
(2013) 05 AHC CK 0089

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 16425 of 2013

Ram Kishore

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Citation : (2013) 82 ALLCC 759

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Prabhat Agarwal, for the Appellant; Akhilesh Singh, G.A. and Vikas Sahai, A.G.A., for the Respondent

Judgement

Ramesh Sinha, J.—Heard Shri Prabhat Agarwal, learned Counsel for the applicant and Shri Akhilesh Singh, learned Govt. Advocate assisted by Shri Vikas Sahai, learned AGA for the State. Brief facts of the case are that the applicant, who is the complainant of the case belongs to Scheduled Caste category. He has moved an application u/s 156(3) Cr.P.C. against the accused persons alleging that they are notorious persons indulged in womanizing; specially molesting, physically harassing and threatening the girls. The daughter of the applicant, aged about 14 years, is a student of Class-Xth in Fateh Chandra Smarak Inter College at Udanpur in district Jalaun which is at a distance of 2 kilometres from her house. On the way, while going to school, she was followed by accused Ashish, who is student of B.A. in a degree college at Kadaura and he used to tease her, pass indecent remarks and ask her to marry with him. The accused Ashish caught hold of his daughter and physically harassed her. The daughter of the applicant after tolerating the said act of accused Ashish for several days, made a complaint to the Principal of the college on 1.3.2013 on which the Principal of the college after making an enquiry, made an endorsement on 10.3.2013 to the police personnel of police station Kurara recommending that the complaint of the daughter of applicant be registered and action be taken against accused Ashish, a copy of the same has been annexed as annexure-2 to the present application.

When accused Ashish came to know about the said complaint being made by the daughter of applicant, he along with other co-accused persons armed with Lathi, Spear and Barchi came to the house of the applicant on 5.3.2013 and started abusing the applicant and his family members and further threatened them to be ready to face dire consequences, if any, complaint is made in future. On the alarm raised by the applicant, several persons of the locality gathered whereupon the accused persons fled away threatening the daughter of the applicant that they will entice her away. The Board Examination of the daughter of applicant is going on and he is very much worried about the security and safety of his daughter from the accused persons, hence he went to register an F.I.R. against the accused person. When neither the complaint of the applicant was entertained nor the F.I.R. was registered against the accused persons in spite of the endorsement made by the Principal of the institution, the applicant has made an application on 8.3.2013 to the Superintendent of Police, Hamirpur, copy of same was also sent to the District Magistrate, Hamirpur and D.I.G. Chitrakoot through a registered post. On the said application, the District Magistrate, Hamirpur had made an endorsement to the Superintendent of Police, Hamirpur to investigate the matter and thereafter proceed in accordance with law but no action was taken either by the police personnel of police station Kurara or by the Superintendent of Police, Hamirpur nor F.I.R. was registered. On being failed in all his attempts, the applicant had approached the Court of C.J.M., Hamirpur by moving an application u/s 156 Cr.P.C. praying for registration of F.I.R. against the accused persons. The learned Magistrate has treated the said application as complaint and directed the applicant to appear before the Court for recording of statement u/s 200 Cr.P.C. by passing the impugned order dated 11.4.2013.

2. From a perusal of the application u/s 156(3) Cr.P.C., it is apparent that the allegations made in the complaint by the applicant as well as his daughter with regard to eve teasing etc. by the accused persons and non registration of the F.I.R. in spite of the endorsement made by the Principal of the institution as well as the District Magistrate, Hamirpur, who had made the endorsement to the Superintendent of Police, Hamirpur to enquire about the matter and for taking action in the matter, appear to be serious one.

3. This Court has come across several cases where the offence committed against the women like rape, molestation, even teasing and sexual harassment including other offences like certain financial scams etc. which are brought in the knowledge of the police officials, are not being attended by them in the districts of the State in spite of the matter being brought into the knowledge of the higher officials of the police, i.e., Senior Superintendent of Police/Superintendent of Police of the districts and the aggrieved persons have to come in the shelter of Court below as well as this Court for redressal of their grievance.

4. This Court taking serious note of the matter has condemned such laxity and dereliction in the duty on the part of the police officials at regular intervals calling upon the S.H.O. of the concerned police station along with S.S.P./S.P. of the

concerned district, who on appearance admitted such laxity and dereliction on the part of police officials in not registering the F.I.R. and the Police Chiefs of the concerned districts submitted that they will take departmental action against such erring police officials, who refuse to register an F.I.R. of a victim/aggrieved person, who approached them for registering the same for the offence committed against them. This Court on earlier occasions had taken a liberal view on the assurance given by them and had cautioned them not to permit such laxity or dereliction in the duty any further.

5. The present case being one of another such case of police inaction registering the F.I.R. of the applicant.

Shri Devraj Nagar, D.G.P., U.P., Lucknow along with Shri Ratan Kumar Srivastava, S.P. (City), District Hamirpur are present in the Court today in compliance of this Court's order dated 14.5.2013.

6. An affidavit of compliance has been filed by Shri Devraj Nagar, Director General of Police, U.P., Lucknow, which is taken on record. An affidavit of compliance has also filed by Shri Ratan Kumar Srivastava, Superintendent of Police, District Hamirpur, which is on record.

7. It has been brought to the knowledge of the Court that in compliance of this Court's order dated 14.5.2013 a circular has been issued on 23.5.2013 to all the S.S.P. and S.P. of the State of Uttar Pradesh with regard to the lodging of the First Information Report u/s 154, Cr.P.C. of the aggrieved person/victims of the crime in pursuance of the latest amendments made in the Indian Penal Code by the Criminal Law Amendment Act, 2013 (hereinafter referred to as the "Act" of 2013) which has come in to force on 3.2.2013. Mr. Nagar, who is present in the Court, has also assured the Court that the directions issued by the Apex Court as well as this Court and the necessary amendment made in the Act of 2013 shall be carried in letter and spirit by the police personnels of the State of U.P. and no laxity on the part of the police officials shall be tolerated and strict action would be taken against the erring police officials, who does not comply with the aforesaid directions. This Court has passed a detailed order on 14.5.2013 noting the judgment of the Apex Court in Lalita Kumari v. Govt. of U.P. and others, 2009 (64) ACC 214 (SC) wherein it has been held that the FIR of a victim/aggrieved person has to be lodged by the police when the crime in question is reported to them, but the Court has time and again found that there has been gross violation of the order of the Apex Court at regular intervals by the police personnels of the State, several such instances were also shown to Sri Nagar D.G.P., U.P. in the matters connected with the present case. Shri Nagar has assured this Court he will make all endeavours that no such complaint would come to this Court in future. He expressed his distress about the several such instances which were pointed out to him by the Court in various other matters where the victim/aggrieved person's FIR was not lodged by the concerned police personnels of the police station and also there was some laches on the part of the S.S.P.'s and S.P.'s of the concerned District, who are also present today in the Court. He

further assured the Court that he will look into said cases and the erring officials, who were found to be responsible for not lodging the FIR of the victims/aggrieved persons of crime specially against women shall be personally monitored by him and the departmental action, which has been initiated against the police personnels in the said cases and in some of the cases same police personnels have also been suspended for not lodging the FIR of the victim/aggrieved persons in cases like eve-teasing, molestation, rape etc. and departmental inquiry initiated against erring officials shall be brought to its logical end and this Court would also be informed accordingly by the next date.

8. This Court has also apprised the D.G.P., U.P., Lucknow about the judgment and order of the Apex Court in Writ Petition (Civil) No. 265 of 2011, *Avishek Goenka v. Union of India* and another passed on 27th April 2012 and 3rd August 2012 respectively in which the Apex Court has held that there has been alarming rise in heinous crimes like kidnapping, sexual assault on women and dacoity has impinged upon the right to life and right to live in a safe environment which are within the contours of Article 21 of the Constitution of India. One of the contributing factors to such increase is use of black films on windows and windshields on four-wheeled vehicles. It was further observed by the Court that the use of black films upon the vehicles gives immunity to the violators in committing the crime and is used as a tool of criminality, considerably increasing criminal activities. At times, heinous crimes like dacoity, rape, murder and even terrorists acts are committed in or with the aid of vehicles having black films pasted on the side windows and the screens of the vehicles. It was stated before the Apex Court that because of non-observance of the norms, regulations and guidelines to the specifications for the front and rear windscreens and the side windows of the vehicles, the offenders can move undetected in such vehicles and commit crimes without hesitation. It was held by the Apex Court that use of black films or any other material upon the safety glass, windscreens and side windows is impermissible in terms of Rule 100(2) of the Motor Vehicles Rules, 1989. 70 percent and 50 percent VLT (Visual Light Transmission) standard are relatable to the manufacture of the safety glasses in the windshields (Front and Rear) and the side windows respectively. Use of films or any other material upon the wind screens or side windows is impermissible in law. It is the VLT of the safety glass without any additional material being pasted upon the safety glass which must conform that manufactured specifications.

9. In this regard paras 26, 27 and 28 of the said Judgment is quoted hereinbelow:--

26. The manufacturer of the vehicle may manufacture the vehicles with tinted glasses which have Visual Light Transmission (VLT) of safety glasses windscreen (front and rear) as 70 per cent VLT and side glasses as 40 per cent VLT, respectively. No black film or any other material can be pasted on the windscreens and side glasses of a vehicle.

27. For the reasons afore-stated, we prohibit the use of black films of any VLT

percentage or any other material upon the safety glasses, wind screens (front and rear) and side glasses of all vehicles throughout the country. The Home Secretary, Director General/Commissioner of Police of the respective States/Centre shall ensure compliance with this direction. The directions contained in this judgment shall become operative and enforceable with effect from 4th May, 2012.

28. With the above directions, we partially allow this writ petition and prohibit use of black films of any percentage VLT upon the, safety glasses, windscreens (front and rear) and side glasses. However, there shall be no order as to costs.

The Apex Court further heard the matter on 3.8.2012 after impleadment of certain persons, who had some inconvenience towards the order passed by the Apex Court, on 27.12.2012, approached the Apex Court in the said case and after hearing them the Apex Court on 3.8.2012 further held and observed which is quoted in para 23 & 24 of the said judgment which is quoted hereinbelow:-

.....23. The petitioner argued with some vehemence that despite a clear direction of this Court, the appellate authority has utterly failed in enforcing the law. According to him, in majority of the vehicles in the NCT Delhi and the surrounding districts of U.P., like Ghaziabad, Noida as well as towns of Haryana surrounding Delhi, law is violated with impunity. All safety glasses are posted either with Jet black films or tight coloured films. He has referred to two instances, one of rape in Ghaziabad and the other of kidnapping, where the cars involved in the commission of the crime had black films. He has also stated that as per the press reports, the vehicles which are involved in hit and run cases are also vehicles with black films pasted on the safety glasses.

24. We are really not emphasizing on the security threat to the society at large by use of black films but it is a clear violation of law. In terms of Rule 100, no material including films of any VLT can be pasted on the safety glasses of the car and this law is required to be enforced without demur and delay. Thus, we pass the following orders:

(1) All the applications filed for clarification and modification are dismissed, however, without any order as to costs.

(2) All the Director Generals of Police/Commissioners of Police are hereby again directed to ensure complete compliance of the judgment of this Court in its true spirit and substance. They shall not permit pasting of any material, including films of any VLT, on the safety glasses of any vehicle.

(3) We reiterate that the police authorities shall not only challan the offenders but ensure that the black or any other films or material pasted on the safety glasses are removed forthwith.

(4) We make it clear at this stage that we would not initiate any proceedings against the Director Generals of Police/Commissioners of Police of the respective States/Union Territories but issue a clear warning that in the event of non-

compliance of the judgment of this Court now, and upon it being brought to the notice of this Court, the Court shall be compelled to take appropriate action under the provisions of the Contempt of Courts Act, 1971 without any further notice to the said officers.

We do express a pious hope that the high responsible officers of the police cadre like Director General/Commissioner of Police would not permit such a situation to arise and would now ensure compliance of the judgment without default, demur and delay.

(5) Copies of this judgment be sent to all concerned by the Registry including the Chief Secretaries of the respective States forthwith.

10. In this regard this Court summoned Shri Ajay Kumar, S.P. City (Traffic), Allahabad, through Government Advocate who is present before this Court along with Shri Devraj Nagar, D.G.P., looking into the increase of crimes in District Allahabad where there has been serious laxity on the part of police personnels, who have failed to regulate the traffic rules in the city as well as checking of black films of the four wheeled in spite of the order passed by the Apex Court in the aforesaid case for which attention was also drawn of the D.G.P. (U.P.), Lucknow in this regard. Shri Nagar has assured this Court that he would make all efforts to get the order of the Apex Court in the case of Avishek Goenka (supra), comply in letter and spirit, so that the crime in the city of Allahabad as well as in other Districts of the State may be checked, which specially committed against the women in the four-wheeled vehicles in which the black films are pasted on the windows and windshields. The S.P. City (Traffic) has also assured this Court that the orders passed by the Apex Court and this Court today shall be complied with strictly and there will be no laxity on his part or other police officials of the city in this regard.

11. It has been informed by S.P. Hamirpur that the F.I.R. of the applicant has been lodged on 21.5.2013 which has been registered as case crime No. 773 of 2013 u/s 147, 354, 354-A, 506, I.P.C. and section 3(1)(ii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, P.S. Kurara District Hamirpur. A copy of which has been annexed as Annexure 3 of the affidavit of compliance.

12. From the perusal of the impugned order dated 11.4.2013 passed by the Magistrate treating the application u/s 156(3) Cr.P.C. as complaint shows that learned Magistrate failed to appreciate that the allegations was made in the complaint by the applicant whose School going daughter was eve teased, indecent remarks was made by accused persons and she was harassed on her way to school by the accused persons regularly. The Principal of the institution in which the daughter of the applicant was studying had also endorsed her application and requested the Station Officer of concerned Police Station to lodge an F.I.R. of the daughter of applicant and also the D.M. of the district directed the S.P. Hamirpur to lodge the F.I.R. of the applicant's daughter but it was not

lodged by the Police and when the applicant approached the Court of Magistrate by means of application u/s 156(3) Cr.P.C. for lodging the F.I.R. against the Magistrate in a most casual manner has observed that all the facts are well within the knowledge of the applicant and the matter does not require any investigation by the police and giving a casual reference of the judgment of Apex Court and Division Bench of this Court directed the matter to be registered as Complaint case. The Learned Magistrate has wrongly interpreted the judgment of Apex Court and Division Bench of this Court in following cases, i.e., Suresh Chandra Jain v. State of M.P., 2007 (42) ACC 459 (SC) Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, Joseph Madhuri alias Vishwaswarenanda v. Swami Sachhidanand Harisakshi and another, 2001 (Suppl.) ACC 957 Ram Babu Gupta and Another Vs. State of U.P. and Others, and Sukhwasi Vs. State of Uttar Pradesh, and has not properly applied his discretion in the matter. The learned Magistrate has given uphill task to the applicant whose minor school going daughter was molested, eve teased and harassed by accused person to prove his case against the accused persons.

13. In view of the above dismissal of the impugned order passed by the Magistrate is hereby set-aside.

14. The Court cautions the Magistrate of the Courts below in the State of U.P. that in cases of crime against the women, they should carefully examine the application u/s 156(3) Cr.P.C. of the victim/aggrieved persons and exercise their jurisdictional discretion in a proper manner taking into account the rapid increase of crime against women but at the same time the Magistrate shall also take care that no innocent persons should be harassed by misuse of process of law.

15. As the FIR of the applicant has already been lodged, the Investigating Officer shall submit his police report to the concerned Court/Magistrate u/s 173(2) Cr.P.C. expeditiously.

16. The matter be listed on 30.8.2013 along with other connected matters for further hearing in order to inform the Court about the action which has been taken by the S.P. Hamirpur against erring officials who have not lodged the F.I.R. of the applicant and about the departmental inquiry initiated and finally action taken against them and also inform the D.G.P., U.P. about the same. The D.G.P., U.P. Lucknow shall also submit his report regarding the steps which he has taken to comply the judgment of the Apex Court in the Case of Avishek Goenka v. Union of India (supra), regarding ban of black films pasted on the side of windows and the screens of the four wheeled vehicles. Copy of this order shall be given to Government Advocate for its compliance.