

GUDALURE M. J. CHERIAN AND ORS.

v.

UNION OF INDIA AND ORS.

DECEMBER 9, 1991

[KULDIP SINGH AND M. FATHIMA BEEVI, JJ.]

*Constitution of India, 1950 :*

*Art. 32—Public Interest Litigation—Assault and rape on nuns—Allegation that police arresting wrong persons and not real culprits—Investigation by CBI—Directions given.*

On the night between July 12/13, 1990 three miscreants entered the residential quarters of a school run by a Christian Missionary and assaulted the maid servant and some sisters. The miscreants also committed rape on two of the sisters and had beaten the sisters and threatened to kill them. They also ransacked the house and after breaking open the almirah looted Rs. 1,11,000/- and snatched away the wrist watches and also the earrings of the maid servant.

Police arrested four persons and recovered some wrist watches from them. Charge-sheet was filed. According to the police the sisters and the maid-servant recognised the accused and the wrist watches.

However, the sisters and the maid servant did not come forward to identify the accused and the stolen property, before the Magistrate. They stated that the four persons arrested were not the culprits and that there were 3 and not 4 culprits involved in the incident. The trial was pending in the Sessions Court.

Meanwhile 3 prominent citizens filed in public interest the present Writ Petitions before this Court contending that the investigation of the case be entrusted to the CBI and for transfer of the case to another Court.

Disposing of the Writ Petitions, this Court,

**HELD :** 1. The investigation having been completed by the police and charge-sheet submitted to the Court, it is not for this Court, ordinarily, to re-open the investigation specially by entrusting the same to a specialised agency like CBI. Of late the demand for CBI investigation even

A in police cases is on the increase. Nevertheless in a given situation, to do justice between the parties and to instil confidence in the public mind it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency. [254-H; 255-A]

B 2. The Nuns who are victims of the tragedy are not coming forward to identify the culprits in an identification parade before the Magistrate. Allegedly the four persons who have been set up as accused by the police are not the real culprits and the police is asking the Sisters to accept the four arrested persons as culprits. In the face of these averments and keeping in view the facts and circumstances of this case, ends of justice would be met by directing the CBI to hold further investigation in respect of the said offences. The CBI shall take up the investigation of the case immediately. The Senior Superintendent Police and the Station House Officer concerned shall assist the CBI in conducting the investigation. The State of Uttar Pradesh through its Chief Secretary and the Home Secretary is further directed to provide all assistance to the CBI in this respect. The CBI shall complete the investigation within three months and submit its report in accordance with law. [255 B, C & E]

3. The prayer for transfer of the criminal case is rejected. The criminal proceedings before the Sessions Court shall remain stayed till March 16, 1992. [255-D]

E ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 1753-55 of 1990.

Under Article 32 of the Constitution of India.

Ms. Lily Thomas for the Petitioners.

F A.S. Pundir, Vijay Hansaria, Sunil Jain, Shivi Sharma, N.N. Sharma, Mrs. Anil Katiyar and Ms. A. Subhashini (NP) for the Respondents.

The Judgment of the Court was delivered by

G KULDIP SINGH, J. This petition under Article 32 of the Constitution of India, in public interest, has been filed by three prominent Citizens regarding the alleged rape of two Nuns at Gajraula in Uttar Pradesh on July 13, 1990 by criminals who broke into the residential quarters of St. Mary's Convent School and assaulted several other Nuns before decamping with about Rs.1.10 lakhs in cash.

H

This Court issued notice on November 26, 1990. Counter affidavits have been filed by senior Superintendent of Police, Muradabad, Shri Subhash Kajla, S.H.O., Gajraula police station at the relevant time, and Dr. Meera Singh who medically examined the Nuns.

The learned counsel appearing for the petitioners has pressed before us only two of the many reliefs asked for in the writ petition. It is contended that the investigation of the case be entrusted to the Central Bureau of Investigation (CBI) and the case be transferred from the file of Sessions Judge, Muradabad to Sessions Judge, Delhi.

On July 13, 1990 at 6.20 A.M. sister Floreena, principal of St. Mary's School lodged First Information Report at Police Station Gajraula wherein she stated that she was living in the school campus along with her staff. On the night between July 12/13, 1990 at about 2.00 A.M. three miscreants entered the premises through the kitchen by breaking-open the window. They were not of fair colour and were aged round about 20/24-30 years. All of them were of blackish complexion and were wearing under-wears. Third person who appeared to be a gang-leader, was wearing underpant and baniyan. The miscreants man-handled the maid servant and snatched her ear-rings and wrist watch. Thereafter all the miscreants went into the room where staff sisters Tara, Tessey, Anjla, Nisha, Roslit and Mamta were sleeping. The sisters were threatened at the point of knife, iron-bar and sticks. The sisters were made to sit in the room and one of the miscreants kept on standing outside the door with some iron implements. The accused who was leader of the gang took sister Tara to another room by force and committed rape on her. On making hue and cry, the sisters were given beating and were threatened to be killed. The miscreant who was standing outside the door took sister Roslit by force to the adjoining room and committed rape on her. All the three miscreants assaulted sister Mamta, Anjali and other sisters. They ran-sacked the house and looted Rs.1,11,000/- by breaking the almirah. The cash was kept for disbursing the salaries of the staff and for payment to the book-seller.

The Senior Superintendent of Police in his counter-affidavit has stated that accused Iqbal was arrested by the police on July 24, 1990 and by August 2, 1990 four accused persons namely, Sampat Lal, Iqbal, Jamil and Babu had been arrested. He further stated in his affidavit as under:

"Two wrist watches were recovered from Babu and one wrist watch was recovered from Jameel in the presence of public witnesses namely Deep Chand and Jai Karan. The victims Nun Floreena Tessey, Elsy, Sister Rinci, Nisha, Anjali and maid servant

A had also arrived at the time of recovery of the stolen property, and recognised the accused persons arrested by the police and the recovered wrist watches."

The charge-sheet against the accused persons, according to the Senior Superintendent of Police has been filed in the Court on August 10, 1990.

B Regarding the identification of the accused persons before the Magistrate, Senior Superintendent of Police has stated as under :

C "About 7 dates from 27.8.90 to 1.10.90 were given to the sisters to attend the identification parade of the accused persons in jail to identify them as well as to identify the wrist watches before the Magistrate. They have however failed to identify the accused and the stolen property before Magistrate."

D The second Petitioner Paulose Vellakunnath who is a catholic priest has filed rejoinder affidavit to the counter affidavit filed by Senior Superintendent of Police, Muradabad. In para 7 of the rejoinder it is stated as under:

E "The arrest of four persons instead of three criminals who committed the crime is a travesty of justice. For Rev. Sisters stated that the four arrested persons Iqbal, Sammarbal, Jameel and Babu were not the real culprits. Rev. Sisters disowned the watches and disclaimed the watches alleged to have been seized by the police from Iqbal and others. Despite this the police asked Rev. Sisters to accept the four arrested persons as real culprits and get them convicted. The fact is that the real culprits were two men and one adolescent."

F Mr. Subash Kajala the then Station House Officer, Police Station, Gajraula filed his affidavit in this Court on October 11, 1991. He has repeated what the Senior Superintendent, Police has already stated in his affidavit. He has also mentioned that the trial is pending in the court of IXth Additional Sessions Judge, Muradabad wherein the charge was to be framed against the accused persons on October 24, 1991.

G It is not necessary for us to go into various facts and circumstances mentioned by the petitioners in the writ petition in support of their apprehensions that the investigation in the case by the police was not fair and the victims are not likely to get justice by the authorities in the State of Uttar Pradesh. Four accused persons have been arrested in connection with the crime and the trial against them is likely to commence. The investigation having been completed by the police and charge-sheet submitted to the court, it is not for this Court, H ordinarily, to re-open the investigation specially by entrusting the same to a

specialised agency like CBI. We are also conscious that of-late the demand for CBI-investigation even in police cases is on the increase. Nevertheless - in a given situation, to do justice between the parties and to instill confidence in the public mind—it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency.

It is obvious from the affidavit of the Senior Superintendent of Police that the Nuns who are victims of the tragedy are not coming forward to identify the culprits in an identification parade to be held by the Magistrate. The petitioners on the other hand, have alleged that the four persons who have been set up as accused by the police are not the real culprits and the police is asking the Sisters to accept the four arrested persons as culprits. In the face of these averments and keeping in view the facts and circumstances of this case, we are of the view that ends of justice would be met if we direct the CBI to hold further investigation in respect of the offences committed between the night of July 12 and 13, 1990 as per the FIR lodged at Police Station, Gajraula.

We are, however, not inclined to accept the prayer of the petitioners to transfer the criminal case from the file of IXth Additional Sessions Judge, Muradabad.

We, therefore, direct the CBI to take up the investigation of the case immediately. We further direct the Senior Superintendent of Police, Muradabad and the Station House Officer, Gajraula Police Station to assist the CBI in conducting the investigation. The State of Uttar Pradesh through its Chief Secretary and the Home Secretary is further directed to provide all assistance to the CBI in this respect.

The CBI shall complete the investigation within three months from today and submit its report in accordance with law. The proceedings before IXth Additional Sessions Judge, Muradabad shall remain stayed till March 16, 1992.

The writ petition is, thus, disposed of.

G.N.

Petitions disposed of.