

(2000) 05 OHC CK 0018

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 9456, 12461 and 13305 of 1999

AB (Name withheld), Dr. Suprava Kumari Das and Prasanta Kumar Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 90 CLT 106 : (2000) CriLJ 3126 : (2000) 1 OLR 629

Hon'ble Judges : P.C. Naik, J;B.P. Das, J

Bench : Division Bench

Advocate : B. Pal and S. Mallik, in OJC 9456/99, A.K. Mohapatra, K.N. Parida and M.R. Mishra in OJC 12461/99 and M.S. Panda, in OJC 13305/99, B. Pal and S. Mallik and S.K. Dash, in OJC 12461/99, for the Appellant; S.P. Mishra, Addl. Govt., for OP 1 in OJC 9456/99 OPs 1 and 2 in OJC 12461/99 and OJC 13305/99, for the Respondent

Judgement

P.C. Naik, J.—On 26.7.1999, some local dailies reported the existence of a sex racket involving high officials, in which a P. T. I., of an institution at Balasore was luring young girls on false pretence. In particular, the headlines in The Sambad, screamed thus :

"KRIDA SIKHYATRINKA DWARA MAHILA COLLEGE RA SEX RACKET, BAHU UCHA PADASTA ADHIKARI JADITA CHAKIRI LOBHA DEKHAI COLLEGE CHHATRINKU OFFICERNKA DHARSHAN UDYAM".

Said report created a sensation and social workers and students became agitated and wanted prompt action. It has come on record in one of the writ applications (OJC No. 9456 of 1999) that on receiving a telephonic message from one Gourisankar Panda of Balasore that a student of Kuntala Kumari Sabat Women's College has been abducted and taken by the P. E. T. to Bhubaneswar where attempts were made to use her for immoral purpose, she, i.e the Chairperson of the State Commission for Women, went to Balasore to enquire into the matter.

After conducting an inquiry into the alleged complaint in which she collected information from various persons including the staff of the college, she prepared a preliminary report and forwarded the same to the Chief Minister; Minister. Women and Child Development; Minister, Home Department; Minister, Higher Education; Chief Secretary, Secretary, Home Department; Secretary, Women and Child Development Department; Director (S.W.) Collector, Balasore; S. P. Balasore and S. P., Khurda, with a request for taking up appropriate action. In the meantime, the agitated inhabitants and students of the local area observed a "BANDH" and called upon the authorities to take up stringent action against those involved in such a sordid affair. Sufficient heat was also generated in the Assembly during its sittings and on 27.7.1999, the then Chief Minister made a statement on the floor of the House that the State Government had directed the Crime Branch to investigate into the matter and to treat the copy of the report of the Chairperson of the State Commission for Women, Orissa, as an FIR. The same day, Shri A. K. Tripathy, Home Secretary, addressed a letter to Shri Janardan Singh, Additional D. G.-cwm-I. G. of Police, C. I. D. Crime Branch, for treating the report of the Chairperson of the Commission as an FIR and for taking necessary action thereon. "On receiving the letter, Shri Janardan Singh endorsed the same for registering a case and forwarding it to the Crime Branch for taking up an investigation. Meanwhile, on the basis of the direction of the Government in the Education Department, the incident was also enquired into by the Regional Director of Education, Orissa, who had conducted a spot inquiry at Balasore in which statement of the teaching and non-teaching staff of the college in question were recorded. The incident was also inquired into by Mr. S. Ch. Mohapatra, Deputy Superintendent of Police, C. I. D., Crime Branch, Cuttack, who had submitted a detailed report on 12.8.1999 to Mr. Janardan Singh, who in his turn had forwarded the same to Mr. A. K. Tripathy, Principal Secretary to Government, Home Department. The above facts are borne out from the record which has been placed before us by the State counsel at the time of hearing.

2. While the public clamour about the sex scandal was gathering momentum, a letter dated 29.7.1999 written by AB (name withheld) addressed to "The Hon"ble Acting Chief Justice, Orissa High Court., Cuttack" was received by the Acting Chief Justice which was ordered to be registered as a writ petition (OJC No. 9456 of 1999). In the said letter, the following prayer was made :

".....to save me and my family from disgrace, mental agony, public humiliation restraining the News Papers from publishing any news involving me in the alleged incident/scandal and action may be taken against the Chairman, State Commission for Women for giving such baseless report which has defamed me and my family.

XX XX XX"

To the aforesaid letter was annexed a copy of the confidential report of the State Commission for Women, Orissa, dated 25.7.1999, a copy of the affidavit of AB that the newspaper reports linking her to the incident were false, frivolous and

baseless and that she had never accompanied Srimati Pravasini Kar, P. E. T. to Bhubaneswar on the 9th July, 1999 nor had she ever made any statement regarding the incident to anyone, a copy of the appeal made by her (AB) to the newspapers. In the said writ application (OJC No. 9456 of 1999), State of Orissa represented through the Secretary to the Government in the Home Department was impleaded as opposite party No. 1 and the Orissa State Commission for Women was impleaded as opposite party No. 2.

3. On notice being served, a counter was filed by Smt. Lopamudra Mohanty, Chairperson, State Commission for Women, Orissa, to which a rejoinder was filed by AB praying that the report of the Chairperson be quashed, action be taken against the Chairperson and compensation be awarded to her (AB) for loss of reputation. However, no counter affidavit was filed by the Secretary to the Government of Orissa, Home Department, in reply to the application filed by AB.

4. In the affidavit filed by the Chairperson of the State Commission for Women, the background leading to submission of a report was clearly pleaded though it was admitted that she was not able to interact with the petitioner because she was not available. It was averred that on such an incident being brought to its notice, it became an obligation on the part of the Commission to get the matter investigated and take appropriate action in view of the provisions contained in Section 10 of the Orissa State Women's Commission Act, 1998.

5. OJC No. 9456 of 1999 was heard and disposed of on 24.8.1999 with the following direction :

"5. Be that as it may, learned counsel for the Commission fairly stated that had the petitioner been examined and her statement to the effect that there was no such incident been recorded, the report would not have been in the present form and the petitioner's involvement would have completely ruled out. That being the position, we close this matter so far as the factual aspects are concerned by holding that no action shall be taken on the report of the Commission in view of the concession as indicated supra. The investigation so far as the allegations relating to the petitioner's role is concerned shall be closed, in view of the statement made by the counsel for the Commission, and the statement made by the petitioner."

It appears that in view of the aforesaid directions, the inquiry into the said incident was shelved.

6. On 29.9.1999, a writ application (OJC NO. 1 2461/99) was filed by one Dr. Suprava Kumari Das of Balasore, a social activist, by way of a public interest litigation praying, inter alia, for a direction to the opposite parties to complete the investigation and submit a charge-sheet against those involved in the incident within a stipulated period and for taking appropriate action against opposite party No. 1, i.e. State of Orissa through the Principal Secretary to Govt., Home Department, and opposite party No. 2 - Director General of Police (Administration), opposite party No. 7 - Chief Secretary, Government of Orissa,

to take appropriate action against the authorities for their inaction and illegal action in obstructing the course of law of justice and for suppressing the material records from the Court of justice and to take appropriate action against those involved in the sex scandal.

7. Subsequent thereto, one Shri Prasanta Kumar Das presented a writ application (OJC No. 13305/99) with a prayer for a direction to the Central Bureau of Investigation to register a case and take up investigation into the alleged Balasore sex scandal.

8. When these petitions came up before the Court for hearing, it was found that one of the annexures to the writ petitions (Annexure - 4 to OJC No. 13305/99) was a purported copy of the report dated 12.8.1999 of the Deputy Superintendent of Police, C. I. D., Crime Branch, Orissa. Cuttack, which indicated that he was prima facie satisfied that Smt. Pravasini Kar had taken one of her students (AB) from Balasore to Bhubaneswar for immoral purpose. The Court had, accordingly, called upon the State counsel to ascertain whether or not such a report had been submitted and if yes, to produce a copy thereof before the Court in a sealed cover. This was done. Opening of the sealed cover by the Court, led to the opening of Pandora's box and to our utter surprise, it was found that Annexure-4 was indeed a copy of the report submitted by Mr. S. Ch. Mohapatra, Deputy Superintendent of Police, C.I.D., Crime Branch, Orissa, Cuttack, to Mr. Janardan Singh, Additional D.G.-cum-I.G., C.I.D., Crime Branch, Orissa, Cuttack.

9. In view of the prayer made in the said writ application (OJC No. 13305/99) which was for a direction to take appropriate action against those involved in the incident and considering the fact that the report indicated such an incident did take place, the Court felt that any direction sought may require modification of the order dated 24.8.1999 passed in OJC No. 9456 of 1999, a reference to which has been made in the earlier part of our order. Said writ application was accordingly directed to be listed along with the other two writ petitions, so that the counsel appearing therein may be heard on the question of review/ modification/ recall of the order dated 24.8.1999. It may also be mentioned that in OJC No. 13305/99, Mr. B. Pal, Senior Advocate with Mr. S. Mallik, had filed an application on behalf of AB for being permitted to intervene and to be heard. A prayer was made for issuance of an appropriate direction to the concerned authorities to close the matter and to take action against the State Commission for Women (OP. No. 9 in OJC No. 13305/99) for manipulating a false and baseless report misleading the public, on the basis of which the Government and the public have been misled thereby jeopardising the life of the intervenor and for a direction to the newspapers not to publish any report concerning the so-called sex scandal which is affecting the life of the petitioner.

10. The case of the intervenor is that in view of the order dated 24.8.1999 passed in OJC No. 9456 of 1999, no investigation can be ordered as far as the allegation regarding AB's role is concerned. A reference was also made for an inquiry by the CBI and for giving protection to AB. That petition was not

entertained by this Court on the ground of locus standi and due to pendency of OJC No. 9456 of 1999 which in the opinion of the Court would be decided on its own merits.

11. The main plank of the arguments of the intervenor was that in view of the order dated 24.8.1999 in OJC No. 9456/99, the Court cannot order investigation into the matter. However, in view of order dated 7.4.2000 passed in the said writ application recalling the order dated 24.8.1999 passed therein, the objection raised by the intervenor AB cannot be accepted. The fact that the Court had declined to entertain OJC No. 9378 of 1999 also cannot stand in the way because, as observed above, the Court had declined to entertain that writ application on the ground of locus standi and pendency of OJC No. 9456 of 1999.

12. On 9.3.2000, all the three writ applications came up for hearing, but as it was noticed that notice in OJC No. 13305 of 1999 had not been issued to the State, notice was issued to the State and the said case was delinked. Accordingly, Mr. A. K. Mohapatra, for the petitioners in O. J. C. No. 12461 of 1999, Mr. S. P. Misra, Additional Government Advocate, Mr. B. Pal, Senior Advocate with Mr. S. Mallik for the intervenor (AB), were heard on merits and also on the question of review/modification/ recall of the order dated 24.8.1999 passed in OJC No. 9456 of 1999 in the light of the new facts and circumstances brought on record in OJC No. 12461 of 1999 which were not placed before the Court at the time of hearing of OJC No. 9456 of 1999.

13. In the meantime, on 23.3.2000 OJC No. 13305 of 1999 was heard and closed for orders. By order dated 7.4.2000, on a consideration of the entire facts and circumstances which were brought on record through subsequent writ application, the Court recalled its order dated 24.8.1999 passed in OJC No. 9456 of 1999 and directed that the matter will be considered afresh along with OJC Nos. 12461- and 13305 of 1999. It may be mentioned that on the same day (7.4.2000), the other two matters (OJC Nos. 12461 and 13305 of 1999) in which hearing had been concluded, had been listed under the heading "To be Mentioned" and therefore, the learned counsel appearing therein were also heard. After hearing the counsel in all the three writ petitions together, those were closed for judgment. Accordingly, these three writ applications are being disposed of by this common judgment.

14. At this stage, we may mention that since any order of the nature sought can only be passed on the basis of the material available on record, we, in order to indicate the available material, extract herein below some relevant paragraphs from the order dated 7.4.2000 passed in OJC No. 9456 of 1999 which prompted us to recall the order dated 24.8.1999 passed therein.

"8. The record indicates that the news about the Balasore Sex Scandal was taken note of by the State Government, as it had generated sufficient heat not only in the society but also in the Assembly. A statement was made on the floor of the House by the Chief Minister on 27.7.1999 that the State Government had

directed the Crime Branch to investigate into the matter and to treat the copy of the report of the Chairperson of the Orissa State Women's Commission as an FIR and that the S. P., Balasore was directed to give protection to the girl. Same day, Shri A. K. Tripathy, the then Home Secretary had addressed a letter to Shri Janardan singh. Additional D.G.-cum-I.G. of Police, CID, CB, for treating the report of the Chair Person of the Commission as an FIR and for necessary action thereon. Shri Janardan Singh had made an endorsement on the letter to the Superintendent of Police, Balasore, for registering a case and sending the same to the Crime Branch for taking up investigation. This endorsement is dated 28.7.1999. In the meantime, it appears that, the incident was enquired into by Mr. S.Ch. Mohapatra, Deputy Superintendent of Police, CID, CB, Orissa, Cuttack, who had submitted a detailed report on 12.8.1999 to Shri Janardan Singh, A.D.G.-cum-I.G. of Police and on 12.8.1999 itself Mr. Janardan Singh had forwarded this report to Shri A. K. Tripathy, Principal Secretary to Government of Orissa, Home Department, the concluding part whereof reads thus :

"However, in view of the fact and circumstances mentioned above, I can tentatively conclude that the allegation regarding Smt. Prabasini Kar taking her student (AB) from Balasore to Bhubaneswar for immoral purposes is proved."

9. The record of the Home Department further indicates that on the basis of directions by the Government in the Education Department, the Regional Director of Education, Orissa had proceeded to Balasore and conducted a spot inquiry during which Geetarani Das Adhikari, Senior Lecturer in History, Sudarsan Nayak, Head-clerk, Sudarsan Das, Harekrishna Samal, Manisankar Das, who are members of the teaching and non-teaching staff of Kuntala Kumari Sabat Women's College, Balasore, had given written-statements about the incident, details whereof is stated to have been narrated to them by AB. 10. Thus, the record discloses the following :

(a) That a statement was made by the Chief Minister on the floor of the House that an FIR would be registered and the matter investigated consequent whereon Home Department had directed for registering an FIR.

(b) That there was a report of the Commission regarding the incident which was on the basis of inquiry made by the Chair Person which indicates that such an incident had taken place on 9.7.1999.

(c) That an inquiry conducted by the Regional Director of Education in which the teaching and non-teaching staff of the college in question have given the details of the incident which had been earlier narrated to them by AB.

(d) That there is the interim investigation/inquiry report of the Deputy Superintendent of Police, CID, CB, Orissa, Cuttack in which he has concluded that the incident in question did take place on 9.7.1999 and in which the identity of one person is established.

(e) The record also indicates that public agitation that took place at Balasore

immediately after the incident that girl students organisation had written to the Government for appropriate action and that the District Magistrate, Balasore had also suggested for an enquiry by the CBI.

11. The question, therefore, is whether in view of what has come on record in these three different inquiries, the matter should not be permitted to be inquired into, because AB states that it never took place. From what has come in the report of the CID, CB, it appears that said Prabasini Kar had a key of the flat of which she was not the owner but was frequently visiting there and invariably accompanied by a young lady. It, therefore, appears that said Prabasini Kar was luring young girls to the said flat (for being sexually exploited probably by high officials). It, therefore, appears that that is what that took place on 9.7.1999 and in view of the reports, we may accept that such an incident did take place. However, it appears that this was not a solitary incident but a repetition of things that were taking place there - God knows, from how long past. Therefore, said Prabasini Kar, if one may say so, was involved in some kind of racket and may be had ruined the lives of many young girls who because of humiliation, shame or blackmail may not have come forward to narrate their tale of sorrow.

12. Thus, it appears that the activities of said Prabasini Kar, if not checked, may adversely affect many girl students who may fall into her trap. Thus her activities are prejudicial to the society at large. In the case at hand, by the grace of God, as the record so far indicates, the girl who she had lured to the apartment on 9.7.1999, was saved from humiliation and exploitation because she locked herself in the bathroom. We admire her valiant fight to save her dignity and honour and from humiliation. Others may not have been that fortunate and many, if the activities of said Prabasini continue unchecked, may not also be lucky as they may not be able to save themselves from being exploited. It is, therefore, in the larger interest of the society that the matter, i.e., the sordid activities of said Prabasini Kar and persons connected therewith should be thoroughly enquired into notwithstanding the denial of the incident by the girl AB, which might be in order to save herself from humiliation and disgrace and also may be because of pressure and undue influence being exercised on her and her family as the persons involved in the incident are probably holding high posts . Even if for the sake of argument the affidavit of AB is accepted that she did not go to Bhubaneswar, there is sufficient material in the report of the Crime Branch that a girl student of the college was lured to Bhubaneswar for the purpose of being sexually exploited. There is also an endorsement on one of the letters of the Home Department that as the incident in question affected the prestige of the State, it was necessary to enquire into the incident notwithstanding the statement of AB. However, because of the orders of this Court dated 24.8.1999 nothing further did happen.

13. What is surprising us is the fact that though many incriminating material pointing out to the incident were available on the file of the Government, no effort whatsoever was made by the Government to place the material before the

Court at the time of hearing. Non- placement of such material before the Court was probably due to the reason that someone somewhere did not want the Court to see the file. We are sure, had all the facts which have been mentioned in the foregoing paragraphs, been placed before the Court earlier, the order would have been different. We are, therefore, of the opinion that op the facts and in the circumstances of the case, the matter needs reconsideration."

And we adopt the same for the purpose of disposal of these writ applications as the facts involved in all these three matters are the same and the documents to which reference has been made in the order of recall form part of the file of the Home Department which, as observed earlier, have been placed before us by the State counsel.

15. Though counter has not been filed in OJC No. 1 2461 of 1999 on behalf of the State, in OJC No. 13305/99, the Joint Secretary to Government, Home Department, Bhubaneswar, has filed a counter on behalf of the State of Orissa and the Addl. Director General-cum-Inspector General of Police, C.I.D., Crime Branch, Orissa (O. Ps 1 and 2 respectively therein).

16. The sum and substance of the aforesaid counter filed by the Joint Secretary is that in view of the order dated 24.8.1999 of the Court in OJC No. 9456 of 1999, the question of any further investigation by the Investigating Authority does not arise and as such, the prayer for referring the matter to the C.B.I, for investigation and the Court monitoring the investigation, cannot be granted. But, as appears from the counter, an FIR has not been registered by the Superintendent of Police, Balasore, as was required to be done in view of the letter of the Home Secretary dated 27.7.1999 and the endorsement of Mr. Janardan Singh thereon. What is pleaded is that since the letter of the Home Secretary was marked "Confidential", it was not clear to the police authorities as to which part of the letter was to be treated as an FIR and as such, it was suggested that the A. D. G. P., Crime Branch, may discuss the matter with the D.G.P. for orders. It is further stated that thereupon the A.D.G.P., Crime Branch, discussed the matter with the Director General of Police and also the Home Secretary and the latter instructed that his letter may be treated as instructions from the Government to conduct a preliminary inquiry and not to treat it as an FIR. It was accordingly, decided that a preliminary inquiry into this episode should be conducted by a D.S.P. of the Crime Branch before any case is registered for regular investigation and it is resisted that an inquiry was conducted by Mr.S.Ch. Mophapatra. It is further pleaded that the preliminary inquiry report of the D.S.P. was forwarded by the A.D.G.P., Crime Branch, to the Principal Secretary to the Government, Home Department, and as in the meantime the Court in its order dated 24.8.1999 in OJC No. 9456 of 1999 had observed that "the dignity of a woman is sacrosanct and any attempt to defile it may amount to violation of the protection of right to life with dignity given under Article 21 of the Constitution of India", the A.D.G.P., Crime Branch, had requested the Government to move the High Court for necessary direction if any

further legal action by the police was warranted. However, in view of the direction of the Court that the investigation so far as the allegations regarding AB's role is concerned shall be closed, no further action was taken in the matter. It is also averred that as the incident in question was confined to a particular incident relating to AB which was highlighted in the letter of the Chairperson of the State Commission for Women, no general inquiry was there, more so when the allegation about the involvement of said Pravasini Kar in the sex racket was not specific and general in nature. Accordingly, it was further submitted that the question of enquiry so far as the victim girl is concerned may not arise after the order dated 24.8.1999 passed by the Court in OJC No. 9456 of 1999. It is also pleaded that the Crime Branch was fully equipped to investigate into the matter, which in fact has not been done so far, as no FIR has been registered and as such, handing over the matter for investigation to another Agency is not warranted.

17. From the substance of the counter filed by the State, referred to by us in the earlier paragraph, what is surprising us is that no effort whatsoever has been made by the State to explain as to why, when the report of the Deputy Superintendent of Police was available with the Government during the pendency of OJC No. 9456 of 1999, no effort whatsoever was made to bring it to the Court's notice at the time of hearing of that writ petition. That apart, it was also not indicated as to why no counter on behalf of the State was filed in that case though State authorities were well aware of the sensitive nature of the incident which was a matter of hot discussion in the society and had concerned the people at large including the Assembly.

18. As we have already observed that the inquiry conducted by the Deputy Superintendent of Police prima facie establishes that such an incident did take place, putting a cloak over it would not be proper and we may be shirking in our responsibility, if we become a mute spectator to such a sordid affair. Our intention is not to see that dirty linen is washed in a public nor is it to harm the reputation of an individual - a helpless and hapless victim of this sordid affair, but we are considering it with a wider angle as to what would be its repercussion on the society at large if such incidents are not taken seriously and are permitted to become dormant. We are quite aware that an inquiry into the matter is likely to cause embarrassment to the innocent victims who may under false pretence have been lured into a trap laid by Smt. Kar and for quenching the sexual appetite, as it appears, of highly placed individuals, but as we have observed, when something, if not checked, is likely to have a bad effect on the society at large as more and more innocent girls may fall into the cleverly laid trap for being exploited sexually, we will be failing to discharge our duties, if we refrain ourselves from ordering an investigation into the entire matter so that the real story comes to light and those found guilty are suitably dealt with in accordance with law.

19. Accordingly, on a consideration of all the material now brought on record

which, as we have already observed above, were previously not placed before the Court at the time of hearing of OJC No. 9456 of 1999. we feel that closing the matter and not ordering an inquiry into the Balasore Sex Scandal, would not be in the public interest. On the contrary, we feel that it would be appropriate if the inquiry covers a wider field so that activities of Smt. Pravasini Kar and others alleged to have been involved, as it appears from the report, prior to the incident in question also come within its fold, for we strongly feel that the incident in question which came to the limelight was not the solitary incident.

20. But for the unusual nature of the incident, we would have directed the CID, Crime Branch, to investigate into the matter. However, considering the fact that despite the statement made by the Chief Minister on the floor of the Assembly that an FIR shall be registered and thereupon, there was a written direction of the Home Secretary to that effect, an FIR has not been registered, and as some high officials appear to be involved, as the inquiry report indicates, we think it proper that the matter should be investigated into by an independent agency which, in our view, would be the Central Bureau of Investigation.

21. In the aforesaid view of the matter, while dismissing OJC No. 9456 of 1999, we dispose of the other two writ applications (OJC Nos. 12461 and 13305 of 1999) by directing that the Crime Branch shall hand over all the papers with it relating to the matter, including the papers relating to the inquiry conducted by it through the D.S.P., C.I. D, CB, Orissa Cuttack to the Director of the Central Bureau of Investigation, New Delhi, who in turn will cause an investigation into the matter by some of his officer not below the rank of a Deputy Inspector General. Records produced by the State Counsel be handed over to him in a sealed cover.

A copy of this order be handed over to Mr. Sanjit Mohanty, the learned counsel for the CBI, for necessary action.

B.P. Das, J.

I agree.