

WP (PIL) No. 01/2017

IN RE MISSING CHILDREN

For petitioner : Mr. T. R. Barfungpa, Amicus Curiae

For respondents no. 1 to 7 : Mr. Sudesh Joshi, Addl. Advocate General
Mr. Yadev Sharma, Govt. Advocate
Mr. Sujan Sunwar, Asst. Govt. Advocate

For respondent no. 8 : Mr. N. Rai, Sr. Advocate
Ms. Malati Sharma, Advocate

Officers present : Mr. S.T. Bhutia, Inspector General of Police, Sikkim.
Mr. D.B. Giri, Deputy Inspector General of Police, Sikkim.
Mr. Hari Chettri, Sr. Superintendent of Police.
Mr. Palzor Wangyal Shenga, Sr. Superintend of Police , AHTU PS/PHQ, Gangtok.
Mr. Shammi Rai, Sr. Superintendent of Police.
Mr. Pratap Pradhan, Superintendent of Police.
Mrs. Dhan Maya Subba, Asst. Superintendent of Police, AHTU PS/PHQ, Gangtok.
Ms. Geeta Gazmer, Law Officer, PHQ, Gangtok.
Mrs. Chezum Lepcha, Police Inspector, AHTU PS/PHQ, Gangtok.
Mrs. Sudha Basnett, Police Inspector, AHTU PS/PHQ, Gangtok.
Mr. Leewang H. Subba, Police Inspector, AHTU PS/PHQ, Gangtok.
Mr. Bikash Rai, Police Inspector.
Mr. Ugen Tshering Bhutia, Police Inspector.
Mr. Karma Tshering Tamang, Police Inspector.
Mr. Karma Gandan Kaleon, Police Inspector.
Mr. Kinga Tharchen Bhutia, Police Inspector.
Mr. Umesh Pradhan, Police Inspector.
Mr. Sameer Pradhan, Police Inspector.
Mr. Karma Tamang, Police Inspector.
Ms. Yangkala Bhutia, Police Inspector.
Mr. Rajiv Bhujel, Sub-Inspector.
Mr. Sun Tshering Lepcha, Sub-Inspector.
Ms. Ankita Pradhan, Sub-Inspector.
Mr. Bishan Rai, Sub-Inspector.
Mr. Kewal Singh Chettri, Sub-Inspector.
Mr. Indra Kr. Rai, Asst. Sub-Inspector.

Date: 17/04/2021

CORAM :

**HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

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PER J.K. MAHESHWARI, CJ

In the present case, a girl Ms. Alka Subedi, aged about 14 years, found missing from 16.06.2013. The FIR was lodged by the mother to Police Station, Namchi, which was registered on 20.06.2013 as Case No. 68/2013 under Section 363 IPC.

As stated in the details of the investigation regarding the said girl, the statement of the mother, father and one Laxmi of Village Suminkhor was recorded. Laxmi was informed by one Bal Bahadur Chettri and Matrika Chettri. Laxmi interacted to the girl who disclosed that she is the daughter of Shivmaya Subhidi having mobile. Laxmi feeded her and informed to the mother on 17.06.2013. The girl is of the Village Samdong Gaon and Laxmi is the resident of Suminkhor, having distance of 7 to 8 kilometers.

In the investigation, it is not apparent that why the mobile number of the girl was not taken? How the girl has come 7 to 8 kilometers from her village Samdong?

The photographs of the girl were taken on the same day i.e. 20.06.2013 but why those photographs have not been immediately communicated to other Police Stations. The statement of the parents indicates that the girl was mentally low. Nothing is available on record to find out the justification of the said statement. Thereafter, parents have surrendered that they have found the slippers of the girl on the bank of Teesta River.

Investigation must be all around having a suspicion on everyone in the case of missing a minor girl but the said part is conspicuously missing in the investigation. Therefore, the investigation has been given to various other officers transferring the same to CID on 19.03.2019.

After hearing learned Additional Advocate General who is present in the Court along with the In-charge Officers with their respective Superintendent of Police.

We are of the view that further course of action in the facts of the case with respect to the missing child Alka Subedi must be submitted by the investigating team on an affidavit.

We are further of the view that a SOP must be prepared by the State Government or by the Director General of Police of the State Government in the matter of missing persons including children, which is required to be followed by the Investigating Officers and their team and if violated, responsibility must be fixed on those Investigating Officers. The action must be taken in this regard within two weeks and the said SOP be submitted within that period.

As directed earlier, the case be listed on 19.04.2021 for further orders.

Judge

Chief Justice

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Officers present : Mr. S.T. Bhutia, Inspector General of Police, Sikkim.
Mr. Sonam Gyatso Bhutia, Sr. Superintendent of Police, Sikkim.
Mr. Palzor Wangyal Shenga, Sr. Superintend of Police , AHTU PS/PHQ, Gangtok.
Mrs. Dhan Maya Subba, Asst. Superintendent of Police, AHTU PS/PHQ, Gangtok.
Ms. Geeta Gazmer, Law Officer, PHQ, Gangtok.
Mrs. Chezum Lepcha, Police Inspector, AHTU PS/PHQ, Gangtok.
Mrs. Sudha Basnett, Police Inspector, AHTU PS/PHQ, Gangtok.
Mr. Leewang H. Subba, Police Inspector, AHTU PS/PHQ, Gangtok.
Mr. Umesh Pradhan, Station House Officer (SHO), Rhenock.
Mrs. Yawkeela Bhutia, Police Inspector, Culture Department.
Mr. Indra Kr. Rai, Asst. Sub-Inspector, Gyalshing.
Mr. Sameer Pradhan, Station House Officer (SHO), Rangpo.
Ms. Dawa Chamu Pakhrin, Station House Officer (SHO), Namchi.
Mr. Bikash Rai, Police Inspector.
Mr. Ugen Bhutia, Police Inspector, Soreng.

Date: 19/04/2021

CORAM :

**HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

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PER J.K. MAHESHWARI, CJ

In furtherance to the order passed on 17.04.2021, the course of action with respect to the missing child Alka Subedi has been brought to the notice of this Court on an affidavit of Mr. Paljor Wangyal Shenga, Sr. Superintendent of Police, Anti Human Trafficking Unit (AHTU), Gangtok, East Sikkim.

Let recourse be taken by the Investigating Officers under the supervision of the Officer who has filed the affidavit, within a period of six weeks and the progress report be submitted within the aforesaid time for perusal of the Court and to take further recourse.

The manner of investigation as done in the case of Riya Sutraader, Ashish Tirwa and Inder @ Chotu has been seen by the Court. During discussion, it is found that the manner in which the investigation has been done is not as per the procedure and looking to the situation in each individual FIRs and further clues which were available to the Investigating Officers.

Learned Additional Advocate General who is present in the Court has fairly stated across the Bar that there are some lapses in the investigation and for that a future course of action has also been suggested perusing the further action plan.

At the first instance, we leave it open on the State Authorities to look into each and every investigation and its lacunas. Such investigation ought to be assigned to the specialized persons having acquaintance to the investigation in the case of missing Children, if trained, specially by the Government.

It would be further seen that the Investigating Officers previously appointed have not discharged their duties, as such what course of action to be taken for their inaction by the high ranking Officers and it be apprised to the Court.

List tomorrow i.e. on 20.04.2021 for consideration of investigation of other children.

Judge

Chief Justice

jk/ds/avi