

ORISSA HIGH COURT : CUTTACK

W. P. (C). Nos. 17638 of 2011 and 6287 of 2012

In the matter of applications under Articles 226 and 227 of the Constitution of India.

In W.P.(C) No. 17638 of 2011

Mrs. Sashiprava Bindhani	...	Petitioner
Versus		
State of Orissa and others	...	Opposite parties
<i>For petitioner</i>	-	<i>M/s. Sujata Jena, G.B.Jena and Satyabhama Nath</i>
<i>For opposite parties</i>	-	<i>Mr. Debashis Panda, Government Advocate</i>

In W.P.(C) No. 6287 of 2012

Odisha Rationalist Society	...	Petitioner
Versus		
State of Orissa and others	...	Opposite parties
<i>For petitioner</i>	-	<i>M/s. Kshirod Kumar Rout, T.K.Nayak, C.R.Mohanty, Ms. J.Naik and S.K.Rout</i>
<i>For opposite parties</i>	-	<i>Mr. Debashis Panda, Government Advocate</i>

P R E S E N T

**THE HONOURABLE CHIEF JUSTICE MR. V.GOPALA GOWDA
A N D
THE HONOURABLE MR. JUSTICE S.K.MISHRA**

Date of hearing – 25.04.2012 : Date of judgment - 25.04.2012

S.K.Mishra, J.

In these writ petitions, the petitioners pray to direct the State Government for framing of guidelines to deal with the cases of witch-hunting and to protect women from such hunting till legislation is framed in this regard.

2. The petitioners in their applications have described the instances of murders on the allegations that the deceased was practicing witchcraft. The petitioners have pleaded about several such incidents in the State of Orissa. It is further pleaded that the persons committing the murder do so under the influence of 'Gunias'. As such, it is pleaded that the propagators of the crime are generally not in a fit state of mind while committing the crime. The person often believes that he is doing the right thing while committing murder of a person, who is alleged to be practicing witchcraft. Such state of affairs is prevalent in all the tribal districts of the State.

3. The petitioner pleaded that India is a signatory to the universal declaration of human rights to give protection to women from discrimination and all sorts of violence against them. Besides, the United Nations' International Covenant on Civil and Political Rights prescribe that all persons are equal before law and entitled to equal protection of law. Government of India is a signatory to the same in the year 1966. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) resolved that the countries which have ratified the same should take appropriate steps to eliminate all forms of discrimination against women. Article 5(a) of CEDAW further provides that the State shall take appropriate measures to modify social and cultural patterns of conduct of men and women. Witch-hunting, which is prevalent in several States, leads to dispossession, torture and murder but as of date, although India is a signatory to CEDAW, no steps have been taken to enact appropriate law to curb the menace of witch-hunting, which is

prevalent in this State. States like Bihar, Jharkhand and Chattisgarh have already taken steps to eradicate such practices but our State has not taken any steps with regard to eradicating such practice. Therefore, the petitioner prays that appropriate direction be given to the State to enact law in this regard.

4. The petitioners rely on the reported case of **Bishaka and others v. State of Rajasthan and others** reported in AIR 1997 SC 3011, wherein the Supreme Court has taken into consideration the provisions of the CEDAW and has held as follows:

“16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution.”

It is, therefore, urged that in view of the fact that there is no legislation to tackle the problem of witch-hunting, this Court should give direction to the State Government to introduce appropriate law before the Legislature and in the interregnum provide guidelines to prevent witch-hunting in the State of Orissa.

5. It is seen that the Legislature of Bihar has passed the Prevention of Witch (Daain) Practice Act, 1999 (Bihar Act 9 of 1999). Similar Act has also been passed by the Legislature of Chhatishgarh.

6. Witch-hunting is also seen in the State of Karnataka and a Committee consisting of eminent Professors was asked to investigate and report about the practice of Banamathi. Banamathi is the Kannada word for witch. The Committee after careful and detailed investigation of a large number of cases and on the basis of

discussions with number of persons, who were considered to have knowledge on the subject, came to the following conclusions:

“People have been suffering from this so called witchcraft i.e. Banamathi due to various causes. Some of the prominent causes have been fear, ignorance, superstition, personal and family problems, poverty, religious feuds, and village politics. This phenomenon of Banamathi is more prevalent in remote villages cut away from the main stream of life. It is also a fact that most of the victims are women. Even among women those belongs to marriageable and child-bearing age groups seem to be more prone to this problem.

All the sufferings of the victims attributed to Banamathi fit into familiar patterns of mental and physical diseases. Most of these are psychiatric cases. Many of these attacks were induced by a simple suggestion by the doctors and were also terminated by a similar suggestion. These people have been suffering from a variety of psychological disorders. Hysterical neurosis, a form of psychiatric disturbance, is the most common. This is characterized by episodes of abnormal behaviour, like screaming, developing fits, becoming unconscious, tearing away of clothes, inability to speak and so on. These are directly understandable in terms of strong socio-cultural beliefs, family and personal problems, poverty etc. It is common knowledge that such internal conflicts resulting in hysterical neurosis are found in other countries also. Their effects would be in accordance with the prevailing social and other conditions. In a few villages these psychological disturbances have assumed the form of ‘mass hysteria’ as witnessed in Yadlapur and in Benekanahalli villages. There are other kinds of neuroses like depression, obsession etc. from which some of the victims have been suffering.

The phenomenon of Banamathi as already mentioned has been in existence for decades and is deep rooted among some sections of the people in North Karnataka which formed part of the erstwhile Hyderabad State governed by the Nizam. This malady exists in some parts of the present Andhra Pradesh adjacent to Gulbarga and Bidar Districts also. The belief has been handed over from person to person and passed on from generation to generation. In fact, the belief in Banamathi is so deep rooted that even common physical ailments such as asthma, leprosy, tuberculosis, anaemia, and vitamin deficiency diseases are attributed to Banamathi. Susceptible and ignorant people have become so sensitive and scared that they think of suffering from the effects of Banamathi whenever they are not feeling well. The fact that even normal variations in the yield of

milk of a cow is also attributed to Banamathi shows to what extent the pernicious belief is deep seated in their minds.

The second category of the phenomena belongs to the appearance and disappearance of the objects, falling of stones, burning of sarees etc. It is very significant to note that nobody had ever witnessed those phenomena during the process of their actual occurrence. No body saw either the clothes catching fire or scares during the process of their marking. As already mentioned two persons were caught by the villagers when they were trying to throw stones. Besides, falling of stones is reported in many parts of the State and it is also interesting to note that according to such reports there was no falling of stones when a vigil was kept. A careful scrutiny of these phenomena will lead to the conclusion that there is no evidence of the working of any supernatural force. Many of the phenomena attributed to Banamathi must have been deliberately performed by persons due to various reasons such as to attract attention, to get sympathy, or to avoid extra work. These are all of common occurrence familiar to the doctors in the field of psychology and psychiatry. It may not be out of place to mention that nobody ever came forward to perform 'Banamathi' on the members of the team when they publicly offered themselves as subjects on many an occasion.

Thus, based on a careful analysis of all the available data and a close and searching examination of a large number of victims, the Investigation Committee has come to the unanimous and firm conclusion that the so called Banamathi is not due to any supernatural cause.

It is a fact that there has been a lot of suffering on account of these mental and physical problems. It is also a fact that vested interests have been using Banamathi as a means of exploitation. Attributing these phenomena to supernatural causes they have been reaping a rich harvest. Some of the families are ruined on account of spending large amounts of money in the hope of getting a cure of the ill-effects. Poor villagers and gullible people are being cheated.

The Committee would like to point out certain strong supporting factors which have lent credence to belief in Banamathi. The fact that many educated people, officials and men of public importance implicitly believing in Banamathi has also been responsible for its continued widespread belief among large sections of villagers. As we know superstitions are widely prevalent in our country. All of us know that an educated superstitious person is more harmful to society than his uneducated counterpart. Besides, occasional, nay, frequent dubious and unscientific reports, articles, and statements in some

newspapers tend to give a final seal of confirmation to the existence of some kind of witchcraft. In fact the phenomena attributed to Banamathi are not peculiar to places in Gulbarga or Bidar Districts. They are widespread in all parts of the state and the country. But they are called by different names. All these can be attributed to the same root causes excluding any supernatural force.

Another important reason for the spread of Banamathi is that the Police Department under its existing laws are helpless and cannot take notice of cases coming under the purview of Banamathi. This has indirectly given a free hand and also encouragement to persons who in the name of Banamathi scare innocent people and exploit them.” *(Emphasis supplied)*

7. Thus, it is clear that this social malady is prevalent because of the ignorance of the people and an effective measure to control the same is necessary to be taken. The Committee of Elimination of Discrimination Against Women of the United Nations in the 51st Session held between 13th February to 2nd March, 2012 has given its concluding observations on the elimination of discrimination against women. The Committee also recommended to eliminate stereo-type and harmful practice. At paragraphs 21 and 22, the Committee observed as follows:

“21. The Committee recognizes the rich culture and traditions of the State party and their importance in daily life. However, the Committee expresses its serious concern about the persistence of harmful norms, practices and traditions, patriarchal attitudes and deep-rooted stereotypes, regarding the roles, responsibilities and identities of women and men in all spheres of life, as well as the State party’s limited efforts to address such discriminatory practices. These include, in particular, polygamy, bride price (lobola), and in certain regions, virginity testing and witch hunting. The Committee is concerned that such customs and practices perpetuate discrimination against women and girls and that they are reflected in women’s disadvantageous and unequal status in many areas, including education, public life, decision-making and in the persistence of violence against women, and that, thus far the State party has not take sustained measures to modify or eliminate stereotypes and harmful practices.

22. The Committee urges the State party to :

- (a) Put in place, without delay, a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes

that discriminate women in conformity with the provisions of the Convention. Such measures should include efforts, in collaboration with civil society and community and religious leaders to educate and raise awareness of this subject, targeting women and men at all levels of the society;

- (b) More vigorously address harmful practice by expanding public education programmes and by effectively enforcing the prohibition of such practices, in particular, in rural areas;
- (c) Use innovative measures that target media people to strengthen understanding of the equality of women and men and through the educational system to enhance a positive and non-stereotypical portrayal of women; and
- (d) Monitor and review the measures taken in order to assess their impact and to take appropriate action.”

8. From the above, it is clear that the CEDAW also endorse witch-hunting as one of the harmful practices. The State should formulate a preventive strategy to eliminate such practice. This Court, therefore, is of the opinion that the State should introduce a bill in the Legislature to enact law to tackle the menace of witch-hunting effectively. There should be concerted efforts to spread awareness to eradicate the superstitions among the people. In the meantime, we recommend the guidelines in following paragraphs for prevention of witch-hunting in the State of Orissa. It shall be the duty of the State and the District Administration to prevent or deter commission of witch-hunting and to provide protection to citizens from being victim of witch-hunting. The State shall also provide procedure for prosecution of the persons who endangers human life on the allegation that she is a witch.

9. For the aforesaid purpose, witch-hunting means and includes:

- (i) Any person accuses another or defames a woman by calling her ‘Dayan’ or ‘Dahani’ or any other name or symbol suggesting her to be a witch; and

- (ii) Any person/persons jointly or individually harms another person either physically or mentally or damages her property calling her to be a witch, shall be known to be practicing witch-hunting;

10. Whoever forces a woman to drink or eat inedible or obnoxious substances on the allegation that she is a witch, shall be punishable under the provisions of the Indian Penal Code or any special law attracted to such commission of offence.

11. Any person calling another a 'witch' or being possessed one, uses criminal force against her, or instigates or provokes others in doing so or abate with intent to harm and/or to displace her from the house by using criminal force or intimidates, which amounts to specific offence under the Indian Penal Code or any other law, the authorities shall initiate appropriate action in accordance with the law by lodging complaint in the Police Station.

12. The authorities also prevent any person from acting as a 'tantric' or a 'witch doctor' in the area claiming to have possessed spiritual and magical powers to cure witch-craft or in possession of super-natural powers and performs any rituals to free the woman from the evil spirit or entices a woman or any person or her behalf with a promise to bless the woman with a child or performs any ritual on behalf of any person with an intention to harm the woman, should be prosecuted, if such an act amounts to any specific offence under the Indian Penal Code or any other law.

13. **Preventive steps.**

In the meantime, the authorities shall take appropriate steps to prevent witch-hunting and in particular take the following steps :

- (i) Public awareness programmes should be launched in the Grama Panchayats to eradicate the superstitions of witch-craft;
- (ii) Health camps should be organized in different village level to detect cases of the psychologically disordered, which may lead to a false acquisition being possessed or being a witch;
- (iii) The Investigating Agency in cases involving allegations of witch-hunting, in order to avoid the witnesses turning hostile should take steps to get statement of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973.

14. These directions are not exhaustive. The State may, in addition to such steps, take suitable and appropriate step to tackle the menace of witch-hunting.

Accordingly, we direct that the guidelines should be strictly observed by the authorities till a suitable legislation is passed by the State Legislature. The State Government shall introduce an appropriate bill in the State Legislature within a period of one year.

The writ application is accordingly disposed of.

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S.K.Mishra, J.

V.Gopala Gowda, C.J. *I agree.*

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V.Gopala Gowda, C.J.

*Orissa High Court, Cuttack,
Dated, April 25, 2012/JNS.*