

Court No. - 29

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 509 of 2020

Petitioner :- Mahendra Pratap Singh

Respondent :- State Of U.P. Through Secretary (Home) And 2 Others

Counsel for Petitioner :- In Person

Counsel for Respondent :- C.S.C.

Hon'ble Munishwar Nath Bhandari, Acting Chief Justice
Hon'ble Anil Kumar Ojha, J.

Heard Sri Manish Goyal, Additional Advocate General assisted by Ms. Akanksha Sharma for the respondents.

Pursuant to the order of this Court on last two dates, the Director General of Police submits that action has been taken against those police officers who defaulted in conducting the investigation in a fair and proper manner. The D.G.P. has admitted serious lapse in the investigation and accordingly, the investigating officer Pahup Singh has been placed under suspension on following grounds:-

"दिनांक 16.09.2019 को जवाहर नवोदय विद्यालय, भोगाँव जनपद मैनपुरी की कक्षा 11 की विज्ञान वर्ग की छात्र का शरीर विंग के प्रवेश कक्ष में पंखों की रॉड में बने छेद पर दुपट्टे से लटका पाये जाने पर मृतका के पिता श्री सुभाष चन्द्र पाण्डेय द्वारा थाना भोगाँव पर दिनांक 17.09.2019 को मु०अ०सं० 392/2019 धारा 302/376/511/34 भादवि व पोक्सो 7/8/18 एक्ट के अन्तर्गत पंजीकृत कराया गया। इस अभियोग की प्रारम्भिक विवेचना के दौरान आपके द्वारा विद्यालय परिसर में लगे सीसीटीवी कैमर के आधे-अधूरे फुटेज 78 दिवस विलम्ब से प्राप्त किये गये।

2. मृतका के वैजाइनल स्लाइड व चड्डी में मानव वीर्य की पुष्टि सम्बन्धी एफ० एस० एल०, आगरा की आख्या दिनांक 17.10.2019 को प्राप्त होने के उपरान्त आपके द्वारा 45(पैंतालीस) दिवस की लम्बी अवधि तक एक भी नामित या संदिग्ध व्यक्ति के रक्त का

नमूना प्रप्त कर डी०एन०ए० मिलान हेतु विधि विज्ञान प्रयोगशाला नहीं भेजा गया।

3. मृतका की पोस्टमार्टम रिपोर्ट में "***HYMEN TORN, CLOTTED BLOOD PRESENT IN VAGINA***" जैसे तथ्यों को गम्भीरता से नहीं लिया गया। यद्यपि यह महत्वपूर्ण तथ्य मृतका के साथ दुराचार होने की तरफ प्रथम दृष्टया इंगित करता है (उल्लेखनीय है कि बाद में एफ० एस० एल०, आगरा की रिपोर्ट में इसकी पुष्टि भी हुई है) तथापि मृतका के स्कूल यूनिफॉर्म को सीज कर परीक्षण हेतु विधि विज्ञान प्रयोगशाला नहीं भेजा गया।

4. मृतका की मृत्यु के सम्बन्ध में दिनांक 17.09.2019 को मुकदमा पंजीकृत होने के उपरान्त आपके द्वारा मुकदमें की अभियुक्ता श्रीमती सुषमा सागर का त्वरित बयान नहीं किया गया बल्कि अत्यधिक विलम्ब से दिनांक 08.12.2019 को लगभग 03 माह बाद बयान अंकित किया गया जिस कारण मुकदमें की विवेचना पर विपरीत प्रभाव पड़ा।

इस प्रकार स्पष्ट है कि उक्त महत्वपूर्ण अभियोग की विवेचना में आपके द्वारा घोर लापरवाही एवं उदासीनता बरती गयी जिससे जहां एक ओर घटना के सफल अनावरण पर प्रतिकूल प्रभाव पड़ा वहीं दूसरी ओर जन सामान्य में पुलिस की छवि धूमिल हुई है।"

A perusal of the reasons for placing him under suspension shows serious lapses in the investigation. It was found that in the vaginal slide, human semen was found apart from sperm on the underwear of the deceased girl. Despite receipt of the report from F.S.L., Agra, the Investigating Officer did not send for DNA test of those persons within 45 days who were named in the F.I.R. or who were suspected and thereby subsequent DNA remains of no use. There are other aspects which have been taken note of for placing the officers under suspension.

It is also stated that the inquiry against the then Superintendent

of Police, Mainpuri would also be completed soon. It is also stated that two other officers Om Prakash, Additional Superintendent of Police and Priyank Jain, Deputy Superintendent of Police have also been placed under suspension.

The new S.I.T. has constituted to investigate the matter within the shortest possible time and possibly, it would be completed within a period of six weeks.

Sri Amrendra Nath Singh, Senior Counsel assisted by Ms. Chhaya Gupta, Sri Prabha Shankar Mishra and other Bar Members has submitted that it is not only a case of serious lapse of investigation but a case where the effort of the investigating team was to give benefit to the accused. Referring to the F.I.R., he submitted that the incident said to have taken place at around 5.30-6.00 AM but the parents were not informed about the incident by the Principal of the school rather knowledge of the incident could be gathered from the relative Sri Vijay Mishra who was present in the hospital for the treatment of his wife.

It is also stated that statement of the father was not recorded despite being material apart from record of call details of 15.09.2019 was taken when the deceased said to have called the mother.

Learned Senior Counsel further referred to Section 173 Cr.P.C., as amended. It is to show duration to complete the investigation in a case registered for the offence under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E I.P.C. In the instant case, even the statement of the named accused were recorded after three months and were not arrested despite serious allegations against them. The effort was to somehow make them free and thereby no evidence relevant to

the case was collected rather subsequent investigation was also to give clean chit to the accused.

Learned Senior Counsel Sri Amrendra Nath Singh submits that now the investigation should be conducted under the supervision of the High Court.

He further submits that the accused were named, yet they have not been arrested otherwise truth would have come.

We have considered the submissions made by the learned Senior Counsel Sri Amrendra Nath Singh and Sri Prabha Shankar Mishra appearing for the Bar to assist the Court.

We find that the D.G.P. has realised that the serious lapses in the investigation of the case and thereby three officers have been placed under suspension and the inquiry against the then Superintendent of Police would be completed at the earliest. A new S.I.T. team has been constituted to hold a fresh investigation because the investigation conducted till date cannot be trusted and accordingly we direct the new team to investigate the matter afresh. It would be after taking note of the allegations in the FIR and the lapses committed by the earlier investigating team. They would collect all the evidence relevant to the case. The investigation would be under the supervision of this Court.

It is made clear that if any matter comes before any Court in reference to the present case, the detailed order of this Court would be produced before the Court concerned to give reasons for holding a fresh investigation and further action in the matter so that direction in the public interest litigation may not go unnoticed by any Court for taking proper decision.

Since Section 173 (2) Cr.P.C. mandates completion of

investigation within time frame, the D.G.P. is directed to find out whether necessary order has been issued by the State Government to direct the investigating officers for compliance of the provisions, as amended. If circular/direction has been issued till date, then immediately an order be issued. Delay in the investigation in such cases should be made subject or explanation otherwise delay without any reason should invite action against the defaulting officers. The provision of Section 173 Cr.P.C., as amended, should not be taken casually rather seriousness should be attached. The Government is directed to take action against the defaulting officers, if cause delay in investigation of the offence under Section 173 Cr.P.C. If the investigating officers are not efficient then in future they should not be assigned investigation of the case. It is further directed that in the investigation, all scientific methods should be applied because defective investigation or investigation without collection of proper evidence, results in acquittal and therefore only the conviction rate is only 6 to 7%.

We direct the police administration to not only monitor the investigation but guide the investigating officers to apply the scientific methods for investigation and for that periodically training program should be arranged. At the end, we further direct that not only the investigating officer but the officers who supervise the investigation should be made responsible if any defect is found in the investigation.

At this stage, learned Senior Counsel Sri Amrendra Nath Singh submits that looking to the seriousness of the case and direction of this Court, the security of the family and the petitioner in person may be required, thus a direction for it may be given. We accept the prayer and direct the respondents to provide adequate security to the family of the deceased so as the petitioner in

person. The D.G.P. is directed to closely monitor the progress of the investigation so that it may be reached to its logical conclusions.

The Registry is directed to send copy of this order to the District Judge, Mainpuri who may circulate the copy of the order amongst subordinate officers.

The presence of the D.G.P. along with other police officers is dispensed with till further order.

Let this petition be listed again on **18.10.2021** at 10.00 AM as first case.

Order Date :- 16.9.2021
Nirmal Sinha

(Anil Kumar Ojha, J.) (Munishwar Nath Bhandari, A.C.J.)