

REPORTABLE**Court No. 47**

Case :- CRIMINAL MISC. WRIT PETITION No. - 6539 of 2020

Petitioner :- Rama Shankar Mishra

Respondent :- State of U.P. & 6 Others.

Counsel for Petitioner :- Dheeraj Kumar Dwivedi, K. K. Tripathi

Counsel for Respondent :- Government Advocate

Hon'ble Pankaj Naqvi, J.

Hon'ble Sanjay Kumar Pachori, J.

(Sanjay Kumar Pachori, J.)

1. The present writ petition under Article 226 of the Constitution of India was initially preferred for seeking direction in the nature of mandamus to transfer of the investigation of Case Crime No. 3 of 2020, P.S. Meja, District Prayagraj to Crime Branch Criminal Investigation Department (C.B.C.I.D.) or any other independent agency to ensure a fair investigation and prayed for following principal reliefs:

"(i) Issue a writ order or direction in the nature of mandamus direct the respondent no. 2 to transfer the investigation of present case, i.e. Case Crime No. 03 of 2020, under Sections 147, 366 I.P.C. Police Station Meja, District Prayagraj to C.B.C.I.D. or any other any other independent agency to ensure fair investigation.

(ii) Issue a writ order or direction in the nature of mandamus commanding the respondent no. 2 and 3 to arrest the accused persons in the present case."

2. We, after hearing the learned counsel for the parties, passed a detailed order on 1.10.2020. The operative part of the said order is quoted hereunder:-

(i) The order of cognizance dated 1.5.2020 passed by the Remand Magistrate in Case Crime No. 3/2020, under Sections 147/366 IPC, P.S. Meja, Prayagraj is quashed. The learned Jurisdictional Magistrate is directed to take fresh cognizance on available materials at the earliest.

(ii) The Competent Authority is directed to immediately place the I.O.s of Case Crime No. 3 & 264, both of 2020 and the Circle Officer concerned under suspension and institute disciplinary proceedings against them which shall be conducted by an officer not below the rank of Superintendent of Police. The disciplinary proceedings shall be completed as expeditiously as possible preferably within 2 months and the action taken be apprised to the court in a sealed cover on 18.12.2020.

(iii) The Disciplinary Authority shall not hesitate in invoking the provisions of Section 166-A IPC and other offence, if need be, against the erring police officials.

(iv) The victim shall be provided adequate security (24 X 7) at the expense of the State. She shall be escorted in a police vehicle to record her evidence in the Court and the witness protection scheme formulated by the Apex Court in Mahendra Chawla and Others vs. Union of India and others in Writ Petition (Criminal) No. 156/2016 on 5.12.2018 shall be adhered to."

3. We kept the petition pending.

4. Pursuant to our detail order dated 01.10.2020, it was reported that not only the two I.O.'s of Case Crime Nos. 3 & 264, both of 2020 but the C.O.'s concerned were suspended and disciplinary inquiries initiated in which the two I.O.'s namely Mohd. Azhar Khan and Sri Munna Lal were found guilty in discharge of their duties while Sri Navin Kumar Naik (erstwhile C.O.- Meja) was found partly guilty whereas Sri Sachidanand (erstwhile C.O- Meja) stood exonerated.

5. Sri Shiv Kumar Pal, learned Government Advocate for the State submitted that pursuant to quashing of the cognizance order by this Court on 1.10.2020, further investigation of Case Crime Nos. 3 of 2020 and 264 of 2020 was transferred to Crime Branch, both the cases were independently investigated by Inspector Vridhi Chand Gautam, Crime Branch who after completing investigation of both the cases fairly and impartially, submitted Final Reports in both the cases before the jurisdictional Magistrate. He further pointed out about materials collected during further investigation but fairly admitted that at the time of submitting the police report, the investigation agency has no scope to discard the statements of the victim under Section 164 of the Code.

6. Learned Government Advocate further argued that the jurisdictional Magistrate issued summons after taking cognizance vide order dated 22.3.2021, on the basis of materials collected during the investigation against respondents no. 5 to 7 and Abhishek Singh @ Shani under Sections 363 and 376D of the IPC after rejecting the Final Report in Case Crime No. 3 of 2020. It is further submitted that the jurisdictional Magistrate has also issued summons against accused Arun Kumar Singh, Ashish Singh, Amrendra Pratap Singh, and Abhishek Singh in Case Crime No. 264 of 2020 under Sections 363, 366, and 376D of the IPC vide order

dated 2.4.2021, after taking cognizance.

7. Learned counsel for the petitioner admitted that although the jurisdictional Magistrate took cognizance in Case Crime No. 3 of 2020 and 264 of 2020 and issued summons against the accused persons yet the local police has not served the process.

BRIEF FACTS OF THE CASE:

8. The first incident took place on 25.12.2019 when after taking objection to the conduct of the informant/cousin of the victim and his family in not letting a road to be constructed, respondents no. 5 to 7 and Shani Singh came to the house of the victim at about 6:30 AM. They hurled filthy abuses and inflicted serious injuries to the family members of the victim. First Information Report (in short "FIR") of the incident was lodged by Vinod Kumar Mishra, against the respondents no. 5 to 7 and Shani Singh on 26.12.2019 at 6:27 PM as Case Crime No. 1070 of 2019 under Sections 452, 323, 504, and 506 of the IPC at Police Station Meja, Prayagraj.

9. On 1.1.2020, the second incident took place at about 8:00 PM, when the victim had gone to ease herself on the rear side of her house, respondents no. 5 to 7, Abhishek @ Shani, and 4 other unknown persons were waiting for the arrival of the victim and when she came, 8 accused persons forcibly dragged her in an unnumbered vehicle (Red Renault Duster). On hearing her cries for help, the petitioner and other family members came out from the house, saw the armed accused persons, who threatened them with life, and the victim abducted. On 25.12.2019, respondent nos. 5 to 7 and Abhishek @ Shani had extended a threat that the family of the informant would be given a new year gift. An FIR of the above incident was lodged by the petitioner/ father of the victim against respondents no. 5 to 7, Abhishek @ Shani, and 4 other unknown persons on 2.1.2020 at 13.48 hours as Case Crime No. 3 of 2020 under Sections 147, and 366 of the IPC at P.S. Meja, Prayagraj.

10. Sub-Inspector Mohd. Azhar Khan started the investigation, recorded the statements of the petitioner Rama Shankar Mishra (informant/father of the victim), Daya Shankar Mishra (brother of the informant), Om Shankar Mishra (brother of the informant),

Ruchi Mishra (sister of the victim) and Shivam Mishra (brother of the victim) as eyewitnesses of the incident, under Section 161 the Code on 7.1.2020.

11. Statement of the victim under Section 161 of the Code was recorded on 8.1.2020 by S.I. Munna Lal II I.O., wherein she stated that on 1.1.2020 at 8:30 PM that when she had gone to ease herself on the rear side of her house, all the accused persons along with Shani @ Abhishek were standing there with firearms to commit murder of her cousin Vinod Kumar Mishra. All the accused persons caught her and closed her mouth with a handkerchief and put her in a Red Duster car. She does not remember where they took her. She stayed with the accused persons for 7 days. She stayed 2 days in a room and 5 days in the dicky of the car. They used to take her into the room and commit rape with her while keeping her unconscious. After 7 days, respondents no. 5 to 7, Abhishek @ Shani Singh, and 4 other unknown persons left her near her house.

12. The victim was medically examined on 9.1.2020 at 1:00 PM in Community Health Centre, Ram Nagar by Dr. Reeta Dwivedi, which indicated that her hymen was torn with slight redness in the region. During medical examination, hair of the scalp, nail scrapings of both hands, and vaginal smear (air-dried) for semen examination of the victim were collected.

13. On 14.1.2020, statement of the victim under Section 164 of the Code was recorded by Judicial Magistrate -II, Allahabad, which is extracted as:

” घटना 1/1/20 की हैं। मैं शाम 8.30 बजे अपने चाचा को खाना देकर घर के पीछे शौचालय जा रही थी। तब मैंने तहसीलदार सिंह, अरूण सिंह, आशीश सिंह, सन्नी सिंह को देखा। 3 - 4 और लोग थे जिन्हें मैंने नहीं पहचाना। तहसीलदार सिंह ने मेरा मुह दबा दिया जिससे मैं बोल नहीं पाई। फिर मैं बेहोश हो गई। जब होश आया तब आँखें, मुँह और हाथ बंधे थे। आँखों में पट्टी होने के कारण मुझे कुछ नहीं समझ आ रहा था कि जगह क्या है। ऐसा लगता था किसी कमरे में है। 3 - 4 दिन खाने को कुछ नहीं दिया, पानी देते थे। एक दो दिन बाद किसी ने मेरी सलवार उतारी। मेरे साथ गलत काम किया (बलात्कार)/गलत काम करने के बाद सलवार पहना दी। 2 - 3 दिन बाद बेहोश करके डिक्री में रखा गाड़ी की। मुझे नहीं पता कितने समय डिक्री में थी। आँखों में पट्टी बंधी थी। मुझे नहीं पता गाड़ी में कितने लोग थे। मेरे साथ 3 - 4 बार गलत काम (बलात्कार) किया गया परन्तु किसने किए यह नहीं पता। 8/1/2020 को मुझे घर के पीछे गाड़ी से उतार दिया गया। जब मुझे छोड़ा तब हाथ खोल कर छोड़ा। तब मैंने आँखों की पट्टी खोली और देखा

लाल रंग की गाड़ी जा रही थी। नम्बर नहीं देख पाई। तहसीलदार, अरूण सिंह और उनके बेटों से जमीन का विवाद चल रहा था हमने 25/12/19 को पुलिस बुलाई तब सन्नी सिंह ने कहा था कि बच्ची मैं तुम्हें नए साल के दिन गिफ्ट दूँगा। जब मैं घर गई तब पुलिस थी। इसके अतिरिक्त मुझे कुछ नहीं कहना।”

14. On 22.1.2020, the petitioner approached the Assistant Director General of Police, Prayagraj Zone by way of an application to get the investigation of case Crime no. 3 of 2020 transferred to any other police station of the district. He stated that the police of Police station Meja had colluded with the accused persons and the police were not taking any concrete action against the accused persons.

15. On 28.3.2020, co-accused Abhishek @ Shani Singh was arrested and sent to judicial custody. On 29.3.2020, after completing investigation, S.I. Munna Lal submitted a charge sheet against respondents no. 5 to 7 and Abhishek @ Shani Singh under Sections 323, 504, and 506 of the IPC only, while exonerating all the accused persons under Sections 147, 366, and 376D of the IPC. The Magistrate took cognizance under Sections 323, 504, and 506 of the IPC only. As a result, accused Abhishek @ Shani Singh after being enlarged on bail under Sections 323, 504, and 506 of the IPC started extending threat to the victim, therefore, the victim had to be shifted to the house of her maternal uncle.

16. The second incident of abduction took place on 17.5.2020 at about 7:30 PM, when the victim had gone to attend the call of nature from the house of her maternal uncle, where she was residing for 25 days prior to the incident. When she did not return after a long time then her maternal uncle and aunt searched for her and dialed 112 to inform the police about the incident. The informant came to know that a boy came on a motorcycle and abducted the victim. An FIR was lodged by her uncle namely Umakant Dubey, on 19.5.2020 at 3:27 PM against unknown persons as Case Crime No. 264 of 2020 under Sections 363 and 366 of the IPC at P.S. Meja, Prayagraj.

17. On 16.6.2020, a Division Bench of this Court directed the Senior Superintendent of Police, Prayagraj to recover and produce

the victim before the Court in a Habeas Corpus Writ Petition No. 277 of 2020 which was filed by the petitioner for the recovery of the victim.

18. On 17.8.2020, subsequently in Case Crime No. 264 of 2020, the statement of the victim under Section 164 of the Code was recorded by Civil Judge (Sr.D.)/F.T.C. Prayagraj which is extracted as under:

"1/01/2020 को मेरा आपहरण अरुण सिंह, पवन सिंह उर्फ तहसीलदार, आशीश सिंह, अभिशेक सिंह उर्फ सनी ने किया था । और आठ दिन कर मुझे एक कमरे में रखा । और मेरे साथ जबरदस्ती संबंध बनाया । उस समय आशीश सिंह और अरुण सिंह ने मेरे साथ शारीरिक संबंध बनाया था । इस घटना की FIR भी हुयी थी । दूसरी बार 17/05/2020 को मेरा आपहरण अमरेन्द्र सिंह उर्फ पंकज, आशीष सिंह ने किया । मैं अपने मामा के घर गयी थी। वहाँ से मेरा अपहरण किया । एक महिना तक मुझे एक कमरे में बन्द करके रखा । वहाँ पर अरुण सिंह ने मेरे साथ जबरदस्ती शारीरिक संबंध बनाया । एक और आदमी भी आता था लेकिन वो मुंह ढक कर आता था । उसने भी मेरे साथ शारीरिक संबंध बनाया । एक दिन मौका देखकर मैं वहाँ से निकल गयी । तब रास्ते में एक आदमी मिल गया जिसका नाम नीरज सिंह उर्फ डिग्री था । उसने तीन चार लोग को बुला लिया और मुझे जबरदस्ती साड़ी पहनाकर थाने पर छोड़ दिया । थाने पर पुलिस नित्यानन्द, राकेश चौरसिया ने मुझसे जबरदस्ती कागज पर हस्ताक्षर करवाया । और जबरदस्ती लिखवाया कि मैं धर्मपाल की पत्नी हूँ । जब की धर्मपाल से मैंने शादी नहीं की, धर्मपाल 45 - 50 साल का आदमी है । और उसकी एक पत्नी भी है । जब मेरा मेडिकल हो रहा था तो महिला आरक्षी नेहा तिवारी ने डाक्टर को बोल कर अपने मन से रिपोर्ट लिखाई । और वहां पर भी जबरदस्ती नेहा तिवारी ने लिखवाया कि मैं धर्मपाल की पत्नी हूँ । धर्मपाल आज भी यहाँ कोर्ट में मेरा पीछा करते हुये आया है । और शादी का झूठा कागज बनवा कर लाया है । अरुण सिंह ने मेरी मम्मी को डण्डे से मारा था । और जान से मारने की धमकी दिया । मैंने धर्मपाल सिंह के साथ शादी नहीं की है । अरुण सिंह, आशीष सिंह, पवन सिंह और सनी ने मेरे घर आकर बन्दूक चलाये और पापा मम्मी को मारे । मैंने पुलिस को बुला दिया था । सनी सिंह ने मेरे भाई के ऊपर गोली चलाई थी । जो मेरे चाचा को छू कर निकल गयी । पुलिस वालों ने सब गलत कागज पर हस्ताक्षर करवाया अरुण सिंह के कहने पर । मैं अपनी मम्मी पापा के साथ रहना चाहती हूँ । मेरी जान को बहुत खतरा है ।"

19. The victim was medically examined again on 22.6.2020 at 1:30 PM in Community Health Centre, Ram Nagar by Dr. Reeta Dwivedi, which indicated that her hymen was old, torn and healed. During medical examination, hair of the scalp, nail scrapings of both hands and vaginal smear (air-dried) of the victim were collected for semen examination.

20. We, in view of above background were constrained to pass a detailed order on 1.10.020 and it appears that further investigation

in respect of both the occurrences was conducted by the Crime Branch.

21. On 10.2.2021, accused persons of case Crime No. 264 of 2020 Amrendra Pratap Singh, Arun Kumar Singh, and Ashish Singh were also released by the jurisdictional Magistrate on the basis of the Final report, submitted by the investigating officer of Crime Branch after completing further investigation vide order dated 10.2.2021.

22. On 22.3.2021, on a protest application of the petitioner, the jurisdictional Magistrate issued summons after taking cognizance vide order dated 22.3.2021, on the basis of materials collected during investigation against respondents no. 5 to 7 and Abhishek Singh @ Shani under Sections 363 and 376D of the IPC after rejecting the Final Report in Case Crime No. 3 of 2020. The Magistrate also issued summons against accused person respondents no. 6, 7 and Amrendra Pratap Singh, and Abhishek Singh in Case Crime No. 264 of 2020 under Sections 363, 366, and 376D of the IPC vide order dated 2.4.2021 on protest application which has been filed by the petitioner, after taking cognizance, on the basis of materials collected during the investigation and rejected the Final Report.

23. In compliance of the order dated 4.8.2021, Sri Vridhhi Chand Gautam, investigating officer of Crime Branch has filed a compliance affidavit, wherein he stated that he conducted further investigation of both the cases i.e. Case Crime No. 3 of 2020 and Case Crime No. 264 of 2020, as ordered by Deputy Inspector General of Police, Prayagraj, with a team of competent police officials. He claims to have conducted the investigation fairly and impartially.

24. Another compliance affidavit has also been filed by the Superintendent of Police (Crime) on 16.8.2021, wherein he stated that he is the supervisory authority of the investigation of both the cases after perusal of the Final Reports, he found that the investigation was conducted in accordance with law.

25. Without going to the details of the evidence collected during

the investigation and further investigation of both the cases, it is clear that the Final Reports were submitted after discarding the statements of the informants, the victim, and her family members which were recorded under Section 161 of the Code. The I.O. also discarded the statements of the victim, recorded under Section 164 of the Code. It is also clear that the investigating officer has not enquired about the Red Duster car by which the victim was abducted on 1.1.2020 as stated by the eye-witnesses and the victim in her statements under Sections 161 and 164 of the Code. The medical examinations of the victim have also not been considered by the investigating officer.

26. In **Amar Nath Chaubey v. Union of India (UOI) and Ors.**, AIR 2021 SC 109, (3 Judge), the Supreme Court observed as follows:

"8. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not 49investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.

9. In *Manohar Lal Sharma v. Principal Secretary and Ors.* (2014) 2 SCC 532, the Apex Court observed as follows:

24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of

investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer not functioning bonafide. In very exceptional cases, however, where the courts finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the properly of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bonafide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

25. Lord Denning has described the role of the police thus:

In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust: and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the Accused to justice.

The police of course, must act properly. They must obey the Rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

26. *One of the responsibility of the police is protection of life, liberty and property of citizens. The investigation of the offences is one of the important duties of the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.*

39. *..In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference."*

27. In **Pooja Pal v. Union of India, (2016) 3 SCC 135**, the Supreme Court observed as under:

"87. Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge

its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

88. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in Vinay Tyagi v. Ishad Ali (2013) 5 SCC 762) to encompass two imperatives; firstly, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsised in the prefatory chapter dealing with the history of criminal investigation in the treatise of Criminal Investigation- Basic Perspectives by Paul B. Weston and Renneth M. Wells:

'Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognising that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of

efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime the certainty that a criminal will be discovered, arrested and convicted."

28. After submitting police report under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. The power may be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone to escape from the clutches of law. In such exceptional circumstances the court may, in order to prevent miscarriage of criminal justice direct de novo investigation. [Vide: *Babubhai v State of Gujarat*, (2010) 12 SCC 254]. Fair investigation is a part of a constitutional right guaranteed under Article 21 of the Constitution of India. In ***Babubhai v State of Gujarat*, (2010) 12 SCC 254** the Apex Court observed as:

"45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed Under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of Rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation."

29. In ***Bharati Tamang v. Union of India*, (2013) 15 SCC 578**, the Apex Court relied on the following extract from *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158, as follows:

"33...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. In 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 framework 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."

30. In **Sakiri Basu v. State of Uttar Pradesh, (2008) 2 SCC 409**, the Supreme Court observed in paragraph 10 and 11 as under:

"10. It has been held by this Court in CBI v. Rajesh Gandhi, 1997 Cri LJ 63 that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) Cr.P.C. is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

Directions issued by the Apex Court:

31. For the time bound conclusion of the criminal trial the Apex Court in **State of Kerala v. Rasheed, AIR 2019 SC 721**, held as under:

"The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

(i) a detailed case-calendar must be prepared at the commencement of the trial after framing of charges;

(ii) the case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

(iii) the case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

(iv) testimony of witnesses deposing on the same subject matter must be proximately scheduled;

(v) the request for deferral under Section 231(2) of the Cr.P.C. must be preferably made before the preparation of the case-calendar;

(vi) the grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross-examination of each witness, or set of witnesses;

(vii) while granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witness (es) as has been prayed for;

(viii) the case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary;

(ix) in cases where trial courts have granted a request of deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation."

32. In **State of Gujarat v. Kishanbhai and Ors., (2014) 5 SCC 108**, the Supreme Court has observed with regard to the glaring lapses in the investigation by the investigating agency, in para 20 reads as under:

"20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice.

Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystallizing mistakes committed during investigation, and/ or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/ prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating /prosecuting official (s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the

matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/ prosecuting officials/ officers. All such erring official / officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant directions shall also be given effect to within 6 months.

23. A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one week. All the concerned Home Secretaries, shall ensure compliance of the directions recorded above. The record of consideration, in compliance with the above direction, shall be maintained."

Duties of Superior Police Officer:

33. Sub-rule (iii) of Rule 122 of Police Regulations provides that the final report must in all cases be submitted through the Superintendent of Police.

34. The Chief Secretary of Government of Uttar Pradesh has issued a direction to the Director General of Police and Director General (Prosecution) on 5.8.219 in compliance of several directions issued by the Supreme Court in **Perumal v. Janaki, (2014) 5 SCC 377** and **State of Gujarat v. Kishanbhai, (2014) 5 SCC 108** for submitting charge-sheets/final report in the competent court, relevant part of aforesaid direction reads as under:

"(1) प्रत्येक विवेचना पूर्ण होने के उपरान्त आरोप पत्र/अन्तिम रिपोर्ट प्रेषित करने से पूर्व विवेचक द्वारा क्षेत्राधिकारी के माध्यम से केस डायरी जनपदीय अभियोजन कार्यालय में प्रेषित की जायेगी । जहां पर अभियोजन अधिकारी द्वारा केस डायरी के अवलोकनोपरान्त/परीक्षणोपरान्त विवेचक के मध्य संकलित साक्ष्य आदि की समीक्षा की जायेगी और यदि उसमें कोई कमी या विसंगति पायी जाती है तो स्वतंत्र मस्तिष्क से उसको इंगित करते हुए उसकी पूर्ति हेतु अग्रेतर विवेचना हेतु प्रेषित की जायेगी । इस कार्यवाही में केस डायरी

जिस माध्यम से अभियोजक के पास परीक्षण हेतु प्रेषित की जाय उसी माध्यम से अभियोजक द्वारा पुनः परीक्षणोपरान्त ही यथा स्थिति आरोप पत्र अथवा अंतिम रिपोर्ट न्यायालय प्रेषित किया जायेगी । इस कार्य की सुचारु रूप से सम्पादित करने हेतु जनपदीय अभियोजन कार्यालय में एक केस डायरी प्राप्त करने का पटल स्थापित होगा, जहां पर आवश्यकतानुसार कान्सटेबिल मोहरीर लगाये जायेगे । उक्त समस्त कार्यवाही बिलम्बतम 07 दिन में पूर्ण करनी होगी। यदि अपरिहार्यतावश 07 दिन से अधिक के समय लग रहा हो तो इस स्थिति में वस्तुस्थिति का उल्लेख करते हुये अनिवार्यतः 15 दिन में कार्यवाही पूर्ण करनी होगी ।"

35. The object behind recording of the statement of witness under Section 164 of the Code is to ensure that the investigation is in the right direction, against the right person which will instil a sense of feeling in the mind of the witness that he/she should not retract later. The statement of witness has to be recorded like a statement recorded from a witness in the court. Before recording the statement, oath has to be administered to the witness. Although the statement of a witness recorded under Section 164 of the Code is also a previous statement like recorded under Section 161, it has some higher value as it is recorded by a Magistrate.

36. We now revert to submission of the learned counsels for the parties. It is an admitted fact that the jurisdictional Magistrate has taken cognizance in Case Crime No. 3 of 2020 under Sections 363, 376D of the IPC against respondents no. 5 to 7 and Abhishek Singh @ Shani and in Case Crime No. 264 of 2020 under Sections 363, 366, 376D of IPC against respondents no. 6, 7, Amrendra Pratap Singh and Abhishek Singh. Learned Magistrate rejected the Final Reports submitted by the investigating officer of Crime Branch vide order dated 22.3.2021, 2.4.2021 respectively and has issued the summon against the accused persons. It is also admitted fact that all the accused person were in judicial custody during further investigation but were released after submitting of the Final Reports.

37. At this juncture, one question remains unanswered, why the vehicle in question used in abduction of the victim has not been recovered or what attempts/ efforts were made by the I.O. to recover the same?

38. A question of law, after filing of charge-sheet, whether

Magistrate has power to order for further investigation has been considered by a three Judge Bench of the Apex Court in **Vinubhai Haribhai Malaviya and Ors. vs. The State of Gujarat and Ors., (2019) 17 SCC 1**, wherein it observed as under:

"17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the Code of Criminal Procedure that must needs inform the interpretation of all the provisions of the Code of Criminal Procedure, so as to ensure that Article 21 is followed both in letter and in spirit.

23. It is thus clear that the Magistrate's power Under Section 156(3) of the Code of Criminal Procedure is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police-which such Magistrate is to supervise-Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him Under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) of the Code of Criminal Procedure would, as per the definition of "investigation" Under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation Under Section 173(8) of the Code of Criminal Procedure."

39. In view of above, we leave the matter of the involvement of the vehicle in question to the jurisdictional Magistrate for consideration.

40. After considering the facts and circumstances of the present

case as noted above and after keeping in mind the settled position of law in respect of fair and proper investigation relating to sexual offences, we direct that the jurisdictional Magistrate, District Prayagraj shall commit both the cases (Case Crime Nos. 3 and 264 of 2020 both P.S. Meja, Prayagraj) within a month from the date of receipt of this order, to the Court of Sessions and also direct that the security of the victim (24 X 7) shall continue till the conclusion of the trial of both the cases, as per our order dated 1.10.2020.

41. We, before parting, are of the view that considering the issues involved, it would be just and appropriate to issue following directives:

(i) The 'Monitoring Cell' of all the districts of the State shall collect monthly data of the number of cases in which after recording the statement of victim of sexual offences under Section 164 of the Code in support of prosecution, Final Report(s) has/have been submitted.

(ii) In the Monitoring Cell meetings, all the district judges of the State shall ensure that all Police Report(s) are submitted in accordance with the directions issued by the Apex Court in **State of Gujarat v. Kishanbhai and Ors. (2014) 5 SCC 108.**

42. A copy of this order shall be transmitted by the Registry of this Court to all the Judgeships for information and compliance.

43. All pending applications are disposed off. Matter consigned.

Date: 17.8.2021

Ishan

(Sanjay Kumar Pachori,J.) (Pankaj Naqvi,J.)