

Court No. - 9

Case :- MISC. BENCH No. - 29706 of 2018

Petitioner :- Brijesh @ Puchchi Thru Mother Rajkumari

Respondent :- State Of U.P Thru Prin Secy Home Lko & Ors

Counsel for Petitioner :- Abhishek Srivastava, Devki Nandan Srivastava

Counsel for Respondent :- G.A.

Hon'ble Ajai Lamba, J.

Hon'ble Rajeev Singh, J.

1. The petition seeks issuance of a writ in the nature of mandamus directing the investigating agency to conduct fair and impartial investigation in First Information Report No. 0123/2018 under Sections 366, 366A I.P.C., Section 18 Protection of Children from Sexual Offences Act, and Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, P.S. Rehra Bajar, District Balrampur.
2. Gist of the issue raised in the petition is recorded in order dated 26th November, 2018. The order reads as under.

"1. This petition seeks issuance of a writ in the nature of mandamus directing investigating agency to conduct fair and effective investigation in First Information Report No. 0123/2018 under Sections 366, 366A I.P.C., Section 18 Protection of Children from Sexual Offences Act, and Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, P.S. Rehra Bajar, district Balrampur.

2. It has been pointed out that the petition has been filed through the mother of the petitioner.

3. In para 3 of the petition, it has been pleaded that the petitioner is of unsound mind and is unable to know the nature of act committed by him.

4. We have considered the provisions of Section 84 of the Indian Penal Code which read as under :

"84. Act of a person of unsound mind. -Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

We have also considered the provisions of Chapter XXV of the Code of Criminal Procedure which provides procedure in case of accused being lunatic.

5. We deem it just and proper to direct respondents to get the mental health of the petitioner assessed under Mental Health Care Act, 2017.

We direct the petitioner to provide an assistant who would be required to stay in the medical facility for assessment of mental health of the petitioner.

We hereby direct the investigating agency to stay all proceedings in the matter. In case charge-sheet has been prepared, no action thereupon be taken.

6. The Court has been informed that the petitioner is confined in jail. If

that be so, the custody of the petitioner be taken by the investigating agency to get this order complied with.

7. List on 17.12.2018.

8. Superintendent of Police, Balrampur to ensure compliance.

9. Let a copy of this order be conveyed to Superintendent of Police, Balrampur by Mr. S.P. Singh, learned counsel for the State, and through Senior Registrar of the Court.”

3. In deference to direction issued vide above extracted order, particularly para 5, the mental health of the petitioner was assessed by a Board of Doctors of King George's Medical University, Lucknow, Department of Psychiatric. It has been found medically that the petitioner is suffering from severe disabling condition which is untreatable and needs continuous care and support for carrying out day to day activities.

4. On 17th December, 2018, the following order was passed directing Superintendent of Police, Balrampur to take cognizance of the facts and circumstances of the case and ensure that appropriate action is taken before the next date of listing:-

“1. This petition seeks issuance of a writ in the nature of mandamus directing investigating agency to conduct fair and effective investigation in First Information Report No. 0123/2018 under Sections 366, 366A I.P.C., Section 18 Protection of Children from Sexual Offences Act, and Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, P.S. Rehra Bajar, district Balrampur.

2. Order dated 26.11.2018, notices the gist of the issue raised by the petitioner. The order reads as under:-

1. This petition seeks issuance of a writ in the nature of mandamus directing investigating agency to conduct fair and effective investigation in First Information Report No. 0123/2018 under Sections 366, 366A I.P.C., Section 18 Protection of Children from Sexual Offences Act, and Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, P.S. Rehra Bajar, district Balrampur.

2. It has been pointed out that the petition has been filed through the mother of the petitioner.

3. In para 3 of the petition, it has been pleaded that the petitioner is of unsound mind and is unable to know the nature of act committed by him.

4. We have considered the provisions of Section 84 of the Indian Penal Code which read as under:-

“84. Act of a person of unsound mind. -Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

We have also considered the provisions of Chapter XXV of the Code of Criminal Procedure which provides procedure in case of accused being lunatic.

5. *We deem it just and proper to direct respondents to get the mental health of the petitioner assessed under Mental Health Care Act, 2017.*

We direct the petitioner to provide an assistant who would be required to stay in the medical facility for assessment of mental health of the petitioner.

We hereby direct the investigating agency to stay all proceedings in the matter. In case charge-sheet has been prepared, no action thereupon be taken.

6. *The Court has been informed that the petitioner is confined in jail. If that be so, the custody of the petitioner be taken by the investigating agency to get this order complied with.*

7. *List on 17.12.2018.*

8. *Superintendent of Police, Balrampur to ensure compliance.*

9. *Let a copy of this order be conveyed to Superintendent of Police, Balrampur by Mr. S.P. Singh, learned counsel for the State, and through Senior Registrar of the Court.”*

3. *Instructions in writing have been filed in Court, which is taken on record.*

4. *Sri S.P. Singh learned Counsel for the State has informed the Court that a board of Doctors of King George's Medical University, Lucknow, Department of Psychiatry, medically examined the petitioner. The petitioner was hospitalized and evaluated.*

It has been found that the petitioner is in a severe disabling condition which is un treatable and needs continuous care and support for carrying out day to day activities.

5. *Sri S. P. Singh learned counsel for the State has assured the Court that in view of the mental condition of the petitioner, further investigation would be conducted.*

Sri S.P. Singh has further informed that the petitioner is confined in Jail.

6. *We are of the opinion that the investigating agency is not sensitive even to the mental state of a citizen who might have been accused of committing an offence. Section 84 of the Indian Penal Code as extracted in the above extracted order mandates that nothing is an offence which has been done by a person who at the time of doing it by reason of unsoundness of mind is incapable of knowing the nature of the act. Despite such statutory and legal position the petitioner appears to have been confined in jail.*

7. *The conduct of the prosecuting agency is clearly in violation of the human rights.*

8. *We hereby direct Superintendent of Police Balrampur to take cognizance of the facts and circumstances of the case and ensure that appropriate action is taken on or before the next date of listing.*

9. *List on 04.01.2019.*

10. *In case the needful is not done, we shall be constrained on summoning Superintendent of Police, Balrampur to Court as to under what circumstances the mental health of the petitioner was ignored at the first instance.*

11. *Let a copy of this order be conveyed to Superintendent of Police, Balrampur through Sri S.P. Singh, learned counsel for the State.”*

5. Affidavit of Shri Amit Kumar posted as Superintendent of Police,

Balrampur has been filed in Court along with certain documents. It is apparent that the Investigating Agency is now conscious of the fact that the petitioner is suffering from severe mental disability conditions, as opined by a Board of Doctors of King George's Medical University, Lucknow, Department of Psychiatric. Under the circumstances, an application has been moved in the Court concerned vide Annexure CA-2 dated 1st January, 2019 with a prayer that appropriate direction be issued.

6. We are pained at recording that human rights are the last consideration for the Investigating officers. Section 84 of the Indian Penal Code reads as under:

"84. Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

7. The report furnished by the Board of Doctors indicates that all that the petitioner keeps saying is 'Mummy ke paas jana hai'. The petitioner is not able to perform his day to day activities. Surely such mental and physical condition of the petitioner was obvious at the time when the Investigating Officer thought it prudent to arrest the petitioner. The petitioner would also have been produced before the Magistrate/Special Court. The facts and circumstances clearly warranted the Investigating Officer and the Court to ensure that the petitioner is subjected to medical examination. If the needful had been done, the Investigating Agency and the Court would have been sensitized about the medical condition of the petitioner and right of the petitioner under Section 84 I.P.C. (supra) would have been respected.

8. In consideration of all the facts and circumstances of the case, and in particular the report furnished by the Board of Doctors we are in no doubt that the Investigating Officer has failed in performance of his duties and has not cared for the rights of the petitioner.

9. We further find that the matter is not being given due importance even at this stage. Apparently, the petitioner has not been released from jail even till date.

10. We deem it just and proper, in the interest of substantial justice to direct

the Jail Authorities concerned to release the petitioner forthwith on receipt of copy of this order, which would be released under signatures of the Bench Secretary.

11. We further direct the officer responsible for not subjecting the petitioner to medical examination, and effecting his arrest, to be burdened with cost in the sum of Rs.25,000/- to be deducted from his salary. Superintendent of Police, Balrampur is directed to ensure compliance within 15 days. The cost amount shall be paid to Rajkumari, the mother of the petitioner through whom the petition has been filed.

12. Compliance report be sent to this Court by the next date of listing.

13. We make it clear that in case custody of the petitioner is required by the Prosecuting agency, the agency would be at liberty to file an application before this Court, for reasons in law and facts mentioned in the application.

14. List on 21.01.2019.

15. In case needful is not done, additional cost in the sum of Rs.20,000/- would be imposed. Superintendent of Police, Balrampur would also be summoned in case needful is not done.

Order Date :- 4.1.2019
VKS