
(2011) 12 AHC CK 0390
In the Allahabad High Court
Case No : Criminal M.W.P. No. 1797 of 2011

Mohammad Qasim

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Criminal Procedure (Amendment) Act, 2009 — Section 161(3), 164(1)

Citation : (2011) 12 AHC CK 0390

Hon'ble Judges : Ramesh Sinha, J;Amar Saran, J

Bench : Division Bench

Judgement

Amar Saran and Ramesh Sinha, JJ.—We have heard Shri Mukhtar Alam, Learned Counsel for the petitioner, Shri D.R. Chaudhari, learned Government Advocate assisted by Shri Vimlendu Tripathi, learned Additional Government Advocate, Shri Sanjay Kumar Jaiswal, Learned Counsel who appeared on behalf of Additional Solicitor General of India. Dr. S.B. Upadhyay, Director Forensic Science Laboratory, U.P., Shri S.K. Raghuvanshi, Special Secretary (Home), U.P. are also present.

2. We are informed about the developments that have taken place in pursuance of the earlier orders of this Court. Our attention has especially been drawn to the "Action taken" report filed today which mentions action taken on seven points which are as under:

- (1) Training of medical officers,
- (2) Improvement in mortuaries,
- (3) Sanction of posts in F.S.L./Existing Labs,
- (4) Finalization of proforma,
- (5) Upgradation of F.S.L./Existing Labs,
- (6) Disposal of old samples of viscera collected in districts and

(7) Meeting of State Level Committee.

3. On the next listing we would like greater details on the aforesaid points and how shortfalls are estimated regarding the level of knowledge of medical doctors engaged in forensic medical work, or the conditions of mortuaries, or the shortage in posts in Forensic Science Laboratories and the facilities therein, or with regard to the problem of over-crowding of old samples of viscera in places of storage, so that we can evaluate whether the measures suggested are equal to the tasks involved. We would also like to have feedback/progress reports every three months on the improvements, if any, as a result of the interventions.

4. We also direct the Finance department to provide funds for the aforesaid plans, and provide details to the Court on the next listing about the amount and time schedule by which funds are to be released for the aforesaid purposes and how the Government is planning to monitor that the funds are properly utilized in a time bound manner.

5. If human rights are to be preserved and simultaneously the interest of society is also to be protected then scientific investigation is necessary both for ensuring that innocent persons are not implicated in crimes by the police for showing its success in solving cases on the basis of third degree measures or trumped up witnesses, and at the same time the actual offenders do not escape identification and punishment.

6. We would like the State Government to come up with a plan on the next listing for constituting forensic units in each district with one or more officers, a superior referral forensic unit at the divisional headquarters level and a specialized forensic department at the State level, in a similar manner to the P.H.Cs., C.H.Cs., District Hospitals and specialized medical centres at State level that we see under the Government health scheme.

7. The aforesaid "Action taken" points relate to some important areas for intervention, and are largely concerned with forensic work by specialized agencies. But we need a plan of action for actually carrying out investigations at the ground level by local investigators. This has been alluded to in the Action point No. 4 on "Finalization of Proforma." But there are other issues in this respect which we shall also be referring to hereinafter.

8. We would like the State Government also to come up before this Court with a time frame for separating the investigating wing of the police (which will help such officers to specialize in forensic work) from the law and order and V.I.P. and other duties wing, which has been repeatedly emphasized by the Apex Court in *Prakash Singh v. Union of India*, AIR 2006 SCW 5233 : 2006 (3) ACR 3061 (SC) and *Pramod Kumar and Another Vs. Bihar Vyavasayik Sangharsh Morcha and Others*, , as also by decisions of this Court and to which the State and Union are also committed as per their own reports. The reasons for failure so far in carrying out these directions may also be indicated. Also what mechanism is to be devised for identifying intelligent, diligent and honest police officers for assigning them

the specialized investigation work, when the separation of investigation from law and order functions is carried out. Public is more likely to have rapport with crime police men in plain clothes compared to the law and order police who are frequently in conflict with the public. Freed from law and order and other duties (which according to a Police Commission report take up 70% of the police officers time), the investigation and consequent prosecution of the offender can be expedited.

9. As a starting point we think that within a period of 3 months or so this separation of functions between the investigating and law and order wings be brought about in Meerut district which in recent reports has been described as the crime capital of India, and and in a phased manner, if there are impediments in bringing about this change all at once, separation of functions between the investigation and law and order wings may be brought about in the KAVAL and other important towns starting from urban areas and proceeding to rural areas in all districts in U.P. The plan of action in this regard may be spelt out by the State Government in the next hearing.

10. We would also like to be informed about the details for the training programme in forensics and scientific investigations that are needed to be provided to all police officers engaged in investigation work. What are the bodies for training in forensic investigations in U.P. and also at the centre [for e.g. the National Institute for Criminology and Forensic Sciences (N.I.C.F.S.) or the institutions run by the Bureau of Police Research and Development, (B.P.R.D.)] and the plans for bringing about their more effective intervention. We would also like the response of the Union Government and the concrete steps that are to be taken in response to the proposal dated 18.10.2011 sent to it by the State Government regarding the development of the forensic science laboratories in the State as described in the said letter.

11. this Court would also like to be furnished with details of a protocol that may have already been or is in the process of being developed as to how investigation is actually to be carried out when a major crime by known or unknown offenders is reported. We would like to be informed whether the protocol mentions points such as whether the scene of the crime is to be cordoned off by a coloured ribbon by the Investigating Officer, where no one except the investigators and the forensic experts may enter, their manner of collecting samples, so that it is not tampered with. Even politicians, senior district officials, V.I.Ps. and media should not have permission to enter such areas. In this context we may recall the mess and interference with investigation that resulted because of the free access of persons to the scene of crime as in the "Arushi" and other sensational cases, which substantially damages the investigation. The manner and time frame by which the photographers and other specialized forensic personnel of different fields are to carry out their tasks-dog squad, finger or foot print collection, hair, vomit, excreta, blood or seminal stains and other items for D.N.A. or other testing, also needs to be spelt out.

12. The time period for submission of D.N.A. or other forensic science laboratory (F.S.L.) reports of the samples collected also needs to be specified, as delays facilitate accused corruptly approaching the analysts concerned and obtaining dishonest reports. This can prove fatal for proper investigations and for securing the conviction in Court of the actual offenders.

13. The Court needs to be apprised of steps that are being taken for preventing political interference or transfer of important investigations midway to other officers or wings because the accused enjoys political or economic clout, and is able to twist the investigation to suit his needs. It is regrettable that often transfer and postings are dictated by politicians who exercise undue influence for furthering personal agendas which are detrimental for objective investigations of crimes. We would also like to be informed as to the period when the State Police Commission and the Police Establishment Board are likely to be established as mandated by the Supreme Court in *Prakash Singh (supra)* both for acting as a watch dog body for receiving complaints of officers to keep up their morale and also for regulating transfers and postings of officers above the rank of Dy. S.P. in the case of the Police Commission and officers below that rank by the Police Establishment Board. This will help to a large extent in insulating the police from unwarranted pressures by politicians and outsiders.

14. this Court should also be informed about the steps taken for introducing audio-video recording of the statements of witnesses to the police or before the Magistrate which have been made permissible by the newly introduced proviso to Section 161(3) and proviso to Section 164(1) by the Criminal Procedure (Amendment) Act 5 of 2009 effective from 31.12.2009.

15. The Court would also like to be furnished with information and measures taken for developing tools for combating cyber or computer crimes and also for analyzing inputs from mobile or other telephones for crime detection.

16. We should also be furnished with information about the system which exists or is being developed for providing legal and other expert opinion to the Investigating Officers on complex and technical matters requiring specialized knowledge.

17. The Court would like to be informed of the mechanism in place for collection of real time criminal intelligence for tackling crimes of terrorism, organized crime and drug trafficking, economic crime and crimes having inter-State ramifications etc.

18. In the first order passed by this Court taking cognizance on this P.I.L. on 28.1.2011 certain unsolved sensational crimes relating to the murder and loot at the D'dmas show room on 12.1.2011, the Robbery of R 1.5 crore in the showroom of Prashant Agarwal, a sarafa trader in Kotawali area, Chetna Samia's murder case of the year 2010, highway robbery of lakhs from the clerk of a trader in 2009 at Phaphamau, robbery of Sisodia jewellers in 2001, Robbery at a showroom of Rana jewellers, were referred to. The recent crimes relating to the

robbery of an A.T.M. machine in Allahpur on 14.5.2011, the murderous attack on M.L.A. Nand Gopal Gupta on 9.2.2011, the highway robbery where a lawyer was shot dead on 13.7.2011 by miscreants who took away his car, the high profile murder case of an ex-army officer's wife Alka Pandey on 20.9.2011, and the R 44 lakh robbery and murders of two security personnel who tried to deposit money of a H.D.F.C. bank A.T.M. at George Town on 14.10.2011 and the murder of a 60 year old wife of a doctor who was brutally stabbed repeatedly and killed by unknown assailants who decamped with valuables and cash from her house in Mumfordganj on 29.3.2011 may be added to this list. We would now like the D.I.G. Allahabad to send officers not below the rank of C.Os. who were supervising these investigations to inform this Court regarding the progress of investigations in these sensational crimes, and the reasons for failure, if some of these crimes still remain unsolved.

19. We also note that a committee has been constituted to implement the directions of this Court, which consists of (1) Principal Secretary, Law, (2) Principal Secretary, Health, (3) Director General of Police, (4) Principal Secretary, Finance and (5) Additional Solicitor General, State of U.P. representing the Central Government. In view of the importance and multiple nature of issues which are required to be addressed we would like the said committee to be headed by the Chief Secretary. The learned Government Advocate prays for and is allowed four weeks" time to file a comprehensive affidavit on all aspects and a compliance report mentioning greater details of the actions taken earlier and in pursuance of the present order and to communicate this order to the Government parties concerned. The Union of India is allowed four weeks time to file an affidavit with regard to the directions relating to the Central Government. Registry to also communicate this order to the parties concerned in 10 days.

List this case on 17.1.2012.