreciation to Ms. Rebecca John who has spent a lot of time on collating the development of law on this subject, the position of law in other countries, and has given a lot of valuable suggestions and assisted this Court.

11. With these observations, the Writ Petition is disposed of, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JANUARY 24, 2023

Rahul