

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 2108 / 2011

DIVYA D/O ANIMESH DHORELIYA

Vs.

STATE OF MP & OTHERS

\* \* \* \* \*

**O R D E R**

( 26/4/2011)

The petitioner before this Court, a student of Bachelor's in Business Administration, studying at Prestige Institute of Management and Research, Indore has filed this present petition for issuance of an appropriate writ, order or direction, directing the respondent No.1 to transfer the investigation of Crime No. 108 / 2011 to some other Investigating Officer.

The contention of the petitioner is that on 10/2/11 when she was in the educational institution along with her friends, one Nidhi Somani started abusing her and when she requested not to do so, certain antisocial elements were called on telephone by Nidhi Somani and with the help of those antisocial elements attempts were made to outrage the modesty of the petitioner. It has also been stated on affidavit that the alleged accused persons

went to the extent in tearing off the clothes of the petitioner and after ripping off the petitioner she was made to run to save herself. The petitioner has further stated that a report was lodged on 11/2/2011 itself and initially a crime was registered at Crime No. 108/2011 for offences u/S. 294, 323, 354, 341, 384 and 147 of the Indian Penal Code. The petitioner's grievance is that the accused persons as they enjoy political patronage were not arrested by the police and only after a writ petition was preferred before this Court some arrests were made by the police. Learned counsel for the petitioner submitted that respondent No.5 Mr. Ajay Kethwas, Station House Officer is not conducting the investigation properly and for the reasons best known to him no arrest was made by him till a writ petition was preferred before this court and it is only after the notices were issued, accused persons were arrested and they have been released on bail as non-bailable sections have been deleted by the Investigating Officer in respect of the crime registered in the present matter. Learned counsel for the petitioner has vehemently argued before this court that the Investigating Officer of the present case deserves to be changed and any other officer other than respondent No.5 be appointed as Investigating Officer in the

matter.

A reply has been filed on behalf of State Government and the respondent State has admitted the lodging of FIR in respect of the incident which took place on 11/2/2011 and has informed this court that initially a case was registered at Crime No. 108 / 2011 u/Ss. 294, 323, 354, 341, 384 and 147 of the Indian Penal Code. It has also been stated that the accused persons were arrested and later on they have been released as the investigation is going on and the Sections in respect of which crime has been registered are bailable Sections. The documents enclosed along with the return reveals that at the time of arresting the accused persons Sec. 384 has been deleted. The State Government in its return has stated that investigation is going on in a most fair and impartial manner and the writ petition deserves to be dismissed. Learned Government Advocate has informed this Court that the persons involved in the alleged incident have also been expelled from the Institution in some disciplinary proceedings initiated by the Institution in respect of those students who were studying in the College in question and who were involved in the incident.

Heard learned counsel for the parties at length and perused the record.

The petitioner before this court is a young girl aged about 19 years has filed this present petition being aggrieved by the inaction on the part of the respondents in investigating the crime registered at Crime No. 108 / 2011 against certain persons. It has been stated in the writ petition that on 10/2/11 at about 1:30 pm the petitioner was assaulted by certain persons, she was stripped off and was assaulted brutally. First Information Report was lodged immediately and a crime was registered for offences u/Ss. 294, 323, 354, 341, 384 and 147 of the Indian Penal Code. The crime in question has taken place in a public place as stated by the petitioner and it was only after issuance of notice, the respondents came into action and have arrested the accused persons but at the same time have released them immediately as non bailable offences were deleted by the investigating officer. The petition was filed before this court on 23/2/11. Notices were issued on 25/2/11 and the learned Government Advocate was directed to seek instructions in the matter. The alleged accused persons were arrested on 1/3/11 and on furnishing a bail bond were released on the same day by the Station House officer conducting the investigation in the matter namely; Mr. Ajay Kethwas. Thus it is evident that only after intervention of this

Court some action has been taken by the police authorities in the matter. The record reveals that initially Crime was registered for non bailable offence and later on while arresting the persons, arrest was made only in respect of bailable offences and the same day accused persons have been released. Not only this, the record reveals that there are serious allegations of outraging the modesty of the petitioner and use of criminal force in a public place. However, the investigation has not been conducted as reflected from the case diary keeping in view the aforesaid fact. In the present case, a young girl aged about 19 years was allegedly subjected to great humiliation and the respondents should have acted with quite promptitude in the peculiar facts and circumstances of the case, however, the delayed action on the part of the SHO speaks volumes about the manner and method in which the investigation is going in the present case. In the present case, as the investigation is going on, this Court is of the considered opinion that the Investigating Officer deserves to be changed and resultantly the Inspector General of Police, Indore Range, Indore is directed to look into the matter and to pass necessary orders for changing the Investigating Officer. The aforesaid exercise to change the investigating officer and

handing over the case to some other officer to investigate the matter shall be concluded within a period of 10 days from the date of receipt of the Certified Copy of this order. It is needless to mention that the Inspector General of Police shall also monitor the investigation in the present case as stripping off a woman in public is certainly a heinous offence in a civilised society. The investigation officer to whom the investigation is to be handed over by the Inspector General of Police shall also be free to look in to the matter and to examine whether offences under other Sections are also made out in the peculiar facts and circumstances of the case and he shall be free to investigate the matter after taking into account the allegations and the averments made by the petitioners in accordance with law keeping in view the provisions of the Code of Criminal Procedure. The writ petition stands disposed of. No order as to costs.

(S. C. SHARMA)  
J U D G E

℞