

Noushad Vs. the State of Kerala, Represented by the Sub Inspector of Police and Others

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Court : Kerala

Decided On : Aug-26-2011

Reported in : 2011(4)KLT301; 2011(4)KHC198; 2011(2)KLD719

Judge : Thottathil B. Radhakrishnan & K. Surendra Mohan

Appeal No. : W.P.(Crl.) No.173 of 2011 (S)

Appellant : Noushad

Respondent : The State of Kerala, Represented by the Sub Inspector of Police and Others

Judgement :

Thottathil B. Radhakrishnan, J.

1. Alleging that the girl described in this writ petition is illegally detained in Mahila Mandiram, Kollam and that she is in love with him, the petitioner sought issuance of a writ of habeas corpus. Pursuing that complaint, by now, he is among those arrayed as accused persons, for having visited that girl with offences relating to her body, including rape of a minor and also providing a chain of sexual assaults and activities prohibited by the laws.

2. Investigation by police appears to reveal a case where a minor girl was raped and presented to many persons who also sexually exploited her, including by rape; for financial gain by such presentation having been done by those who attained control over her by inducing, luring and otherwise securing and keeping her with them, may be, by force, threat, deception, fraud, misrepresentation or undue influence, including by calculated deprivation of the adolescent victim, among other things, by lascivious promptings and provocations by words and deeds thereby appealing to her prurient adolescent mind, corrupting her and inducing her to be prey to repeated sexual visits. Different provisions of IPC and other penal laws vividly flash.

3. Trafficking in human beings is prohibited by the Constitution. Article 23 embodies the fundamental right to protection against exploitation. It prohibits trafficking in human beings. Trafficking in human beings would take in any form of trade, disgraceful pushing of human beings, for favours received, either as money, or in kind, including by barter. The constitutional concept parked in Article 23 is to provide the citizen a right, guaranteed as fundamental, to protection against exploitation. It seems from the knowledge and thinking of the framers of the Constitution that the society would have vulnerable sections and the Constitution by itself should stand to provide them succor, providing fundamental right against exploitation. The fundamental right under Article 23 is an insulation guaranteed, in particular, to the challenged sectors of the Indian People. Those vulnerable to sexual exploitation, including women, fall within the protective arms of Article 23. That should be available even without asking. This constitutional premise, as noted above, should necessarily advise the State, particularly, the police, the investigators and the prosecutors to ensure that no offender jerks off the transit to trial on clear charges in accordance with the laws. The need to enliven the constitutional value embedded in Article 23 is the constitutional obligation of all involved in the process of prevention of such crimes, investigations and in prosecuting the offenders. With this goal, it has to be necessarily ensured that all steps are taken to ensure that the wrong doers, without fail, face the due process of law, in time. The judiciary also plays its role in this regard, while focusing on the different relevant aspects during trial of such cases because Article 23 is relevant in deciding bail applications and weighing the case on the scales of proportionality

as to punishment.

4. Following earlier orders, a special investigation team was constituted. The investigation was under the control of the Inspector General of Police, Ernakulam Range since, at that time, we wanted the case file to be looked into by a senior officer and we then saw that there were suggestions that the investigation would have to be continued even centering areas which fall within the jurisdiction of the Inspector General of Police, Ernakulam Range. With the passage of time, it appears that one of the officers involved in the team so constituted is stated as required to be transferred on account of administrative exigencies. Having regard to the larger background of the case and because the facts disclose the need for a pointed and effective investigation by sharpened skills and officers of exemplary forensic abilities, we are of the view that this case needs to be investigated by the Crime Branch. We, accordingly, direct that appropriate orders be issued by the competent authority in the Police Department, transferring the case to the Crime Branch for further investigation. Following this, the State Police Chief will constitute appropriate team in the Crime Branch for the investigation and give appropriate guidelines and directions for vigorous investigation and timely completion of the process and submission of final report.

5. We place on record our appreciation for the earnest efforts taken by the Inspector General of Police, Ernakulam Range in counseling the victim and also coming up with suggestions for rehabilitating her after providing appropriate protection and modulation of her thought process since she is just a senior adolescent, not even a major. During the course of this litigation before us, we had also been watching how the Inspector General of Police, Ernakulam Range had been able to very effectively get involved in ensuring that everything needful is done for the victim. The victim needs to be under the guidance of a superior officer, preferably a lady officer. We had also, in the process, shifted the victim under our orders from the Mahila Mandiram, Kollam to Mahila Mandiram at Champakkara, Ernakulam. We direct that, in spite of the aforesaid order to transfer the investigation to the Crime Branch, the victim will continue to be housed in the Mahila Mandiram at Champakkara, Ernakulam. She will also have appropriate guidance of the Inspector General of Police, Ernakulam Range. The

Superintendent of Mahila Mandiram, Champakkara and other officers who exercise statutory or executive jurisdiction over that hostel will ensure that any requirements as regards the victim is done only in concurrence with the Inspector General of Police, Ernakulam Range.

6. We also think that of late, the number of cases of similar nature are increasing and it is high time that the Government seriously views the issue of providing compensation for the victims in a larger measures so that there could be appropriate rehabilitation of the victims. In the case in hand, the father of the victim has to be sent to report to a police officer to ensure that he gets appropriate medical aid to get out of his addiction problem. The mother is stated to be working as a home maid in some other Nation. The only sister is stated to be undergoing education as a resident in a low profile hostel attached institution in another State in India. Rehabilitation of the victim in the case in hand cannot be had without appropriate State support. Similar other cases have also come up to the notice of this Court. Hence, the State Government will look into those aspects of this matter also.

For further submissions regarding the progress of the investigation, post on 27.10.2011.

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