
(2010) 07 AHC CK 0304

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 9489 of 2010

Nagina Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 151, 154, 156(3)
Penal Code, 1860 (IPC) — Section 147, 148, 323, 324, 354
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 17(1)(a), 17(1)(b)

Citation : (2010) 07 AHC CK 0304

Hon'ble Judges : Sabhajeet Yadav, J and B.K.Narayana, J

Final Decision : Disposed Of

Judgement

Sabhajeet Yadav And B.K. Narayana, JJ.—By this petition, petitioners have sought relief of writ of certiorari for quashing the First Information Report dated 17.5.2010 lodged against them under Sections 147, 148, 452, 324, 323, 504, 506 I.P.C. registered as Case Crime No. 244A of 2010 at P.S. Kuber Sthan, District Kushi Nagar, contained in Annexure1 of the writ petition and further relief in the nature of mandamus commanding the respondents and their subordinate officials not to arrest the petitioners in pursuance of aforesaid case crime and to issue any other suitable writ, order or direction which this Court may deem fit and proper in the circumstances of the case have also been sought for.

2. The aforesaid reliefs are grounded on the facts that the aforesaid F.I.R. dated 17.5.2010 was lodged against the petitioners by respondent no.4 as counterblast of two F.I.R. lodged by the petitioners; one of which was registered as Case Crime No. 244 of 2010 under Sections 147, 323, 504, 506 I.P.C. at P.S. Kuber Sthan, District Kushi Nagar, on 16.05.2010 though it was not registered in proper sections and another F.I.R. was registered as Case Crime No.221 of 2010 under Sections 147, 376, 354, 504, 506 I.P.C. at P.S. Kuber Sthan, District Kushi Nagar.

3. It is stated in the writ petition that on 19.4.2010 (wrongly typed in Annexure2

of the writ petition as 13.4.2010) in collusion and conspiracy of village Pradhan, namely Ramayan Prasad Chauhan S/o Ram Raksha Chauhan, Village Badgaon, P.S. Kuber Sthan, District Kushi Nagar, the Station Officer of said police station namely Sri Mohan Ram, Constables Munna Upadhyay, Vimal Kumar Pandey and Jai Prakash Singh, P.S. Kuber Sthan had arrested the petitioner no. 1 Smt. Nagina Devi W/o Aadya Singh and her husband Aadya Singh and two minor daughters namely Vandana aged about 15 years and Archana aged about 14 years about 4 P.M. from her house and brought them at police station Kuber Sthan District Kushi Nagar. Thereafter, in the night at about 11 P.M. on 19.4.2010 Sri Mohan Ram Station Officer, P.S. Kuber Sthan had raped her daughter Km. Vandana in police station and Constables Munna Upadhyay, Vimal Kumar Pandey and Jai Prakash Singh of P.S. Kuber Sthan and Ramayan Prasad Chauhan S/o Ram Raksha Chauhan, Village Pradhan of village Badgaon P.S. Kuber Sthan had outraged the modesty of her another younger daughter namely Archana in the police station in the said night (in the manner disclosed in the FIR). And while doing so the aforesaid police personnels had also threatened the petitioner no.1 and her husband and daughters that in case they will speak about the same they may be falsely implicated in other serious offences like smuggling of Ganja and Charas.

4. It is stated that on 20.4.2010 the Station Officer, P.S. Kuber Sthan, District Kushi Nagar had challaned/sent the petitioners no.1, 2 and 3 alongwith Aadya Singh under Section 107, 116, 151 Cr.P.C. and had brought them before Sub Divisional Magistrate, Padrauna. When they were brought before Sub Divisional Magistrate, Padrauna, they had moved application to be released on bail but Sub Divisional Magistrate concerned did not accept their request instead thereof sent them to District Jail, Deoria. Thereafter, they were bailed out on 22.4.2010 and released from jail on 23.4.2010. Thereafter the petitioner no.1 had approached the Police Station Officer, P.S. Kuber Sthan to register the aforesaid case but by abusing the petitioner no.1 Station Officer of said Police Station had refused to register the FIR against himself and other police personnels and Ramayan Prasad Chauhan. Aggrieved by said refusal the petitioner no.1 had sent an application through registered post for registering the aforesaid case crime to the Superintendent of Police, District Kushi Nagar purported to be U/s 154 (3) of Cr. P. C. but when no F.I.R. was lodged against the aforesaid police personnels and Ramayan Prasad Chauhan, then on 1.5.2010 an application was moved before A.C.J.M., Kasia District Kushi Nagar for lodging an F.I.R. against the aforesaid police personnels and Ramayan Prasad Chauhan, Village Pradhan of the said village. Thereupon on 3.5.2010 while exercising the power U/s 156(3) Cr. P. C. A.C.J.M., Kasia had directed the Circle Officer, Sadar, Padrauna, District Kushi Nagar to lodge an FIR of aforesaid crime at P.S. Kuber Sthan against the aforesaid persons and investigate the same. Thereupon on 4.5.2010 an FIR was lodged against Sri Mohan Ram, Station Officer, P.S. Kuber Sthan, District Kushi Nagar, Constables Munna Upadhyay, Vimal Kumar Pandey, Jai Prakash Singh, P.S. Kuber Sthan, District Kushi Nagar and Ramayan Prasad Chauhan S/o Ram

Raksha Chauhan, Village Pradhan of Badgaon, P.S. Kuber sthan, District Kushi Nagar under Sections 147, 376, 354, 504 and 506 IPC and registered as Case Crime No. 221 of 2010 at P.S. Kuber Sthan, District Kushi Nagar. The copy of aforesaid FIR is on record as Annexure 2 of the writ petition.

5. It is further stated in the writ petition that on 16.5.2010 at 6.00 A.M. in the morning Sri Suresh Chauhan S/o Ram Raksha Chauhan and Sri Bhuwali alongwith several other persons, mentioned in Annexure 3 of the writ petition, had approached the petitioners no. 1, 2 and 3 and threatened them to compromise in the rape case lodged by the petitioner no.1. On refusal to do compromise in the said case, the aforesaid persons had beaten the petitioners No.1, 2 and 3 and their other family members and caused several injuries including fractures upon six persons from petitioners side. Thereupon the petitioners had lodged FIR against them on 16.5.2010 which was registered as Case Crime No. 244 of 2010 under Sections 147, 323, 452, 504, 506 IPC at P.S. Kuber Sthan, District Kushi Nagar but the said FIR was not registered under proper sections according to the nature of injuries sustained by the persons of petitioners' side. A copy of aforesaid FIR and the copies of injury reports of Nagina Devi, Archana Singh, Vandana Singh, Sindu Singh and X-ray report of Vishwamber Singh are filed as Annexures 3 and 4 of the writ petition. It is stated that the present case against the petitioners is counterblast of aforesaid two criminal cases filed by the petitioners. It is stated that in a Case Crime No. 244A of 2010 lodged against the petitioners under Section 147, 148, 452, 324, 323, 504 and 506 IPC the police are trying to arrest the petitioners, as such they have approached this Court seeking relief for quashing of aforesaid FIR and stay of arrest with further prayer for issuance of any other suitable writ, order or direction as this Court may deem fit and proper in the circumstances of the case.

6. The writ petition was filed in the Summer vacation on 2.6.2010 but the same was taken up as fresh for hearing on 9.6.2010 by this Court. Having regard to the gravity of offences alleged to have been committed by Sri Mohan Ram, Station Officer and three constables namely Munna Upadhyay, Vimal Kumar Pandey and Jai Prakash Singh of P.S. Kuber Sthan, District Kushi Nagar and Ramayan Prasad Chauhan S/o Ram Raksha Chauhan R/o Village Badgaon, P.S. Kuber Sthan, District Kushi Nagar under Sections 147, 376, 354, 504 and 506 IPC registered as Case Crime No. 221 of 2010 at said police station, the learned counsel for the petitioners has urged that the F.I.R. under Sections 147, 148, 452, 324, 323, 504, 506 IPC registered as Case Crime No. 244A of 2010 at P.S. Kuber Sthan, District Kushi Nagar was lodged by respondent no.4 against the petitioners as counter blast to the aforesaid criminal cases against them, at the instance of Station Officer namely Mohan Ram and other police personnels of Police Station Kuber Sthan and Village Pradhan who are involved in the case of rape and outraging the modesty of petitioner nos. 2 and 3 for pressurising the petitioners to compromise with the accused persons of Case Crime No. 221 of 2010 and to withdraw the aforesaid criminal case lodged against them. He has further submitted that in spite of order passed by A.C.J.M., Kasia District Kushi

Nagar on 3.5.2010 and on publication of aforesaid incident in daily newspapers circulated in the locality, no step has yet been taken by superior police officers against the police personnels, instead of thereof the police personnels are harassing the petitioners and are trying to arrest them in Case Crime No. 244A of 2010 registered at P.S. Kuber Sthan, District Kushi Nagar.

7. Having considered the aforesaid submission of learned counsel for the petitioners and having regard to the gravity of crimes alleged to have been committed by police personnels of Police Station Kuber Sthan, Kushi Nagar and said village Pradhan under Section 147,376,354,504 and 506 IPC registered as case crime No. 221 of 2010 at P.S. Kuber Sthan, Kushi Nagar, in the night of 19/20.4.2010 and action expected to be taken by investigation officer in the said case crime and disciplinary measures expected from Superintendent of Police, District Kushi Nagar, the case was ordered to be put up as fresh on 11.6.2010 and the Superintendent of Police, Kushi Nagar was directed to appear in person before the Court and show cause as to why appropriate action has not yet been taken against the erring police personnels. However, on that day as interim measure until further orders of this Court, the petitioners' arrest in Case Crime No. 244A of 2010 under Sections 147,148,452,324,323,504 and 506 IPC registered at P.S. Kuber Sthan, District Kushi Nagar has also been stayed.

8. On 11.6.2010 this case was taken up again by this Court and in pursuance of direction given by us Superintendent of Police, Kushi Nagar appeared before us and has also shown Case Diary of Case Crime No. 221 of 2010. We have gone through the Case Diary wherein statements of prosecutrix Vandana and Archana and other prosecution, witnesses have been recorded under Section 161 Cr.P.C., whereby the allegations levelled against Mohan Ram Station Officer of P.S. Kuber Sthan for committing rape with Kumari Vandana (petitioner no. 2) and against police personnels and Ramayan Prasad Chauhan, Pradhan for outraging the modesty of Km. Archana daughters of Aadya Singh in the night of 19/20 .4.2010 in police station Kuber Sthan have been fortified and supported. After going through the case diary of said crime we have directed the Superintendent of Police, Kushi Nagar to take appropriate action against the police personnels in administrative side and also directed the Superintendent of Police, District Kushi Nagar and Principal Secretary (Home), Government of Uttar Pradesh to provide adequate security for protection to the complainant and prosecutrix of aforesaid Case Crime No. 221 of 2010 by deputing two armed police with them at their residence with a further direction to file an affidavit about the action taken by him by the next date while putting the case afresh for hearing on 18th June, 2010.

9. On 18.6.2010 the Superintendent of Police, Kushi Nagar has again appeared before the Court and filed an affidavit of compliance. From the perusal of aforesaid affidavit, it appears that he has merely attached the police personnels at police line vide order dated 15.6.2010 passed by him, contained in Annexure8A of the said affidavit and vide order dated 15.6.2010 he has deputed

Sri Bajrangbali Chaurasia, Circle Officer, Kasia to hold preliminary inquiry in respect of case crime no. 221 of 2010 under Section 147,376,354,504,506 IPC registered at P.S. Kuber Sthan, District Kushi Nagar and in Case Crime No. 244A of 2010 registered at said police station under Sections 147, 148, 452,324,323,504,506 IPC. However it appears that the Superintendent of Police has provided two armed police to the complainants and prosecutrix referred herein before.

10. The pertinent averments made in para 4 to 10 of the said compliance affidavit filed by Superintendent of Police, Kushi Nagar on 18.6.2010 are extracted as under:

"4. That after the registration of the case (Supra) the investigation of the same was handed over to Circle Officer, Sadar in compliance of the direction of the Hon"ble court. However, since the aforesaid post was vacant the investigation was handed over to the link officer namely Circle Officer, Khandda and subsequently when the Circle Officer Sadar took over the charge and pursuant to the letter of Circle Officer, Khadda dated 10.5.2010 the investigation was transferred to Circle Officer, Sadar so that the same could be completed without any unnecessarily delay. Copies of communications dated 10.5.2010 and 19.5.2010 (transferring the investigation) are being filed hereto and marked as Annexure 1and 2 to this affidavit.

5. That on 16.5.2010 the complainant namely Nagina Devi had an altercation with some villagers and as consequent of the quarrel two cross first information reports were lodged as Case Crime No. 244 of 2010 under Sections 147, 323,504,506 and 452 of I.P.C lodged by Nagina Devi against Suresh Chauhan and 14 others on 16.5.2010 and other was lodged by Ram Ashrey against Nagina Devi being case crime no. 244A of 2010 , under Section 147, 148,452 323, 324 504, and 506 of I.P.C on 17.5.2010.

6. That considering the seriousness of the incident, and in order to ensure proper, transparent and impartial investigation the aforesaid two cases were shifted form police station Kuber sthan to police station Kotwali, Padrauna on 28.5.2010 and the investigation was handed over to SubInspector Sri Rajesh Kumar Singh. A copy of transfer order dated 28.5.2010 is being filed hereto and marked as Annexure 3 to this affidavit.\\

7. That as per the direction of this Hon"ble Court and since serious allegations have been made against police personnel, the deponent under took the following steps to ensure a fair and proper investigation, which culminate in legal consequence4s and to ensure that justice is done.

8. That in compliance of directions of this Hon"ble court and to ensure that a fair and impartial investigation could be completed at the earliest without any fear in the mind of the complainant by order dated 12.6.2010 two armed Constables namely constable 17 Ali Hasan and Constable 74 Dharmsher Saroj has been deployed for the security of the complainant and the prosecutrix. It is further

submitted that the Principal Secretary, Home, Government of U.P. has also requested to extend the period of security by letter dated 16.6.2010, since the deponent can only provide security for a limited period and security shall be extended on the direction of Principal Secretary, Home after expiry of the period of security which the deponent can provide. Copies of two orders for providing security dated 12.6.2010 and communication to the Principal Secretary, Home dated 16.6.2010 are is being filed hereto and marked as Annexure 4,5 and 6 to this affidavit.

9. That in compliance of the direction of this Hon''ble Court, since the accused persons are police personnel departmental action has been initiated against them on 15.6.2010 in which Bajrang Bali Chaurasiya, Circle Officer, Kasaya was appointed as enquiry officer. As per the procedure further action shall be taken against the accused personnel upon receipt of report of preliminarily enquiry by the aforesaid enquiry officer. The deponent under takes to ensure that strict action shall be taken in accordance with the law. A copy of order for taking departmental proceeding against the accused persons dated 15.6.2010 is is being filed hereto and marked as Annexure 7 to this affidavit.

10. That in compliance to ensure the investigation is fair, impartial and transparent, the accused police personnel have been attached to the Police Line, Kushi Nagar by order dated 15.6.2010. Copies of orders dated 15.6.2010 are is being filed hereto and marked as Annexure 8 and 8A to this affidavit.

11. After going through the aforesaid affidavit and having regard to the case diary perused on 11.6.2010 of Case Crime No. 221 of 2010 at P.S. Kuber Sthan, District Kushi Nagar, we were not satisfied about the action taken by the Superintendent of Police, Kushi Nagar as in our opinion that was not proper action against the police personnels who are involved in aforesaid criminal case, as such we have directed the case to be listed on 2nd July, 2010 as part heard before us. On that day Superintendent of Police, Kushi Nagar was again directed to appear before the Court and file an affidavit stating the action taken by him on the date fixed.

12. On 2.7.2010 in pursuance of our earlier direction given on 18.6.2010 the Superintendent of Police, Kushi Nagar has again appeared before us and filed compliance affidavit whereby he has informed the court that Sri Mohan Ram, the then Station Officer of P.S. Kuber Sthan, Constables Munna Upadhyay, Vimal Kumar Pandey and Jai Prakash Singh of said police station have been placed under suspension vide order dated 20.6.2010 passed by him during the pendency of disciplinary inquiry against them. A copy of the order dated 20.6.2010 passed by him was also enclosed therewith. Since the FIR was lodged against the police personnels in respect of commission of offence of rape and outraging the modesty of girls in police station and from perusal of case diary of said case crime it appears that the prosecution witnesses have supported the story of F.I.R. in their statements recorded by the Investigating Officer under Section 161 Cr.P.C., therefore, in given facts and circumstances of the case, in

our opinion, instead of taking action under Rule 17 (1)(a) of U.P. Police Officers of the SubOrdinate Ranks (Punishment and Appeal) Rules, 1991, and placing the police personnels under suspension during the pendency of inquiry, it was proper course to place them under suspension under Rule 17 (1)(b) of the said Rules during the pendency of investigation, inquiry and trial of the said case crime. As such, we have again directed the Superintendent of Police, Kushi Nagar to take proper action in administrative side against police personnels involved in the aforesaid criminal case and also inform the Court about the progress of investigation in Case Crime No. 221 of 2010 registered at P.S. Kuber Sthan, District Kushi Nagar. Since at earlier occasion we have been told that the statements of prosecutrix Vandana and Archana D/o Aadya Singh were not recorded under Section 164 Cr.P.C. before the concerned Magistrate but before 2.07.2010 the same were recorded before the Magistrate concerned, therefore, we have also directed the A.C.J.M., Kasia to produce the aforesaid statements before us on the next date fixed by us and the case was directed to be listed on 9th July, 2010 before us as part heard.

13. Today on 9.07.2010 Superintendent of Police, Kushi Nagar has again appeared before this Court and filed a compliance affidavit stating therein that he has placed the police personnels under suspension vide order dated 5.07.2010 during the pendency of investigation, inquiry and trial of Case Crime No.221/2010 u/s 147, 376, 354, 504, 506 I.P.C. registered at Police Station Kuber Sthan, District Kushinagar by modifying the earlier order dated 20.06.2010. The copy of the aforesaid order has also been enclosed as Annexure1 of the said affidavit. In para 3 of the affidavit he has also stated that Investigating Officer/Circle Officer has also been directed to conclude the aforesaid investigation as soon as possible. A true copy of the direction issued by him on 07.07.2010 is on record as Annexure2 of the said affidavit. He has also filed status report of investigation submitted by the Investigating Officer to him on 07.07.2010 which has also been enclosed as Annexure3 of the said affidavit, whereby the Investigating Officer has informed that after investigation of Case Crime No.221/2010 u/s 147, 376, 354, 504, 506 I.P.C. registered at Police Station Kuber Sthan, District Kushinagar in pursuance of direction of A.C.J.M., Kasiya u/s 156(3) Cr.P.C. in absence of any evidence against the accused persons final report has been submitted as report no.7/2010 by concluding the investigation. But subsequently in pursuant to order and direction of Superintendent of Police dated 1.07.2010 he has further started the investigation and has taken the clothes of Km. Vandana on 06.07.2010 and has sent the same to Vidhi Vigyan Laboratory, Police Lines, Varanasi for examination.

14. Besides this, Sri Suresh Chandra Savita A.C.J.M., Kasiya District Kushinagar has also produced the statements of prosecutrix namely Vandana and Archana daughters of Aadya Singh recorded u/s 164 Cr.P.C. before the Magistrate and after perusal of the same we have returned the aforesaid statements to Sri Suresh Chandra Savita, A.C.J.M., Kasiya District Kushinagar. In the aforesaid statements recorded u/s 164 Cr.P.C. before Magistrate Km. Vandana has stated

that Mohan Ram Sub Inspector Police has raped her in the night of 19/20.04.2010 in police station and Km. Archana has stated that aforesaid three constables and village Pradhan Ramayan Prasad Chauhan have outraged her modesty in police station in the said night.

15. One application has also been moved by Sri Rahul Sripat, Advocate on behalf of Ramayan Prasad Chauhan S/o Ram Raksha Chauhan of Village Badgaon P.S. Kuber Sthan, District Kushi Nagar with a prayer that he may be allowed to intervene in the matter so that some real facts of the case may be placed before the Court. The aforesaid application is supported by an affidavit of Sri Ramayan Prasad Chauhan, wherein he has stated that in Case Crime No.221/2010 u/s 147, 376, 354, 504, 506 I.P.C. registered at Police Station Kuber Sthan, District Kushinagar he has been falsely implicated. It is stated in the said affidavit that story set up against him in aforesaid case is counter blast of the proceedings initiated by District Administration against the petitioners no.1 to 4. It is stated that the petitioners no.1 and 9 are real sisters and petitioner no.4 is soninlaw of petitioner no.9, who had forcibly occupied the village pond No. 384 since long back and had constructed building over half portion of the pond. Being village Pradhan he made efforts to dispossess the petitioner no.4 from the pond in question in accordance with the provisions of law by making measurement of the said pond on 19.4.2010, during which the petitioners had forcibly opposed and threatened the revenue authorities and lady police personnels, ultimately they were arrested on the spot and were sent to jail to maintain the law and order. For measurement of the pond (pokhari) on 19.04.2010 by Land Revenue Inspector and Area Lekhpal one lady Sub Inspector of Police and six lady police constables were provided by Superintendent of Police, Kushinagar on the request of Sub Divisional Magistrate, Padrauna, Kushi Nagar. True copies of the various correspondence made by the Revenue authorities and order dated 18.04.2010 passed by Superintendent of Police providing lady police constables and SubInspector have been filed as Annexures, 2, 3 and 4 of the said affidavit.

16. It is further stated in said affidavit of Ramayan Prasad Chauhan that on 20.04.2010 the petitioners no.1, 2 and 3 were medically examined but they did not offer any internal medical examination of their persons and even before the Sub Divisional Magistrate, Padrauna, they did not whisper a single word about the rape case. It is also stated that the petitioner no.2 was again medically examined on 5.05.2010, wherein neither any spermatozoa was found in her vaginal smear nor any sign of injury in private part of her body was seen. The photostat copy of medical report dated 20.04.2010 and 5.05.2010 are on record as Annexures5 and 6 of the aforesaid affidavit. It is also stated that coming to know about the F.I.R. against the deponent of the aforesaid affidavit, people residing nearby villages were deeply shocked and more than hundreds of people went to the District Magistrate, Kushinagar demanding a magisterial inquiry into the matter. The demand of mob duly published in daily news papers "Rashtriya Sahara" and "Dainik Jagaran" dated 02.07.2010 is on record as Annexure8 of the said affidavit.

17. Heard learned counsel for the petitioners, learned A.G.A. for State respondents and Sri Rahul Sripat for intervener Ramayan Prasad Chauhan, Village Pradhan of Village Badgaon, P.S. Kuber Sthan District Kushinagar.

18. The submission of learned counsel for the petitioners is that having regard to the facts and circumstances of the case and direct involvement of Sub Inspector Police and three constables of P.S. Kuber Sthan as accused in Case Crime No.221/2010 u/s 147, 376, 354, 504, 506 I.P.C. registered at Police Station Kuber Sthan, District Kushinagar, it is clear that police officers are not properly responding in the investigation of said case crime, instead thereof Investigating Officer of aforesaid case crime and superior police officers of the State Government are trying to hushup the aforesaid crime and shield the police personnels involved in that case, as such the petitioners have no hope of justice from such investigating agency of Uttar Pradesh police. In such backdrop of the case, learned counsel for the petitioners has prayed that only an independent investigating agency can properly and fairly investigate the aforesaid case crime and bring the accused persons to book. He has requested that C.B.I. should be asked to investigate the aforesaid case crime so that police personnels of State police who are accused in the aforesaid case crime and village Pradhan of the said village may be brought to book.

19. Having regard to facts and circumstances of the case and rival submissions of the learned counsel for the parties, first question arises for consideration is as to whether in given facts and circumstances of the case this Court can grant such relief without any specific prayer in the writ petition or not and as to whether the relief sought for in the writ petition can be moulded by this Court and appropriate relief can be granted without any specific prayer in writ petition under the general prayer of "to issue any other suitable writ, order or direction as in circumstances of the case this Court may deem fit and proper"?

20. In this connection, it would be useful to refer some decisions of Hon"ble Apex Court which have material bearing on the question in issue. In Dwarka Nath Vs. Income Tax Officer, Special Circle, Kanpur and another A.I.R. 1966 S.C. 81 Hon"ble Apex Court while dealing with the content and scope of power of this Court under Article 226 of the Constitution of India in para 4 of the decision observed as under:

"..... This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. That apart, High Courts can also issue directions orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country....."

21. The aforesaid decision has also been followed by Hon"ble Apex Court in Comptroller and Auditor General of India Vs. K. S. Jagannathan and another

A.I.R. 1987 S.C. 537, and in Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V. R. Rudani and others A.I.R. 1989 S.C. 1607

22. In S. Nagraj Vs. State of Karnataka 1993 Supp. (4) SCC 595, the Hon"ble Apex Court has observed that "justice is a virtue which transcends all barriers. Neither the rule of procedure nor technicalities of law can stand in its way. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness."

23. In Common Cause Vs. Union of India and others A.I.R. 1999 SC 2979, while dealing with the power of review the Hon"ble Apex Court in para 170 of the decision has observed that the powers of this Court under Article 32 and that of High Court under Article 226 are plenary powers and are not fettered by any legal constraints.

24. The view earlier taken by Apex Court in Dwarka Nath's case (supra) has again been reiterated by the Apex Court in West Bengal and others Vs. Committee of Protection of Democratic Rights West Bengal A.I.R. 2010 SC 1476. In para 37 of the decision Hon"ble Apex Court observed as under:

"37. In Dwarkanath's case (AIR 1966 SC 81) (supra), this Court had said that Article 226 of the Constitution is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. This Article enables the High Courts to mould the reliefs to meet the peculiar and extraordinary circumstances of the case. Therefore, what we have said above in regard to the exercise of jurisdiction by this Court under Article 32, must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226 of the Constitution."

25. Thus, from the legal position stated by Hon"ble Apex Court from time to time there can be no scope for doubt to hold that the Constitution has conferred wide power on the High Courts under Article 226 which is plenary power and is not fettered by any legal constraints. Neither the rule of procedure nor technicalities of law can stand in its way to reach injustice wherever it is found. This article also enables the High Court to mould the reliefs to meet peculiar and extraordinary circumstances of the case. Therefore, in our opinion if the basic facts are founded in the writ petition or brought before the Court through affidavits or otherwise, this Court is quite competent to mould the relief and grant appropriate relief to meet peculiar and extraordinary circumstances of the case, even if such relief is not specifically sought for in the writ petition. In any view of the matter an appropriate relief can be granted by this Court under general relief usually prayed for in the writ petition to the effect that " to issue any other suitable writ, order or direction as in circumstances of the case this Court may deem fit and proper".

26. Now next question arises for consideration is that as to whether in given facts and circumstances of the case it would be appropriate to direct the C.B.I. to

investigate the Case Crime No.221/2010 U/s 147, 376, 354, 504, 506 IPC registered at P.S. Kuber Sthan District Kushi Nagar against police personnels and Village Pradhan namely Ramayan Prasad Chauhan by moulding the relief prayed for in the writ petition and to investigate the other criminal cases allegedly used by the parties as counterblast of each other such as case crime No. 244 of 2010 and case crime No.244A of 2010 registered at same police station?

27. In order to answer aforesaid question it would be useful to refer some decisions of Hon"ble Apex Court, wherein the Apex Court has occasion to consider similar issue. In Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others Vs. Sahngoo Ram Arya and another, A.I.R. 2002 S.C. 2225, while considering the power of High Court to direct the investigation by C.B.I. in para5 of the decision Hon"ble Apex Court observed as under:

"5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (supra). This Court in the said judgment at paragraph 174 of the report has held thus:

"The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person"s involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given."

28. In State of West Bengal and others and Committee for Protection of Democratic Rights, West Bengal and others A.I.R. 2010 S.C. 1476, the question for consideration before the Constitution Bench of Apex Court was as to whether any direction can be given by writ court to C.B.I. to investigate the offence committed in territory of State even in absence of consent of the that State? In paras 45 and 46 of the said decision the Hon"ble Apex Court has answered the aforesaid question as under:

" 45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights,

guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain selfimposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process loss its credibility and purpose with unsatisfactory investigations."

29. Thus from a close analysis of aforesaid decisions of Hon"ble Apex Court, it is clear that so far as power to issue direction to C.B.I. to investigate the cognizable offences alleged to have been committed within the territory of State without the consent of that State is concerned, there appears no doubt about existence of such power with the High Court under Article 226 of the Constitution of India. Not only this but being the protectors of civil liberties of the citizens, the High Courts have not only the power and jurisdiction but also an obligation to uphold the Constitution and the majesty of law. However, despite wide powers conferred by Article 226 of the Constitution, while passing any order, this Court must bear in mind certain selfimposed limitations on the exercise of these Constitutional powers. Hon"ble Apex Court further observed that although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where such an order may be necessary for doing complete justice to the party.

30. Now applying the aforesaid legal proposition in given facts and circumstances of the case, we find that in F.I.R. dated 4.5.2010 registered as Case Crime No. 221 of 2010 at Police Station Kuber Sthan, District Kushi Nagar in pursuance of direction of A.C.J.M. Kushi Nagar dated 3.5.2010 under Section 156(3) Cr.P.C., the allegations of committing rape by Sri Mohan Ram, Subinspector, Police/ Station Officer of P.S. Kuber Sthan with Kumari Vandana daughter of Sri Aadya

Singh and outraging the modesty of Kumari Archana by Police Constables Munna Upadhyay, Vimal Kumar Pandey and Jai Prakash Singh, P.S. Kuber Sthan District Kushi Nagar and Ramayan Prasad Chauhan are clearly levelled. The aforesaid version of F.I.R. also finds support from statements of prosecution witnesses and prosecutrix recorded under Section 161 Cr.P.C. by the Investigating Officer. The same version of F.I.R. has been again supported by Kumari Vandana and Kumari Archana both daughters of Sri Aadya Singh in their statements recorded under Section 164 of Cr.P.C. before the Magistrate concerned. Therefore, we are of the prima facie opinion that the commission of cognizable offences viz. committing rape and outraging the modesty of women by aforesaid police personnels and Ramayan Prasad Chauhan have been prima facie established on the basis of averments made in pleadings of the writ petition and case diary of the aforesaid case crime inasmuch as statements of Kumari Vandana and Kumari Archana daughters of Aadya Singh recorded before the Magistrate U/s 164 Cr.P.C., placed before us.

31. At this juncture we would like to state that it is well settled that the conviction for offence u/s 376 I.P.C. can be based on sole testimony of a rape victim. In State of Rajasthan Vs. Om Prakash A.I.R. 2002 S.C. 2235 while placing reliance upon earlier decisions Hon"ble Apex Court in para 13 and 14 of the decision observed as under:

"13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is well settled proposition. In State of Punjab Vs. Gurmit Singh & others (1996) 2 SCC 384), referring to State of Maharashtra vs. Chandraprakash Kewal Chand Jain (1990) 1 SCC 550), this Court held that it must not be overlooked that a woman or a girl subject to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were in an accomplice. It has also been observed in the said decision by Dr. Justice A.S. Anand (as his Lordship then was), speaking for the court, that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

14. In State of H.P. v. Gian Chand (2000) 1 SCC 71) Justice Lahoti speaking for the Bench observed that the Court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been

examined but were not examined."

32. The view taken in Gurmit Singh's case (supra) has been again reiterated by Hon"ble Apex Court in recent decision rendered in Santhosh Moolya and another Vs. State of Karnataka JT 2010(4)SC 651. The observation made by Hon"ble Justice Dr. A.S.Anand (as His Lordship then was) speaking for the Apex Court has been quoted in para7 of the decision as under:

"7.In State of Punjab Vs. Gurmit Singh and others (JT 1996 (1) SC 298 : 1996 (2) SCC 384} speaking for the Bench Dr. A.S. Anand,J.(as His Lordship then was) has observed thus:

".....The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no selfrespecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be selfinflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. "

33. In para8 of Santosh Moolya's case (supra) Hon"ble Apex Court went on further observing that "any statement of rape is an extremely humiliating experience for a woman and until she is victim of sex crime, she would not blame

anyone but the real culprit. While appreciating the evidence of prosecutrix, the Courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for."

34. Hon'ble Apex Court in para 9 of Santosh Moolya's case (supra) has placed reliance upon another decision of Apex Court and quoted the observations made therein as under:

"9. In Sohan Singh and another Vs. State of Bihar {JT 2009 (13) SC 161 : 2010 (1) SCC 68}, this Court has observed as under:

"When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of the victim who has been criminally assaulted in such a manner. Obviously, the prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR."

35. Now viewing the case from the angle of legal proposition stated hereinbefore visavis submissions of rival parties, it is not in dispute that on 19.4.2010 only petitioners no. 1 to 3 and Sri Aadya Singh were arrested by the police of Police Station Kuber Sthan, District Kushi Nagar, whereas in averments made in para 4 and 5 of the affidavit filed by Ramayan Prasad Chauhan in support of intervening application, it is alleged that petitioner no.1 Smt. Nagina W/o Aadya Singh and petitioner no.9 Prabhavti W/o Satya Narayan Singh are real sisters and petitioner no.4 Vishambhar Singh is son-in-law of the petitioner no.9 who had illegally occupied the village pond No.384 since long back and had constructed building over half portion of the said pond and for dispossessing him from the said pond measurement was done by Land Revenue Inspector and area Lekhpal with the help of six lady police constables on 19.04.2010. While doing said measurement the petitioner no.1 to 3 and Aadya Singh husband of petitioner no.1 had forcibly opposed the same, as such they were arrested by the police on 19.4.2010 and were brought to Police Station Kuber Sthan but there is nothing to indicate in the said affidavit of Ramayan Prasad Chauhan or other affidavits filed by S.P. Kushi Nagar as to why the petitioner no.4 and his other family members could not be arrested by the police, who had allegedly occupied the said pond of the village illegally. Without going into further details of story of alleged measurement, we are of the prima facie view that for the benefit of respondent no.4 who is alleged to be remote relation of petitioner no.1 she cannot lodge such F.I.R. alleging the commission of rape with her unmarried daughters Kumari Vandana and outraging the modesty of her another unmarried daughter Kumari Archana and put the reputation and prestige of her unmarried daughters and family at stake. Therefore, in our opinion, story set up by Ramayan Prasad Chauhan that aforesaid F.I.R. dated 4.05.2010 was lodged by the petitioner no.1 through A.C.J.M. against him and police personnels as a counter blast of

aforesaid administrative action of District Administration appears to be wholly misplaced and cannot be accepted for the reason that in case of rape the reputation and prestige of family and career or life of victim is involved, that is why Hon''ble Apex Court has repeatedly held that the victim of rape is not an accomplice to the crime but is victim of another person''s lust and it is improper and undesirable to test her evidence with a certain amount of suspicion treating her as accomplice. Besides said F.I.R. Kumari Vandana and Kumari Archana have also stated in their statements recorded U/s 161 and 164 Cr.P.C. about the commission of aforesaid crime and involvement of the aforesaid persons in said crime. Apart from it, the Hon''ble Apex Court in Santosh Moolya case has observed that "any statement of rape is an extremely humiliating experience for a woman and until she is victim of sex crime, she would not blame anyone but the real culprit."

36. Further submission of Sri Rahul Sripat, learned counsel for Ramayan Prasad Chauhan that arrest of Smt. Nagina and her two daughters Km. Vandana and Kumari Archana was effected by Lady Police provided by S.P. Kushi Nagar, therefore, it was highly improbable of commission of rape with Kumari Vandana by Station Officer and outraging the modesty of Kumari Archana by other constables named in F.I.R. and Ramayan Prasad Chauhan in the Police Station Kuber Sthan in the night of 19/20.4.2010, in our prima facie opinion, also appears to be misplaced for the reason that Lady SubInspector and constables seems to have been provided by S.P. Kushi Nagar vide order dated 18.4.2010 from police lines of Kushi Nagar, merely for the purposes of effectuating the measurement and removal of encroachment from pond in question to be carried on 19.4.2010 and after arresting the petitioners no. 1 to 3 and Aadya Singh and bringing them at Police Station Kuber Sthan they might have been returned to Police Line in the evening of 19.4.2010. It is also not case of respondents that Kumari Vandana and Kumari Archana were in actual physical custody of those Lady Police constables throughout the whole night of 19/20.4.2010 in the said Police Station, therefore, in our view, on this count also the allegation made in F.I.R. of Case Crime No. 221 of 2010, could not be rejected by the investigation officer at the stage of investigation of said crime.

37. After said incident of committing rape with Kumari Vandana and outraging the modesty of Kumari Archana in the night of 19.4.2010, they alongwith her mother Smt. Nagina and father Adya Singh were brought before SubDivisional Magistrate, Padrauna on 20.4.2010 under Sections 107, 116 and 151 Cr.P.C. but when they moved bail application before SubDivisional Magistrate, Padrauna on that day the concerned SubDivisional Magistrate did not grant bail instead thereof sent them to District Jail, Deoria, thereafter, they were bailed out on 22.4.2010 and released from jail on 23.4.2010. Although, in the various affidavits filed by Superintendent of Police, District Kushi Nagar, he did not disclose that before sending the petitioners no. 1 to 3 and Sri Aadya Singh in District Jail, Deoria on 20.04.2010, they were brought for medical examination at Primary Health Centre, Kuber Sthan on 20.4.2010 but in the affidavit filed by Sri

Ramayan Prasad Chauhan in support of the intervening application he has filed the injury reports dated 20.4.2010 of the aforesaid persons and submitted that while examination of their injuries, Kumari Vandana and Kumari Archana did not offer internal examination of their person while examination of external injuries of their persons on that day. Beside this, he has further submitted that after lodging of said F.I.R., Kumari Vandana was medically examined on 5.5.2010 in the District Hospital, Kushi Nagar and her vaginal smear was also examined by Mahila Chikitsalaya, Padrauna but neither any spermatozoa was found in the said vaginal smear nor any sign of injury was seen on the private part of her body, so as to establish the case of rape by Mohan Ram, Subinspector/Station Officer of P.S. Kuber Sthan with Kumari Vandana. As such, story of rape with Km. Vanda and outraging the modesty of Km. Archana in the night of 19.4.2010 at P.S. Kuber Sthan, District Kushi Nager set up in the said F.I.R. dated 4.5.2010 is wholly false.

38. In this connection, at this juncture, it would be useful to refer Section 164A of Cr.P.C. which is inserted by the Code of Criminal Procedure (Amendment Act, 2005) w.e.f. 23.6.2006, which provides specific procedure for medical examination of the victim of rape. The provisions of Section 164A of Cr.P.C. are extracted in extenso as under:

"164A. Medical examination of the victim of rape. (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twentyfour hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall without delay, examine her person and prepare a report of his examination giving the following particulars, namely:

- (i) the name and address of the woman and of the person by whom she was brought;
- (ii) the age of the woman;
- (iii) the description of material taken from the person of the woman for DNA profiling;
- (iv) marks of injury, if any, on the person of the woman;
- (v) general material condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay, forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of subsection (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation For the purpose of this section, "examination" and "registered medical practitioner" shall have the same meaning as in section 53."

39. From a careful reading of Section 164A of Cr.P.C. it appears that where during the stage of investigation of offence committing the rape, it is proposed to get the person of woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, the investigation officer is duty bound to send the victim of rape for medical examination with the consent of such woman or of a person competent to give such consent on her behalf, to registered medical practitioner employed in a hospital run by Government or local authority, within twenty four hours from the time of receiving the information relating to the commission of such offence. Thereupon the registered medical practitioner to whom such woman is sent, shall without delay examine her person and prepare a report of his examination in the manner stated in sub sections (2),(3), (4), (5) and (6) of Section 164A of Cr.P.C. and forward to the Investigating Officer who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in Clause (a) of sub section (5) of that Section.

40. In instant case the concerned Police Station and S.P. Kushi Nagar, alleged to have refused to lodge F.I.R. of the aforesaid crime. However, after expiry of 1415 days from the date of incident by intervention of A.C.J.M., Kasia on 3.5.2010, the said F.I.R. could be lodged at Police Station Kuber Sthan, District Kushi Nagar on 4.5.2010. In case, local police of Police Station Kuber Sthan, Kushi Nagar or S.P. Kushi Nagar would have registered the aforesaid F.I.R. without causing any delay in the matter, the medical examination of Kumari Vandana would have conducted u/s 164A Cr.P.C. within twenty four hours from the time of receiving the information relating to the commission of such offence, in that event of the matter the genuineness of alleged commission of rape would have been verified on the basis of such medical examination but on account of aforesaid delay

caused by District Police Administration, it is clear that they have tried to defeat the aforesaid provisions of law and thereby hushed up the said crime for saving the offender of the rape.

41. Not only this but the Sub Divisional Magistrate, Padrauna, District Kushi Nagar has also sent the petitioners no. 1, 2 and 3 and Adya Singh in jail on 20.04.2010 and after expiry of two days he has granted bail on 22.04.2010 and thereafter they have been released on bail on 23.04.2010. Even assuming that on 20.04.2010 they were forwarded to Primary Health Centre for their medical examination, even then such medical examination of persons of Kumari Vandana and Kumari Archana could not be conducted by such medical officer as contemplated u/s 164A Cr.P.C. for the reason that by that time F.I.R. in respect of alleged rape was not lodged at all and on that day Kumari Vandana victim of alleged rape was not forwarded by Investigating Officer for medical examination of her person during the investigation of alleged rape, as such the submission of Sri Rahul Sripat, learned counsel appearing for intervenor that inspite of the petitioners no.1, 2 and 3 were brought before medical officer of Primary Health Centre, Kuber Sthan, they did not offer medical examination of internal part of body of Km. Vandana and Kumari Archana nor they whisper any word about such examination before Sub Divisional Magistrate, appears to be wholly misplaced, for the simple reason that by that time neither F.I.R. for alleged rape was lodged nor the investigation of Case Crime No.221 of 2010 in respect of alleged rape and outraging of modesty of woman was started by the Investigating Officer, instead thereof at that time the arrest of aforesaid persons was effected u/s 107, 116, 151 Cr.P.C. Thus, such medical examination of Kumari Vandana could not be done by medical officer on her said presentation before Medical Officer as required under Section 164A Cr.P.C..

42. In this connection, it is to be noted that even if the aforesaid injury reports of Kumari Vandana enclosed with affidavit filed in support of intervening application of Ramayan Prasad Chauhan for the sake of argument assumed to be correct, even then, since incident of rape was allegedly committed with her in the night of 19/20.4.2010 by Sri Mohan Ram Subinspector Police/Station Officer of P.S. Kuber Sthan and vaginal smear was taken for examination on 5.5.2010 after lapse of 15 days from the date of incident, therefore, in our opinion, it can not be said that spermatozoa of alleged rape dated 19/20.4.2010 could have remained in vagina of Kumari Vandana after such long lapse of time of 15 days from the date of alleged rape. Since, her age in the said medical examination was recorded as 20 years and on the basis of Xray report also she was found to be major as her vagina reported to be admitting two fingers and she was fully grown up lady, therefore, absence of sign of injury in private part of her body, and absence of spermatozoa in vaginal smear after lapse of 15 days, from the date of incident can also not automatically falsify the story of said rape case. Therefore, In our opinion, the submission of Sri Rahul Sripat, Advocate is wholly misplaced, accordingly, same can not be accepted. The view taken by us also finds support from the recent decision rendered by Apex Court in Santosh Moolya's case

(supra) wherein it was held by Apex Court that absence of injuries on private part of the victim of rape after a month and 14 days from the date of incident of a married woman having children, does not lead to an inference that rape was not committed.

43. At this juncture, we must also state that inspite of continuous monitoring of the Case Crime No. 221 of 2010 registered at, Police Station Kuber Sthan, Kushi Nagar, by this Court, it appears that the statements of Kumari Vandana and Kumari Archana, could be recorded before the Magistrate concerned on 26.6.2010 after lapse of about more than 1 and 1/2 months from the date of said F.I.R., which goes to show that investigating officer has unduly delayed in producing them before Magistrate concerned with certain ulterior and oblique motive. Not only this but subsequent conduct of investigating officer and superior police officers of District also does not inspire confidence in the investigation of said case crime in stead thereof strengthen the case of petitioners that for pressurising them to do compromise in the said case crime the accused persons of Case Crime No. 244 of 2010 have also attacked the petitioner no. 1 to 4 and other persons who came to rescue them on 16.5.2010 and further F.I.R. in Case Crime No. 244A of 2010 was also registered against them at instance of police officers of District Kushi Nagar, to achieve the same goal.

44. In this connection, it would be useful to refer the letter dated 07.07.2010 of, Sri Mahendra Pratap Chauhan, Circle Officer, Sadar, Kushi Nagar who is investigation officer of the case crime No. 221 of 2010 registered at P.S. Kuber Sthan, District Kushi Nagar, whereby, he has informed the Superintendent of Police, Kushi Nagar, that in absence of any evidence against the accused persons of said case crime, he has closed up the investigation on 28.6.2010 and submitted Final Report No. 7/2010, but on account of some instructions of Superintendent of Police, Kushi Nagar he has taken the cloths of Kumari Vandana, victim of rape and sent the same on 06.07.2010 to Vidhi Vigyan Prayogshala, Police Lines, Varanasi for examination as contained in Annexure1 to the affidavit filed by Sri Lav Kumar, Superintendent of Police, Kushi Nagar dated 09.07.2010 before this court, inspite of fact that in the statements recorded under Section 161 of Cr.P.C. the prosecution witnesses and victim of rape and victim of Section 354 I.P.C. have supported the said prosecuion case and further in their statements Kumari Vandana and Kumari Archana recorded under Section 164 of Cr.P.C. before Magistrate concerned they have also supported their case. As such, we are of the prima facie opinion that investigation officer could not reject the aforesaid statements of prosecution witnesses and prosecutrix by treating the same as false at investigation stage, for the simple reason that if as such statements would be made by them during trial of said case it can hardly be disbelieved by the trial court in view of law laid down by Hon"ble Apex Court in various decisions referred herein before. Therefore, we are of the view that investigation officer, instead of investigating the aforesaid case crime in a fair and proper way, has tried to hush up the aforesaid crime for shielding the police personnels of Police Station Kuber Sthan, Kushi Nagar and Ramayan Prasad

Chauhan allegedly involved in the said case crime.

45. Apart from it, we are also constrained to say that the Superintendent of Police, Kushi Nagar did not discharge his duties in a trustworthy and fair manner in the aforesaid case. We are of the prima facie opinion that on alleged refusal of lodging F.I.R. in respect of aforesaid case crime by concerned Police Station he was under obligation to register the aforesaid case crime under Section 154(3) of Cr.P.C. Beside this, on receipt of information of the aforesaid case crime, he did not take proper administrative action in the matter against the police personnels allegedly involved in the said case as indicated in preceding part of this judgement. Despite pendency of writ petition and direction of this Court dated 11.06.2010 asking his explanation about the action taken by him, in his affidavit dated 18.6.2010 filed before this Court Superintendent of Police, Kushi Nagar has stated that on 15.6.2010 he has merely attached the police personnels involved in the said case crime on Police Line, though, the F.I.R. was lodged against the police personnels on 4.5.2010 much earlier atleast one month ten days ago, which indicates that he has also unduly delayed in taking any administrative action against the police personnels involved in the said crime and permitted them to win over the prosecution witness by hook and crook. On finding the aforesaid action unsatisfactory, he was again directed by this Court to take proper action in administrative side, in pursuance thereof, he could place the police personnels under suspension vide his order dated 20.6.2010 but the aforesaid order of suspension was also not properly issued by him. Thereafter, in pursuance of subsequent direction of this Court, vide his order dated 5th July, 2010 he could modify the order of suspension dated 20th June, 2010. The aforesaid facts clearly indicate that the action and conduct of Sri Lav Kumar, Superintendent of Police, Kushi Nagar in respect of case crime in question was not fair and proper and free from undue pressure.

46. Thus, from totality of facts and circumstances of the case, we are of the prima facie opinion that commission of cognizable offence of rape and outraging the modesty of unmarried girls in the night of 19/20.4.2010 at Police Station Kuber Sthan, District Kushi Nagar, and involvement of Police personnel in the said crime as accused is prima facie established. We are also constrained to say that the investigating officer and superior police officers are trying to hush up the said crime and shield the offenders, thus it is exceptional situation and fit case where this Court should direct the investigation of aforesaid case crime be made by C.B.I. for providing credibility and confidence in investigation and for doing complete justice to the victims of said crime. Accordingly, we direct the Director General of C.B.I. to undertake the investigation of aforesaid Case Crime No. 221/2010 registered at P.S. Kuber Sthan, District Kushi Nagar, under Sections 147, 376, 354, 504 and 506 I.P.C. and depute an officer not below the rank of Senior Superintendent of Police as in our opinion the conduct of Investigating Officer and Superintendent of Police is also subject matter of scrutiny and complete the investigation within a period of three months from the date of supply of certified copy of this order to Sri N.I. Jafri, learned advocate appearing

for C.B.I. in this Court.

47. Since two other cases as Case Crime No. 244 of 2010 under Sections 147, 323, 504 and 506 I.P.C. registered at Police Station Kuber Sthan, Kushi Nagar and Case Crime No. 244A of 2010, under Sections 147, 148, 452, 324, 323, 504 and 506 I.P.C. registered at said Police Station are also alleged to be counter blast of the aforesaid case crime, therefore, the C.B.I. shall also investigate the aforesaid case crimes alongwith Case Crime No. 221 of 2010, under Sections 147, 376, 354, 504 and 506 I.P.C. registered at Police Station Kuber Sthan, Kushi Nagar within the same period. However, C.B.I. shall investigate the aforesaid crimes without being influenced by any observation made by us as we have recorded aforesaid findings and have made observations only for the purpose of directing the C.B.I. to investigate the said crimes, therefore, those findings and observations shall not be binding upon the C.B.I. while investigating the aforesaid crimes.

48. Before parting with the judgment, we must further clarify that interim order granted by us earlier staying the arrest of petitioners in Case Crime No. 244A of 2010, under Sections 147, 148, 452, 324, 323, 504 and 506 I.P.C. on 9.6.2010 shall continue till filing of charge sheet against the petitioners under Section 173 of Cr.P.C. Since we have already directed the Superintendent of Police, Kushi Nagar and Principle Secretary of Home Govt. of U.P. for providing adequate security to the petitioners no. 1, 2 and 3 during investigation, enquiry and trial of the aforesaid Case Crime No. 221 of 2010 registered at Police Station Kuber Sthan, Kushi Nagar, therefore, we further reiterate that this security arrangement shall continue with the petitioners no. 1, 2 and 3 and shall not be withdrawn by the respondents without leave of the Court as it is extension of security by this Court for protection of witnesses of criminal case. In our view, providing such security to protect the witness of prosecution in a pending criminal case, does not fall within purview of Government Order wherein provisions for providing security of armed police or gunner to other persons have been given.

49. After completion of investigation the C.B.I. shall proceed in accordance with the provisions of law without any further reference to this Court.

50. With the aforesaid observation and direction, writ petition stands disposed of finally.

Note Office is directed to supply a copy of this order to Sri N.I. Jafri, learned Advocate appearing for C.B.I. before this Court, by 22nd July, 2010 for communication and necessary action. A copy of this order shall also be sent by the office to Superintendent of Police, Kushi Nagar for necessary information and action and to A.C.J.M. Kasia, District Kushi Nagar for keeping the same on record of the case.