

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 1437/2010

HEMANTI MALLICK and ANR

..... Petitioners

Through: Mr. Anant Kumar Asthana, Adv.

versus

UNION OF INDIA and ORS

..... Respondents

Through: Ms. Rajdipa Behura, Adv. for UOI

Mr.Pawan Sharma, Adv. for R3 to R6

Ms. Arpana Bhat, Adv. for NCPCR

Mr. A.K. Singh, Adv. for DCPCR

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

04.02.2013

The petition concerns inter alia about missing of a girl by name <name withheld>. The girl went missing far back on 28th January, 2010 for which a case in FIR No.21/2010 was registered in P.S. Daringbad, Orissa. Of course, three more such girls were also missing and they were traced except <name withheld>.

On the present petition filed before this Court, the Deputy Commissioner of Police, Outer District, Delhi filed a status report far back in February, 2012 narrating the steps taken by the police to trace the girl in question up to 19.12.2011. On taking note of the status report, this Court by order dated 28.2.2012, directed the Joint Labour Commissioner and the Deputy Commissioner of Police, Headquarters to be present in Court on the next date of hearing, i.e. 11.4.2012.

The matter was taken up at least on seven earlier occasions. Each time this Court had expressed its opinion and emphasized that the girl must be immediately traced and for this purpose, necessary steps must be taken. A further status report dated Nil was filed before this Court on 3.12.2012 after almost a period of ten months. The Office of the Deputy Commissioner of Police, Outer District has only reproduced the steps that were taken prior to 19.12.2011 except adding one or two paragraphs without even giving dates on which such action was taken.

We are totally unimpressed by the report as admittedly a perusal of the case diary does not indicate any sincere efforts being made by the investigating officer to trace the girl in question from 19.12.2011. Investigation in matters like this cannot be taken lightly and when this is pointed out, learned counsel appearing for the respondent Delhi Police has submitted that a detailed status report shall be filed within a period of four weeks and the respondent Delhi Police shall also make all possible efforts to trace the girl.

In view of the said submission concerning the earlier status reports as to the action taken by the police which are not to the satisfaction of the Court, we direct that the Joint Commissioner of Police having jurisdiction over the matter in question shall file a report indicating the action taken to trace the girl. We make it clear that status report should not be filed only to impress upon the Court as to the action taken in the matter but the action must be sincere and effective. If necessary, the Joint Commissioner of Police can also form a team for the purpose so that the girl should be traced without any further loss of time.

Our attention is also drawn to an affidavit filed on behalf of the NCPCR which was taken note of by this Court while it passed the following order on 25.11.2011:

The respondent No.7, National Commission for Protection of Child Rights has filed a lengthy affidavit. Apparently, it is more of a critique of the other departments of the Government of Delhi as well as the State of Orissa than on account of what the respondent No.7 has done or proposes to do. The learned counsel for the respondent No.7 submits that she shall place on record a status report indicating as to whether a Fact Finding Committee had been constituted to examine this trend of bringing minor children and particularly girls from Orissa and perhaps other States to the Capital on the pretext of employment and the disappearance of the said children from here. Since the respondent No.7 is a recommendatory body, according to the learned counsel, it can certainly give its recommendations. The status report shall indicate the same. Insofar as the criticism of various departments of the NCT of Delhi is concerned, Mr. Pawan Sharma appearing for the Government of NCT of Delhi submits that he would like to file a status report/affidavit indicating the steps taken. A similar affidavit may also be filed by the State of Orissa.

Renotify on 12.01.2012.

We have gone through the above affidavit, particularly paragraph 12 which relates to the inaction on the part of Delhi Police (especially the then SHO of Prashant Vihar Police Station) on non-compliance of the directions of the order of Supreme Court of India dated 14.7.2008 in Lalita Kumari Case, delay in the medical examination of one of the victim girls and the inadequate investigation/prosecution of the accused. The relevant portion of the said affidavit reads as under:

1. Non-compliance with the directions of Hon ble Supreme Court of India dated 14.7.2008 in Lalita Kumari Case:-

The then SHO of Prashant Vihar Police Station did not register the complaint on time when the Petitioner No.1 with the assistance of concerned NGOs approached him on 09.08.2010. As per the claim of the Petitioner, the complaint was not registered until the Petition in question got filed before this Hon ble Court on 20.08.2010. The Daily diary No. was not provided to the complainant, although, the same was insisted. This is in contravention of the direction of the Hon ble Supreme Court of India dated 14.7.2008 in the matter of Lalita Kumari case, in terms of which the complaint had to be registered as an FIR immediately and copies thereof had to be made over to the complainant. This is also in contravention of the direction of this Hon'ble Court dated 16.09.2009 in W.P.(Crl.) No.249/2009.

2. Delay in the medical examination of one of the victim girls:

It has been claimed by the Petitioner at para 36 and 37 of the Petition that medical examination of the rescued girl (<name withheld>) was delayed. As claimed in the petition, the girl (Petitioner no.2) had injury marks on her wrist and finger, nail marks on the inside/crock of her elbow and her face swollen by injury behind her ear. The girl was rescued from her employer in Rohini (Sector-11) between 6 p.m. and 7 p.m. Thereafter, the Petitioner no.1 and the representatives of the NGOs accompanying her insisted for medical examination. A lady constable was brought to the Police Station around 10 p.m. The victim girl (Petitioner No.2) was taken for medical examination at 11.30 p.m. The medical examination was completed on 10.8.2010 at 8.30 a.m. Although the status report of Delhi Police dated 27.9.2010 has a mention about the medical examination of this victim girl, the delay in medical examination has neither been denied nor reasoned therein.

3. Inadequate investigation/prosecution of the accused:-

As revealed from the Inner Case Diary of Prashant Vihar police station dated 30.10.2010 (which contains the statement of another victim girl, <name withheld>), an FIR was registered by the Vijay Vihar police Station under the jurisdiction of outer police District on 8.10.2010 registered with case no.357/10 under Sections 342, 354, 323 and 34 of IPC only on 8.10.2010. It is not clear from the status report of Delhi Police dated 27.9.2010, 20.10.2010, 30.11.2010, 12.1.2011, 22.2.2011 and 24.5.2011 as to whether FIR(s) have been registered against the proprietors/agents of the concerned placement agencies (including petitioner No.12, 14, 15, 16 and Taji Maid and Servant Service, Shahbad Dairy, Delhi) as well as the employers, such as, Petitioner No.13 and Shri Nirpal Sing, son of Sant Singh, R/o W-Z 461, Gali No.25, Shiv Nagar, Hari Nagar, Delhi (the employer of <name withheld>) and Shri Akshay Kumar, son of Late shri Prem Prakash, R/o Magazine Street, Sangroor, Punjab (the alleged employer of <name withheld>). It is also not established as to whether all applicable penal provisions (including the provisions of IPC against cheating/duping, illegal confinement and molestation/sexual exploitation/outraging (sic) modesty), Section 23, 25 and 26 of Juvenile Justice Act, 2000, Section 3(1)(xii) SC/ST (Prevention of Atrocities) Act, 1989 and Bonded Labour Act have invoked against the accused. Although it is revealed from the status reports of Delhi Police dated 27.9.2010, 22.2.2011 and 24.5.2011 that necessary actions have been taken by Delhi Police in terms of the guidelines of Hon ble Apex Court dated 14.11.2002, it is not clear as to whether such actions have been initiated immediately after the local police station(s) came to know about the missing girls. It is also not clear as to whether charges have been framed against such accused/alleged offenders under this penal provisions, although more than a year time has elapsed since the Delhi Police is having the knowledge of them.

4. Apparently all accused/alleged offenders involved in the matter are scot free.

In spite of our earlier order dated 25.11.2011, there has been no response by the Delhi Police. The counsel appearing for Delhi Police has submitted that though no response has been filed before this Court, such a response will also be filed on the next adjourned date. His statement is recorded. In the very same affidavit filed on behalf of NCPCR, with regard to the inaction of the respondent Odisha Police, it has been mentioned in paragraphs 13 and 14 as under:

(13) That the Odisha Police may be asked to do the following:

i. All the accused persons as mentioned in the FIR dated 3.6.2010, Prisanu Mallick @ Sanu, Sudhir Mallick and Pushpanjali Digal @ Mitu are brought to book without further delay.

ii. To make all out effort to trace out the other missing children as reported to this Hon'ble Court vide the Status Report of SP, Kandhamal dated 11.01.2011 (affidavit

dated 24.01.2011).

iii. To file a comprehensive report in this Hon'ble Court through the DGP/ADGP (Crime) explaining the inactions mentioned at para 11 and specifying the remedial measures taken/contemplated to be taken in the cases of missing/trafficked children.

iv. To institute high level impartial inquiry against the then in-charge of the Daringbadi Police Station in Kandharmal District for not promptly registering FIR and issuing hue and cry notices on time and to take appropriate administrative/disciplinary actions (based upon the outcomes of such inquiry).

v. To ensure that any complaint brought before any police station in the State regarding a missing child is registered forthwith and all necessary actions as stipulated under the Supreme Court guidelines dated 14.11.2002 in Horilal case are taken. A web-based monitoring system should be developed at District/State Police Headquarter in this regard and a copy of the monitoring report should be shared with the Department of WCD, State legal Aid Services Authority and State Commission for Protection of Child Rights (SCPCR) on quarterly basis.

vi. To have consistent community intelligence gathering of information regarding out-of-school children/missing children/trafficked children, analyzing the same by the State/District Crime Record Bureaus and giving constant feedback to the anti-trafficking/anti-kidnapping Cell in the Police Headquarters.

14. That the District Collector of Kandhalmal (Odisha) shall extend all the benefits under the relevant developmental (DRDA) schemes, so as to ensure the proper rehabilitation of the rescued girls (<names withheld>).

Apart from the above paragraphs, the above affidavit also refers to certain things to be followed by Delhi Police and Government of NCT of Delhi in paragraphs 15 and 16 and by the State Governments in paragraph 17. None appears for the State of Odhisha. We are of the considered opinion that the respondent State of Odhisha also has to respond to the above affidavit of the NCPCR by the next adjourned date. We direct accordingly. List again on 6th March, 2013. Order dasti.

CHIEF JUSTICE

V.K. JAIN, J

FEBRUARY 04, 2013