

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 2.12.2014
Pronounced on: 30-4-2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.27995 of 2014
and
M.P.Nos.1 to 3 of 2014

M.Subramaniam ... Petitioner

Vs.

1. The State of Tamil Nadu
rep. by Home Secretary,
Secretariat, Chennai 600 009.
2. The Director General of Police,
Mylapore, Chennai.
3. The Joint Director,
Central Bureau of Investigation (CBI),
Rajaji Bhavan, Besant Nagar,
Chennai 600 090.
4. The Superintendent of Police,
Cuddalore.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus to direct the respondents (a) to transfer the investigation pending on the file of Thittakudi Police station in Cr.No.141/2014 to the 3rd respondent and direct the 3rd

respondent to investigate into the case in hand and also the complaints regarding other missing children in and around Thittakudi; (b) to enforce all the relevant provisions of Protection of Children from Sexual Offences Act and Rules in this case; (c) to shift the victim children to a reputed children's home at Chennai which has schooling facility thereby enabling them to continue their education; (d) to give protection and assistance to the family members of the victims in all possible manner; and (e) to direct the State Commission for Protection of children to depute one of its members preferably a female lawyer to monitor the investigation, trial and the welfare of the victims.

For Petitioner	..	Ms.U.Nirmala Rani
For Respondents	..	Mr.P.H.Arvinth Pandian, Additional Advocate General, assisted by Mr.R.Vijayakumar, Additional Government Pleader.

ORDER

The petitioner, a daily wage earner, whose daughter went missing along with one of her friends from 08.06.2014 and who were later rescued, after allegedly being sexually exploited, has come up with the above writ petition, seeking various reliefs such as transfer of the investigation from the local police to the Central Bureau of

Investigation and the enforcement of the various provisions of the Protection of Children from Sexual Offences Act and the Rules thereunder.

2. Heard Ms.U.Nirmala Rani, learned counsel for the petitioner and Mr.P.H.Arvinth Pandian, learned Additional Advocate General, assisted by Mr.R.Vijayakumar, learned Additional Government Pleader, for the respondents.

3. The petitioner is a poor daily wage earner, residing in Thittakudi, in Cuddalore District. He has two sons and two daughters. One of his daughters by name Kalaiselvi, studying in Standard IX in Government Higher Secondary School, Thittakudi, went missing from 08.06.2014 along with her friend by name Swetha.

4. The petitioner claims to have made a complaint to the Thittakudi Police on 15.06.2014, but they registered the complaint much later in Crime No.141 of 2014. It is the specific case of the petitioner that one Mr.Karnan, the brother of the Chairman of the Local Town Panchayat asked the petitioner to meet his brother. When the petitioner met the Chairman of the Town Panchayat, he assured the petitioner that the missing children would come back home, if the petitioner withdrew the police complaint.

5. It appears that what happened in June 2014 was, a repeat performance of what happened earlier in February 2014. In February 2014, when those two girls went missing, the petitioner gave a police complaint and the same was received and given CSR.No.35 of 2014. However, the petitioner claims that he was threatened to withdraw the complaint, after which, the children returned home.

6. When the second incident happened on 08.06.2014, the petitioner not only gave a police complaint on 15.06.2014, but also sent a memorandum to the Chief Minister's Grievance Cell on 03.07.2014, even mentioning the names of the possible suspects. According to the petitioner, this action infuriated the local police, one of whom threatened the petitioner. However, a few political parties such as CPI(M), PMK as well as the local MLA and the All India Democratic Women's Federation helped the petitioner.

7. The petitioner states that as per the information given by the children, they were kidnapped by one Fr. Aruldass, who sold them to many persons. The children were trafficked and sexually exploited at various places. Since the petitioner was not allowed to meet the children even after they were rescued, the petitioner came up with the above writ petition seeking various reliefs indicated supra.

8. On 20.10.2014, when the writ petition came up for hearing, it was reported by the learned Additional Government Pleader that the children were lodged in a Home for Children. Therefore, I passed the following order:-

"Mr.R.Vijayakumar, learned Additional Government Pleader takes notice for the respondents.

As per the written instructions given by the Inspector of Police, PEW, Cuddalore to the learned AGP, the victim children are in MATT Home (Child Care and Protection) in Cuddalore from 05.08.2014 as per the orders of the Mahila Court II. The children are aged 14 & 12 respectively.

The respondents are directed to file counter by 05.11.2014. In the meantime, further investigation in Cr.No.141 of 2014 on the file of Thittakudi Police Station shall stand stayed. The children shall be immediately shifted by the Thittakudi Police, at the cost of the State, to the AVVAI Home, Adayar, Chennai.

9. On the next date of hearing namely 05.11.2014, the respondents filed a counter. On that date, I passed the following order:-

"The respondents have filed a counter today. As per the order passed on 20.10.2014, the victim

children have been shifted to Avvai Home at Chennai. The parents of the children are present in Court today. The learned counsel for the petitioner seeks permission for the parents to visit children along with one or two officers of the N.G.O., which supports the children in this cause. There will be an interim direction permitting the parents of the victim children to visit the children and talk to them. The parents are also permitted to be accompanied by the officers of the N.G.O. Post on 10.11.2014."

10. Thereafter, the CD file was summoned and arguments were heard on both sides.

11. The Superintendent of Police, Cuddalore, who is the fourth respondent has filed a counter affidavit. In the counter affidavit, she has stated that the petitioner filed a complaint on 11.07.2014 which was registered in Crime No.141 of 2014; that no complaint was filed on 15.06.2014; that after the petitioner and the grandmother of the other girl, whose parents are now no more, lodged complaints, the Special Sub-Inspector of Police by name Prathapan was deputed to enquire one Lakshmi; that when the investigation was in progress, the petitioner and the guardian of the other missing girl produced the children at Thittakudi Police Station, claiming that the children had gone to their friend's house; that the children also corroborated the

version of the parent and guardian and hence, the CSRs were closed on the same date; that the claim of the petitioner that the missing girls were traced by police on 05.08.2014 is false; that it was only the petitioner, who brought the missing girls to the police station claiming that they returned home as usual, as had happened in the past; that the Investigating Officer has examined 64 witnesses so far and identified 22 accused and arrested and remanded them to custody; that a test identification parade was conducted in the concerned Court in respect of 4 accused by name Mohanraj, Mathivanan, Anandraj and Vignesh; that the statement of the victim girls revealed that there are other accused, who put them to sexual exploitation and subjected them to torture; that after this revelation, the provisions of law were altered in the first information report by incorporating the relevant provisions under the POCSO Act, 2012; that the 4th respondent nominated a woman Inspector of Police to conduct further investigation after sending the children to a home; that the provisions of the POCSO Act, 2012 have been scrupulously followed; that there is no incriminating material against the Panchayat Chairman; that the conduct of the local police cannot be doubted; that the police had also taken action to detain some of the offenders under Tamil Nadu Act 14 of 1982; that the State Government have already been addressed to

provide financial assistance of Rs.10,000/- to the families of the two girls, in terms of the POCSO Act, 2012; that the investigation in the case is almost complete; and that when the case was ripe for filing final report, the petitioner has approached the Court.

12. From the rival contentions, the factual matrix that can be said to be undisputed, would unfold as follows:- (1) that the case is one of abduction of minor girls for the purpose of trafficking and involving them in commercial sex exploitation; (2) that consequently, the provisions of the Protection of Children from Sexual Offences Act, 2012 and the Rules framed thereunder will have to be applied, both with respect to the procedure for reporting of cases and with respect to the manner in which the trial has to be conducted.

13. In view of the above admitted position that the victims involved in this case are minor girls, the Respondents themselves agree that they would have to follow the Protection of Children from Sexual Offences Act, 2012. Keeping this in mind, if we go back to the rival contentions, it is seen that the reliefs sought for by the petitioner can be segregated into two categories namely: (a) the prayer for transfer of investigation to the Central Bureau of Investigation; and (b) the prayer for various other reliefs in terms of Protection of Children from Sexual Offences Act, 2012. The Respondents themselves do not

have any quarrel with respect to the other reliefs sought by the petitioner in the writ petition. The only area where the Respondents have a dispute with the petitioner is as to the transfer of investigation. Therefore, I shall divide my discussions into two parts, one relating to the various steps to be taken in terms of Protection of Children from Sexual Offences Act, 2012 and the other dealing with the prayer for transfer of investigation.

Protection of Children from Sexual Offences Act, 2012:

14. The General Assembly of the United Nations adopted the Convention on the Rights of the Child, way back in the year 1982. India ratified the Convention on 11.12.1992. The Convention requires States Parties to undertake all appropriate National, bilateral and multilateral measures to prevent : (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) exploitative use of children in prostitution or other unlawful, sexual activities; and (c) the exploitative use of children in pornographic performances and materials.

15. Though the United Nations Convention was of the year 1982 and it was ratified by India in 1992, there was already a Constitutional mandate under Article 15(3) to make special provisions for children. Article 39 also directs the State to secure that the tender age of

children are not abused and that their childhood is protected against exploitation.

16. Therefore, after finding from the data collected by the National Crime Records Bureau that there was a spurt in the number of cases of sexual offences against children, the Parliament enacted the Protection of Children from Sexual Offences Act, 2012. The object of the Act is to protect the children from offences of sexual assault, sexual harassment and pornography and to provide for establishment of special courts for trial of such offences.

17. The Act comprises of 9 Chapters, the first containing the definitions of words and expressions, the second enlisting the sexual offences against children, the third containing provisions regarding the using of children for pornographic performances, the fourth dealing with the abetment to commit the offences, the fifth dealing with the procedure for reporting of cases, the sixth dealing with procedure for recording the statement of the child, the seventh dealing with special courts, the eighth dealing with the powers and procedures of the special courts and the ninth dealing with the miscellaneous provisions.

18. The provisions of the Act with which we are immediately concerned would fall under four categories namely (i) the reporting of offences; (ii) recording of the statement of the child; (iii) the

procedure to be followed by the special courts; and (iv) monitoring of the implementation of the Act. Let me now examine each of these steps, one by one.

REPORTING OF OFFENCES :

19. Section 19 of the Protection of Children from Sexual Offences Act, 2012 prescribes a special procedure for the reporting of offences, notwithstanding the procedure contained in the Code of Criminal Procedure for reporting of the offences. Under Sub-Section (1) of Section 19, any person having an apprehension that an offence under the Act is likely to be committed or who has knowledge that such offence has been committed, should immediately provide information to the Special Juvenile Police Unit or Local Police. Under Sub-Section (2) of Section 19, the report given under Sub-Section (1) should be ascribed an entry number and recorded in writing. It should be read over to the informant. It should also be entered in a book to be kept by the Police Unit.

20. After a report is recorded in the manner prescribed in Sub-Section (2), the Police should make immediate arrangements to give the child such care and protection as is needed. This obligation is cast by Sub-Section (5) of Section 19. Thereafter, the Special Juvenile Police Unit or the Police should, under Sub-Section (6) of Section 19,

report the matter within 24 hours to the Child Welfare Committee and the Special Court or the Court of Sessions, indicating therein the need of the child for care and protection and the steps taken in this regard.

RECORDING OF THE STATEMENT OF THE CHILD :

21. Sections 24 to 26 of the Act prescribe the procedure for recording the statement of the child by the Police and by the Magistrate. Section 27 prescribes the procedure for medical examination of the child.

22. Section 24, which prescribes the procedure for recording the statement of the child by the Police, imposes the following obligations upon the Police Officer :

(i) The statement should be recorded either at the residence of the child or at the place where the child usually resides or at the place of the child's choice;

(ii) The statement shall be recorded as far as practicable by a woman Police Officer not below the rank of Sub-Inspector;

(iii) The Police Officer recording the statement should not be in uniform;

(iv) It must be ensured that during investigation, the child does not come in contact in any way with the accused; and

(v) The Police Officer should ensure that the identity of the child

is protected from the public and media and that the child is not detained in the Police Station in the night;

23. Section 25 mandates that the Magistrate, who records the statement of the child under Section 161 of the Code should record it in a way as spoken by the child and the Magistrate shall not permit the presence of the advocate of the accused. The Magistrate should also provide to the child and her parents or representative, a copy of the document specified under Section 207 of the Code, upon the final report being filed by the Police under Section 173.

24. Section 26 mandates that the Magistrate as well as the Police Officer should record the statement as spoken by the child, only in the presence of the parents of the child or any other person, in whom the child has trust or confidence. Wherever possible, the Magistrate shall also ensure that the statement is recorded by audio and video electronic means. Where an offence under the Act had been committed upon the child, the victim child should be subjected to medical examination by a woman doctor in accordance with Section 164-A of the Code, notwithstanding that a first information report has not registered. The medical examination should be conducted in the presence of the parents of the child or any other person in whom the child reposes trust or confidence.

PROCEDURE BEFORE COURTS :

25. The offence under the Act, as far as possible, are to be tried by a special court designated by the State Government. The State Government also should appoint the Special Public Prosecutor under Section 32 for conducting cases under the provisions of this Act.

26. In the court, the Judge is obliged under Section 33(4) to create a child-friendly atmosphere by allowing a family member, a guardian concerned or a relative in whom the child has trust or confidence to be present in court. The court may permit frequent breaks for the child during trial. Questions in examination in chief, cross examination or re-examination shall be put to the child by both the Special Public Prosecutor as well as the Defence Counsel, only through the Presiding Officer and not directly. Aggressive questioning or character assassination of the child should be prevented and the identity of the child should not be disclosed.

27. Section 36 mandates that the child is not exposed to the accused at the time of recording of the evidence, though the accused can be permitted to hear the statement of the child. The Special Court may record the statement of the child through video conferencing or by utilising single visibility mirrors or curtains. All trials, by virtue of Section 37, are to be conducted only in camera. The child itself is

entitled to the assistance of a local counsel under Section 40, subject to the proviso to Section 301 of the Code.

MONITORING IMPLEMENTATION OF THE ACT :

28. The National Commission for Protection of Child Rights or the State Commission for Protection of Child Rights is required, under Section 44(1), to monitor the implementation of the provisions of the Act. These Commissions, while monitoring the implementation of the Act, would have the same powers as are vested in them under the Commissions for Protection of Child Rights Act, 2005.

SPECIAL PROVISIONS UNDER THE RULES :

29. In exercise of the powers conferred by Section 45(2) of the Protection of Children from Sexual Offences Act, 2012, the Central Government issued a set of rules known as Protection of Children from Sexual Offences Rules, 2012. Rule 4 of the Rules prescribes a detailed procedure as to what should be done immediately upon receipt of a report by the local Police. Under Sub-Rule (4) of Rule 4, the Child Welfare Committee, immediately upon receipt of a report from the Police, should proceed to make a determination in terms of the powers conferred under the Juvenile Justice Act, 2000. Under Sub-Rule (7), the Child Welfare Committee is required to provide a separate person to the child throughout the process of investigation and trial. The child

and its parents are also entitled by virtue of the proviso to Sub-Rule (7) of Rule 4 to seek assistance of any person or organisation for the proceedings under the Act. Rule 7 contains detailed provisions regarding payment of compensation.

30. Keeping in mind the above statutory mandate, let me now move over to the next part of the discussion that concerns the prayer of the petitioner for transfer of investigation.

THE PROCEDURE FOLLOWED BY THE LOCAL POLICE:-

31. To find out whether there is justification for the grant of the prayer of the petitioner for the transfer of investigation from the local police to the CBI, it is necessary to see whether what the local police has done, is in conformity with what they are ordained to do under the provisions of Sections 19 and 24 to 26 of the Act and Rule 4 of the Rules framed under the Act.

32. Justifying the prayer of the petitioner for the transfer of investigation to CBI, it is contended by Ms.U.Nirmala Rani, learned counsel for the petitioner (i) that whenever trafficking in children assumes Transnational Proportions, the handling of the same requires special training; (ii) that by virtue of a notification issued by the Ministry of Human Resources Development, CBI has been identified as the nodal agency to conduct investigations in respect of Transnational

Crimes; (iii) that in the case on hand, the respondents did not even form of a team for investigation but entrusted the investigation to a single investigating officer; and (iv) that it was quite strange that the investigation officer took charge on 6.8.2014 and completed the investigation on 18.8.2014, after examining 64 witnesses and arresting 22 persons in a record time.

33. In addition to the above, it is also contended by Ms.U. Nirmala Rani, learned counsel for the petitioner that in the counter affidavit filed by the fourth respondent, there are certain contradictions which will eventually go to the rescue of the offenders. According to the learned counsel, the manner in which the investigating officer questioned the children and the parents, coupled with the contradictions that the fourth respondent has made available in the counter affidavit, justify the prayer for transfer of investigation.

34. To find out whether the contentions of the learned counsel for the petitioner are well founded, I summoned the Case Diary. From the Case Diary, it is seen that the investigating officer has gone completely off the track. This is evidenced by the following:-

(a) As per the affidavit of the petitioner in support of the writ petition, he lodged a complaint on 15.6.2014 that his daughter went missing along with her friend on 8.6.2014. The petitioner appears to have sent

a complaint to the Chief Minister's Grievance cell also on 3-7-2014. It is only thereafter that the Police registered a First Information Report only on 11.07.2014 as though the complaint was lodged only on 11.07.2014.

(b) In a statement allegedly recorded by the Inspector of Police under Section 161(3) of the Code on 5.8.2014, the writ petitioner appears to have stated that his daughter returned on 5.8.2014 and that she narrated to him about both children being taken from place to place and subjected to rape by several persons at the residences of a few persons by name Kala, Fr.Aruldass, J.Beena, Sathishkumar, Maha, Fathima and Anbu and that the girls eventually escaped when they were in the custody of the wife of one Sathishkumar.

(c) Therefore, as per the Case Diary, the Inspector of Police, could be taken to have received an information at least on 5.8.2014 about the trafficking and sexual exploitation of the two minor girls. Therefore, at least from 5.8.2014, the Inspector of Police ought to have taken recourse to the provisions of Section 19 of the Protection of Children from Sexual Offences Act, 2012. But there is no indication in the Case Diary that he did so.

(d) Though the Investigating Officer has recorded the statement on 5.8.2014 from the writ petitioner to the effect that the children

returned home by 6.00 am., there is a communication sent by the Inspector of Police, Thittakudi to the Juvenile Home entrusting the children to their custody on 4.8.2014 itself.

(e) The Case Diary also contains a letter written by the Inspector of Police, All Women Police Station, to the Child Welfare Officer on 6.8.2014, requesting the Child Welfare Officer to take the care and custody of the children. There is also another letter dated 7.8.2014 indicating that the children were taken away from the Home at 9.00 am. for production of them before the Mahila Court for the purpose of medical examination. But the Child Welfare Officer appears to have acknowledged the receipt of the children at 9.46 am.

(f) It is only thereafter that by the proceedings dated 6.8.2014, the Superintendent of Police transferred the investigation from the Inspector of Police All Women Police Station, to one C.Amudha, Inspector of Police, Prohibition and Enforcement Wing.

(g) On 7.8.2014, the Inspector of Police, Prohibition and Enforcement Wing, is said to have produced the minor girls before the Mahila Court for the purpose of medical examination and she is said to have also effected 8 more arrests.

(h) On 8.8.2014, the lady Inspector of Police, is said to have again recorded the statements of the two minor girls. She is also stated to

have recorded the statements of a few more witnesses.

(i) It appears that the Investigating Officer took three of the accused by name Sathishkumar, Kala and Lakshmi to police custody from 13.8.2014 to 18.8.2014. Subsequently, the statements of the minor girls also appear to have been recorded by Judicial Magistrate-II on 13.8.2014. It is not known why the statements were not recorded by the Judge of the Mahila Court.

(j) From a statement said to have been recorded from one Dr.Lavanya, Assistant Surgeon, Government Hospital, Cuddalore on 22.8.2014, it is seen that the minor girls were produced before her on 7.8.2014 for medical examination by two women Police Constables. The minor girls also appear to have been examined by one Dr.Priyanka, Radiologist on 7.8.2014, for the purpose of ascertaining their age.

(k) The Identification Parade is said to have been conducted at the Central Jail, Cuddalore much later on 22.8.2014 as per the order of the Judicial Magistrate No.II.

(l) The Case Diary also shows that the investigation officer has recorded the statements of other minor girls who are classmates of the victim girls.

(m) It appears that two of the accused namely Sathishkumar and Kala were detained under Tamil Nadu Act 14 of 1982.

35. From what is revealed by the Case Diary, it appears that the provisions of Section 19(2) and 19(5) were not followed. The report allegedly sent to the Child Welfare Committee on 6/7.8.2014 also does not inspire the confidence of this Court. The manner in which the statements of the children were recorded under Section 24 and by the Magistrate under Section 25, are not in accordance with the mandates of Section 26. Even the medical examination allegedly conducted, is not in accordance with the Act. The manner in which the statements of minor girls, who are the classmates of the victims were recorded, gives an impression as though there is an attempt to put the blame on the victims themselves. No investigation appears to have been conducted to see whether the allegations against the brother of the Chairman of the Town Panchayat could be true or not, especially when four persons working under him were rescued. Therefore, I am of the view, on the first question the investigation has to be transferred to the CBCID.

36. Accordingly, the writ petition is disposed of with the following directions:-

- (i) Within a week of receipt of a copy of this order, the first and second respondents shall transfer the investigation to the CBCID.
- (ii) Within a week of transfer of investigation, the Additional Director

General of Police, CBCID or the IG of Police, CBCID shall nominate a lady officer not below the rank of Deputy Superintendent of Police to carry out investigation from all possible angles, including the possibility of a huge racket in the area.

(iii) The officer nominated to carry on the investigation, shall take note of the provisions of the Act and the Rules and follow the same scrupulously and file a final report within a period of three months from the date of receipt of the copy of this order.

(iv) The victim girls who have now been admitted to a Residential school in Chennai, shall continue to be there and the Investigating Officer shall explore the possibility of recording their statements and examining them through video conferencing, to the extent it is feasible, keeping in mind the express provisions of the statute.

(v) The victims shall be paid compensation, of Rs.50,000/- each.

(vi) The parent/guardian of the minors shall be permitted access to the children whenever they want.

(vii) The Investigating Officer and the Court shall find out the person on whom the children have trust and confidence and the examination, including the medical examination of the children shall take place in the presence of such a person.

(viii) The Court shall also take note of Section 40 of the Act and permit

the children to have legal assistance either by themselves or through the Legal Services Authority.

There will be no order as to costs. Consequently, M.P.Nos. 1 to 3 of 2014 are closed.

30-4-2015

Index:Yes

Internet:Yes

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To

1. The Home Secretary, Government of Tamil Nadu, Secretariat, Chennai 600 009.
2. The Director General of Police, Mylapore, Chennai.
3. The Joint Director, Central Bureau of Investigation (CBI), Rajaji Bhavan, Besant Nagar, Chennai 600 090.
4. The Superintendent of Police, Cuddalore.

V.RAMASUBRAMANIAN, J

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ORDER IN
W.P.27995 of 2014

30-4-2015