

ITEM NO.33

COURT NO.14

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SMW (CRL) No(s). 1/2019

I N R E A L A R M I N G R I S E I N T H E N U M B E R O F R E P O R T E D C H I L D R A P E I N C I D E N T S
P e t i t i o n e r (s)

VERSUS

Respondent(s)

(Mr. V. Giri, Sr. Advocate (A.C.), Mr. Krishna Dev Jagarlamudi, Adv
and Ms. Uttara Babbar,

IA No. 14891/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 14888/2020 - INTERVENTION/IMPLEADMENT)

Date : 31-01-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For the parties:

By Courts Motion, AOR

Mr. Tushar Mehta, SG
Mr. ANS Nadkarni, ASG.
Ms. Suhasini Sen, Adv.
Mr. S.S. Rebello, Adv.
Mr. N.K. Gokhle, Adv.
Mr. Swati Ghildiyal, Adv.
Mr. G.S. Makker, Adv.
Mr. A.K. Sharma, Adv.
Mr. Rajat Nair, Adv.
Ms. Neela, Adv.
Mr. Manish, Adv.
Ms. Neela Kedar Gokhale, Adv.
Mr. Arzu paul, Adv.
Mr. Neeleshwar P., Adv.
Ms. Riya Soni, Adv.
Ms. Neela Gokhale, Adv.
Ms. Shradha Agrawal, Adv.
Ms. Shruti Dixit, Adv.
Mr. Raj Bahadur Yadav, Adv.
Mr. B.V. Balramdas, Adv.

Mr. Siddharth Dave, Sr. Adv.

For Odisha Mr. Som Raj Choudhury, AOR
Mr. Prashant Kumar, Adv.

Mr. T. G. Narayanan Nair, AOR

Mr. R. P. Gupta, AOR

For T.N. Mr. Jayanth Muth Raj, Sr. Adv.
Mr. M. Yogesh Kanna, AOR
Mr. Raja Rajeshwaran S., Adv.
Ms. Uma Prasuna Bachu, Adv.

For Maharashtra Mr. Sachin Patil, Adv.
Mr. Rahul Chitnis, Adv.
Mr. Aditya Pande, Adv.
Mr. Geo Joseph, Adv.

For R.G., High Court of Meghalaya Mr. Sanjai Kumar Pathak, AOR
Ms. Shashi Pathak, Adv.
Mr. Arvind Kumar Tripathi, Adv.

Mr. Sahil Tagotra, AOR

For H.C. of MP Mr. Arjun Garg, AOR
Mr. Devansh Srivastava, Adv.

For Calcutta Mr. Kunal chatterji, Adv.
Ms. Maitrayee Banerjee, Adv.
Mr. Pravar Veer Misra, Adv.

Ms. Sneha Kalita, AOR

Intervenor-in-person, AOR

For State of Goa Mr. Arun R. Pedneker, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Ms. Mukti Chowdhary, AOR

For HC Sikkim Ms. Aruna Mathur, Adv.
Mr. Avneesh Arputham, Adv.
Ms. Anuradha Arputham, Adv.
Ms. Geetanjali, Adv.
M/S. Arputham Aruna And Co, AOR

For AIIMS Mr. Atul Kumar, AOR
Ms. Sweety Singh, Adv.
Mr. Subodh Kumar, Adv.

For Patna Mr. P.H. Parekh, Sr. Adv.
Mr. K. Raj, Adv.

Ms. Tanya Chaudhry, Adv.
 Ms. Pratyusha Priyadarshini, Adv.
 Ms. Nitika Pandey, Adv.
 M/S. Parekh & Co., AOR

Mr. Raj Bahadur Yadav, AOR

Mr. Prem Sunder Jha, AOR

Mr. Naresh K. Sharma, AOR

Mr. V. Giri, Sr. Adv.
 Ms. Uttara Babbar, AOR
 Ms. Bhavana Duhoon, Adv.
 Mr. Manan Bansal, Adv.

For State of MP

Mr Rahul Kaushik, AOR
 Ms. Bhuvneshwari Pathak, Adv.
 Ms. Shilpi Satyapriya Satyam, Adv.
 Mr. Rahul Khatri, Adv.

For High Court of
 Bombay

Mr. Aniruddha P. Mayee, AOR
 Mr. A. Rajarajan, Adv.
 Mr. A. Selvin Raju, Adv.

For Arunachal
 Pradesh

Mr. Abhimanyu Tewari, AOR
 Ms. Eliza Bar, Adv.

For W.B.

Mr. Suhaan Mukerji, Adv.
 Mr. Vishal Prasad, Adv.
 Mr. Amit Verma, Adv.
 M/S. Plr Chambers And Co., AOR

Mr. Milind Kumar, AOR

For Kerala

Mr. G. Prakash, AOR
 Mr. Jishnu M.L., Adv.
 Mrs. Priyanka Prakash, Adv.
 Mrs. Beena Prakash, Adv.

Mr. Sanjeev Kumar Jain, Adv.
 Mr. S.K. Rajora, Adv.
 Mr. Akhileshwar Jha, Adv.
 Ms. Annika Missar Sayyed, Adv.
 Mr. A.S. Sayyed, Adv.

for Jharkhand

Mr. Gopal Prasad, AOR
 Ms. Shalya Agarwal, Adv.
 Mr. Jayesh Gaurav, Adv.

for State of AP Mr. G. N. Reddy, AOR
Mr. T.Vijaya Bhaskar Reddy,Adv.

For Nagaland Mrs. K.Enatoli Sema,Adv.
Mr. Amit Kr. Singh,Adv.

High Court of Chhattisgarh Mr. Apoorv Kurup, AOR
Ms. Upama Bhattacharjee, Adv.

Mr. Nikhil Goel, AOR

Ms. Garima Prashad, AOR

Mr. Rama Krishna Reddy, Adv.

For Bihar Mr. Abhinav Mukerji, AOR
Mr. Somarth Khanna, Adv.
Mr. Pratishtha Vij, Adv.

For Sikkim Mr. Raghvendra Kumar,Adv.
Mr. Yeshi Rinchin,Adv.
Mr. Narendra Kumar, AOR

For UP Mr. Sarvesh Singh Baghel,Adv.
Ms. Garima Prasad,Adv.

For Assam Ms. Diksha Rai,Adv.
Ms Palak Mahajan,Adv.

For H.C. of MehalayaMr. Avijit Mani Tripathi,Adv.
Mr. T.K. Nayak, Adv.
Mr. P.S. Negi, Adv.
Ms. Shruti Ram Kochar, Adv.
Mr. K.V. Kharyung D., Adv.
Mr. Arvind Kumar Tripathi,Adv.

State of Manipur Mr. Pukhrambam Ramesh Kumar, adv.
Mr. Karun Sharma, Adv.

Mr. Annam D. N. Rao, AOR

For Rajasthan Dr.Manish Singhvi,Sr.Adv.
Mr. Shailja Nanda Mishra,Adv.
Mr. Arpit Parkash,Adv.
Mr. Sandeep Kumar Jha,AOR

Mr. Abhimanyu Tewari, AOR

Dr. Monika Gusain, AOR

Mr. Subhasish Mohanty, AOR

Mr. Apoorv Kurup, AOR

Mr. Ashok Mathur, AOR

Mr. R. Nedumaran, AOR

Mr. Mahfooz Ahsan Nazki, AOR

For Jharkhand Mr. Himanshu Shekhar, AOR
Mr. Mamnesh Kumar, Adv.
Mr. parth Shekhar, Adv.

For HP Mr. Vikas Mahajan, AAG
Mr. Vinod Sharma, AOR
Mr. Anil Kumar, Adv.

Mr. Nishant Ramakantrao Katneshwarkar, AOR

For Telangana Mr. S. Udaya Kumar Sagar, AOR
Ms. Swati Bhardwaj, Adv.

Mr. Shuvodeep Roy, AOR

Mr. P. I. Jose, AOR
Mr. Prashant Sharma, Adv.
Mr. Jenis Francis, Adv.

For Karnataka Mr. V. N. Raghupathy, AOR
Md. Apzal Ansari, Adv.

For Mizoram Mr. Siddhesh kotwal, Adv.
Ms. Bansuri Swaraj, Adv.
Ms. Arshiya Ghosh, Adv.
Ms. Divyansh Tiwari, Adv.
Ms. Ana Upadhyay, Adv.
Ms. Astha Sharma, AOR

For Uttarakhand Mr. Vinay Arora, AOR
Mr. Vikas Negi, Adv.

For Chhatisgarh Mr. S.C. Verma, AG
Mr. Sumeer Sodhi, AOR
Mr. Ashish Tiwari, Adv.
Ms. Aarzo Aneja, Adv.

Ms. G. Indira, AOR

For HC Odisha, Adv. Mr. Sibor Sankar Mishra, AOR
Mr. Niranjana Sahu, Adv.

Mr. Sunny Choudhary, AOR

For J & K Mr. M. Shoeb Alam, AOR
Mr. Mojahid Karim Khan, Adv.

For State of Punjab Ms. Jaspreet Gogia, AOR

For Assam Ms. Deepanwita Priyanka, AOR
Ms. Vishaka, Adv.

Mr. Ankit Goel, AOR
Mr. P.K. Gupta, Adv.

Ms. K. Enatoli Sema, AOR

Mr. Gopal Singh, AOR

For Puducherry Mr. V. G. Pragasam, AOR
Mr. S.Prabu Ramasubramanian, Adv.
Mr. S.Manuraj, Adv.

Ms. Radhika Gautam, AOR

Mr. Ranjan Mukherjee, Adv.
Mr. Upendra Mishra, Adv.
Mr. K.V. Kharlyngdoh, Adv.

For Rajasthan Mr. K. Parameshwar, AOR
Mr. M.V. Mukunda, Adv.
Mr. P.P. Vikram, Adv.
Mr. P.K. Madhu, Adv.

UPON hearing the counsel the Court made the following
O R D E R

These applications bearing Nos. 14888 and 14891 of 2020 have been filed by the accused Birendra Singh @ Bauaa Singh for transfer of cases bearing R.C. Nos. 9 and 10 of 2018 from the Court of Sh. Dharmesh Sharma to any other court and for impleadment. The main grievance of the Petitioner is that while dealing with case bearing R.C. No. 8 of 2018, the learned judge has made the following observations.

“(iii)Indeed, the incident of rape was not reported immediately by ‘AS’ nor disclosed by her in her statement u/s 164 Cr.P.C. dated 22.05.2017 before the Magistrate during investigation in FIR No. 316 of 2017

PS Makhi (RC No. 11(S)/2018). However, the delay of two months and 10 days in reporting the incident on first time on 17.08.2017 vide letter Ex.PW 9/D addressed to Hon'ble the Chief Minister, state of UP has been cogently and reliably explained by PW-10 victim girl 'AS' PW-8 her mother 'MS' and her uncle PW 9 Mahesh Singh

(iv) That it is explained by PW 10-victim girl 'AS' as well as PW-8 'MS' and PW 9 that such facts were not disclosed by her on 22.6.2017 before the Judicial Magistrate, Unnao, UP as she had been threatened by accused Kuldeep Singh Sengar (A-2) to keep quite or else she and her family would not be spared, and it established on the record that no sooner the incident was reported, a vicious tirade against PW-9 Mahesh and his deceased brother 'SS' (father of victim 'AS') was orchestrated by (A-2) to keep PW-9 Mahesh Singh, uncle of victim girl 'AS' behind the Bars, who was the mainstay of the family and leading to the alleged incident of beatings of 'SS' on 03.04.2018."

Mr. Siddhartha Dave, learned counsel for the applicant(s) submits that the aforesaid observations show that the learned Judge had made up his mind and therefore the applicant(s) apprehend that they will not get justice from the learned Judge. He, therefore, submit that the case be transferred to some other Court. This plea has been opposed by learned counsel for the victim and learned counsel for the Union of India.

We have gone through the entire order of the judge and the observations at paras (iii)& (iv) were necessitated only to explain the delay in filing the complaint by the prosecutrix. These observations are not on the merits of the allegations made therein. Even the judge is cognizant of this and therefore had recorded the following observations in para (xiv):

(xiv)"Lastly, it is specifically provided that any

observation or expression of opinion by this Court in the instant case, shall not tantamount to an expression on the merits of crime case/FIR No. 316/17 now RC No. 11(S)/2018 or for that matter RC No.9(S)/2018 & RC No. 10(S)/2018.”

We therefore direct that the learned judge will decide the matters bearing R.C. Nos. 9 & 10 of 2018 only on the basis of the evidence on record of the case bearing R.C. Nos. 9 & 10 of 2018 totally uninfluenced by the evidence which may be recorded or the observations made in R.C. No. 8 of 2018.

With these observations the applications are disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER