

Suo Motu Writ

N.ANAND VENKATESH.,J

Ms. D. Gomathi, Additional Deputy Superintendent of Police, Villupuram, who was originally assigned the investigation, was also present at the time of the hearing.

2. A very shocking incident that may impact the women officers belonging to the Tamil Nadu Police Force came to the attention of this Court. Considering the seriousness of this incident that had taken place and after taking into consideration the monstrosity of the situation, this Court decided to take *suo moto* cognizance in exercise of its jurisdiction under Article 226 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution").

3.This Court,in expressing its deep concern about the incident, and its intention to take cognizance of the same, had directed the Additional Public Prosecutor to take instructions and circulate all the relevant records. Accordingly, the relevant records were circulated in a sealed cover.

4. On going through the records, it is seen that the victim officer who belongs to the Indian Police Service (hereinafter referred to as "IPS") cadre had given a complaint to the Director General of Police, Chennai (hereinafter referred to as "DGP, Chennai"). From the complaint, it is seen that the victim officer had reported for *bandobast* duty at Karur District on 21.02.2021, in view of the visit of the Hon'ble Chief Minister of Tamil Nadu. It is from there that the Special DGP directed the victim officer to accompany him in his vehicle, and she was told that she will be dropped at Perambalur. The lady officer belonging to a subordinate cadre, therefore accompanied the Special DGP in his official car from Karur to ThanneerPandhalPalayam. From there, she accompanied him to ParamathiVelur, Namakkal District. Thereafter, they left towards Ulundurpet at around 7:40 p.m.

5. It is during this travel towards Ulundurpet, the Special DGP is said to have indulged in sexual harassment of the lady officer. The complaint reads as if the officer was trying her best to wriggle out of the situation. The harassment suffered by the victim officer went to a point where she was left with no option but to hurriedly leave to Ulundurpet

in the available car belonging to the Superintendent of Police, Kallakurichi. Enroute, the official car in which the victim officer was travelling caught up with her official car in which she proceeded towards Perambalur.

6. The victim officer prepared a complaint and started her journey from Perambalur to Chennai in order to handover the complaint to the DGP, Chennai. During her travel, she started getting phone calls from the Special DGP and many other police officers which she decided not to attend.

7. The most shocking incident happened only at this stage. The official car in which the victim officer was travelling was intercepted at Paranur toll gate by a large contingent of police headed by one Mr. D. Kannan, Superintendent of Police, Chengalpet District. A striking force vehicle was stationed right in front of the car belonging to the victim officer. Two named police officers in the rank of Inspector and Sub-Inspector of Police, respectively got down from the striking force vehicle, came near the car and took away the car keys. When this was happening, the victim officer was present inside the car. Thereafter, the

officer was pressurised and forced to talk with the Special DGP who is said to have requested her not to proceed further with the complaint.

8. This was going on for sometime, and the victim officer was not prepared to budge and ultimately, the Superintendent of Police, Chengalpet District received a call from somewhere and thereafter, the striking force vehicle was removed and the official car in which the victim officer was travelling was allowed to proceed towards Chennai. The victim officer submitted a complaint to the DGP, Chennai and the DGP by communication dt. 26.02.2021, directed the DGP, CB-CID, to take up necessary investigation. It is also seen from the records that an FIR came to be registered by the CBCID- North, Villuppuram on 27.02.2021 in Crime No. 01 of 2021 for offences under Sections 354A(2), 341, 506(1) of the Indian Penal Code, 1860 and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. In the said FIR, the Special DGP and Mr. D. Kannan, Superintendent of Police, Chengalpet District were shown as accused persons.

9. It is also brought to the notice of this Court that a committee has already been constituted to enquire into the sexual harassment complaint given by the victim officer.

10. The victim officer in this case is a high-ranked police officer of the State Police. It took so much of struggle, for a police officer of that rank, even to give a complaint to the DGP, Chennai. This Court shudders to think as to what would have happened if the victim was an officer belonging to a lower cadre as that of a Sub-Inspector or Constable of Police. Probably, it would have become impossible for such an officer to have even given a complaint in this case. If that is the position in which lady officers are placed, it is hard to think as to what will happen if such a sexual harassment had taken place on an ordinary lady with no background.

11. It is true that an FIR has now been registered by the CB-CID and it is brought to the notice of this Court that the case is going to be investigated by an officer not less than the rank of the Superintendent of Police. The mere registration of an FIR by itself does

not take away the sordid state of affairs that is prevailing insofar as sexual harassment in workplaces are concerned.

12. There is a faulty gene in men which sometimes make them think that a woman is subordinate to them and that at times she can even be treated like a chattel. History, time and again shows that it is after a very long struggle, and only in the last 25 years that women have somehow managed to get to top levels at workplaces including public service. That by itself, does not place them at a secure position since they are not seen in their stature as an officer or professional but continue to be seen merely with patriarchal eyes.

13. The case reached its crescendo when the lady officer was intercepted by a posse of policemen who had the audacity to stop the car and take away the car keys. It must be borne in mind that the officers who did it are named and they are in the ranks of Sub-Inspector and Inspector of Police, respectively and the officer who was sitting inside the car was a Superintendent of Police. This was exactly the incident which caught the attention of this Court. If IPS Cadre lady officers are going to face situations such as this, this Court thought that

it is high time to take cognizance of the same to ensure that these instances do not happen in the future.

14. It is only in the recent past that women have started coming out even complaining against sexual harassment. There was a time where they used to swallow the bitter pill without raising a complaint about the same, since they feared consequences both in the workplace as well as the society.

15. If an officer, due to the power he veils, thinks that he can get over with his power and connections, from any act, this Court is not going to be a mute spectator and this Court will step in and ensure that the rule of law is preserved. Persons by virtue of the position they hold should not get the impression that they can do anything and finally escape from the situation with their power. The more the power that is vested in a person by virtue of the position that he is holding, the more stringent must be the punishment if he indulges in sexual harassment. Whosoever may be the person involved and whatever position he holds should never come in the way of the law taking its own course, more particularly when it comes to cases of sexual harassment.

16. It is well settled that a fair and proper investigation into crimes is one of the essentials of the criminal justice system and an integral facet of rule of law. In ***Pooja Pal v. Union of India*** reported in **(2016) 3 SCC 135**, the Hon'ble Supreme Court emphasized on the requirement of a free and fair investigation as an essential concomitant of Article 21 of the Constitution. The observations made by the Hon'ble Supreme Court in this regard is extracted hereinunder:

“86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India.”

“89. Prior thereto, in the same vein, it was ruled in SamajParivartanSamudaya v. State of Karnataka [SamajParivartanSamudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law.”

17.As stated *supra*, the victim was maneuvered and manhandled by a posse of police officers to somehow prevent her from

lodging the complaint. The accused person in this case is a high-ranking police official of the very same State Police Force which is stated to be investigating this case also. The propensity of the accused person to mobilise the State Police Force to thwart the course of justice is amply demonstrated by the incident that took place at Paranur toll gate.

18.The axiomatic principle that 'justice must not only be done but seen to be done' is not alien to the field of criminal investigation. This is therefore, an extraordinary case where this Court is required to step into monitor the investigation to ensure that it progresses on the right lines, and to retain public confidence in the investigation of the alleged crime by ringfencing the interference of the high and mighty in the corridors of power.

19.It will be relevant to take note of the judgement of the Hon'ble Supreme Court in ***Manohar Lal Sharma v. Principal Secy.,*** reported in ***(2014) 2 SCC 532*** where the Hon'ble Supreme Court established guidelines for monitoring of investigation. The relevant portion of the judgement is extracted hereinunder:

“The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place

without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law.”

20. Similarly, in ***Babubhai Jamnadas Patel v. State of Gujarat***, reported in **(2009) 9 SCC 610**, the Hon’ble Supreme Court held as extracted hereinunder:

“44. In cases where it has been brought to the notice of the courts that investigation into an offence was not being carried on in the manner in which it should have been carried on, directions have been given by the courts to the investigating agencies to conduct the investigation according to certain guidelines, as otherwise the very purpose of the investigation could become fruitless. The decisions cited by Mr Nariman do not militate against the concept of the Court's power, where necessary, to direct the authorities to conduct themselves in a particular way.

46. The courts, and in particular the High Courts and the Supreme Court, are the sentinels of justice and have been vested with extraordinary powers of judicial review and supervision to ensure that the rights of the citizens are duly protected. The courts have to maintain a constant vigil against the inaction of the authorities in discharging their duties and obligations in the interest of the citizens for whom they exist. This Court, as also the High Courts, have had to issue appropriate writs and directions from time to time to ensure that the authorities performed at least such duties as they were required to perform under the various statutes and orders passed by the administration.”

21. In view of the aforesaid, this Court is required to step into monitor the investigation thereby, ensuring that the fundamental rights of the victim to a free and fair investigation is not reduced to an empty ritual. The role of the Constitutional Court in exercise of its jurisdiction

under Article 226 of the Constitution to zealously guard the fundamental rights guaranteed under Article 21 of the Constitution is reinforced by a constitutional duty to act as a sentinel on the *qui vive*. The Hon'ble Supreme Court in a very recent judgement in ***Gujarat Mazdoor Sabha v State of Gujarat*** reported in **(2020) 10 SCC 459** has held that:

“The phrase may have become weather-beaten in articles, seminars and now, in the profusion of webinars, amidst the changing times. Familiar as the phrase sounds, Judges must constantly remind themselves of its value through their tenures, if the call of the constitutional conscience is to retain meaning.”.

22. This is therefore, one of those extraordinary cases where sentinel must raise to the occasion to discharge its constitutional duty and to ensure that the pure streams of criminal justice are not polluted and corrupted by those in the corridors of power.

23. It is settled law that the wholesome power under Article 226 of the Constitution can be exercised *suo moto* for the vindication of the fundamental rights of a citizen. Useful reference may be made to the judgment of a Division Bench of this Court in ***V. Natarajan v. Deputy Inspector of Police*** [W.P 28886 of 2004 dated 22.09.2005],

wherein the following observations of the Allahabad High Court were cited and approved:

“ Article 226 of the Constitution does not confine the powers of Courts to issuing prerogative writs in cases where a party makes an application for the purpose and we think the words are wide enough to authorise the High Court to quash an order suo moto. ... ”

24.The learned Additional Advocate General appearing on behalf of the State submitted that the investigation will be conducted by an officer in the rank of Superintendent of Police and it will be monitored by the DGP, CB-CID. The learned Additional Advocate General further submitted that the State is privy to the seriousness of the allegations made in this case and therefore, the investigation will be carried out with all seriousness and it will be taken to its logical end. The learned Additional Advocate General further submitted that since this Court has taken a decision to monitor the investigation, periodical status reports will be filed by the Investigating Officer, and this Court will be updated on the progress of this investigation.

25.Considering the sensitivity of the issue and the ensuing elections that are going to take place in the State, there is a high possibility of politicising this issue. This has to be prevented without any

further delay. That apart, exchanging the name of the victim officer through media and other social media networks, will also have a very serious impact on the investigation. In view of the same, this Court wants to place certain restrictions by way of issuing the following interim directions:

- a. In order to ensure that there is a fair investigation in this case, there shall be a restraint to all political parties from politicising and/or publicising this case and no statements must be given by such parties in the media, touching upon the merits of this case;
- b. The name of the victim officer, the accused person and the witnesses shall not be used or exchanged through any media, pending investigation in this case; and
- c. Any violation of the directions issued by this Court will be viewed very seriously and this Court may be forced to initiate contempt proceedings.

26. Place this Order before the Hon'ble Chief Justice and obtain necessary orders and directions to list this matter and to proceed further with the same.

01.03.2021

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