

Harendra Rai Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Mar-13-2007

Judge : Aftab Alam and S.P. Singh, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 164, 311 and 482;
[Constitution of India](#) - Articles 226 and 227

Appeal No. : Cr. W.J.C. No. 717 of 2006

Appellant : Harendra Rai

Respondent : The State of Bihar and ors.

Advocate for Def. : P.K. Shahi, A.G., Vikash Kumar, J.C, Bindhya Keshri Kumar, Sr. Adv. and Shambhu Sharan Singh, Adv.

Advocate for Pet/Ap. : Birendra Kr. Sinha, Sr. Adv. and Jagannath Singh, Adv.

Prior history : Aftab Alam, J. 1. In this petition filed under Articles 226 and 227 of the Constitution the petitioner prayed for a writ in the nature of habeas corpus for recovery and production of his mother, who according to him, was abducted to prevent her from being examined as witness in a criminal trial. In the writ petition many allegations are made mainly against Prabhunath Singh who is the sitting M.P. from Maharajganj constituency in the district of Chapra and who is described as one of the leaders

Judgement :

Aftab Alam, J.

1. In this petition filed under Articles 226 and 227 of the Constitution the petitioner prayed for a writ in the nature of habeas corpus for recovery and production of his mother, who according to him, was abducted to prevent her from being examined as witness in a criminal trial. In the writ petition many allegations are made mainly against Prabhunath Singh who is the sitting M.P. from Maharajganj constituency in the district of Chapra and who is described as one of the leaders of the ruling party in the State. It is stated that for the murder of the petitioner's brother Rajendra Rai and one Daroga Rai [Masrakh (Panapur) PS case No. 62 of 1995], Prabhunath Singh along with some other accused was facing trial in Sessions Trial No. 19 of 2003 in the court of the 7th Addl. Sessions Judge, Bhagalpur. The trial court had earlier closed the prosecution evidence even though some material eye-witnesses were not examined but on 23.10.2006 it allowed a petition filed under Section 311 of the Code of Criminal Procedure fixing 3.11.2006 as the last date for examining Lalmuni Devi, the mother of the petitioner and Rajendra Rai, one of the victims of murder.

2. It is alleged that on 24.10.2006 at about 1 P.M. Dinanath Singh the brother of Prabhunath Singh, Harendra Singh and some other accused persons descended on village Dhonuki, P.S. Panapur, Chapra armed with deadly weapons and forcibly abducted his mother Lalmuni Devi and father Rama Rai from their house. It was further stated that the petitioner went to Panapur P.S. and submitted a written report (Annexure 2) to the Officer Incharge informing about the abduction of his mother and father by the accused, including the brother of Prabhunath Singh, M.P. The Officer Incharge took the report but he neither registered a case nor took up investigation nor took any steps to rescue or recover the victims of abduction. The petitioner then went to the Superintendent of Police, Chapra and gave him a copy of the report that he had submitted before the Officer Incharge, Panapur P.S. and requested him to rescue his father and mother. But he too did not take any action. Thus, denied of any help at the local level the petitioner came to Patna and on 26.10.2006 submitted a written complaint (Annexure 3) to the Director General of Police, Bihar, Patna. He sent copies of the complaint to the Chief Secretary and the Home Secretary, Govt. of Bihar, Patna and the Home Secretary, Govt. of India

but even then no action was taken to rescue and recover his mother. It was further stated that though the petitioner's father Rama Rai was released by the accused on 23.10.2006, his mother continued to be in their custody. It was alleged by the petitioner that his mother Lalmuni Devi was being kept in confinement by Prabhunath Singh or his brother and henchmen and an apprehension was expressed that she would either be killed or made traceless or she would be made to depose in the trial as per their wishes. It was also alleged that in the past too several trials against Prabhunath Singh were similarly frustrated when setting no protection, despite repeated prayers, witnesses finally succumbed to the threats and pressure by him and were declared hostile before the court.

3. With the aforesaid statements and allegations the writ petition was filed before the court on 31.10.2006 and it was listed on 1.11.2006 when on the prayer of the Advocate General it was passed over for the day.

4. On 2.11.2006 the Advocate General stated before the court that on receiving report of abduction of Lalmuni Devi and Rama Rai the police started investigation but on 24.10.2006 itself Rama Rai appeared in the late hours and gave statements before the Officer Incharge and the Subdivisional Police Officer that apprehending some threat from different quarters he and his wife had gone underground for self protection. On coming to learn that a rumour was spread that they were abducted he had come forward to say that there was no truth in it and they had gone in hiding of their own accord. He, however, refused to disclose the where about of his wife Lalmuni Devi. The Advocate General further assured the court that Lalmuni Devi would be given full protection not only for appearing before the court but also otherwise so that she may not be harmed by anyone. On the statement of the Advocate General the court directed for the production of Rama Rai for making his statement before the court personally. The Supdt. of Police, Saran was asked to ensure the production of Rama Rai on 8.11.2006. It was further directed that in the mean while if Lalmuni Devi appeared before the trial court on 3.11.2006, the court may proceed with the case but if she failed to appear on that date, the prosecution case should not be closed till further orders by the court.

5. On 8.11.2006 it was reported to the court that on 3.11.2006, the date fixed by the trial court, Lalmuni Devi appeared before it and made her deposition in the trial. From Bhagalpur she was taken to Chapra where her statement under Section 164 Cr.P.C. was recorded by a Magistrate. In her statement Lalmuni Devi said that she was not abducted by anyone. A copy of the statement of Lalmuni Devi recorded by the Magistrate was enclosed with a counter affidavit filed by the Advocate General on behalf of the Officer Incharge, Panapur P.S. The Advocate General submitted that in view of those developments he did not deem it necessary to produce Rama Rai before the court as with the appearance of both the alleged victims of abduction this writ petition was rendered infructuous.

6. The court was told that Lalmuni Devi was examined before the trial court on the date fixed but at the same time it was clear that her deposition in the trial court had not been normal and smooth. Her appearance had led to a clash in the court room between two groups of people and though the matter was not reported by the trial judge, it nevertheless attracted the attention of the Hon'ble Inspecting judge, Bhagalpur through newspaper reports and he deemed fit to call for reports and direct for an enquiry in the matter.

7. It was also alleged on behalf of the petitioner that though apparently her parents were made free and they stated before the Magistrate that they had not been abducted, they were in fact still under the clutches and (remote) control of the accused.

8. In those circumstances this Court did not close the proceedings of the case and adjourned the matter awaiting the result of the enquiry by Mr. Justice C.K. Prasad, the Inspecting judge Bhagalpur. On 8.11.2006 it was also stated before the court that the alleged abduction of Lalmuni Devi and Rama Rai had given rise to two cases one (Panapur PS Case No. 81 of 2006 instituted on the basis of the fard-e-bayan of Girija Devi, the wife of the writ petitioner and the daughter-in-law of Lalmuni Devi and the other (Masrakh PS case No. 129 of 2006) instituted on the basis of a complaint filed by one Shankar Rai before the C.J.M., Muzaffarpur. The complainant Shankar Rai was some sort of nephew of Lalmuni Devi. He too had retracted soon after the institution of the case and had submitted a written

statement that he had filed the complaint under some misunderstanding. It also came to light that it was Shankar Rai who along with others was accompanying Lalmuni Devi at the time of her appearance before the trial court in Bhagalpur. On 8.11.2006 while adjourning the writ petition the court directed that the two cases should be thoroughly investigated under the close supervision of the Supdt. of Police, Saran and following the directions of the D.I.G. Saran Range and called for the reports of investigation under the signature of the D.I.G.

9. On 17.11.2006 even before the report of any investigation was submitted, Lalmuni Devi appeared before the court and a second supplementary affidavit, sworn by her, was filed on behalf of the writ petitioner. In the affidavit it was stated that as a matter of fact she and her husband Rama Rai were abducted by the men of Prabhunath Singh and were all along under their complete control. Lalmuni Devi appeared as an old and rustic village woman. She was apparently under stress and looked quite vulnerable. She spoke only Bhojpuri. Fortunately, one of us S.P. Singh, J is fluent in Bhojpuri. Finding someone willing to listen to her, she poured out her heart to Justice Singh. She made an oral statement before the court that she and her husband were in fact abducted by the men of respondent No. 7. Her abductors used force against her and threatened her. She further said that all along she was under their complete control and her statements before the trial court in Bhagalpur and before the Magistrate at Chapra were not free and voluntary but were made under duress and intimidation.

10. The Advocate General reiterated his submission that with the appearance of the alleged victims of abduction the writ petition had exhausted itself and there remained nothing for the court to proceed further in the matter. The court, however, did not accede to the Advocate general's submission as it was evident that lurking behind the surface were much larger and far more important issues than the alleged abduction of two old villagers by some people.

11. The court had before it two sets of statements of Lalmuni Devi, one recorded by the Magistrate at Chapra under Section 164 Cr.P.C. and the other in the affidavit submitted before the writ court and her oral statement made before it. The two statements were completely contrary to each other. The court, therefore,

directed her to be lodged at the Judges' Guest House in Patna in order to keep her away from any possible influences from any quarters till she made a fresh statement before a Magistrate. The Registrar General was given the direction to make arrangement for her statement to be taken by a Magistrate at the Judges' Guest House itself on 20.11.2006. It also appeared to the court that the police was not showing due seriousness in the investigation of the two cases relating to the abduction of Lalmuni Devi and for them the statements of Rama Rai and Lalmuni Devi appeared to be conclusive leaving nothing more for further investigation. They seemed to refuse to see the possibility that the apparent might not be the real. Under the circumstance, the court entrusted the supervision of the case to Dr. D.N. Gautam, Additional Director General of Police who was at that time posted in the Special Branch.

12. On 22.11.2006 the statement of Lalmuni Devi, recorded in writing by a Magistrate as also on a video cassette, was submitted before the court in a sealed cover.

13. On 5.12.2006 the Advocate General submitted the interim report by Dr. Gautam. It mainly contained his comments on the supervision made by the D.I.G. Dr. Gautam severely criticized the supervision report and described it as one of the shallowest of the shallow pieces of investigation. The court was then constrained to direct that the investigation of the two cases would be made under the overall charge of Dr. Gautam.

14. On 24.1.2007 the Advocate General submitted the report of investigation by Dr. Gautam who in the meanwhile was shifted from the Special Branch to Modernization and Training Wing of the police.

15. The enquiry report of the Inspecting Judge, Bhagalpur was finally received by the court on 21.2.2007.

16. It may be stated here that the orders passed on November 08, November 17 and December 05 were challenged before the Supreme Court in S.L.P. Criminal Nos. 187, 377 and 378 of 2007 respectively. All the S.L.Ps. were dismissed, with some observations, by order dated 15.01.2007.

17. Coming back to the matter in hand, on the issues of abduction of Lalmuni Devi and her husband Rama Rai and the motive and the purpose behind their abduction, the Court before it the following materials.

(i) Supplementary affidavits sworn by Lalmuni Devi filed on 08.11.2006 and her statement recorded by a Magistrate on 20.11.2006 at the Judges' Guest House, Patna.

(ii) The reports of Dr. D.N. Gautam, dated 30.11.2006, 16.12.2006 and 22.01.2007.

(iii) The enquiry report by the Inspecting Judge, Bhagalpur with regard to the incident in the Trial Court on 3.11.2006 when Lalmuni Devi appeared there for her deposition in the trial.

18. Lalmuni Devi asserted that she and her husband were abducted from their village forcibly and against their will. She gave the names of her abductors that included Dina Singh (the brother of Prabhunath Singh) and Chhotelal (the M.L.A. from Parsa). She described how she and her husband were carried away in two different vehicles. She also stated that Jai Bahu (her description of Budhni Devi) was also brought along with them. They were taken to Mirzapur, the maternal place of Chhotelal where they were kept in a house under construction. An hour after darkness Chhotelal, M.L.A. came on two vehicles on one of which her husband was taken away Somewhere. She did not know where her husband was taken and she was very anxious. She herself was put in another car on which Jai Bahu was also taken. She (Lalmuni Devi) protested and asked to be left alone but the M.L.A. said that there she would not be comfortable and he was taking her to his home. He did not take her to his home but brought her to Patna on way to Gorakhpur. Here she was given a glass of water and was once again put in the vehicle. She felt intoxicated and fell asleep. Early in the morning she bitterly cried and protested on which the Mukhiya and the guard said that there was nothing to worry; that they were taking her to their home where she would be given clothes and foot-wear etc. Around 5 O'clock they reached Gorakhpur where the guard forcibly took her down from the vehicle and she was dumped on a bed. At Gorakhpur she was kept hidden for ten days. On the eleventh day, by the night

hours, they brought her to Bhagalpur. There she was kept hidden in a house under-construction. Daya Din was with her. Crying all the while she ate a little rice. At that time Prabhunath came there on one vehicle and on another her Daya Din's younger son Shankar who lived in Darjeeling. She did not know what Prabhunath gave to Shankar that he started to pester her. Prabhunath Singh, the guard, the Mukhiya and Shankar told her to change (her statement). She said how could she change, her son was killed. Then they threatened that her second son Harendra (the writ petitioner) too would be killed. Shankar said that if she did not change her statement, Prabhunath would kill her other son. Prabhunath had killed her son Rajendra. She further said that Prabhunath Singh, Shankar, Dina Singh forcibly took her to the Bhagalpur court. The Mukhiya and the body-guard were also with them. In the court-room her son, daughter-in-law and son-in-law were also present. They tried to snatch her from Prabhunath, Shankar, Kedar, Dina, the Mukhiya and the guard on which Prabhunath and his men assaulted them with kicks and fists. No one present in the court-room, including any lawyer came to their rescue. Even the Judge was sitting and in his presence they were assaulted but he said nothing. Shankar was gagging her mouth and Prabhunath Singh was shoving her from behind in the direction of the Judge. She told the Judge that she did not want to say anything on which Shankar forcibly got her thumb impression on a paper before the Judge Saheb. At that very moment, outside the court-room, Prabhunath Singh, Dina, Kedar, the guard and the Mukhiya were assaulting her son-in-law, son and daughter-in-law as a result of which they received injuries. She was again forcibly picked up by Prabhunath Singh and his men and was carried to Patna where she was kept for two days. On the third day she was taken to Chapra at 10. She was kept at Chapra in the house of Chanarma Singh of village Satjora Pakri. Prabhunath, Dina, Kedar the Mukhiya and the body-guard went to the Chapra court from where they came back after sometime. Then they threatened her that she would be killed. She was taken to Chapra court where her thumb impression was taken. She did not give any statement. Only her thumb impression was taken. At 10 in the night, after being threatened by Prabhunath Singh and her people, she was put in a vehicle with two body-guards, a driver and Shankar and his brother who brought her to her Bathan where she was kept confined by the body guards who did not allow her to go to her house. In the

morning she went to her house. Prabhunath Singh posted 'force' at her Bathan and house. The 'force' always kept her husband in confinement and did not allow him to go even for relieving himself. Prabhunath Singh, 'the leader' had made her life hell. He was an M.P. His house was in Masrakh. He got people killed and had their bodies thrown in the well in his court-yard. She learnt that Prabhunath Singh was preparing to get her abducted once again and then in order to save her life, she ran away to Patna thinking that she would save her life by appearing before the High court or lay down her life in that process. The lawyer took her to the High court where she met her son who had also come there. In the courts at Chapra and Bhagalpur, Prabhunath Singh forcibly got her thumb impression by giving threats to kill her son, daughter-in-law, daughter and son-in-law and by taking Shankar in his collusion. She was abducted by Chhotelal, M.L.A. (while picking grass at her Bathan) who said that he was taking her to her son at Taraiyan. When she said that she would not go, she was forcibly pushed into a vehicle. She was abducted by them. Her husband too was abducted by them. Shankar's brother was taken in collusion by Prabhunath Singh, Dina, Kedar etc. Prabhunath and his men had ruined their life. Her family was destined to be killed. Prabhunath Singh threatened that he would get his son Harendra removed from service. He threatened that he would have all of them killed. Even at that time he had got her house surrounded by 'force'. Prabhunath shot three fires at her son Rajendra as a result of which his entrails came out. She saw that with her own eyes and now Prabhunath got her abducted and asked her to change her statement otherwise her entire family would be wiped off. With this she concluded.

19. In the interim report, dated 30.11.2006 Dr. Gautam roundly condemned the report of the D.I.G., Saran range, Chapra that came to him for vetting before its submission to the Court. A reference to this interim report is to be found in the order dated 5.12.2006, when the Court directed that investigation of the two cases be made under the overall supervision and control of Dr. Gautam. In the second interim report, dated 16.12.2006. Dr. Gautam reviewed the investigation and supervision of two cases (Masrakh P.S. case No. 29 of 2006 Panapur P.S. Case No. 81 of 2006) made till then. He concluded the report by observing that the investigation of the two cases was quite casual and the supervision and control of the investigation were also pitiable. On 5.1.2007, Dr. Gautam took the statements

of 23 witnesses, including Lalmuni Devi and Rama Rai, the victims of the alleged abduction. The statements of witnesses are incorporated in his last report, dated 22.01.2007. Lalmuni Devi stated before him that great misfortune and suffering had befallen her and she had not been able to go to her house for the last three months. She further said that she and Rama Rai were carried away in three vehicles by Dina Singh, Kedar Singh and Chhote Lal, M.L.A. and some other accused forcibly and against their will. She was taken away forcibly with a view to coerce her to give deposition in favour of Prabhunath Singh, the local M.P. who was one of the accused in the case of murder of her son. She also said that though Budhni Devi, wife of Jai Narayan Rai was also taken alongwith them, she was not a victim of abduction. On the contrary, she was a party to abduction and was in league with the accused. She was brought along in order to pacify her and to keep her under control (it may be noted here that Shankar Rai is the son of Budhni Devi). She further stated that her statement made before, the C.J.M. Chapra on 6.11.2006 to the effect that she had not been abducted was not voluntary and it was made under duress. After abduction, Police was posted at her house and everyone was terrorised. It was only after the Court' s order that the police assumed a protective role. When she appeared in the Court of C.J.M., Chapra she was still under the clutches of the accused and it was in that state that her statement was recorded under Section 164 Cr.P.C. She also said that false cases were lodged against his second son, Harendra Rai, who worked in the block. They were after getting him removed from service. One son Rajendra Rai was killed. He was killed by Prabhunath Singh. After being abducted, she was taken to Mirzapur (in the district of Chapra), then to Patna and from there she was taken to Gorakhpur and was kept there. Then she was taken to Bhagalpur for deposition. She was abducted by Prabhunath Singh to control her deposition. She did not give any deposition. She was taken to the Court forcibly and there was some clash in the Court. The same people took her back from Bhagalpur, first to Patna where she was kept for two days and then to Chapra and then at 12 in the night, she was brought to her home. She came to learn that she would once again be abducted and then she, on her own, caught a bus and came to Patna. In Patna, she stayed in the house of Sri Ramdas Rai and after talking to a lawyer, she appeared before the High Court and gave her statement.

20. Dr. D.N. Gautam made his comment that in course of her statement. Lalmuni Devi was full of pain, anguish, worry, anxiety and anger against the Chapra Police.

21. Her husband Rama Rai also fully supported her statement. So did the other family members, namely, Harendra Rai, his wife Girija Devi (the informant), their son Nagendra Rai and some other villagers. Shankar Rai and Budhni Devi, though, denied the allegation of abduction and said that Lalmuni Devi was taken to Masrakh by her husband for her treatment.

22. In light of the statements of witnesses and on a review of the investigation of the two cases made by the local Police, Dr. Gautam concluded that the investigation of Panapur P.S. Case No. 81 of 2006 was completely corrupted. Not only the Police did not recover Lalmuni Devi, more importantly they did not make any effort in that direction. They failed to find out Lalmuni Devi before her deposition in the Bhagalpur Court but took her in their hands only when she was presented to them by the very people who had carried her away. Then, the police showed remarkable speed and zeal in getting her statement recorded before the C.J.M., Chapra. Once the statement was recorded denying abduction, the matter was over and concluded. Dr. Gautam commented that the sequences of events started on 23.11.2006 when the petition under Section 311 Cr.P.C. was allowed by the trial court at Bhagalpur and the deposition of Lalmuni Devi was fixed for 03.11.2006. On 24.11.2006, Lalmuni Devi was abducted. Girija Devi, wife of Harendra Rai, the son of Lalmuni Devi gave her statement before the Officer-in-charge, Panapur Police Station. Harendra Rai went to the Superintendent of Police, Chapra but he was unable to see him. On 25.10.2006, he submitted a written petition with regard to her mother's abduction before the Director General of Police and the Home Secretary at Patna. On the same date, that petition was sent from the Office of the Director General of Police to the Superintendent of Police, Chapra by fax for taking necessary action. The message was received in the Office of the Superintendent of Police on 25.10.2006 but it remained unattended till 2.11.2006. Its formal notice was taken on 2.11.2006 only after a case was instituted on the direction of the C.J.M., Chapra. Dr. Gautam further commented that from 24.10.2006 to 3.11.2006, Harendra Rai ran from pillar to post between Chapra, Patna and Bhagalpur but no public authority paid any heed

to his allegations. Dr. Gautam lastly stated that he had tried to put the investigation of the two case back on the right tracks and had also pointed out the glaring omissions and deficiencies in the investigation. He, however, submitted that he had no investigation machinery of his own by which he could conduct an independent and impartial investigation. He also stated that the cases instituted against the witnesses and the attitude of the Police was another cause of grave concern. In the end, he requested the Court to spare him any further involvement in the matter and to get the cases further investigated by some independent statutory agency.

23. On coming to learn, through some newspaper report about the fracas created in the Court of the 7th Additional Sessions Judge, Bhagalpur while the court proceedings were going on, Mr. Justice C.K. Prasad, Inspecting Judge of the judgeship called for reports and ordered an enquiry in the matter. After a thorough and painstaking enquiry, he gave a report, dated 21.2.2007. In the beginning of the report, he noted the circumstances in which the trial arising from Masrakh (Panapur) P.S. Case No. 62 of 1995, that should normally have taken place at Chapra, was first transferred to Hazaribagh and when as a result of the bifurcation of the State Hazaribagh fell in Jharkhand, it was brought to Bhagalpur. After taking into account the reports submitted by the District and Sessions, Judge, the 7th Additional Sessions Judge, the Public Prosecutor, statements of witnesses and the report of Dr. D.N. Gautam to whom he entrusted the enquiry the Hon'ble Judge, in his report, found and held as follows.

I do not have the slightest hesitation in endorsing the reports of the District and Sessions Judge, Bhagalpur as also the Additional Director General of Police that the witness Lalmuni Devi was not produced under proper security. She was frightened and under savvy stress prior to her examination. She was intimidated inside the Court room prior to her examination. She was not normal and the Court atmosphere was highly tensed and abnormal. The materials on record led him to conclude that evidence of Lalmuni Devi can not be said to have been voluntarily made.

I am of the considered opinion that had the Presiding Officer of the Court exercised little discretion, this untoward incident ought not have taken place. The Presiding Officer of the Court having found that the witness was not looking normal and, in fact, looking frightened and having not been produced under proper security, he ought to have taken these facts seriously and prevented deflecting the Court of Justice.

The direction to this Court to record evidence can not be construed to mean that the Court was obliged to record her statement despite the fact that she was produced without proper security. I am of the opinion that the Presiding Officer of the Court had also failed miserably in the matter.

24. The reports of Dr. D.N. Gautam and the statement of Lalmuni Devi clearly establish the connection between her abduction at Chapra and the murder trial taking place before the Bhagalpur Court. It is evident that Lalmuni Devi was abducted to prevent her from deposing freely in the trial relating to the murder of her son. Her statement made in the Court and recorded by the Magistrate at the Judges Guest House, Patna and the report of Justice C.K. Prasad, the Inspecting Judge of Bhagalpur Judgeship further make it clear that the abductors of Lalmuni Devi succeeded in their design and she was not allowed to make a free deposition in the Bhagalpur Court.

25. However, Mr. Bindhya Keshri Kumar, Senior Advocate appearing for respondent No. 7 would not accept the aforesaid inferences inescapably arising from the materials on record and he also opposed any directions that might be given in light of the above conclusions. Mr. Kumar reverted to the old theme that the writ petition had become infructuous and the Court was needlessly proceeding further in the matter. He once again pointed out that the writ petition was filed mainly seeking two reliefs; one, for the recovery of the petitioner's mother Lalmuni Devi who was allegedly abducted by the accused and the other for instituting a case concerning her abduction and its investigation by the Police. He submitted that both the reliefs were satisfied. Lalmuni Devi was no longer under abduction of anyone and cases relating to her alleged abduction were also registered and were under investigation. He submitted that that would bring the proceedings of this

case to an end and there is nothing left for the Court to proceed on. He further Submitted that the Court had committed serious error in calling for, by its previous orders, the reports of investigation by Dr. D.N. Gautam. He submitted that those reports were in the nature of supervision notes and no one, including the Court, was entitled to look into them. In support of the submission, he relied upon decisions of the Supreme Court in (i) Sunita Devi v. State of Bihar and Ors. 2005 (2) BBCJ 119 & (ii) M.C. Abraham and Anr. v. State of Maharashtra and Ors. : [2002]SUPP5SCR677 . Mr. Kumar also Submitted that on the basis of the report of the Inspecting Judge the Court was not justified in taking the view that the testimony of Lalmuni Devi before the Trial Court on 3.11.2006 was not free and voluntary. He submitted that the report was based on materials that were in the nature of hear-say evidence, and hence, it should not be taken into consideration. According to him, there was nothing before the Court to hold that Lalmuni Devi made her statement before the Trial Court under the influence or control of anyone. No such petition was filed before the Trial Court and apparently Lalmuni Devi like Zahira Sheikh was used to make inconsistent statements at different times.

26. I am unable to accept the submissions of Mr. Kumar, all of which appear to me to be completely without any substance or merit.

27. It is highly myopic to say that with the appearance of the abducted people, the writ petition had served its purpose and the proceeding should come to a close. To my mind, such a stand would amount to a negation of what the court stands for and an abdication of its constitutional, legal and moral obligations and responsibilities. Should the court be so slavish to the form of the petition that it should shut its eyes to the facts that are staring at its face and allow a serious miscarriage of justice to take place unchecked? Articles 226 and 227 of the Constitution and Section 482 of the Code of Criminal Procedure give to the court vast powers. What are those powers meant for and when are those powers to be exercised, if not in the facts of this case. Every criminal trial, specially a trial relating to a double murder is supposed to be held fairly and impartially. The present trial was not held at Chapra, in departure from the normal, but was transferred to Hazaribagh and then to Bhagalpur in order to ensure that it should

be held fairly. But the materials before the court leave no room for doubt the proceedings of the trial were violently interfered with and the trial's sanctity has been badly abused. In light of the materials before it, the court has no hesitation in finding that the deposition of Lalmuni Devi on 3.11.2006 in Sessions Trial No. 19 of 2003 before the 7th Addl. Sessions Judge, Bhagalpur was not voluntary. It was made under duress and intimidation while she was fully under the control of the accused. What this Court finds indescribably regrettable is that the subversion of the trial was made possible only with the abetment, by acts of omission and commission, of those who were primarily responsible to ensure that it should be held independently, fairly and impartially. The unholy drama that took place in the trial court was not possible without the inaction and connivance of the Chapra police, the active help and co-operation by the P.P. conducting the trial and the defence lawyer appearing for the accused. The saddest part in the entire episode is that the Presiding Judge turned a Nelson's eye to what was happening in the court room. He not only remained a silent spectator in the court room but did not even report the matter to this Court. When an enquiry was directed there was an apparent attempt to cover-up by all concerned. What happened in this case remind us of some of the observations made by the Supreme court in *Zahira Habibullah Sheikh v. State of Gujarat* : 2004 CriLJ2050 . In paras 55, 56 and 58 of the decision it was observed as follows:

55. The courts, at the expense of repetition we may state, exist for doing justice to the persons who are affected. The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. It cannot be oblivious to the active role to be placed for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.

56. As Pithily stated in *Jennison v. Baker*: (ALL ER p. 1006d)

The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the frame work of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (See Shakila Abdul Gafar

68. If one even cursorily glances through the records of the case, one gets a feeling that the justice-delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out of the truth and bringing to book those who were responsible for the crime. The Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice.... Criminal trials should not be reduced to be mock trials or shadow-boxing or fixed trials. Judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.

28. The case in hand appears to have some of the features of Zahira Sheikh, in that the agencies and the court entrusted with the responsibility to ensure a fair and impartial trial appear to be active or passive parties to its subversion.

29. The above are some very disturbing findings to which this Court has arrived at painfully and after giving very careful thought and consideration to all the materials before it.

30. Here, I am pleased to note that the Advocate General was fully alive to the gravity of the matter. He completely gave up his earlier stand that with the appearance of Lalmuni Devi, the writ-petitions had become infructuous and gave some useful suggestions to the Court. The Advocate General submitted that though there was an apparent connection between the abduction of Lalmuni Devi at Chapra and the trial taking place at Bhagalpur, the two matters were required to be dealt with separately as one was still at the stage of police investigation while the other was a trial before a Court. With regard to the abduction case at Chapra, he stated that the Government is willing to accept investigation by any mode and by any agency as may be directed by the Court. With regard to the trial at Chapra, he submitted that the Government was willing to change the P.P. and to appoint a Special P.P. to conduct the trial in his place. He also submitted that prima facie the statement made by Lalmuni Devi before the trial court on 3.11.2006 was not free and voluntary and hence, she was required to be re-examined. He also said that there was need to change the Presiding Judge by transferring the case to another Court.

31. As noted above, the role of Chapra Police with regard to the abduction of Lalmuni Devi was deplorable but that matter is still at the stage of investigation and therefore, the court would not like to give any positive directions in that regard. It is for the concerned officers in the Government to take note of the complete failure of police investigation as appearing from the report of Dr. Gautam and to take appropriate corrective measures. Let copies of the reports of Dr. Gautam along with a copy of this judgment be sent to the Director General of Police and the Home Secretary, Bihar who, it is expected, will take curative measures in the matter without any loss of time. As stated by the Advocate General, the State Government will ensure that the investigation of the abduction case(s) is held fairly and impartially and the final report is submitted without any undue delay.

32. Coming now to the murder trial at Bhagalpur. I find all the suggestions made by the Advocate General positive and fully acceptable. The Advocate General suggested the need to transfer the trial to another Court. I feel that it would be better to transfer the trial altogether out of Bhagalpur for more reasons than one. The incident taking place in the Court on 3.11.2006 and the enquiry held by the

Inspecting Judge in the matter would have undoubtedly left its shadow on the judgeship and it is possible that any other Court there might take a vengeful attitude causing undue prejudice to the accused. At the same time, the possibility of attempts to interfere with the trial proceedings in future also can not be ruled out. It would be, therefore, better that the trial should be held at Patna, closer to this Court and the seat of the State Government. Moreover, Patna is at half the distance (or even less) from Chapra to Bhagalpur and for going to Bhagalpur, one would normally pass through Patna. It would, therefore, be less inconvenient to all if the trial is held at Patna. In the aforesaid circumstances, the only proper course is to transfer the trial from Bhagalpur to Patna so that it may proceed smoothly and conclude without delay.

33. In light of the discussions made above, it becomes necessary to give the following directions with regard to Sessions Trial No. 19 of 2003 arising from Masrakh (Panapur) Police Station Case No. 62 of 1995.

(i) The proceedings of Sessions Trial No. 19 of 2003 pending before the 7th Additional Sessions Judge, Bhagalpur is directed to be transferred to Patna. The records of the case should be transmitted forthwith to the Sessions Judge, Patna who should either keep the case in his own court or assign it to some Additional Sessions Judge or a Fast Track Court who would hold the trial on a priority basis so as to conclude it without any undue delay and preferably within three months from the date of receipt of the records.

(ii) The state Government is directed to appoint a Special P.P. to conduct the trial. The Government shall take into account the way the trial was tried to be subverted in the past and would appoint as P.P. an experienced lawyer of reputed integrity.

(iii) The deposition of Lalmuni Devi taken on 3.11.2006 would stand scrapped and she will be examined afresh before the trial court at Patna under Section 311 of the Code of Criminal Procedure.

(iv) The order passed by the Bhagalpur Court closing the prosecution case is set aside and the trial shall proceed from the stage of examination of Lalmuni Devi as directed above.

(v) It will be open to the Special P.P. to make an application for recall of witness(es) earlier examined. In case such a petition is filed, the trial court shall pass appropriate orders, in accordance with law.

(vi) The report of Hon'ble Mr. Justice C.K. Prasad is directed to be placed before the Standing Committee of the Court for consideration and suitable action.

(vi) The Bihar State Bar Council is directed to examine the roles of the P.P. and the defence counsel who were conducting Sessions Trial No. 19 of 2003 before the 7th Additional Sessions Judge. Bhagalpur and to take appropriate action in the matter.

34. This writ petition is disposed of with the aforesaid observations and directions.

S.P. Singh, J.

35. I agree.

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