
(1988) 11 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 155 of 1988

Kamla Devi

APPELLANT

Vs

State of Ors.

RESPONDENT

Date of Decision : 10-11-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107, 151
Criminal Procedure Code, 1973 (CrPC) — Section 97
Penal Code, 1860 (IPC) — Section 342, 376

Citation : (1988) 17 ILR HP 521

Hon'ble Judges : P.D. Desai, C.J; R.S. Thakur, J

Bench : Division Bench

Advocate : L.S. Panta, D.A.G. for Respondents Nos. 1 to 3 and 5 and Bhawani Singh, for the Respondent

Judgement

R.S. Thakur, J.—An application dated November 11, 1987 was addressed by the Petitioner, Smt. Kamla Devi, herein, to one of us (the Chief Justice), which was received in this High Court on November 24, 1987. It was averred therein that the Petitioner belongs to a poor Harijan class who was married to one Sumer Chand but since he was drunkard and a loafer, he started maltreating her and ultimately turned her out of the house and she had been living in the house of her father Mansha Ram, resident of village Salwala for 31/2 years prior to this application. On August 6, 1987, at about 9 p.m. H.C. Kutab Din, Respondent No. 4 herein, came to the parental house of the Petitioner in village Salwala along with one constable and after entering the house told the Petitioner that he had come to arrest her and asked her to accompany him to the police post Rajban. when the Petitioner refused to accompany him at night, he forcibly dragged her out of the house and when her parents intervened they were also pushed/ manhandled aside and their clothes got torn. Meanwhile, a number of persons of the village Salwala collected there including the Pradhan of the Gram Panchayat, ,Ch. "Virender Singh and one Supa Ram. The Pradhan Virender Singh then also dissuaded Respondent No. 4 from taking the Petitioner to police post

Rajban at night and undertook to produce her himself in the police post next morning. Respondent No. 4 however, did not accede to his request and this he took the Petitioner to the police post at Rajban at 9 30 p.m. Latter on, when she was at the police post at Rajban, the brother of the Petitioner also arrived there but Respondent No. 4 threatened and terrorised him and thus drove him away. She was kept by Respondent No. 4 in the police-post till mid-night during which period he maltreated and threatened her and also hurled filthy abuses at her and warned her that he being a police officer can even shoot her dead.

2. She further averred that after mid-night Respondent No. 4 forcibly took her to his quarter near the police post and after she was taken over there he continued terrorising and threatening her and ultimately started out-raging her modesty. She first resisted his over-tures but ultimately Respondent No, 4 over-powered her and committed forcible sexual intercourse with her. Respondent No. 4 detained the Petitioner in his quarter till 1.30 p.m. on the following day and later on produced her in the Court at Paonta Sahib at 2. p.m. when the Presiding Officer of the Court released her but at that time she was so much terror-stricken at the hands of the Respondent No. 4 that she could not complain against him to the Court. After coming home, however, she disclosed the incident to her father Mansha Ram who then took her to the Sub-Divisional Magistrate at Paonta Sahib where she lodged a complaint. The S.D.M. then enquired into the matter and so also the. Dy. S.P., Painta Sahib but no action had so far been taken against Respondent No. 4 who is said to be a favorite of the Superintendent Police concerned and that Respondent No. 4 was still threatening the Petitioner to kill her in case she disclosed any thing about this incident. She thus prayed for Justice against this autocratic behavior of Respondent No. 4 which had given her "pangs of indignity."

3. This complaint was then ordered to be registered as Civil Writ Petition on March 9,1988.

4. After This Court became seized of this matter, notices were ordered to be issued to the Respondents in the petition including Respondent No. 4 to file their respective affidavits and the connected record from different quarters was also ordered to be summoned.

5. After the various affidavits were filed in the Court, This Court vide its order dated May 11, 1988 observed that the Court after perusing the concerned record was prima-facie left with the impression in its mind that serious allegations have been levelled against the fourth Respondent in the petition, which still required a deeper probe. The Court thus directed the Inspector General of Police (C.I.D.) Himachal Pradesh to conduct a thorough enquiry into the alleged incident after affording full opportunity to the concerned parties of being heard

6. The Inspector General of Police (C.I.D.) accordingly submitted his report, the copy of which was also supplied to the concerned parties, as per the directions of the Court. The parties thereafter were also heard by This Court.

7. After perusal of the record summoned from the Court of the Sub-Divisional Judicial Magistrate (for short, S.D.J.M.) the Sub-Divisional Magistrate, Paonta Sahib, the police-post, Rajban, the report of the Inspector General of Police (C.I.D.) and the various affidavits filed by the parties, the undisputed facts which emerged are as follows.

8. There were highly strained relations between the Petitioner and her husband Sumer Chand as the latter has turned the Petitioner out of his house and she has been living with her parents in village Salwala for about 31/2 years prior to the incident with her daughter aged about 3 years;

9. Her husband, said Sumer Chand, obtained a search warrant u/s 97 of the Code of Criminal Procedure from the S.D.J.M., Paonta Sahib on the basis of an application filed in his Court on July 29, 1987 for the recovery of the Petitioner from the house of her maternal grand-father Bholar and his wife Shibo Devi in village Salwala on the allegation that the said Bholar and his wife had kept the Petitioner and her daughter, born from his loins, aged about 3 years, confined in their house against her wishes who were forcing her to take to prostitution and were also likely to sell said Kamla Devi along with her daughter and that the Petitioner was otherwise willing to live with him in the matrimonial home.

10. The application for search warrant was supported by an affidavit and also by the Statement of Sumer Chand in the Court on the same date. The Court ordered the issuance of search warrant in question on the same day to the Incharge, Police Post, Rajban for execution and for production of the Petitioner in the Court if found in the house of Bholar on or before September 3, 1987. The endorsement on this warrant shows that it was despatched to the police post, Rajban on August 2, 1987. The file of the Sub-Divisional Judicial Magistrate, Paonta Sahib shows that, the Petitioner was produced by the fourth Respondent in the Court on August 7, 1987 and after recording the statement of the Petitioner to the effect that she was living in her parental house at Salwala, of her own free will, and she did not want to go to the matrimonial home as he (the husband) has been maltreating her, the learned S.D.J.M. in his order dated August 7, 1987, recorded that in view of the statement of the Petitioner, she was set at liberty. On the reverse of this warrant u/s 97 of the Code of Criminal Procedure the fourth Respondent has recorded a report under his signature dated August 7, 1987 which when translated into English would read as follows:

Myself, the H.C. Incharge of police post Rajban duly executed the warrant in question at the house of Shri Bholar s/o Basia, r/o Salwala in accordance with law and Mst. Kamla Devi wife of Sumer Chand of Dhamon was recovered from her father Bholar aforesaid and after arresting her in accordance with law she was being produced along with the search warrant in the Hon"ble Court.

11. Then the file of the S.D.M. Paonta Sahib shows that Kamla Devi made a similar Complaint as the one before us, before the said Sub-Divisional Magistrate on August 13, 1987, wherein the said S.D.M., thereafter, examined the Petitioner,

her father, Mansha Ram and the witnesses Virender Singh, Pradhan, Gram Panchayat and Supa Ram, shopkeeper of Salwala who confirmed the allegations made by the Petitioner in the complaint, namely, that the fourth Respondent as Incharge of Police Post, Rajban forcibly took said Kamla along with her young child to the police-post, Rajban, in the night of August 6, 1987 despite the protest of the Petitioner, her parents and other resident of village salwala. and also despite the fact that Shri Virender Singh, Pradhan, had offered to stand surety for the production of the Petitioner either in the police post at Rajban or in the concerned court next morning to the tune of rupees one lac.

12. The fourth Respondent had filed a reply before the S.D.M. in those proceedings wherein he averred that the warrant of arrest u/s 97 Code of Criminal Procedure was received in the police-post, Rajban on August 5, 1987 from the Court of J.M.I.C, where-under the Petitioner was to be arrested and that he proceeded to execute the same on August 6, 1987 in the company of one constable Nihaloo Ram and the husband of the Petitioner Sumer Chand and arrived at Salwala at 7 p.m. when the Petitioner was found present at the house of her father Mansha Ram. She was then made aware of the said warrant. Meanwhile, Shri Virender Singh, Pradhan also came there who was also shown the warrant in question and he offered to furnish sulety but the fourth Respondent refused to accept the surety as there was no such direction in the warrant itself and that he then brought the Petitioner along with her young child, her father and brother, to the police-post Rajban, He further averred that he intended to take the Petitioner that very night to the Court concerned" for her production before the Court but when he arrived at the police-post he found that two contending parties from Kishan-kot village were present there who had quarreled with each other. That since about five years prior thereto similar quarrel inter-se the parties had resulted in a murder, he felt compelled to immediately leave for that village and he thus proceeded to said village after he handed over the custody of the Petitioner to one Shanti Ram, resident of Sirmauri Tal and employed at that time in the C.C.I. at Rajban and was also related to said Kamla Devi, after calling him to the police-post and recording this fact in the daily dairy register of the police-post. He, then returned from Kishan Kot at about 2 a.m. to the police post on August 7, 1987 and produced the Petitioner along with her custodian, her husband and daughter, in the Court of the J.M.I.C. Paonta Sahib along with the warrant and later on initiated proceedings against the rival parties of village Kishan-kot under Sections 107 and 151 of the CPC He thus denied all charges of misbehavior and rape against him levelled by the Petitioner in her complaint.

13. Said Shanti Ram was also examined by the learned S.D.M. in his Court on November 30, 1987, on oath, when he stated that he was not related to the Petitioner in any manner but her husband Sumer Chand was distantly related to him as his nephew. That he was in occupation of a quarter in the C.C.I. Colony Rajban and on August 6, 1987 at about 10 or 10.30 p.m. the fourth Respondent called him to the police-post on telephone and he told him that he should keep in

his custody said Sumer Chand, his wife, the petitioner and their child in his quarter and should produce them before him next morning. These three persons thereafter remained in his quarter for the night and next morning he produced the Petitioner in the police post-Rajban,

14. The S.D.M. in his report gave the findings which are reproduced as follows:

From the statement and contents of complaint, it is found that Smt. Kamla Devi was married to one Shri Sumer Chand r/o Dhimon some four years back. There is dispute going on between husband and wife in the civil court and Smt. Kamla Devi has filed a suit for maintenance in the court of Id. Sub-Judge, Paonta Sahib. For the last more than two years Kamla Devi is residing with her father at Gorkhu-wala. It has come on the record that a search warrant was issued by Ld. Sub-Judge, Poanta and as a consequence of this Smt. Kamla Devi was arrested at about 8.00 p.m. on 6-8-1987. At the time of arrest of Smt. Kamla Devi the President of Gram Panchayat, Shri Birender Singh and Shri Shupa Ram r/o village Salwala offered the bail of Kamla Devi but Shri Qutab Din did not agree to accept for the same. If admitted that he was not authorised to take the bail then I fail to understand that how she was handed over to Shri Shanti Swarup who is in a distant relation of Shri Sumer Chand husband of Smt. Kamla Devi. As stated above the relations of Smt. Kamla Devi with her husband are not good and she has already filed a suit before Sub-Judge, Paonta so the plea that Smt. Kamla Devi stayed with her husband at the place of Shri Shanti Swarup on the night of 6-8-1987 is a after thought and cannot be relied upon. There are instructions from various courts that a lady is not to be arrested or called to the police station after 5 p.m. Even if, the circumstances warrants so then they should be arrested by lady Police and if Lady police cannot arrest then at least lady police should be available during all the proceedings. In the instant case neither there was lady police at the time of arrest nor lady police was present at Police Post. The time of arrest has admitted to be 7 p.m. by the police official himself. So in this way the police has erred. Regarding the second allegation of outraging the modesty it is difficult to ascertain at this stage because even the lady has herself complained after five days of instance (sic. incident) having taken place.

15. The Inspector General of Police (C.I.D.) has submitted his report on July 12, 1988 wherein, he inter-alia, recorded the finding which in brief, are as follows:

"That the fourth Respondent on August 6, 1987 brought the Petitioner from her parental house at Salwala in compliance with the warrant u/s 97 of the Code of Criminal Procedure at night which was improper especially when the returnable date of the warrant was September 3, 1987, that is, 27 days away which was against instructions contained in the Police Rules regarding/handling of females, and despite the explanation of the fourth Respondent that he had to immediately leave for village Kishan Kot apprehending breach of peace over-there, did not mitigate his mistake in executing the warrant at night when plenty of time was available to him for its execution and, after recovery, not producing her before the Court forthwith.

That from the record it has been proved that the Petitioner remained at the police post Rajban at-least till midnight after she was brought from Salwala.

It was not proved that after mid-night the fourth Respondent kept the Petitioner confined in his quarter till 1.30 p.m. of the following day or that she was raped or terrorised by the fourth Respondent during the night.

That as a result of enquiry by the Dy. Section P. Paonta, the Superintendent of Police, Sirmour, had administered a warning to the fourth Respondent and that it has not been proved that the fourth Respondent was a favourite of S.P. Sirmour and that he was given mild punishment as his past record was good, according to the said Superintendent of Police concerned.

16. The report No. 18 in the daily-dairy register of the police post, Rajban dated August 6, 1987 at page 50 has been recorded by the fourth Respondent in his own hand with regard to the "sapurdari" of the Petitioner after she was brought from her parental house at Salwala which when translated into English would read as follows:

It has been recorded at 10.40 p.m. that at this time himself, the Head Constable along with Shri Nihaloo constable No. 50 who had left the police post vide report No. 15 has come back after executing the warrant from the Court of JMJC Paonta Sahib u/s 97 of the CPC in village Salwala along with the accused Smt. Kamla Devi and her husband, Sumer Chand. Since the time has become rather odd, the accused aforesaid cannot be produced before the S.D.J.M. Sahib Paonta as it would not be proper to produce at his residence at this time. Further the police post did not have any lock up for ladies. In view of this the accused aforesaid along with the complainant Sumer Chand is being entrusted to Shri Shanti Prashed s/o Dhanoo Ram resident of Colony Rajban who is closely related to the complainant after issuance of proper instructions to him as the accused would be produced before the SDJM Paonta Sahib on the following day.

17. From the narrations of the foregoing facts and circum stances of the case, it is clear that there are un-equivocal findings on record that the fourth Respondent went to execute the warrant u/s 97 of the CPC for the recovery of the Petitioner to village Salwala just one day after its receipt in the Police Post, Rajban, and that too at night when there were still 27 days at his disposal for executing the said warrant and it has been held by the enquiring authorities that bringing the Petitioner from her parental house in the teeth of all opposition and inspite of offering huge security amount for her production in the police post or in the court concerned on the very next morning, was improper. It has also been proved that the Petitioner was kept in the police post at Rajban along with her small kid till mid-night. After this, there are two different versions. According to the Petitioner, after having been maltreated and threatened at the police post till mid night, the fourth Respondent removed her to his residential quarter near the police post where she was subjected by him to forcible sexual intercourse and was kept confined in his quarter till 1.30 p.m. on the following day. According to the fourth

Respondent, however, she (the Petitioner) was given in the custody of Shanti Sawroop/Shanti Ram, resident of Sirmauri Tal who had a quarter at that time in the Aa-drash Colony Rajban as he was an employee of the C.C.I. over there, who had kept the Petitioner along with her baby, her husband Sumer Chand and her brother in his quarter and produced them in the police post next morning at 7.a.m. The S.D.M. Paonta, however, has not believed this story of the fourth Respondent and has described it as an after-thought but he has at the same time stated that has not been proved that the Petitioner was subjected to forcible intercourse by the fourth Respondent during that night since she disclosed this fact only five days after the incident.

18. Obviously, there could not be any direct evidence on the point that the Petitioner was removed to his residential quarter by the fourth Respondent and subjected to forcible intercourse. However, whatever the facts and circumstances have come on record, are clearly indicative of the fact that prima facie the allegations of the Petitioner in this behalf cannot be said to be unfounded for the following reasons:

The fourth Respondent showed an undue haste and anxiety to execute the warrant in question. He has himself admitted that he was aware of the fact that the Petitioner could not be arrested without the help of a lady constable and that before proceeding to Salwala he did make an enquiry from the Station House Officer, Paonta Sahib, as the said police-post was under the said police station, to make available the services of the lady police constable but he was told that she had proceeded to Junga for the purpose of participation in some State function. The S.H.O. concerned has denied this. It is also clear that this plea on the part of the fourth Respondent is again an after-thought. When he (fourth Respondent) submitted his first reply in the complaint filed by the Petitioner before the S.D.M. Paonta Sahib, he had taken no such plea whatsoever. In any case if he had this knowledge he could easily defer the execution of the warrant in question to the next day when he could bring said Kamla and produce her in the court concerned straightway during the day time and the fact that he executed this warrant at night in spite of opposition and offer of an undertaking to produce her on surety amount, prima facie, shows that the fourth Respondent had an ulterior motive to bring the Petitioner to the police post at night.

It is also clear from the file of the S.D.J.M. that the warrant enjoined upon the fourth Respondent to search the house of Bholar and his wife in Salwala for the recovery of Kamla Devi where her maternal grandfather and grand mother lived respectively and not the house of her parents in the same village, whereas as per the fourth Respondent he went straight to the parental house of the Petitioner and when he found her there, he showed her the warrant and expressed his desire to take her to the police post, Rajban immediately under his custody. If his intention was bon-a-fide he could easily report back to the court-concerned that he did not execute the warrant since the Petitioner was not in the house of Bholar but in her parental house and that in case the court so desired he would

produce her from there and could have left her in her parental house at least after taking an undertaking from the Pradhan of the Panchayat, Sh. Virender Singh, as offered by him, that the Petitioner should be produced in the police post next morning.

The fourth Respondent in his very first version before the S.D.M. has stated that although he intended to produce the Petitioner before the SDJM Paonta Sahib immediately, after she was brought to the police post, Rajban but he could not do so as there were two rival parties at the police post who has quarrelled and created a law and order problem in village Kishan Kot and he was compelled to go there immediately as similar quarrel five years earlier had resulted in a murder. It is, however, clear from the contents of diary reproduced above that in the report the fourth Respondent had not stated this as a reason for the Petitioner being handed over to the custody of Shanti Ram but he has rather stated therein that since it was an odd hour of the night he did not think it proper to produce her (Petitioner) before the SDJM, Paonta Sahib at his residence. He has then later on also came out with the explanation that while he was bringing he Petitioner to the police post, he tried to catch hold of any vehicle to take her to Paonta Sahib immediately but could not do so, which is again an after-thought. He has also stated in his version before the SDM that this Shanti Ram was related to the petitione and she (Petitioner) was handed over to him Sh. Shanti Ram, however in his statement before the S.D.M. has given a clear lie to this assertion of the fourth Respondent. According to him he was not related to the Petitioner at all and was distantly related to Sumer Chand who was his distantly related BHANJA (nephew). Now in these circumstances as the SDM has also stated, how could the fourth Respondent have handed over the custody of this lady to this Shanti Ram when he was so particular is not leaving her in the custody of her parents even during that night especially when, admittedly, the relations between the Petitioner and her husband Sumer Chand were highly strained and she had clearly cut off all relations with him some three years prior thereto.

The Fourth Respondent has then cleverly brought in Deep Ram, the brother of the Petitioner to depose that this Deep Ram remained with the Petitioner throughout after she was brought from Salwala and till she was produced before the SDJM at Paonta Sahib. The Petitioner and her brother, however, have deposed that although Deep Ram did come to the police post after she was brought there but the fourth Respondent terrorised and threatened him and thus drove him away. This appears to be correct and we have no doubt in our mind that this Deep Ram was not allowed to remain with the Petitioner. This is clear from the statement of Shanti Ram before the SDM where he has clearly stated that only the Petitioner, her child and her husband Sumer Chand had stayed with him in his quarter at Rajban during the night in question. We are, however, of the opinion that there are. circumstances on record which throw great doubt on the fact whether this Shanti Ram was in occupation of any quarter in the Rajban Colony or Aadrash Colony. Admittedly, his house in village Sirmauri Tal is at a

distance of 3 kms from the place of his posting in the C.C.I. at Rajban which is well connected by road and he goes to his house on bicycle which hardly take 15 minutes and if goes on foot it just takes half an hour or forty minutes. It is also clear that in his statement before the SDM on November 20, 1988, this Shanti Ram had claimed that he was still in occupation of a quarter in Rajban Colony but later on an attempt was made to adduce evidence that he has kept a private quarter in the house of some shopkeeper in Aadarsh Colony from Nov, 1986 to Oct., 1987 and thereafter left it. But this again appears to be a framed-up story. Apparently, this Shanti Ram has been working in the C.C.I. factory at Rajban since 1980. It is therefore not understandable why he should have taken a house on rent of Rs. 50/ p.m. just in November, 1986 and vacated it in October, 1987.

19. it appears that this type of evidence has been brought on record without of course any documentary proof, to prove the assertion of the fourth Respondent that the Petitioner was kept in the quarter of Shanti Ram.

20. In fact the fourth Respondent has from time to time brought in a lot of improvements in his case in order to plug the loopholes in his defence. For instance, although in his very first reply before the SDM, he had nowhere stated that he was living in his quarter at the relevant time with his wife and that during that very night he had three guests in his quarter which consisted of only two rooms. Then he has also asserted later on that he had made attempts to get a vehicle to take the Petitioner to be produced before the SDJM at Paonta Sahib that very night but could obtain none whereas it is a fact of judicial notice can be taken that Paonta Sahib is an industrial town which is growing fast with lot of road and numerous vehicles ply thereon day and night. It is also an admitted fact that Salwala village, at that time, fell not within the jurisdiction of police post Rajban but under the police-post Singhpura. The Respondent in these circumstances had a number of justifications in not executing the warrant in the manner he did. For instance, when this warrant was received in the police post Rajban he could return it immediately with the report that the same should be sent to police post Singhpura for execution. Then if at all he was so mindful of his duty to execute the warrant, he could go there during day time to execute the warrant and produce the Petitioner before the SDJM on the same day during the hours before the Sun-set and after Sun-rise. Further he could also say that the said Sumer Chand had wrongly obtained the warrant against Bholar, the grand-father of the Petitioner and that no search was justified of the house of said Bholar as he found the Petitioner living in her parental house with her parents. In fact, according to the constable Nihaloo, who was accompanying him, the Petitioner at the time when they arrived at the house of her father Mansha Ram, was sitting in the courtyard of his house. In these circumstances, there was no question of search of any premises for her recovery as she was not kept in unlawful confinement and the fourth Respondent could report to the court accordingly. The fourth Respondent however, even had subsequently tried to make an improvement by adducing evidence to show that the Petitioner at the time of his arrival in village Salwala was proceeding from her parental house to the house of

her maternal grand father, Bholar and that then she was stopped by him as her husband Sumer Chand pointed to him that she was his wife Kamla and that in these circumstances he did not have the necessity of searching any premises. The fourth Respondent, however, instead of refraining to execute the warrant in the face of these facts and circumstances, has gone out of his way to apprehend the Petitioner as if she was worst criminal and thus completely shutting his eyes to the wholesome provisions of the Section 97 of the Code of Criminal Procedure under which the warrant in question was issued which was meant not to confine the Petitioner as he did but rather to recover her from an illegal confinement, if any. In fact the fourth Respondent has been describing the Petitioner as an "accrued" as if the person for whose benefit the warrant u/s 97 of the CPC is issued is a criminal to be arrested and produced before the Court.

21. The strong contention being set-forth on behalf of the fourth Respondent against the assertion of the Petitioner that she was subjected to forcible sexual intercourse and other indignities during the time she emailed in the custody of the fourth Respondent is that the Petitioner failed to take the first opportunity to make these accusations against the fourth Respondent when she was produced by him in the Court of the S.D.J.M. Paonta Sahib, on August 7, 1987. In fact this factor has also weighed with the two enquiring officers, namely, the Inspector General of Police, (CID) and the S.D.M. Paonta Sahib. We, however, feel that in the facts and the circumstances of the case this should not be taken as sole factor to absolve the fourth Respondent of such a serious charge. The Petitioner has explained that she could not complaint to the S.D.J.M. at the time when she was produced in his Court against the fourth Respondent as she was still under the influence of terror that the fourth Respondent had created in her mind. In the present set of circumstances this explanation cannor be brushed aside off hand. Apparently, the Petitioner belongs to the lowest strata of the society being a Harijan lady and the fourth Respondent was treating her as an accused all the time and was also in fact describing her as such in various official documents prepared by him in this connection. In this background, it cannot be ruled out that the Petitioner was living under trauma that she might have been booked for a very serious crime as she was arrested from her parental house at night and was being treated as an accused and, therefore, when she was let off in the Court without her facing any criminal charge, she hastened to leave the court without raising any further issues in this connection especially when the fourth Respondent was also present in the court itself. It is, further on record that on coming back to home she narrated the entire incident to her father and she even picked up the courage after five days of the incident to make a complaint against the fourth Respondent in the Court of the S.D.J.M. at Paouta Sahib.

22. This Court in ILR 1984 H.P. 916, Anita Panwar and Ors. v. State of H.P. and Anr. has categorically held as follows-

It is a matter beyond the pale of doubt, therefore, that the provisions of Section 160 of the code of Criminal Procedure are not confined in their operation only to

witnesses, Sub-section (1) of Section 160 and its proviso, therefore, apply not only to witnesses but also to an accused, whether the person concerned is named as such or suspected to be involved in the commission of an offence which may be under investigation. As a necessary corollary and consequence, the protection afforded to a male person under the age of 15 years and to a woman under the said proviso against being required to attend before a police officer making investigation of an offence under Chapter XII is available not only to a person falling within the said category if he or she is a witness but also if such a person is an accused or a person suspected to be involved in the commission of an offence. No such person, as a result of the legislative injunction contained in the proviso to Sub-section (1) of Section 160, can be required to attend for any purpose connected with the investigation of an offence under Chapter XII at any place other than the place in which such male person or woman resides. Similar is the effect of the amended sub-para (3) of para 26.18-A of the Punjab Police Rules, 1934, Vol. III.

23. This meant that a lady even if suspected of the commission of any crime cannot be called to the police station even for the purpose of investigation and a duty is cast upon the investigating agency to examine her at the place of her residence. Not only that, this Court has also gone to the extent of getting the Polite Rules para 26.18-A amended in consonance with the provisions of law in the manner set out below-

No male person under the age of 15 years or woman shall be required by any police officer making investigation under Chapter XII of Code of Criminal Procedure to make attendance at any place other than the place in which such male person or woman resides.

24. In view of these facts and circumstances of the case, we are firmly of the view that the allegations of the Petitioner that she was kept in unlawful confinement by the fourth Respondent during the night intervening August 6, and August 7, 1987, and was subjected to forcible sexual intercourse by the fourth Respondent cannot be said to be, prima-facie, devoid of any basis. We, therefore, consider it expedient in the interest of justice that a criminal case should be registered against the fourth Respondent and thoroughly investigated. We, accordingly direct that a case under Sections 376 and 342 of the Indian Penal Code be registered against the fourth Respondent (Kutab Din) and in view of the facts and circumstances attendant upon to this case, we further direct the first Respondent (State of Himachal Pradesh) to entrust this case to the Central Bureau of Investigation for investigation. We are further of opinion that in view of what has come on record, the fourth Respondent deserves to be placed under suspension forthwith. The writ petition is disposed of accordingly.