

(2019) 11 BOM CK 0131

In the Bombay High Court

Case No : Public Interest Litigation (Suo Motu) No. 3 Of 2019

PIL Sou Moto

APPELLANT

Vs

State Of Goa And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 21, 32, 226
Code Of Criminal Procedure, 1973 — Section 162

Citation : (2019) 11 BOM CK 0131

Hon'ble Judges : M.S. Sonak, J;Nutan D. Sardesai, J

Bench : Division Bench

Advocate : D.J. Pangam, P. Faldesai, C.A. Ferreira

Judgement

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M.S. Sonak,J

1. Heard Mr. D. J. Pangam, learned Advocate General alongwith Mr. P. Faldesai, learned Addl. Government Advocate for Respondent Nos.1, 2 and 5, Mr. C. A. Ferreira, learned Advocate for Respondent Nos.3 and 4, Mr. G. V. Dhume, Chairperson of CWC, North Goa, who appears in person.

2. In the daily 'Tarun Bharat' dated 30th August, 2019, there appeared a news report of

the arrest of a couple, which is alleged to have abandoned their new born, third male child under the caption "भंडाडणाच्या रागातूनच तान्हुल्याला गॅरेजमध्ये ठेवले".

3. The news report included a photograph, in which Mr. Kapil Nayak, Police Inspector, Mapusa Police Station (Respondent No.3) and Mr. Amin Naik, Police Sub Inspector, Mapusa Police Station (Respondent No.4), appeared prominently, alongwith other police officials, out of which at least four are in full police regalia (uniform).

These police officials are seen standing in the photograph and the accused mother, is seen kneeling down before them. The names of the mother, alongwith the police officials appear quite prominently in the photograph published alongwith the news report. The police officials, including in particular the Respondent Nos.3 and 4, are seen posing alongwith the mother, as if they are displaying some "trophy". The photograph clearly conjures images of some erstwhile Maharajas or hunters posing with their trophy after a hunt. The photograph of the father also appears separately alongwith the news report.

4. Suo Motu cognizance was taken of the aforesaid news report and the photograph and appropriate directions were issued to the registry to treat this news report as a Suo Motu Public Interest Litigation vide order dated 30th August, 2019. Notices were issued to the Respondents to file their responses in the matter. Certain interim orders were also issued to ensure that proper care and protection is accorded not only to the allegedly abandoned child but also to the two other minor children, aged four and six years respectively, of the accused couple, who might have been left abandoned on account of arrest of their parents by the police.

5. In our order dated 30th August, 2019, we made it clear that we do not propose to make any observations with regard to the arrest of the parents or investigations into any alleged offence committed by them and that law may take its own course on this aspect. We however, expressed concern at the parading of the accused mother before the print and electronic media, which, we found at least prima facie to be in violation of human rights of the accused mother, not to mention in violation of her rights to privacy and dignity, both recognized as fundamental rights under Article 21 of the Constitution of India. We also observed that the presumption of innocence, which is one of the cornerstones of our criminal jurisprudence was compromised by the acts of the police officials in so insensitively parading the accused mother before the print and electronic media.

6. In this Suo Motu Public Interest Litigation, we are mainly concerned with the following two aspects of the matter:-

(i) The welfare of three minor children, including the welfare of new born child, who was alleged to be abandoned by the parents;

(ii) Virtual parading of the mother by the police officials before the print as well

as the electronic media, in prima facie violation of the accused mother's human rights, rights to privacy and dignity, as guaranteed by the Constitution of India.

7. In so far as the first aspect of the matter is concerned, we have not only perused the affidavits filed on record but we have also interacted with the officials from the Directorate of Women and Child Development and Mr. G. V. Dhume, Chairperson of Child Welfare Committee (CWC). From all this, we are quite satisfied that expedient, and more particularly sensitive steps have been taken by these agencies to accord full care and protection to the three minor children, involved in this matter. The minor children have been ultimately restored to the custody of the accused persons, who are their natural guardians. The officials as well as the Chairperson of CWC, who were present in the Court, have assured this Court that they are monitoring the progress of the children even though, the children are restored to the custody of their parents. They have also assured this Court that all measures will be taken to accord care and protection to these minor children, consistent with the provisions of Juvenile Justice Act and all other statutory provisions as may be applicable. Therefore, as indicated by us in the orders made in this matter from time to time, we are quite satisfied that appropriate measures have indeed been taken by the officials and CWC in relation to the care and protection of the three minor children involved in this matter. In fact, the measures taken by the officials and CWC, deserve to be appreciated and we therefore record our appreciation, in that regard.

8. In so far as the second aspect of the matter is concerned, we made it clear that our anxiety was not restricted merely to what has transpired in the present matter but we were equally anxious to ensure that incidents of similar nature do not repeat or recur, in future. Therefore, we had required the Respondents to file affidavits to indicate whether there were any statutory provisions or Circulars, guidelines etc., to deal with such incidents of parading of accused person, while in custody, before the print and electronic media, in utter disregard of rights of such accused persons to privacy and dignity as guaranteed by Article 21 of the Constitution of India.

9. In the affidavits filed, there is no reference to any statutory provision or rule, which authorises the police officials to parade the accused persons before the print and electronic media, in the manner in which the accused mother was insensitively paraded, in the present case. Mr. D. Pangam, learned Advocate General for the State of Goa, in fact made it clear that the State was not at all supporting the actions of the police officials parading the accused mother before the print and electronic media. He referred to a Note issued by the Inspector General of Police on 16th January, 2015, at least four years prior to the present incident, which in fact, had prohibited any officers below the rank of Superintendent of Police (SP) to even interact with or brief the media on official matters without obtaining prior permission from the competent officer. He pointed out that this note had made it clear that the name of any minor or women should not even be disclosed in sensitive cases.

10. Mr. D. Pangam, learned Advocate General for the State of Goa also made reference to the Office Memorandum dated 1st April, 2010 issued by the Ministry of Home Affairs, Government of India, by way of an advisory on media policy to be adopted by the Police Department. He pointed out that the affidavit filed by Mr. Bossuet Silva, Superintendent of Police in the present matter made it clear that both note issued by the Inspector General of Police on 16th January, 2015 and Office Memorandum dated 1st April, 2010 was circulated amongst all the police stations at the relevant time and incharges of all police stations were therefore expected to adhere to the same, while dealing with media. The learned Advocate General submitted that the State is quite serious in dealing with such incidents and all measures will be taken to ensure that such incidents do not repeat or recur, in future. The learned Advocate General also made it clear that the State was neither endorsing nor associating itself with the justification offered by Respondent Nos.3 and 4 in their respective affidavits before this Court. He submitted that the explanation offered by these police officials to the show cause notice issued to them had been rejected and penalty of "censure" has been imposed on Respondent No.3.

11. Mr. D. Pangam, learned Advocate General, further placed on record draft guidelines, which, the State is desirous of issuing so that such incidents are not repeated in future and there is some discipline in the matter of police officials interacting with the media/press. He submitted that such guidelines will be finalized and circulated amongst all the police stations incharges within a period of three weeks from the date of disposal of this petition so as to ensure that the incidents, which triggered the present Suo Motu Public Interest Litigation, are not repeated in future.

12. Mr. C. A. Ferreira, learned counsel for Respondent Nos.3 and 4, at the outset, tendered apology on behalf of the Respondents whom he represents. He submits that the affidavits have been filed by these Respondents explaining the circumstances in which parading took place. He submits that the action of the Respondents was not actuated by any malice or malafides and therefore, these proceedings be closed by accepting the apologies tendered by the Respondents, now that some departmental penalties have also been imposed upon them.

13. Neither the learned Advocate General nor Mr. C. A. Ferreira, learned counsel for the Respondent Nos.3 and 4 were in a position to point out any legal provisions authorizing the police officials to parade the accused person before the print and electronic media in the manner in which the accused mother was paraded, in the present case.

14. The note dated 16th January, 2015 issued by the Inspector General of Police, almost four years prior to the present incident reads as follows :-

" It has been observed that the police personnel are briefing/giving interview to media without any authorization from competent authority. It has also been observed that some of the police officers are also giving step by step briefing to

press on progress of various sensitive cases which badly affects the sanctity of the investigation of the sensitive cases.

Henceforth, no officer below the rank of SP will interact/brief media on official matters without obtaining prior permission from competent officer. The concerned SP will also ensure that sensitive cases should be briefed to press with proper care. It should also be ensured that name of minor and women should not be disclosed in sensitive case.

All subordinate staff should be briefed accordingly.

Strict action will be taken for non compliance.

Sd/-

(Sunil Garg, IPS)

Inspector Genral of Police, Goa."

(Emphasis supplied)

15. There are statements made in the affidavit in reply filed by Mr. Bossuet Silva, Superintendent of Police that note dated 16th January, 2015 was circulated to all police officials which will include the Respondent Nos.3 and 4 in the present matter. In fact, in the affidavit in reply filed by Respondent Nos.3 and 4, it is not their case that they were unaware of the note dated 16th January, 2015. The note, very clearly provides that no officer below the rank of Superintendent of Police will even interact/brief to media on official matters without obtaining prior permission from the competent officer. The note requires the concerned Superintendent of Police to ensure that sensitive cases are briefed to the press with proper care. The note also requires that the name of minor and women should not be disclosed in sensitive cases. The note warns of strict action, in case of non compliance.

16. In the present matter, the Respondent Nos.3 and 4 have obviously, disregarded the note dated 16th January, 2015 issued by the Inspector General of Police at least four years prior to the incident in question. Admittedly, the Respondent Nos.3 and 4 are the officers below the rank of Superintendent of Police. This is not a case where any permission was sought for by the Respondent Nos.3 and 4 before they interacted with the print and electronic media and insensitively paraded the accused mother, with a view to humiliate her and denude her rights to privacy and dignity. The actions of the Respondent Nos.3 and 4 are in clear violation of the directions issued to them by the Inspector General of Police vide note dated 16th January, 2015.

17. Apart from the note dated 16th January, 2015 issued by the Inspector General of Police, the affidavit in reply filed by Mr. Bossuet Silva, the Superintendent of Police refers to the Office Memorandum dated 1st April, 2010 issued by Ministry of Home Affairs, Government of India, by way of an advisory on media policy to be adopted by the Police Department. The affidavit specifically

states that even this Office Memorandum dated 1st April, 2010, was circulated amongst all Police Stations at the relevant time. Again, in the affidavits filed by Respondent Nos.3 and 4, it is not their case that they were unaware of the Office Memorandum dated 1st April, 2010 and the guidelines therein, which were required to be scrupulously adhered to by the police officials whilst dealing with media.

18. The Office Memorandum dated 1st April, 2010 provides for substantially exhaustive guidelines to be adhered to by the police officials while dealing with the media. The guidelines, inter alia include the following :-

(i) That the police officials while sharing information with the public through the media, should take adequate precautions to ensure that authentic and appropriate information as is "professionally necessary" be shared with the media without hampering the process of investigation or "issues of legal/privacy rights of the accused/victims";

(ii) That only "designated officers" should disseminate information to the media on major crime and law and order incidents, important detections, recoveries and other notable achievements of the police. The Police Officers should confine their briefings only to the essential facts and not rush to the press with half-baked, speculative or unconfirmed information about ongoing investigations;

(iii) That due care should be taken to ensure that there is "no violation of the legal, privacy and human rights of the accused/victims";

(iv) That the arrested persons should not be paraded before the media and faces of arrested persons whose Test Identification Parade is required to be conducted should not be exposed to the media;

(v) That any deviation by the police officer/official concerned from these guidelines should be viewed seriously and action should be taken against such police officer/official.

19. The affidavit filed by Mr. Bossuet Silva has made further reference to the advisory issued by the Deputy Inspector General of Police on 26th February, 2019, again, hardly six months prior to the incident in the present matter. This advises the police officers/police personnel to avoid sharing information on social media/TV channels in respect of matters which are under investigation/trial or sensitive matters, failing which the Departmental action would be initiated against such police officers/police personnel. In fact this advisory, in clear term states that any breach of these instructions will be visited with suitable departmental action.

20. The affidavit of Mr. Bossuet Silva further refers to the decision taken in the meeting held on 8th May, 2019, which was attended by all senior officers of the Goa police. This issue was discussed at point No.23 and the minutes record that the Director General of Police, Goa has taken a serious note about the media briefing by the incharges of Police Station and directed that henceforth only the

concerned SDPO's/SP's will issue press note on behalf of the Police Department or interact with the media on behalf of the Police Department. Again, it is not even the case of the Respondent Nos.3 and 4 that they were unaware of either the advisory dated 26th February, 2019 or the decision taken at the meeting held on 8th May, 2019.

21. In response to the show cause notice, the Respondent No.3 on the aspect of parading of the accused mother before the print and electronic media, has offered the following justification:-

".....It is submitted that pursuant to commission of crime both accused had absconded and there was repeated follow up by the media since the act of the accused of abandoning the just born child was sensitive. Hence, meticulous investigation was carried out and after due efforts the accused concern in the crime were apprehended.

Since the progress in regards to the apprehension of accused was being monitored by the media the news of about the arrest of the accused person spread like wild fire. The members of print and electronic media appeared at Mapusa Police Station while the accused lady being interrogated and requested to have visual clips of the accused, as the act of the accused person was required to be made aware to the general public as to sensitize the public about the ill effects of abandoning the child the request of media was honoured.

The act of honoring the request of the media person was without any malafied intention so also to uplift the image of the police which was under public scrutiny in the present crime since the considerable time had lapsed from the day of commission of crime...."

(Emphasis supplied)

22. The Respondent No.3, in his affidavit filed before this Court has also sought to justify his action in substantially similar terms, by stating the following, at paragraphs 11, 12 and 13 :-

"11. I respectfully state that considering that there was intense media coverage which was following up on the case as also the news of the arrest of the couple was also immediately known to the press/media, members of the print and electronic media appeared at Mapusa Police Station and requested to have visual clips of the accused particularly to make the general public aware of the acts of the accused and to sensitize the public about the ill effects of abandoning the child, the request of media was acceded.

12. I respectfully state that the photographing of the accused with the staff of the police was not with any malafide intention but to bonafidely to uplift the image of the police which was under public scrutiny in the above crime since considerable time had elapsed from the day of commission of the crime.

13. I respectfully state that I have not intended to violate the human rights of

any individual. I respectfully state that there was no motive for having the aforesaid photograph taken except for the bonafide belief that it may be for public interest. I regret such conduct on my part."

(Emphasis supplied)

23. Incidentally, the Respondent No.3 in his aforesaid affidavit has also stated that he did not intend to violate human rights of any individual and that there was no motive for taking photograph in question 'except for the bonafide belief that it may be for public interest'. He has also regretted his conduct, tendered unconditional apology and stated that he will ensure that such type of an act will not be repeated by him or his subordinate in any police station where he may be posted. He has also stated that he bonafidely believed that the prohibition of disclosure of name of the victim/accused would apply in case of sexual offences or whether the minor has been delinquent and involved in the offence.

24. The Respondent No.4 has also filed an affidavit in this Court, in which, he has stated that both the suspects were interrogated and they admitted to their involvement in the crime and were accordingly placed under arrest in due compliance with the guidelines for effecting arrest. He has stated that he never intended to violate the human right of any individual and there is no motive for having the photograph in question taken. He has apologized for being in photograph alongwith the accused and expressed regret for his conduct. He has also tendered an unconditional apology and stated that he will ensure that such type of an act will not be repeated by him. He has stated that there was no malafide intention involved on his part.

25. According to us, the so called justification offered by the Respondent No.3 is totally unacceptable and in fact aggravates his unauthorized, not to mention insensitive action of parading the accused mother before the print and electronic media. So called justification offered by both the Respondent Nos.3 and 4 appears to proceed on the basis of some fundamental misconception that any alleged admission or confession made by the accused persons before the police officials amounts to some sort of legal evidence, admissible in court of law. The second misconception, entertained by the Respondent Nos.3 and 4 is that they have authority to pronounce upon the guilt of the accused persons based upon alleged admissions made before them and further, such pronouncement entitles them to parade the accused persons before the print and electronic media as if they were displaying some trophies.

26. According to us, the action of the Respondent Nos.3 and 4 in parading the accused woman and posing for photograph alongwith her which were then released to the print and electronic media, are actions which are totally without authority of law and in fact, in breach of specific instructions contained in office note dated 16th January, 2015, Office Memorandum dated 1st April, 2010, advisory dated 26th February, 2019 and decision taken in the meeting of 8th May, 2019 by all the senior police officers, which would, in all probabilities

include the Respondent No.3 himself.

27. The justification that such parading was "to make the general public aware of the acts of the accused and to sensitize the public about the ill effects of abandoning the child" is again a justification which deserves no acceptance whatsoever. The justification, proceeds on the basis that the accused persons had indeed abandoned their child. Such basis is contrary to the presumption of innocence, which is accepted as one of the cornerstones of our criminal jurisprudence. Besides we note that both the Respondent Nos.3 and 4 being the police officers not of the rank of SDPO's or SP's were not even authorized to interact with the media much less parade the accused persons in such an insensitive manner before the print and electronic media with scant regard to their rights to privacy or dignity as guaranteed by Article 21 of the Constitution of India.

28. The actions of the Respondent Nos.3 and 4, far from contributing to sensitize the public about the ill effects of abandoning the children contribute to creating an impression that the police officials have no qualms about abandoning their duty to protect the human rights and fundamental rights of persons, as guaranteed by the Constitution of India. The acts of the Respondent Nos.3 and 4 in fact, speak volumes of their insensitivity towards the protection of human rights, right to privacy and dignity of persons accused of crimes. It is well settled that merely because some persons are accused of crimes, they are not denuded of their fundamental rights or human rights. Merely because persons are accused of crimes, the police officials derive no authority to bruise their dignity or run roughshod over their human rights or fundamental rights, which is precisely what the police officials have done in the present case.

29. The justification offered by Respondent No.3 that the action of parading the accused mother or taking photograph of the accused mother alongwith the police personnel was "to uplift the image of the police which was under public scrutiny in the above crime since considerable time had elapsed from the day of commission of the crime" deserves no acceptance but condemnation. If the police officers, who are enjoined to protect the human rights and fundamental rights of citizens, contribute themselves to the violation of the same, then, there is no question of upliftment of the image of the police. In fact, the actions of the Respondent Nos.3 and 4, far from uplifting the image of police department, have contributed to exactly reverse.

30. From the material on record, it is apparent that Respondent Nos.3 and 4 have acted in breach of the office note dated 16th January, 2015, the office memorandum dated 1st April, 2010, advisory dated 26th February, 2019 and the decision in the meeting of senior police officials held on 8th May, 2019. All these instruments, in terms, prescribe that strict action will be taken against the police officials who deviate from the instructions therein. The Respondent Nos.3 and 4 have deviated from every single instructions set out in the instruments. Respondent Nos.3 and 4 are neither officers of the rank of SP/SDPO nor did they

have any authority to interact with the media from the competent authorities, much less to parade the accused mother before the media so as to humiliate her. The actions of the Respondent Nos. 3 and 4 clearly disregard the accused mother's right to privacy, right to dignity guaranteed to her under Article 21 of the Constitution of India. The actions of the Respondent Nos.3 and 4 clearly violate the human rights of the accused mother.

31. Despite all this, the Respondent No.3 has been let off with a censure and there is no clarity regards action, if any, against the Respondent No.4. According to us, letting of Respondent No.3 with a censure does not constitute "strict action" as is contemplated by the various instruments on the subject. In fact, such a minor penalty is disproportionate and creates an impression that the State which professes to treat such incidents with seriousness, falters when the occasion actually arises for taking action. According to us, the penalty imposed upon Respondent No.3 at least, is required to be revisited by the State in the facts and circumstances of the present case so that such incidents are not repeated by the police officials.

32. The issue of police officials photographing themselves with the accused persons and thereafter releasing such photographs to the media came up for consideration before the Division Bench of the High Court of Telangana and Andhra Pradesh in Kavati Sagar Vs State of Andhra Pradesh 2018(6) ALT 291. The learned Judges of the Division Bench noted that their conscience was deeply disturbed on looking at such photographs and felt that the police had no right to violate the personal dignity of any citizen, be it an accused or a convict. It was held that right to privacy having been recognized as a fundamental right, the police have no authority whatsoever to parade the suspects in public and allow the press to publish their photographs and electronic channels to telecast such an event. The initial defence on the part of the State of Andhra Pradesh for presentation of the accused person before the media was a matter of practice and further it was not uncommon for police officials to get photographed with the display of recovered property, was deprecated by the Court. At the later stage of the proceedings, the Director General of Police, Andhra Pradesh filed his personal affidavit, by enclosing revised Circular dated 12.07.2018, in which, it was conceded that parading of accused person before the media by local police officers is not correct practice and the same amounts to violation of right of privacy of such accused person. The Circular instructed the police officers not to produce the accused person before the media and that the media briefings should be confined to the points of preliminary facts without violating the orders made by the High Court and the Supreme Court on these matters.

33. In Mehmood Nayyar Azam Vs State of Chattisgarh and others AIR 2012 SC 2573, the Hon'ble Apex Court was concerned with the case of humiliation afflicted on a doctor while in custody. The SHO and ASI took photograph of this doctor whilst in custody, compelling him to hold a placard, on which it was written that the doctor is a cheat, fraud, thief and rascal. This photograph was

then circulated by the police officials to the general public and found its way into the press as well.

34. The Hon'ble Apex Court whilst roundly condemning the acts of the police officers, referred to the police officials as "some megalomaniac officers who conceive the perverse notion that they are the 'Law' forgetting that law is the science of what is good and just and, in very nature of things, protective of a civilized society." The Hon'ble Apex Court proceeded to observe that "such megalomaniac officers have become totally oblivious of the fact that living with dignity has been enshrined in our Constitutional philosophy and it has its ubiquitous presence, and the majesty and sacrosanctity dignity cannot be allowed to be crucified in the name of some kind of police action."

35. The Hon'ble Apex Court took cognizance of several legislations and several precedents on the issue and noted that the term "life" used in Article 21 of the Constitution is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. It is apposite to note that inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience. The torture is not merely physical but may even consist of mental and psychological torture calculated to create fright to submit to the demands of the police. Even "a man's reputation" which forms a facet of right to life as engrafted under Article 21 of the Constitution. The Hon'ble Apex Court then recorded that there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history." The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector.

36. The Hon'ble Apex Court further observed that it is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner.

On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities.

37. The Hon'ble Apex Court, upon advertng to the fact situation concluded that the appellant had indeed been "humiliated" by photograph with a placard in which condemning language was posted. The photograph was made published by the police officials. The Hon'ble Apex Court observed that such treatment is basically inhuman and causes mental trauma. The Hon'ble Apex Court refers to Kaplan & Sadock's Synopsis of Psychiatry, in which the learned authors have stated that intentional physical and psychological torture of one human by another can have emotionally damaging effects comparable to, and possibly worse than, those seen with combat and other types of trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied.

38. The Hon'ble Apex Court made it clear that it was referring to the aforesaid aspects only to highlight that in the case at hand, the police authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. The Hon'ble Apex Court observed that it is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator. As Pithily stated in *Jennison v. Baker* (1972) 1 ALL ER 997, "The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope."

39. In *Delhi Judicial Services Association Vs State of Gujarat* (1991) 4 SCC 406 while dealing with the role of police observed that the purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police and it must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.

40. In *Sidhartha Vashisht Vs State* (NCT of Delhi) AIR 2010 SC 2352, the Hon'ble Apex Court has observed that there is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the Court.

41. In *Anukul Chandra Pradhan Vs Union of India and others* (1996) 6 SCC 354, the Hon'ble Apex Court has held that the presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. It is essential for the maintenance of dignity of Courts and is one of the cardinal principles of rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to checks and balances so as not to interfere with the administration of justice.

42. In the present case, if the affidavit filed by Respondent No.3 is to be believed, then, he refers to persistent requests by the members of print and electronic media for visual click of the accused persons. Although, this could have been avoided by the print and electronic media, the moot question is whether the Respondent No.3 was justified in obliging the members of print and electronic media by posing for photographs alongwith the accused mother, disregarding utterly, aspects like presumption of innocence, right to privacy and right to dignity, which inhere in the accused mother.

43. The justification that this was done in order to sensitize the public about the ill effects of abandoning the child or that this was done in order to uplift the image of the police which was under public scrutiny in the above crime since considerable time had elapsed from the day of commission of the crime is no justification whatsoever, in the facts and circumstances of the present case. The Respondent No.3 by his acts, has in fact made the general public aware of his own insensitivity, thereby creating an impression that the police officials in Goa are not at all sensitive in such matters. The actions of Respondent Nos.3 and 4, far from uplifting the image of the police have contributed precisely in the reverse direction.

44. In any case, in the name of uplifting the image of the police force, no Constitutional Court can tolerate the infringement of fundamental rights of the citizens of this Country. Merely because the persons in question may have been the accused of commission of some offence does not mean that such persons are denuded of the fundamental right to life guaranteed by Article 21 of the Constitution of India. The fundamental right to life and personal liberty as guaranteed by Article 21 of the Constitution of India, will undoubtedly include the right to privacy and right to live with dignity. The actions of Respondent Nos.3 and 4 have rendered such rights of the accused mother in the present case, a clear casualty.

45. Taking into account the gross facts as established from the record, we are of the opinion that Respondent Nos.3 and 4 must be made to compensate the accused mother for having violated her human and fundamental rights to privacy and dignity with impunity. The jurisdiction of the Constitutional Courts to award compensation in cases of established violation of fundamental rights is not in

dispute. In cases like the present, such power to award compensation is coupled with a duty to do so, as otherwise, the police officials will have no qualms in such matters.

46. In the present case, despite clear and repeated instructions, the message that persons accused of crimes are not to be paraded before the media in violation of their rights to privacy and dignity, does not appear to have percolated to the police officials. If the police officials are merely let off with a censure, there is every likelihood that such incidents recur and repeat. Therefore, we are satisfied that this is a fit case in which the Respondent Nos.3 and 4 are required to pay compensation to the accused mother.

47. On the aspect of compensation, the Hon'ble Apex Court in *Mehmood Nayyar (supra)* rejected the contention on behalf of the State that the victim, if so advised may sue for defamation and/or other damages and that the Constitutional Court may not award any compensation. The Hon'ble Apex Court has held that when there is contravention of human rights, the inherent concern as envisaged in Article 21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy. After reference to several precedents, the Hon'ble Apex Court has held that the purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen.

48. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction and/or prosecute the offender under the penal law.

49. The Hon'ble Apex Court after observing that the inhuman treatment meted out to the appellant can be well visualized when the appellant came out from custody and witnessed his photograph being circulated with the self-condemning words written on it which proceeded to award Rs.5 lakhs by way of compensation to the appellant. The Hon'ble Apex Court observed that humiliation inflicted upon the appellant withers away the very essence of life as enshrined under Article 21 of the Constitution. The compensation was directed to be paid by the State and thereafter realized from the erring officers in equal proportions from their salary

as thought appropriate by the competent authority of the State.

50. In *Hardeep Singh Vs State of Madhya Pradesh* (2012) 1 SCC 748, the appellant was engaged in running a coaching centre. On certain allegations, he was arrested and taken to the police station and handcuffed. A number of daily newspapers published the appellant's photographs and on seeing photograph of the appellant in handcuffs, the appellant's elder sister was so shocked that she expired. The Division Bench of the Madhya Pradesh High Court, in such circumstances, ruled that there was infringement of right to dignity and ordered payment of compensation of Rs.70,000/-. The Hon'ble Apex Court, found that the compensation of Rs.70,000/- was too meagre and did not do justice for suffering and humiliation undergone by the appellant and enhanced the compensation to Rs.2,00,000/-.

51. Since, there is no dispute on the factual aspect in the present matter and this is quite a clear case where the Respondent Nos.3 and 4 have violated the human rights and fundamental rights of the accused mother, applying the principles discussed by the Hon'ble Apex Court in the aforesaid matters, we are satisfied that the Respondent Nos.3 and 4 must pay some compensation to the accused mother, by way of public law remedy. This is obviously without prejudice to the right of the accused mother to claim for compensation under private law.

52. Upon overall consideration of the facts and circumstances as have unfolded and further, upon taking into consideration the fact that the Respondent Nos.3 and 4 have expressed regrets and assured this Court that such incident will not be repeated in future, we feel that the interests of justice would be met if the Respondent No.3 pays the compensation of Rs.30,000/- to the accused mother and the Respondent No.4 pays compensation of Rs.10,000/- to the accused mother, within a period of four weeks from today. We direct accordingly.

53. Consistent with the statement made by the learned Advocate General on behalf of the State of Goa, the directions are issued to formulate and circulate the guidelines in the matter of police officials interacting with the media/press. We have examined the draft handed in by the learned Advocate General, which is more or less on the lines of guidelines in the Office Memorandum dated 1st April, 2010 issued by the Ministry of Home Affairs, New Delhi. The guidelines, once formulated, are directed to be circulated to all the police officials, so that there is no excuse for non compliance in future.

54. The proposed guidelines handed in by the learned Advocate General are transcribed below for convenience of reference. We accept the statement of the learned Advocate General that such guidelines, with suitable modifications, if necessary, will be issued within a period of three weeks from today so as to ensure that there is no recurrence of such incidents in future.

"PROPOSED GUIDELINES IN THE MATTER OF POLICE OFFICIALS INTERACTING WITH MEDIA/PRESS:

Instances have come to notice of this office, wherein Police Officers and men are found to be interacting themselves with Media/Press by way of briefing/giving interview/giving step by step briefing to press on progress of various sensitive cases which badly affects the sanctity of the investigation of the sensitive cases without any authorization from competent authority.

Such behaviour on the part of Police Officers, who are guardian of law make them susceptible to biased unwarranted criticism, besides bringing disrepute to the department.

In view of this, their attention is drawn to a Note dated 16th January, 2015 issued by IGP Goa & an Advisory dated 26th February, 2019 issued by DIGP Goa, thereby advised to all Officers/Police Personnel to avoid sharing/interact/brief to media/press such sensitive/secret information in respect of matters which are under investigation/trial or sensitive in nature.

Pertinently, the Hon'ble High Court of Bombay at Goa has taken Suo Motu cognizance of the news item appearing in daily Tarun Bharat dated 30/08/2019 particularly, a photograph published in the said daily of Police Officials posing with accused mother.

At the outset, attention is drawn to the fact that the Hon'ble Apex Court has issued directions from time to time to avoid human rights violations in different matters i.e. vide judgment dated 29th April, 1980 in the matter of Prem Shankar Shukla Vs Delhi Administration, judgment dated 11th January, 1996 in the matter of M. P. Dwivedi & Ors Vs Unknown, judgment dated 5th May, 2009 in the matter of State of M. P. Vs Devendra & judgment dated 3rd August, 2012 in the matter of Dr. Mehmood Nayyar Azam Vs State of Chattisgarh & Ors.

The principal duty cast upon police is to prevent, register, investigate, detect & prosecute all crimes within their jurisdiction. There are no provisions in the law to disclose information of crimes to media/press. As such, directions were issued by the State Govt./Union Govt. from time to time to avoid hampering of the process of investigation or issues of legal/privacy rights of the accused/victims & matters of strategic and national interest.

The following guidelines are required to be scrupulously adhered to while dealing with media/press/social media.

1. Only officers of the rank of Dy. SP & above are designated officers should disseminate information to the media on major crime and law and order incidents, important detections, recoveries and other notable achievements of the police.
2. Police Officers shall confine their briefings to the essential facts and not rush to the press with half-baked, speculative or unconfirmed information about ongoing investigations. The briefing shall normally be done only at the following stages of a case i.e. i. Registration, ii. Arrest of accused persons, iii. Charge-sheeting of the case & iv. Final outcome of case such as conviction/acquittal etc.

3. In a case that attracts the interest of the media, a specific time may be fixed every day when the designated officer would make an appropriate statement on the investigation.
4. In the first 48 hours there should be no unnecessary release of information except about the facts of the incident and that the investigation has been taken up.
5. The general tendency to give piecemeal information/clues, on a daily/regular basis, with regard to the progress/various lines of investigation, should be strongly discouraged so that the investigations are not compromised and the criminals/suspects do not take undue advantage of information shared by the Police authorities about the likely course of the investigation.
6. Meticulous compliance with the legal provisions and Court guidelines regarding protection of the identity of juveniles and rape victims should be ensured, and under no circumstances should the identity of juveniles and victims in rape cases be disclosed to the media.
7. Due care should be taken to ensure that there is no violation of the legal, privacy and human rights of the accused/victims.
8. Arrested persons should not be paraded before the media.
9. Faces of arrested persons whose Test Identification Parade is required to be conducted should not be exposed to the media.
10. Ensure that the name of minor/women/witnesses is not disclosed to press/media.
11. Ensure that the name & address of relatives of accused/victim/minor/women is not disclosed to avoid their identity in public.
12. Ensure that the statement given by the witness during the course of investigation u/s 162 of Cr.P.C. & brief of witnesses is not disclosed.
13. No opinionated and judgment statements should be made by the police while briefing the media.
14. As far as possible no interview of the accused/victims by the media should be permitted till the statements are recorded by the police.
15. The professional tradecraft of policing and technical means used for the detection of criminal cases should not be disclosed as it alerts potential criminals to take appropriate precautions while planning their next crime.
16. In cases where National security is at stake, no information should be shared with the media till the whole operation is over or until all the accused persons have been apprehended.
17. The modus operandi of carrying out the operations should not be made

public. Only the particulars of apprehended persons and details of recovery should be revealed to the media on completion of the operations, by the competent officer.

18. There should not be any violation of court directions and other guidelines issued by the authorities from time to time on this matter.

19. Preferably, there should be one officer designated as the Public Relations Officer to handle the immediate information needs of all media persons and give the correct and factual position of any crime incident.

20. As and when instances of misreporting or incorrect reporting of facts/details pertaining to an incident or the department comes to notice, a suitable rejoinder should immediately be issued and, in more serious cases, the matter should be taken up at the appropriate levels for remedial action.

21. Investigating Officer & Station House Officer have the responsibility to ensure that the information about the investigation before filing of chargesheet or the information in sub-judice/trial matters is not disclosed to press/media, to avoid hampering of the process of investigation and smooth undergoing trial.

22. The Police Officers below the rank of Dy. SP & Police Personnel are hereby directed to refrain from interacting with media/press in the future.

23. Any deviation by the Police Officer/Official concerned from these instructions will be viewed seriously and disciplinary action will be taken against such police officer/official.

24. This should be brought to the notice of all the Officers and men working under their control."

(Emphasis supplied)

55. We accordingly dispose of this Suo Motu Public Interest Litigation by making the following order:-

(i) We hold that the action of the Respondent Nos.3 and 4 in parading the accused mother before the electronic and print media or in posing for photographs alongwith the accused mother before the print and electronic media, are acts, without authority of law and in fact in breach of Office note dated 16th January, 2015, Office Memorandum dated 1st April, 2010, advisory dated 26th February, 2019 and the decision taken on 8th May, 2019. Such acts amount to violation of human rights of the accused mother. Such acts amount to violation of right to privacy and right to live with dignity guaranteed to the accused mother under Article 21 of the Constitution of India. Accordingly, the acts of the Respondent Nos.3 and 4 are hereby deprecated;

(ii) The State Government and Director General of Police are directed to ensure that the police officials do not parade the accused persons before the print and electronic media or pose for photographs with accused persons before the print

and electronic media in disregard human rights, right to privacy and right to live with dignity of such accused persons;

(iii) We hold that the penalty of "censure" imposed upon the Respondent No.3 is totally inadequate and disproportionate in the facts and circumstances of the present case. Accordingly, we direct the State to consider imposition of suitable penalty, proportionate to the role played by the Respondent No.3 in the incident in question. Some decision in this regard be taken within a period of four weeks from today. Compliance report to be filed by Respondent No.2 latest by 6th January, 2020;

(iv) The Respondent No.3 is directed to pay to the accused mother, compensation of Rs.30,000/- within four weeks from today by way of cheque or demand draft;

(v) The Respondent No.4 is directed to pay the compensation of Rs.10,000/- to the accused mother again within a period of four weeks from today by way of cheque or demand draft;

(vi) The Director of Women and Child Development (Respondent No.5) to coordinate with Respondent Nos.3 and 4 so as to ensure that the compensation is received by the accused mother, in the aforesaid terms within four weeks from today;

(vii) In case the Respondent Nos.3 and 4 fail to pay the compensation to the accused mother, within four weeks from today, the State of Goa, is directed to pay the same to the accused mother within a period of two weeks thereafter and then recover such amount from the salary of the Respondent Nos.3 and 4 latest by 31st December, 2019. Compliance report to be filed by Respondent No.2 latest by 6th January, 2020;

(viii) The State Government, as undertaken before this Court, to issue necessary guidelines dealing with the interaction between the police officials and the media, if necessary by making suitable modification to the proposed guidelines tendered in the course of these proceedings. This exercise be completed within a period of six weeks from today. Compliance report to be filed by Respondent No.2 latest by 6th January, 2020;

56. All concerned to act on the basis of the authenticated copy of this order.