
(2014) 09 MAD CK 0147

In the Madras High Court

Case No : Writ Petition No. 23320 of 2014 and M.P. Nos. 1 to 4 of 2014

P. Rajakumari

APPELLANT

Vs

The Additional Director General of Police

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Criminal Procedure Code, 1973 (CrPC) — Section 176, 176(1A), 176(1A), 54

Penal Code, 1860 (IPC) — Section 302, 376

Citation : (2014) 2 LW(Cri) 595 : (2014) 4 MLJ(Cri) 399

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The petitioner in this writ petition is the daughter of one Chandra. The petitioner's mother was working in a hotel in Udumalpet and was staying in a rented house belonging to one Leelavathi. The said Leelavathi was found murdered on 09.08.2014. Therefore, a First Information Report in Crime No. 547/2014 was registered on the file of the Udumalpet Police Station, Tiruppur District, for an offence punishable under Section 302 of the Indian Penal Code.

2. According to the police, the petitioner's mother, upon coming to know that the police were looking for her, surrendered before the Village Administrative Officer, on 14.08.2014 at about 10.00 am and confessed to the commission of the crime. Therefore, the police claims to have taken the petitioner's mother into custody, when she was produced before them by the Village Administrative Officer at about 11.30 am. According to police, the petitioner's mother was arrested in the presence of women Police Constables at about 11.45 am and again her confession was recorded.

3. The police claim that the petitioner's mother had contusion on her hands, when her confession was recorded and that the petitioner's mother told the police that she sustained injuries due to a fall in a drunken state on 12.08.2014

at about 8.00 pm. Therefore, according to the police, they subjected the petitioner's mother to medical examination at the Government Hospital, Udumalpet at about 16.45 hours on 14.08.2014 and the petitioner's mother was thereafter produced before the Judicial Magistrate No. II, who was actually in-charge as Judicial Magistrate No. I at about 17.45 hours.

4. The Judicial Magistrate, while remanding the petitioner's mother seems to have ordered the police to give medical care and hence the petitioner's mother was produced at the CMC Hospital, Coimbatore at about 11.56 p.m. on 14.08.2014. According to the police, a Lady Doctor examined the petitioner's mother and treated the case as a Non-medico Legal Case. Thereafter, she was lodged in the Central Prison, Coimbatore in the early hours of 15th August, ironically, on the eve of the Independence day.

5. On 26-8-2014, the petitioner filed the above writ petition claiming that the police started harassing her mother from 10.08.2014; that even on 11.08.2014 her mother informed her that she was about to be taken to Coimbatore for investigation; that from 11.00 am on 13.08.2014 the mobile phone of her mother was switched off; that on 14.08.2014 the Inspector of Police informed the petitioner's husband that he was arresting the petitioner's mother; that on 18 and 19th August, 2014, the petitioner visited her mother in Central Jail and was shocked to find her completely battered by the use of third-degree methods by the police; that seven male police officers subjected the petitioner's mother to torture by injecting needles into her fingers, nails and hand; that she was beaten mercilessly and was hanged upside down; that her mother was beaten with lathis all over her body; that the lathis were inserted into her private parts, leading to continuous bleeding and that the police coerced her to confess to the crime.

6. When the writ petition was moved for orders as to admission on 26.08.2014, I ordered Notice of Motion returnable by one week and also directed the Principal District Judge, Coimbatore to depute a Judicial Officer to examine the petitioner's mother physically and to submit a report. The order passed by me on 26.08.2014 reads as follows:-

"Notice of Motion returnable by one week. Private notice permitted.

Since serious allegations are made in the affidavit, to the effect that the petitioner's mother was physically assaulted and tortured, there will be an interim direction, directing the Principal District Judge, Coimbatore, either by himself or through a responsible Judicial Officer deputed by him, to take the assistance of a female Medical Officer working either in a hospital owned by the Central Government or the State and have the petitioner's mother examined physically and submit a report to this Court on 3.9.2014. In the event of the Judicial Officer finding that the victim requires medical treatment, he shall make arrangement for necessary treatment at a hospital which is fairly reasonable and good."

7. Accordingly, the Judicial Magistrate No. IV, Coimbatore, took the assistance of the Assistant Professor of Obstetrics and Gynecology of Coimbatore Medical College Hospital by name Dr. V. Geetha and went to the Central Prison, Coimbatore and examined the petitioner's mother on 27.08.2014. Thereafter, she sent a report on 28.08.2014 stating that upon physical examination with the assistance of a Doctor, she found the following:-

"1. Contusion (near the wrist) over the left forearm about 3 x 5 c.m. with a wound, healed in the centre.

2. Left hand index, middle, and ring finger swollen (not the entire length of the fingers, but the front portion, nail and below it), no other external injury in the fingers, no abrasion or contusion.

3. Small wound in the left big toe.

No other external injury was noted, anywhere on her body, including her genitalia."

8. However, the Judicial Magistrate also recorded in her report dated 28.08.2014, the remarks made by various persons on 14.08.2014 and 15.08.2014, when Chandra (Remand Prisoner) was produced before them. The relevant portion of the report of Judicial Magistrate No. IV dated 28.08.2014 reads as follows:

"Judicial Magistrate No. I, Udumalpet, on 14.08.2014 has written in the remand warrant when Chandra was produced and I extract the exact words "Left hand forearm swollen and enquired by me, show her injuries, I seen and found below swelling on both hands, both legs, contusion on thigh and her ("word not clear to me). Time not known as it is noted in the remand warrant.

Udumalpet GH, OP No. 4165. On 14.08.2014, time not mentioned in the OP slip. In the said OP slip, doctor who examined her has noted "Pain on Left forearm, Contusion 3 x 3 cm." Doctor name not mentioned and his signature is not legible to know his name.

At Coimbatore Medical College Hospital (CMC) produced on 14.08.2014, 11.56 pm. OP No. 581996. Dr. Senbagavalli, Casualty Medical Officer has noted:

(a) Swelling in left forearm and leg.

(b) Contusion over L forearm and leg.

(c) Abrasion over L leg (twice written the same)

(d) Contusion over back.

Chandra has been placed in Central prison, Coimbatore at 12.35 am on 15.08.2014 (midnight of 14.08.2014).

Medical Officer of Central Prison Dr. Kumar has noted the following on 15.08.2014, when he examined her at Central Prison.

(a) Contusion over both legs, both forearm, both hands.

(b) abrasion 2 x 1 c.m. left big toe.

H/o Assault by Udumalpet police using PVC pipe on 13.08.2014."

9. In the light of the report of the Judicial Magistrate, I passed an order on 03.09.2014, directing the victim to be produced before this Court on 05.09.2014. Accordingly, the Respondent produced her on 05.09.2014 at 2.15 pm. in my Chambers. After seeing her I passed an order on 05.09.2014 to the following effect:-

"2. The petitioner's mother is not even able to walk. She narrated her tale of woes. But, I refrain from recording the entire contents, as they may have a reflection in the ultimate enquiry or trial. But, in my assessment, the victim requires immediate medical attention at the Super Speciality Hospital. Therefore, for the present, the respondents are directed to admit the victim in the Multi Super Speciality Hospital at Omandurar Estate, Anna Salai, Chennai 600 002."

10. I also directed the Nodal Officer of the Multi Speciality Hospital to have the victim examined by a team of doctors and to submit a report to this Court on 10.09.2014. Accordingly, the Nodal Officer of the Multi Super Speciality Hospital sent a report on 10-9-2014 in a sealed cover containing the gist of (1) the General Surgeon's opinion (2) Orthosurgeon's opinion (3) Ophthalmologist's opinion and (4) Gynaecologist's opinion. The opinions so recorded in the report of the Nodal Officer of the Multi Super Speciality Hospital, are extracted as follows:-

"General Surgeon's opinion:

On examination a swelling (contusion) was noted over the radial aspect of Left forearm measuring 4 x 3 c.ms. with tenderness. Mild linear skin discolouration was noted in left gluteal region. Mild tenderness over the left thigh and left gluteal region. Impression: multiple old contusions.

Ortho surgeon's opinion:

As per the clinical examination, discoloured swelling over radial side of left forearm measuring 3 x 3 c.m. with tenderness, linear discoloured skin over left gluteal region with tenderness, tenderness in the distal region of left index and left thumb noted.

X-Ray left hand shows 3 weeks old fracture distal phalanx of left F2.

MRI pelvis with LS spine screening shows L5-S1 disc protrusion causing anterior thecal sac indentation.

Suggested - Physiotherapy for 1 week (IFT-low back, Ice formentation Left F2 phalanx) and LS belt for the same.

Ophthalmologist opinion:

Advised refraction after discharge.

Gynecologist opinion:

On examination there was no active bleeding per vaginum. Cervix healthy. Uterus 10-12 weeks size. Impression: Adenomyosis. Since patient is asymptomatic, gynecologist advised to observe for bleeding per vaginum."

11. After seeing the report, I passed an order on 10.09.2014, requesting the Nodal Officer of the Hospital (1) to send copies of all the Medical Reports and the Case-sheets in a sealed cover to the Court; (2) to have the condition of the victim assessed for any psychological stress or trauma; and (3) to file another report as to whether she needs continuous medical treatment and if so, the nature of such treatment. I directed the case to be listed on 15.09.2014.

12. On 15.09.2014, the Nodal Officer sent a Report enclosing (1) combined Medical Report; (2) Case-sheet; (3) opinion of Psychiatrist and (4) Medical Investigation Reports. After taking all these records on file, I heard the submissions of Mr. M. Purushothaman, learned counsel for the petitioner and Mr. P.H. Arvinth Pandian, learned Additional Advocate General and Mr. I.S. Inbadurai, learned Special Government Pleader appearing for the Respondents and posted the case for orders on 17.09.2014.

13. But it was realised later that the petitioner had come up with two miscellaneous petitions, one in M.P. No. 2 of 2014 seeking amendment of the prayer and another in M.P. No. 3 of 2014 for an interim direction to pay compensation. It was also realised that the petitioner had not impleaded the State Government or the Director General of Police as parties to the writ petition, in the first instance. Therefore, on 17.09.2014, I could not pass final orders in the writ petition. However, I passed an order in M.P. No. 2 of 2014, allowing the petition for amendment. I also passed a separate order, suo motu impleading (1) the State Government (2) the Director General of Police and (3) the Superintendent of Police, Tirupur as Respondents 5 to 7 in the writ petition. In view of the impleadment of the State Government and the Head of the Department as parties to the writ petition, I adjourned the matter to 22.09.2014, to enable the newly impleaded parties to file their responses to the main writ petition.

14. Accordingly, the newly impleaded Respondents namely, the Additional Secretary to Government, Public (Law & Order) Department, the Director General of Police and the Superintendent of Police, Tirupur filed independent counter affidavits to the main writ petition on 22.09.2014 and I heard the submissions of the learned counsel for the petitioner and the learned Additional Advocate General for the Respondents. In the meantime, the State General Secretary of the All India Democratic Women's Association also filed a petition in M.P. No. 4 of 2014 for impleading themselves as parties to the main writ petition, contending

inter alia that it is a national organisation committed to the cause of women and that they could render valuable assistance to the Court. The petition for impleading was argued by Ms.R.Vaigai, learned counsel for the proposed party.

15. I have carefully considered the pleadings on record, the submissions made on both sides and the reports so far received.

16. It is the specific case of the petitioner that her mother was subjected to torture and custodial rape. Since all the allegations contained in the affidavit of the petitioner are against the policemen attached to the Udumalpet Police Station, the Inspector of Police of the fourth Respondent Police Station has filed a detailed counter affidavit, dealing with the averments contained in the writ affidavit. He has denied the allegation that the petitioner's mother was subjected to custodial torture and rape. But in his counter affidavit, the fourth Respondent has admitted that there were injuries on the person of the petitioner's mother. According to the fourth Respondent, the petitioner's mother sustained these injuries due to a fall in an inebriated condition on the night of 12th August, 2014.

17. The Respondents 5 to 7 have filed independent counter affidavits. In their counter affidavits, they have not dealt with the averments contained in the writ affidavit. This is understandable, since none of these Respondents 5 to 7 could claim any personal knowledge, so as to deal with the averments in the writ affidavit. The entire counter affidavits of the Respondents 5 to 7 revolve only around the scope of an inquiry under Police Standing Order 151 and a Magisterial inquiry under Section 176(1A) of the Code of Criminal Procedure.

18. Keeping in mind these aspects, if we have a look at all the reports that I have referred to and also extracted earlier, it would be clear that (1) the Remand Magistrate; (2) the Government Hospital, Udumalpet; (3) the Coimbatore Medical College Hospital, Coimbatore; (4) the Medical Officer at the Central Prison, Coimbatore; and (5) the Judicial Magistrate No. IV, Coimbatore, have all recorded injuries on the person of the petitioner's mother. Even otherwise, the fourth Respondent has not denied in his counter affidavit to this writ petition, that there are injuries on the body of the petitioner's mother.

19. Since it has become impossible for the fourth Respondent (Inspector of Police, Udumalpet) to deny the presence of injuries, he has chosen the only alternative available to him, namely to say that the petitioner's mother herself had confessed to have fallen down in an inebriated condition on 12.08.2014 and sustained the injuries. But I do not know how the stand so taken by the fourth Respondent can cover up the following:

(1) the injuries noted by the Judicial Magistrate No. IV, to the effect that the left hand index, middle and ring finger swollen, not to the entire length of the fingers but only in the front portion up to the nail and below the nail, which injuries correspond to the allegation in the affidavit that the police injected needles into her fingers and nails;

(2) the recording made on 15-8-2014, by the Medical Officer of the Central Prison, Coimbatore about the history of assault by Udumalpet Police using PVC Pipe on 13.08.2014; and

(3) the finding recorded for the first time on 5-9-2014 by the Multi Super Speciality Hospital, Chennai to the effect that the petitioner's mother has a three weeks old fracture distal phalanx of left F2.

20. Therefore, the first hurdle posed in such cases is crossed, since there is no dispute about the injuries on the body of the victim, requiring not only medical intervention but also a legal intervention and investigation. This takes us then, to the next question as to what kind of an inquiry/investigation is to be ordered in the facts and circumstances of the case.

21. In the independent counter affidavits filed by or on behalf of the Government, the Director General of Police and the Superintendent of Police, they have raised only one contention namely that the petitioner has not named any particular police officer, with reference to the charges made by her and that since what is stated by the petitioner in her affidavit is what was told to her by her mother, the identity as well as culpability of the 7 male Police Officers against whom allegations are made, can be fixed only after a detailed enquiry. According to the Respondents 5 to 7, if an inquiry is held under PSO 151 by the Revenue Divisional Officer and it is found on the basis of his report that there was a prima facie case for proceeding further, a prosecution may be launched and a compensation may also be awarded in terms of G.O.Ms. No. 153, Public dated 31.01.1998. The Respondents 5 to 7 have further stated in their counter affidavits that the matter can also be referred to the Judicial Magistrate under Section 176(1A) of the Code.

22. In his counter affidavit, the fourth Respondent has stated that in the light of the confession made by the petitioner's mother that she sustained injuries on her own, there is no need for any further proceedings/enquiry into the allegations made by the petitioner. However, the fourth Respondent has also stated that in the event of this Court coming to the conclusion that an enquiry is necessary, it can be ordered in terms of Police Standing Order 151 (Old No. 145).

23. Thus, I have on the one hand, a request for a Magisterial inquiry under the provisions of the Code and on the other hand, a request for an inquiry under PSO 151. But a request for an inquiry under PSO 151, has to be rejected outright for several reasons. Under the new Police Standing Order 151(2), an officer of the rank of Assistant or Deputy Superintendent of Police ought to have made a general enquiry, into the incident, immediately upon hearing about such an occurrence (and not upon a formal complaint being made to him). He should also report the case at once to the Revenue Divisional Officer concerned. Under Police Standing Order 151(3) the Revenue Divisional Officer is obliged to conduct an enquiry of a non-judicial character in order to fix responsibility, if any, on individual police officers and in order to see whether a prima facie case for

launching a criminal prosecution is made out. Under Police Standing Order 151(4), the Executive Magistrate is prohibited from conducting any enquiry, once a complaint of such an offence has been filed before the Court of Judicial Magistrate by the affected party. Even if the Executive Magistrate had already commenced the informal enquiry, he is not entitled to continue the same, the moment a complaint is filed with the Judicial Magistrate.

24. In the case on hand, neither the fourth Respondent appears to have informed his superior officers in terms of Police Standing Order 151(2)(b) nor his superior officers who ought to have known about the incident had taken any action in terms of Police Standing Order 151(2)(a). In any case, a complaint has been made before the Judicial Magistrate on 25.08.2014. Since the Magistrate returned the petitions, a writ petition was filed before this Court on 26.08.2014. Therefore, Police Standing Order 151(4) has no application any more. As a matter of fact, Police Standing Order 151(7) makes it obligatory for every officer to inform the Revenue Divisional Officer, immediately upon receipt of a complaint of torture even from unknown and unofficial sources or by way of anonymous or pseudonymous petition. As per PSO 151 (7), even if information is received by way of vague rumour, the officer should inform the Revenue Divisional Officer to commence enquiry. All this was not done. Therefore, the stage for the initiation of such an enquiry has now gone.

25. As an alternative to the enquiry under Police Standing Order 151, it is provided in Police Standing Order 152 that the Government can appoint a Commission of enquiry consisting of two officers, with one of them having judicial experience and neither of them belonging to the police department. Such an appointment is permissible if a Sessions Court or High Court records its opinion that a special enquiry into the conduct of the police is necessary. But the last part of Police Standing Order 152(1) itself stipulates that if sufficient evidence be available without the investigation of the special commission, to justify the institution of criminal proceedings forthwith, that course should at once be taken. Today, sufficient evidence is available even without an investigation by a Special Commission. Therefore, even if recourse is taken to the Police Standing Order 152(1), I am obliged to direct the launching of prosecution immediately.

26. As a matter of fact, the Police Standing Orders have no force of law, as pointed out by the Supreme Court in *The State of Andhra Pradesh Vs. N. Venugopal and Others*, . After considering the scope of Section 145 of the Madras Police Standing Orders (which corresponds to the present PSO 151), the Supreme Court held in para 23 of the said decision that Standing Orders are nothing more than administrative instructions and that they have no force of law. Therefore, the question of ordering an inquiry by the Revenue Divisional Officer in terms of PSO 151 does not arise.

27. Coming to the other request, it is seen that sub-section (1-A) inserted under section 176 of the Code, after its amendment in 2006 states that Where any

person dies or disappears or rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

28. But I do not think that Section 176(1-A) can be invoked in this case. What is contemplated in the said provision is an inquiry by a Judicial Magistrate, in addition to the inquiry held by the police. In this case there is no inquiry by the police at all. The police have not even registered any First Information Report on the basis of the allegations made by the petitioner or his mother. Today, the law is well settled, by virtue of the decision of the Supreme Court in *Lalita Kumari Vs. Govt. of U.P. and Others*, , that once the police receive information, by whatever source, that a cognizable offence had been committed, it is their duty to register a First Information Report. But the police have not done that. Therefore, in the absence of any First Information Report and an investigation by the police, it is not possible to have an additional inquiry in terms of Section 176(1-A). The explanation given by the Respondents 5 to 7 that the petitioner's mother did not make any complaint to any superior officer and that due to this reason and also due to the pendency of the writ petition, no steps could be taken by the administration, is wholly unacceptable. The recording made by the Medical Officer of the Central Prison, Coimbatore on 15.08.2014 itself was sufficient for the police to register a First Information Report. Moreover, the petitioner did not rush to this Court immediately. She actually moved the Court of Judicial Magistrate, with two miscellaneous petitions for an inquiry into the allegations of torture. Therefore, the mere fact that this Court entertained the writ petition, was not a bar for the police to register the First Information Report. Since they have not done so, the question of ordering a Magisterial Enquiry under Section 176(1A), which is supposed only to be in addition to the police inquiry, does not arise.

29. Moreover, I am not very happy about the manner in which Judicial Magistrate No. II, Udumalpet acted at the time of remand at about 17.45 hours on 14.08.2014, while acting in-charge of the Court of Judicial Magistrate No. I. Even as per the counter affidavit of the fourth Respondent, the Judicial Magistrate No. II's remand report reads as follows:-

"Accused produced before me on 14.08.2014 at 05.45 pm. No complainants against police. Grounds of arrest explained. Legal aid explained. Accused remanded to judicial custody till 28.08.2014. I found injury on Accused's left hand fore arm and enquired by me. Accused showed her injuries. I saw her injuries and found below Swelling on both hands, both legs, contusion on thighs and Pums medical memo. seen and directed to give proper medical care."

30. After having noted injuries on the person of the victim, the Judicial Magistrate No. II ought to have checked whether the guidelines issued by the

Supreme Court in D.K. Basu Vs. State of West Bengal, , were followed. Some of the guidelines have obviously been violated and the remand Magistrate has turned a Nelson's Eye.

31. The remand Magistrate has recorded that there was no complaint against police. The fourth Respondent has claimed in his counter affidavit that the petitioner's mother did not make any complaint or allegations against the police, either before the Medical Officer at the Government Hospital, Udumalpet, or before the Medical Officer at Coimbatore Medical College Hospital, Coimbatore. But the Medical Officer of the Central Prison, Coimbatore, by name Dr. Kumar, had recorded on 15.08.2014: "H/O assault by Udumal Police using PVC Pipes on 13.08.2014".

32. The recording made by the Medical Officer of the Central Prison clearly demonstrates that the remand Magistrate did not perform his/her duties properly and effectively. Therefore, there is no question of entrusting the investigation to the jurisdictional Magistrate.

33. The manner in which the regular jurisdictional Magistrate namely J.M.I., Udumalpet acted, was still worse. The petitioner filed two Miscellaneous petitions on 25.08.2014, one under Section 176 of the Code and another under Section 54 of the Code. The Judicial Magistrate No. I, returned the petition filed under Section 176 of the Code, on account of the following defects:-

"(1) Sufficient Court Fee stamp not affixed in vakalat;

(2) Enrolment Number of counsel not mentioned and also landline or Cell Number not mentioned;

(3) If lodged any F.I.R. regarding this U/s 376 of IPC complaint stated in this petition;

(4) How this petition is maintainable before this Court.

Time 10 days."

34. The other petition filed under Section 54 of the Code of Criminal Procedure for the examination of the victim by a female Medical Officer was also returned by the same Judicial Magistrate No. I, for the following defects:-

"(1) Sufficient Court Fee stamp not affixed in the vakalat;

(2) The landline Number or the Mobile Phone Number of the counsel who filed this petition, is not mentioned;

(3) In the affidavit in support of the petition, legal issues are raised. In affidavits, only facts are to be stated. Law cannot be stated.

(4) Under what authority the petitioner has filed this petition under Section 54 of the Code of Criminal Procedure.

(5) Explain as to how this petition is maintainable before this Court.

Time for compliance one week."

35. The returns made by the Judicial Magistrate No. I, focusing more on the fringe formalities with magnifying glasses, than on the Constitutional compulsions of his calling, and that too in a case of this nature, show that the level of sensitivity required to handle such situations was very low. Therefore, to such a person, I would not entrust the task of an inquiry. Once it is seen that the attempt made by the petitioner to have an inquiry conducted by the jurisdictional Magistrate under Section 176(1-A) was warded off by the very same Magistrate, there is no point in going back to the same Magistrate. Even the sense of responsibility exhibited by the Medical Officer at the Central Prison, Coimbatore appears to be much better. Therefore, I do not wish to have an inquiry conducted by the jurisdictional Magistrate.

36. As I have pointed out earlier, there is enough material to warrant the registration of a First Information Report, even without a fact finding mission either by the Judicial Magistrate under Section 176(1A) of the Code or by the Revenue Divisional Officer under PSO 151. The registration of the First Information Report has now become mandatory in view of the decision of the Supreme Court in Lalitha Kumari.

37. Once it is seen that the registration of a First Information Report is necessary, then the next question to be considered is as to who should register the complaint and investigate into it. The answer is too obvious to state, in cases of routine nature. But in cases such as the one on hand, it is not possible for me to direct the State Police to register the F.I.R. and investigate into it.

38. As a matter of fact, the petitioner had not made, in the first instance, either the State Government represented by the Secretary to Government or the Director General of Police of the State or even the District Superintendent of Police, Tiruppur as parties to the writ petition. The petitioner had originally impleaded only the Additional Director General of Prisons, Deputy Inspector General of Prisons, Superintendent of Prison, Coimbatore and the Inspector of Police, Udumalpet alone as parties to the writ petition. But the fourth Respondent was effectively defended by the State machinery even at that time. Therefore, on 17.09.2014, I directed the impleadment of Respondents 5 to 7 suo motu. After they have come on record, they have also chosen to sing only the same chorus namely that an inquiry under PSO 151 or a Magisterial enquiry under Section 176(1A) of the Code could be ordered. Therefore, it appears that the higher echelons of the State Police have not chosen to distance themselves from the fourth Respondent. Once the hierarchy of the State Police Force decide to defend an Inspector of Police and a few Constables, it will not be fair and proper to entrust the investigation at the hands of the State Police.

39. Mr. P.H. Arvinth Pandian, learned Additional Advocate General pleaded, with all eloquence at his command, that entrusting the investigation to any other

agency would have a reflection both upon the efficiency of the State Police and upon the fairness of approach of the Government itself and that therefore, an enquiry either in terms of PSO 151 or by a Superior Police officer would be appropriate.

40. But I do not think so. Just as the erring Police officers are the servants of the State, the Medical Officer at the Central Prison Coimbatore, who did well to record the allegation of the victim, is also a servant of the State Government. Therefore, instead of thinking that any indictment of the subordinate police officers will have a reflection upon the State, they can take pride in the good service rendered by the Medical Officer. Moreover, I have found even 2 Officers who form part of our institution (Judicial Magistrates, Udumalpet) not to have performed their duties properly. It does not mean that it has a reflection upon the entire institution.

41. Therefore, in the facts and circumstances of the case, the only alternative available to the Court is to see if the investigation could be entrusted to some other agency like the Central Bureau of Investigation. In paragraph 69 of its decision in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, , the Supreme Court made it clear that a direction by the High Court, in exercise of its jurisdiction under Article 226, 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 nor violate the doctrine of separation of powers. The Supreme Court indicated in the same paragraph that "being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, zealously and vigilantly".

42. Though in *Advocates Association, Bangalore Vs. Union of India (UOI) and Others*, , the Supreme Court also cautioned the High Courts that the extraordinary power should be exercised sparingly, cautiously and in exceptional situations, the Court indicated that the power could be used in cases where it becomes necessary to provide credibility and instill confidence in investigations. It was further held in that case that even in cases where it is necessary to do complete justice and to enforce fundamental rights, the power is to be used. Similar sentiments were echoed by the Supreme Court in *Doliben Kantilal Patel Vs. State of Gujarat and Another*,

43. The case on hand, without any iota of doubt, falls under the exceptions pointed out by the Supreme Court, as it not only concerns the alleged violation of fundamental rights but also concerns the alleged custodial violence against a woman. In *Shyam Narain Vs. The State of NCT of Delhi*, the Supreme Court emphasised that a serious note should be taken of crimes against women. The relevant portion in para 27 of the Judgment reads as follows:

"Respect for reputation of women in the society shows the basic civility of a

civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter" When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court."

44. Therefore, it is clear that the case on hand falls under the exceptions pointed out by the Supreme Court. The victim is a woman hailing from the economically weaker section of society. She was eking out a livelihood, by washing dishes in a small hotel. Though she has a family, she is forced to stay alone at Udumalpet and earn her daily bread, in view of the fact that her husband is bedridden and is staying with the daughter in Madurai District. Her daughter and son-in-law are also daily wage earners. Her cry for help and justice, was not heard either by the Subordinate Judiciary or by the Superior Police Force. The allegations made by her are very serious in nature and such allegations, deserve the registration of a First Information Report at the earliest point of time. The allegations of this nature made by a woman ought not to be ignored even without an investigation. In *Moti Lal Vs. State of M.P.*, the Supreme Court held as follows:-

"11. In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had even occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believe to be self-inflicted, is the best witness in the sense that he is least likely

to exculpate the real offender, the evidence of a victim of sexual offence is entitled to great weight, notwithstanding the absence of corroboration. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case".

45. Therefore, I am of the view that the Central Bureau of Investigation should be directed to register a First Information Report against the Police Officers of the Udumalpet Police Station, identified by the victim, on the basis of the statements made by her. This should be done at the earliest, since a period of more than 30 days has passed from the dates of the alleged incidents and identification of the offenders and the collection of evidence had to be done immediately.

46. It may also be necessary to award interim compensation to the petitioner's mother, in view of the fact (1) that injuries on her person are now established (2) that even as per the recording made by the Medical Officer of the Central Prison at Coimbatore, the injuries are allegedly inflicted on her while she was in police custody and (3) that but for the referral made by this Court to the Multi Super Speciality Hospital, even the fracture in her hand could never have been found out. The Ortho surgeons at the Multi Super Speciality Hospital have recorded that when the petitioner's mother was examined on 5/6.9.2014, she had a three weeks old fracture of distal phalanx of left F2. This coincides with the date on which the petitioner's mother was admittedly in police custody. Therefore, this is a case where interim compensation has necessarily to be awarded.

47. That the power of the Court to award compensation, is available as a public law remedy, especially in cases of deprivation of fundamental rights, is well settled for a long time. The principles laid down in Rudul Sah Vs. State of Bihar and Another, were followed in Sebastian M. Hongray Vs. Union of India (UOI), , Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , Peoples' Union For Democratic Rights Through Its Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters and Another, , State of Maharashtra and Others Vs. Ravikant S. Patil, and so on and so forth. Even in D.K. Basu, the Supreme Court held that compensation can be awarded for violation of fundamental Rights in public law domain.

48. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the Supreme Court pointed out that the remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies. The case on hand is that of a have-not. Therefore, it is necessary that the power to award compensation should be exercised in this case. In Sube Singh Vs. State of Haryana and Others, , the Supreme Court held as follows:-

"46. In the cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award

compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action."

49. The parameters laid down as above in *Sube Singh*, are satisfied in this case. Therefore, if this is not a fit case, I do not think there could be any other case. In *Alarmelu Mangai Vs. The Secretary to the Government of Tamil Nadu, Public Department and Others*, this Court granted compensation of Rs. 5.00 lakhs for the illegal detention in police lock-up for one night.

50. In view of the above, the writ petition is ordered with the following directions:-

(1) Immediately upon receipt of a copy of this order, the Joint Director of the Central Bureau of Investigation, Rajaji Bhavan, Chennai-90 is directed to record the statement of the petitioner's mother, now undergoing treatment at the Multi Super Speciality Hospital, Chennai-2 and register a F.I.R., for various offences under the relevant provisions of law

(2) After the registration of the F.I.R., the Joint Director shall entrust the task of investigation into the complaint, to an Officer not below the rank of a Deputy Commissioner of Police attached to the CBI

(3) The investigating Officer should take into his possession, all the medical records of the Udumalpet Government Hospital, the Coimbatore CMC Hospital and the records of the Medical Officer of the Prison and investigate into the matter and file a report within 3 months. The records of the Multi Super Speciality Hospital, Chennai can be collected from this court. He shall also check the call records of all the mobile phones of all police personnel of the Udumalpet Police to find out the date on which the petitioner's mother was taken into custody.

(4) Since it appears that the bail petition filed by the petitioner's mother in CrI.M.P. No. 1455 of 2014 on the file of the Principal District and Sessions Judge, Tiruppur is being adjourned on the ground of pendency of this writ petition, a direction is issued to the Sessions Court, to dispose it of in accordance with law, within a period of one week from the date of receipt of a copy of this order.

(5) The State is directed to provide an interim compensation of Rs. 2 lakhs to the petitioner's mother, within a period of 2 weeks from today. Upon completion of trial and in the event of conviction, she will be at liberty to proceed against the erring officers for compensation and it will be open to the State at that time to recover the amount paid by them as per this order, from those responsible.

(6) Once a F.I.R. is registered against named officials, it will be open to the State to place them under suspension and initiate any action in accordance with law.

(7) If the investigation officer is of the opinion that she should be subjected to any further medical examination, the same shall also be done at the Multi Speciality hospital. Thereafter, she may be discharged and sent back home or to the Central Prison, depending upon the fate of her bail petition.

The petition for impleadment M.P. No. 4 of 2014 is dismissed, as the purpose of seeking such impleadment stands served by the present order. All other miscellaneous petitions are closed. There will be no order as to costs.