

Smt. Sarita Kumari alias Laxmi and Sudhir Kumar Gupta Vs State of Uttar Pradesh and Vikash Kumar Misra alias Vikky

None

Court: Allahabad High Court

Date of Decision: Dec. 6, 2006

Acts Referred:

Constitution of India, 1950 " Article 226#Criminal Procedure Code, 1973 (CrPC) " Section 164, 173, 202, 204, 226#Penal Code, 1860 (IPC) " Section 323, 343, 363, 366, 376

Hon'ble Judges: Vinod Prasad, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod Prasad, J.

This Habeas Corpus Petition is a sordid saga of a young girl who was not only illegally detained for five days inside a

police station but was mass raped also by those who are the protectors of law. This petition also indicates how an unscrupulous litigant can make

use of the most solemn constitutional powers of this Court under Article 226 of The Constitution Of India for his ulterior and illegal motives.

2. Heard Sri S.F.A. Naqvi, learned Counsel for the two applicants Digvijai Singh and Devendra Kumar Misra on their impleadment applications

and also on their applications for recalling the order dated 1.12.2004/2.12.2004 passed by Hon"ble I.M. Quddusi J. delivered by Hon"ble Amar

Saran J. under Chapter VII Rule 1 Sub-rule 3 of High Court Rules under the orders of the Hon"ble The Chief Justice. Before coming to the said

prayers made by the two applicants a resume of facts are listed below.

3. Smt. Radhika @ Lalli Misra wife of Ashok Kumar Misra resident of Bakshi KurdPolice Station Daraganj, Allahabad lodged a FIR on

5.6.1997 at 3.10 PM at police station Daraganj District Allahabad under Sections 363, 366 IPC, against Shitla Prasad Gupta, Ashish Kumar

Gupta, Vinay Kumar Gupta, Pawan Kumar Gupta, Shiv Kumar Gupta, Anil Kumar Gupta, Balu Chatterji, Rohini Devi, Adya Prasad Shukla,

Sudhir Kumar @ Anna and his mother regarding kidnapping of her daughter Sarita Misra @ Laxmi on 22.4.1997 at 7 PM which kidnapping took

place on 22.4.97 at 7 PM. Her FIR was registered as crime number 345 of 97 for the aforesaid offences. It transpires from the record that the

said victim Sarita was arrested by the police along with one Sudhir Kumar on 31.5.97 from civil lines bus station Allahabad and was medically

examined on 2.6.97. In her medical report no injury was found and her medical age was determined to be 19 years. The pathology report of Sarita

Misra showed absence of any spermatozoa in her slid. During the investigation the statement of Sarita Misra was recorded u/s 164 Cr.P.C. by

ACJM IV Allahabad on 3.7.97 which was verified and signed by her. In her said statement she has stated that she knew Sudhir Kumar Gupta and

his family members as they used to visit her house. Sudhir Kumar Gupta was behind her and wanted to marry her and for that purpose he used to

threaten her. On 8.4.97 when her mother had gone to her parents house along with her son, (brother of Sarita Misra) and Sarita and her elder

sister were alone in their house that the named accused persons in the FIR kidnapped her and then her court marriage was performed with Sudhir

Gupta forcibly. Sudhir Kumar Gupta detained her at Jabalpur in the house of his parents for two months during which he bet her also. The said

Sudhir Gupta also hired a assassin to get her annihilated but he said that she is the daughter of a Pandit and to murder her will be a curse. There

after Sudhir Kumar Gupta brought her to Allahabad Sudhir Kumar Gupta used to rape her in Jabalpur against her wishes. Both of them were

trying to go to Benaras from Allahabad but they could not get the bus and while on their way to railway station they were apprehended by the

police. She told her woes to the police who got her medically examined. She also stated that she is a student of class 10th and her age is 15-16

years. She stated she does not want to live with Sudhir Kumar Gupta and wanted to go back to her mother and sister. It transpires from the

pleading that Sudhir Kumar Gupta had also filed an application on 5.6.97 before Senior Superintendent Of Police Allahabad alleging therein that

he was a resident of Bakshi Khurd Daraganj, Allahabad and that he had married with aforesaid Sarita Misra @ Laxmi. The police of Police Station

Daraganj had arrested him and his wife Sarita @ Laxmi on 31.5.97 and had detained them at the police station till 5.6.97 when they were

produced in the court of ACJM 3rd Allahabad who refused to pass any order on the ground that the girl was a minor and since she had married

she is entitled to go any where. After the said order was passed when they came out of the court room at 3.35 PM, Lalli Devi @ Radhika

Devi (Respondent No. 2), mother of Sarita Misra, her brother Vikas Kumar @ Vicky (Respondent No. 3), sister Salu @ Pushpa, and Rajesh Rai

along with 3-4 other persons assaulted them and took away his wife threatening to murder both of them. The life of his wife Sarita was in danger

and therefore she should be given in his custody. When nothing was done by the police then he (Sudhir Kumar Gupta) filed the present Habeas

Corpus Writ Petition in this Court on 7.8.97 on behalf of his wife Sarita @ Laxmi for getting her released from her illegal detention by respondents

No. 2 Smt. Radhika Devi, her mother, and respondents No. 3 Vikas Kumar Misra @ Vicky, her brother. He prayed for the following relieves in

this Habeas corpus Petition:

(i) To issue a writ order or direction in the nature of Habeas corpus directing the respondents to release the petitioner No. 1 from the custody of

respondents No. 2 and 3.

(ii) To issue a writ order or direction to the respondents to produce the petitioner No. 1 before this Hon"ble court for her statement and release in

pursuance of her will and consent.

(iii) ...

(iv) ...

4. In this petition, on 28.8.97, Hon"ble I.M. Quddusi J. directed for production of Sarita Misra @ Laxmi in this Court. Sarita Misra @ Laxmi was

produced before this Court on 17.7.97 by her mother but no body appeared on behalf of petitioner Sudhir Kumar Gupta on that date. The

statement of Sarita Misra @ Laxmi was recorded on that day (17.9.97) by His Lordship which forms the part of record of this Habeas Corpus

petition. Her said statement has been quoted in full by Hon"ble I.M. Quddusi J in His Lordship"s Order dated 29.5.98 referred to herein after in

this judgment, which I have marked as under line in bold letters, and hence for the sake of convenience and brevity I am not quoting it here.

Thereafter, on 23.9.97, the statement of Sudhir Kumar Gupta aforesaid, was recorded which is mentioned in the order sheet dated 23.9.1997

which reads as follows:

The statement of Sudhir Kumar Gupta, petitioner No. 2 has been recorded today, who has been identified by his counsel, Sri Gulab Chandra.

Heard the learned Counsel for the petitioner and the respondents.

Learned Counsel for the Sudhir Kumar Gupta has stated that he was produced on 5.6.1997 before the ACJM, III but the police has not

registered a case at that time. Sudhir Kumar Gupta was kept in police lock up from 31.5.97 to 5.6.1997 and Sarita Mishra was also kept in police

lock up as has been stated in her statement. The learned Magistrate did not taken any action. However, mother of Sarita Mishra had already move

an application to the SHO Daraganj in April, 1997 to the effect that her minor daughter was abducted, but no case was registered by him and the

case was registered on 5.6.1997 as case crime No. 345/1997 u/s 363/366 IPC, P.S. Daraganj, district Allahabad. Learned Counsel for Sudhir

Kumar Gupta further stated that Sudhir Kumar Gupta was arrested by the police and he was sent to Jail and was bailed out by the learned

Sessions Judge, vide order dated 15.7.1997 passed in Bail Application No. 2865/1997.

In view of this, summon the relevant lower court record by special messenger, as it is a local matter. List/Put up this case on 30.9.1997 in

chamber. The S.S.P. as well as the SHO Daraganj, Police Station shall appear in person before this Court at 3.00 P.M. The Additional Registrar

(P) may ensure compliance of this order. The statement of Sarita Mishra shall be kept in sealed cover and shall not be open without permission of

this Court.

5. After the said statements this Court ordered that the record of the lower court be summoned and it also summoned SSP Allahabad and SHO of

Police Station Daraganj district Allahabad. On 30.9.97 SSP Allahabad, SHO Police Station Daraganj and the victim Sarita Misra @ Laxmi along

with her mother appeared before this Court and SSP, Allahabad assured this Court that he will get an inquiry made into the matter and will provide

adequate protection to the family of the victim. Senior Superintendent Of Police Allahabad entrusted the said inquiry to Sri Ajai Mohan S.P.(City).

The said inquiry officer submitted his report in this Court on 28.5.98 which was perused by Hon"ble I.M. Quddussi J. and thereafter, on 29.5.98,

Hon"ble I.M. Quddussi J. passed a detailed order which is extracted below:

On 28.8.1997 notices were directed to be issued to respondent No. 2 and the Station House Officer, Police Station Daraganj, district Allahabad

was directed to produce Smt. Radhika Devi alias Lalli wife of Ashok Kumar in person. On 17.9.1997 the girl (Km. Sarita Misra) was produced in

person alongwith her mother. Her statement was recorded by the court and it was directed that the girl namely Km. Sarita Misra shall remain

under custody of her mother and shall be produced by her on the dates fixed in future unless exempted by this Court. It was further directed that

the statement of the girl shall be kept in the sealed cover. Thereafter on 23.9.1997 the statement of Sudhir Kumar Gupta, petitioner No. 2 was

also recorded. The statement of the girl is as under:

I appeared in the High School Examination this year from the Board of High School and Intermediate Education, Uttar Pradesh, Allahabad. I have

appeared in that examination as a private candidate. My date of birth is 30th December. 1982. I am aged about 14 years only. I did not know

Sudhir Kumar Gupta. I have never instructed Sudhir Kumar Gupta (petitioner No. 2) to file this Habeas Corpus Petition in this Court on my

behalf. When I did not know Sudhir Kumar Gupta there was no question of solemnizing my marriage with him. I was kidnapped by some persons

from my house. I do not know their names but in case they come before me I can identify them. My mother lodged a First Information Report

against certain persons regarding my kidnapping on 22.4.1997 but the report was lodged on 5.6.1997, which was registered as Case Crime No.

345 of 1997 under Sections 363, 366 IPC, police station Daraganj, district Allahabad. I was kept at Jabalpur against my wishes by some persons

who had kidnapped me, for about two months. They were bringing me to Varanasi with an intention to sell me out but in the way the Civil Lines

Police caught me. Sudhir Kumar Gupta was also taken into custody at that time by the police. I was also raped by the aforesaid Sudhir Kyumar

Gupta as well as some other persons to whom he allowed to do so. On paper they obtained my signature under duress to show me as the wife of

Sudhir Kumar Gupta while, in fact, I did not marry him and all had been done against my wishes. I was handed over to Daragani police there I was

kept for about five days and Sudhir Kumar Gupta was also kept there but both were kept separately. I was also raped at Police Station Daragani

by the Inspector Digvijay Singh, Incharge of Police Station, Out-Post whose name I did not know but can identify him, as well as by the Incharge

of Police Out-Post Buxi Khurd, namely; Devendra Kumar Mishra, Head Constable of Buxi Khurd Out-Post Anwar Khan, S.I. of Police Station

Daragani, Ram Bahadur Yadav and 3-4 other persons whom I do not know. Thereafter, I was kept at Mahila Thana for eight days but Sudhir

Kumar Gupta was released from police station Daragani by the police after five days. My medical examination was got done by these persons and

by influencing the doctor they got my age on the medical report as 19 years while in fact, I am aged about 14 years and my date of birth is 30th

December, 1982 in the High School records as also the same date of birth has been recorded in Ram Niranian Junior High School Buxi Khurd

where I got education in VII Class. Thereafter Darasani police had produced me and Sudhir Kumar Gupta before the Magistrate at Allahabad.

Thereafter the Magistrate had given me in the Supurdgi of my mother. I am living with my mother on my own free will and I want that the culprits

may be punished and this incident may not be repeated with other poor and innocent girls.

There is danger not only to my life but also to the lives of my family members. On 30th June 1997, the police personnel came to my house at

Daraganj and gave us threats so that we may not give any statement against them They also had beaten my sister Pushpa Mishra, my brother Vikas

Kumar and mother Radhika Mishra alias Lalli. Thereafter my mother, sister and brother were sent to Jail. I do not know the case in which they

were sent to Jail In the night between 1st and 2nd July, 1997 the police personnel came to my house while my family members were in jail and they

again kidnapped me. I was kept in the night at police station Daragani and during that night also I was raped by police personnel Devendra Kumar

Misra, Head Constable Anwar Khan, Kamla Singh, Mahendra Singh, Alok and Jagdish Chauhan constables. Next day at about 3-4 P.M. I was

sent to Mahila Thana. Thereafter I was released by the order of the Magistrate on 3rd. July 1997 after recording my statement.

Sudhir Kumar Gupta, petitioner No. 2 has also stated that he was produced before the ACJM, Allahabad on 7.8.1997 and the police had not

registered a case at that time and he was kept in police lock up for a week and Km. Sarita was also kept in police lockup and the learned

Magistrate did not take any action. It appears that the mother of Km. Sarita had also moved applications to Station House Officer, Daraganj to the

effect that her minor daughter was kidnapped but no case was registered at the police station till 5.6.1997. On 5.6.1997 Case Crime No. 345/97

u/s 363/366 IPC, Police Station Daraganj, district Allahabad was registered against Sudhir Kumar Gupta and he was arrested by the police and

sent to Jail. He was bailed out by the learned Sessions Judge vide order dated 15.7.1997 passed in Bail application No. 2865 of 1997. After

recording the statements and going through it, the court summoned the Senior Superintendent of Police and the Station House Officer, Police

Station Daraganj. Both the officers appeared in person on 30.9.1997. The Senior Superintendent of Police had assured the court that he would

make enquiry and submit his report within a month. He had also assured that the girl and her mother would be provided adequate security.

Thereafter an enquiry was entrusted by the Senior Superintendent of Police, to Sri Brij Mohan Sharma, the Superintendent of Police, who was

holding the post of S.P. City at that time. The enquiry was entrusted to him on 27.10.1997 and before that the matter was not seriously taken up

and the enquiry was entrusted to one Pankaj Gautam, Circle Officer, However, Sri Ajai Mohan Sharma took great pains and tried his best to find

out the truth to show the court in arriving at some conclusion. It is also observed that unfortunately he could not get any assistance from the side of

the girl. Sri Ajai Mohan Sharma attended this Court regularly and appraised the progress of the case. In the mean time the girl Km. Sarita Mishra

disappeared all of sudden. Her mother was requested to produce her before this Court but till date she was not produced inspite of her assurance

given to Sri Ajai Mohan Sharma the Superintendent of Police as well as to this Court. During pendency of enquiry Sri Ajai Mohan Sharma was

transferred from the post of S.P. (City) to the post of S.P. Rural Area but as the Court had desired that he should complete the enquiry, he did the

same and concluded the said enquiry. But he could not record the statement of the girl, as she was not available. However, this Court had already

recorded her statement and on the basis of her statement the enquiry was made. Thus, the Court during the proceeding of this case had also

directed that the medical examination of the girl be got done through States Medical Board. This order was passed on 19.1.1998 The allegation of

the girl as well as mother was that her age was 15 years only while the Chief Medical Officer, Allahabad under the influence of the Police Officer

Daraganj recorded her age as 19 years. It appears that the girl Km. Sarita Misra avoided to appear before the Medical Board and due to this

reason she disappeared and is not available so far. According to the conclusion of enquiry report Km. Sarita Misra was detained at Police Station

Daraganj from 31.5.1997 to 5.6.1997 unauthorizedly. The persons against whom the girl has levelled allegations of commission of offence of rape

also used to come at the police station. However, he could not come to the conclusion that the rape was committed with her or not. In the report it

has been suggested that a thorough investigation is required in the matter.

It has also been indicated in the report that Sudhir Kumar Gupta petitioner No. 2 was also detained at Police Station Daraganj with effect from

31.5.1997 and there is no mention of his release at the said police station. However, it appears that he was also detained unauthorizedly with effect

from 31.5.1997 till 5.6.1997 at Police Station Daraganj and Police Station Mahila Thana..

In the case of D.K. Basu v. State of West Bengal 1997 Jt (1) page 1 the Supreme Court has held observed in paras 36 and 37 which is quoted as

under:-

36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions

are made in that behalf as preventive measures.

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification

and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a

register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be

attested by at least one witness who may be either of the family of the arrestee or a respectable person of the locality from where the arrest is

made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lockup, shall be

entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he

has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative

of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives

outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a

period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or

is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next

friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her

body must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its

copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours of his detention in custody by a doctor on the

panel of approved doctors appointed by director, Health Services of the concerned State or Union Territory, director, Health Services should

prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all districts and states head quarters, where information regarding the arrest and the place of

custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control

room it should be displayed on a conspicuous notice board.

Para-37: Failure to comply with the requirements herein above mentioned shall apart from rendering the concerned official liable for departmental

action, also render him liable to be punished or contempt of court and the proceedings for contempt of court may be instituted in any High Court of

the country, having territorial jurisdiction over the matter.

In view of the above quoted directions of the Hon "ble Supreme Court the authorities concerned as well as this Court are bound to take action

accordingly against the police personnels who are involved in this episode. This is a thing, which has shaken the confidence of the general public

and as such the police personnels who are the custodian of law having ample powers under the code of Cr. P.C. and IPC to maintain the law and

order position of the State are not expected to enter into such acts which undermine the prestige of the Government on whom the general public

have much confidence. Hence serious action is required to be taken. This Court appreciates the efforts of Sri Ajai Mohan Sharma, the

Superintendent of Police. He produced before this Court his enquiry report and he being a police officer has submitted a very fair and impartial

report and by this way he has maintained the high ethics. The Court appreciates his conduct. Sri Suchir Mehrotra, learned AGA has also given

assistance to this Court from time to time. The Court also appreciates his assistance rendered to this Court.

Considering the facts and circumstances of the case the following directions are issued:-

(1) A criminal case shall be registered against the persons reference of whom is made in the inquiry report by the person nominated by the Senior

Superintendent of Police.

(2) The persons against whom FIR is lodged shall be placed under suspension till conclusion of the investigation or in case the charge sheet is filed

against them till the termination of the criminal proceedings and they shall not be given any police duty during this period.

(3) The First Information Report shall be produced before this Court on the next date of the listing of the case so that the Court may also take

action in accordance with the direction of the Supreme Court made in D.K. Basu"s case against the persons involved in that crime.

List this case on 14.7.1998 before this bench. In the mean time the Senior Superintendent of Police Allahabad shall ensure the compliance of this

order.

A copy of this order shall be supplied to the learned AGA free of costs. Copies of this order shall be sent to the Chief Secretary, Government of

Uttar Pradesh, Principal Secretary, Home, Govet. Of Uttar Pradesh, Director General of Police, U.P. Senior Superintendent of Police Allahabad

and Sri Ajai Mohan Sharma, Superintendent of Police (R.A.) Allahabad within a week from today.

6. Applicant Digvijai Singh filed an application on 6.7.98 in this Court for recalling of the order dated 29.5.98 and after hearing both the sides

Hon"ble I.M. Quddusi J. was pleased to stay directions No. 2 and 4 given in his above order dated 29.5.98 in respect of Digvijai Singh regarding

his suspension and departmental inquiry but maintained the order in respect of directions No. 1 and 3 regarding lodging of FIR against the persons

referred to in the inquiry report of Ajai Mohan S.P.(Rural) Allahabad. In pursuance of the order mentioned above the copy of the registered FIR

was filed in this Court on 17.7.98. On that date this Court passed the following order:

An affidavit alongwith a copy of the FIR registered as case crime No. 229/98 u/s 343, 376, 506, 363, 323 IPC, P.S. Daraganj, district Allahabad

has been filed. The statement of Km. Sarita Misra, the alleged victim recorded by this Court on 23.9.1997 has been recorded as FIR but the

order passed after recording the statement by this Court to the effect that the same was taken down by my private secretary on my dictation which

was not part of the statement but was part of the order was also mentioned. Learned AGA has submitted that realizing the mistake the SHO P.S. "

Daraganj deleted the aforesaid portion of the order of this Court vide G.D. No. 42 dated 16.7.1998 at 5.45 P.M.

Sri Naqvi has also filed an application for holding a judicial enquiry along with an affidavit. Keep the same on record. Learned Counsel appearing

for the some of the persons who have been named in the FIR have desired to place some more facts before this Court and for this purpose they

want time. List this case on 28th July 1998. By that time they may bring the facts on record in that regard.

In the mean time the progress regarding the investigation which is being done by the SHO Police Station Kotwali shall be brought to the notice of

this Court through the learned AGA Sri Sudhir Mehrotra. However, the steps regarding arrest of the police officers in question may not be taken

till next listing of the case. It is also provided that no publicity of this case shall be made by publication in the newspapers. A copy of this may be

given to the learned AGA free of cost today and to the learned Counsel for the parties on payment of usual charges.

7. Meanwhile some further proceedings took place in this petition but those are not relevant and hence are being eschewed from being inked here.

Thereafter, the order was reserved on 17.9.98 after hearing the counsels of both the sides but the matter was again posted for further hearing on

16.1.2001. This petition again came up for hearing on 1.2.2002 and following orders were passed on that date:

Sri Sudhir Mehrotra, learned Additional Government Advocate, appeared and filed affidavits of Sri R.K. Vishwakarma, senior Superintendent of

Police, Allahabad, and Sri Jai Narain Singh Reserve Inspector, Police Lines, Allahabad. He has submitted that the orders of this Court passed

earlier have been complied with and by inadvertency the security was withdrawn and Sri D.K. Misra posted at Police Station Daraganj now he

has been transferred to police lines, Allahabad in Election Cell. Keep the affidavits on record. Reserve Inspector, Police Lines, Allahabad Sri Jai

Narain Singh is present in Court. However, Sri R.K. Vishwakarma, Senior Superintendent of Police Allahabad is reported to be out of station and

has deputed Incharge District Sri Kashi Nath Singh, who is present. Keep the affidavits on record.

List this writ petition again on the next my sitting at Allahabad, if possible on 14.2.2002. The Senior Superintendent of Police, Allahabad and

Reserve Inspector, Police Lines, Allahabad, need not appear in person in future until further orders of this Court.

8. It seems that again the order was reserved on 17.9.98 and was dictated, transcribed and signed by Hon"ble I.M. Qudusi, J on 1.12.2004 but

it could not be pronounced by him as he (Hon"ble I.M. Qudusi, J) was transferred to Orrisa High Court meanwhile and hence on 2.12.04

Hon"ble Amar Saran J. pronounced the said order under the orders of The Hon"ble The Chief Justice, under Chapter VII Rule 1 Sub-rule 3 of

High Court Rules. The said order date 1.12.04/2.12.2004 is extracted below:

In this case the alleged high handedness of the police of police station Daraganj, Allahabad, has come out. Although this petition is in the nature of

Habeas Corpus but the petitioner No. 2 had reported the Senior Superintendent of Police of Allahabad that the petitioner No. 1 was living with

him as his wife. On 31.5.1993 police station Daraganj, Allahabad arrested him and his wife namely; Smt. Sarita Mishra and on 5.6.1997 they

were produced before the Court of Additional Chief Judicial Magistrate. The Addl. Chief Judicial Magistrate refused to take any action against

Smt. Sarita Mishra who was declared as major. Since she had married to petitioner No. 2 she was made free to go anywhere. The rest of the

matter is not relevant for the purpose of passing this order.

Through this Habeas Corpus, the facts came before this Court are that the petitioner No. 1 Smt. Sarita Mishra was allegedly raped in police

station Daraganj, Allahabad. She was detained within the premises of police station Daraganj for five days where the police station in-charge

Daraganj, namely; Digvijay Singh incharge of police outpost Bakshi Khurd, Daraganj, namely, Devendra Kumar Misra, Head Constable Anwar

Khan and the Sub Inspector posted at Police Station Daraganj, Allahabad were present. Ram Bahadur Yadav and three or four persons more

committed rape on her. Thereafter she was kept for 8 days in Police Station Mahila Thana. The petitioner No. 2 Sudhir Kumar was released from

Daraganj police Station but Smt. Sarita Mishra was not released and she was released by the order of the Magistrate.

This Court is concerned only about the alleged rape committed on Smt. Sarita Mishra. This Court got an inquiry conducted by the Superintendent

of Police, Jamunapar, Allahabad.

According to the Superintendent of Police Jamunapar, Allahabad Smt. Sarita Mishra was detained in police station Daraganj, Allahabad illegally

from 31.5.1997 to 5.6.1997 and during this period the presence of the alleged rapist remained from time to time at the police station. Therefore,

he has stated that a criminal case was registered and a detailed investigation was to be conducted. Thereafter some of the alleged rapist intervened

and the matter remained pending and after providing an opportunity of hearing to them, this Court has come to the conclusion that the investigation

should be done.

Therefore, it is directed that the matter should be investigated by the CBCID for this purpose, the report of the Superintendent of Police

Jamunapar, Allahabad dated 24.5.1998 along with its documents should be supplied by the registry to the Investigating Officer CBCID who shall

be deputed by the Addl. Director General of Police, UP CBCID, Lucknow for compliance.

A copy of this order shall be sent to the Addl. Director General of Police UP CBCID.

A copy of this order shall also be sent to the U.P. Human Rights Commission for necessary action. The report of CBCID shall be filed in this

Court, a copy of which shall also be filed before the Human Rights Commission for further action. The UP CBCID shall act in accordance with

law after conclusion of the investigation.

List this case before the appropriate Court for further order.

Mt/-

1-12-2004 Sd/- I.M. Quddusi, J.

As per nomination dated 2.12.2004 by Hon"ble the Senior Judge, above judgment signed by Hon. I.M. Quddusi, J is delivered by me in

accordance with Chapter VII Rule 1 Sub-clause 3 of the High Court Rules.

Sd/- Justice Amar Saran

02.12.2004

9. On 30.7.2006 Digvijai Singh applicant moved two applications in this petition - one for impleadment and other for recall of the order dated

1.12.04/2.12.2004 quoted above being numbered as impleadment application number 155613 of 2006 & recall application No. 155616 of 2006.

Another applicant Devendra Kumar Misra followed suit by moving two applications on 4.9.06 with the same prayers being impleadment

application number 185136 of 2006 and recall application No. 185139 of 2006. These four applications filed by the two applicants are now to be

adjudicated upon along with this Habeas Corpus Petition.

10. Sri S.F.A. Naqvi Learned Counsel for the two applicants, on the question of impleadment of the two applicants, contended that since the

order dated 1.12.2004/2.12.2004 is passed against them therefore their impleadment applications deserves to be allowed. He submitted that the

civil rights of the two applicants are threatened and therefore they have got a right to be heard. He further contended that the judgment in this

Habeas corpus petition was reserved on 17.9.98 but the same was signed on 1.12.2004 and was pronounced on 2.12.2004 by Hon"ble Amar

Saran J. after a gap of more than six years and hence in view of the law laid down by the Apex Court in cases of Anil Rai V. State of Bihar ; Toyo

Engineering India Ltd, Bombay v. Collector Customs, Bombay (2001) SCC 608 Bhagwan Das Fatehchand Daswani And Ors. v. HPA

International and Ors. (2000) SCC 13 Hindustan Antibiotics Ltd. v. Parenteral DRUGS (India) Pvt.Ltd. and Ors. (2001)1 SCC 715 the said

order is bad in law and deserves to be quashed. He further contended that since 1998 to 2004, on the registered FIR no investigation was carried

out by the police and therefore also the order dated 1.12.2004/2.12.2004 should be set aside. Ld. Counsel also argued that the victim never

appeared before the medical board for her medical examination as was ordered by this Court and therefore there is no charge against the

applicants. He further submitted that in the statement recorded u/s 164 Cr. P.C. the victim has not said any thing against the applicants and hence

her statement before this Court in this Habeas Corpus petition, recorded on 17.9.97, is a malicious statement and can not be believed and

consequently the order dated 1.12.2004/2.12.2004 should not have been passed by this Court. Sri Naqvi lastly submitted that the police has

manipulated the FIR as the original chik of registration of FIR is missing and from the chik FIR the recorded facts were taken out which power

does not lie with the police. On theses submissions Sri Naqvi pulled down the curtain of his arguments by pleading that the impleadment

applications be allowed and there after the order dated 1.12.2004/2.12.2004 be recalled and the two applicants be heard in the matter and fresh

orders be passed.

11. Learned AGA, contrarily, submitted that the applicants cannot be impleaded in this Habeas Corpus petition and they have no right to be heard.

He argued that before the FIR is registered against them the two applicants can not raise any grievance regarding investigation by the CBCID. He

also contended that the order dated 1.12.2004/2.12.2004 can not be challenged by the two applicants since that order is based on an inquiry

report submitted to this Court under the orders passed by this Court and hence the two applicants does not come in picture at all to challenge the

said order. He further argued that Chapter VII Rule 1 Sub-rule 3 of High Court Rules (Rules Of The Court 1952) empowers The Chief Justice to

nominate any Judge to pronounce the judgment under the said Rule and in this case Hon"ble Amar Saran J. has pronounced the order signed by

Hon"ble I.M. Quddusi, J on the following day it was signed by His Lordship because His Lordship was transferred to Orrisa High Court. He

contended that there is no illegality in the said order and more over the two applicants cannot raise any grievance against the said order. He lastly

contended that in the registered FIR the investigation was ordered to be completed with two weeks by this Court, on 2.11.2006, and in pursuance

of the said order the investigation has been completed and a charge sheet has been submitted in the concerned court of Magistrate on 7.11.2006

against the two applicants for offences under Sections 343/376/506/323 IPC by the inspector C.B.C.I.D. and now the matter is with the court and

therefore the applicant"s now can seek relief in the appropriate forum u/s 482 Cr. P.C. or they can claim discharge u/s 226/227 Cr.P.C. before

the trial court. He lastly submitted that the applicant"s applications for impleadment and recall deserves to be rejected.

12. I have considered the arguments of the rival sides and have gone through the record of this Habeas Corpus petition. So far as the prayers

made in this petition are concerned those have become infructuous as the corpus is no longer in illegal detention and as desired by her free will she

was allowed to go with her mother by this Court. The petitioner Sudhir Kumar Gupta never appeared in this petition after 23.9.97. It seems,

realized the hollowness of his setup case and therefore lost interest in the matter. For deciding the relieves claimed in this petition by the petitioner

Sudhir Kumar Gupta the impleadment of the two applicants is unnecessary as they are not a party to the main petition and there are no allegations

leveled against them regarding illegal detention of Km. Sarita Misra @ Laxmi. The only two private respondents in the petition are the mother and

brother of Sarita Misra and the relief is sought only against them for producing the Corpus of Sarita Misra @ Laxmi and set her free from their

illegal detention. No relief has been sought against the two applicants. Hence for the relief claimed in this Habeas Corpus petition the impleadment

of the two applicants is not warranted at all.

13. Coming to the second aspect of the matter as to whether the impleadment of applicants are necessary in view of the order passed by this

Court on 1.12.2004/2.12.2004 it is to be noted that by the said order this Court had directed C.B.C.I.D. to make an investigation into the

offences disclosed in the inquiry report submitted by S.P.(Rural) Allahabad as the facts which emerged in the said inquiry and proceedings of this

petition were that Sarita Misra @ Laxmi was illegally detained from 31.5.97 to 5.6.97 inside police station Daraganj District Allahabad and was

gang raped for those five days by the two applicants and other persons. There after she was detained illegally in Mahila Thana for 8 days. The

inquiry further surfaced the fact that during this period the two rapists applicants were present inside the said police station. On such facts this

Court ordered for C.B.C.I.D. investigation vide it's order dated 1.12.2004/2.12.2004. Now the question arises as to whether the two applicants

who are the alleged rapists accused be impleaded in this petition to plead that the order of C.B.C.I.D. investigation is bad in law and deserves to

be recalled? Can they be heard at the stage of investigation to object the direction given by this Court regarding the agency who is to conduct the

investigation of such a crime? The answer to the two questions is imbedded into the answer of a larger question as to whether an accused can be

heard regarding the manner and the mode in which the investigation is to be conducted, during the continuation of an investigation into cognizable

offences. This question, to me, seems to be no longer remains res-Integra. It has been adjudicated upon many times by the Apex Court as well as

by this Court in many reported pronouncements. In the case of Union of India v. W.N. Chaddha 1993 SCC 1171 this aspect of the matter has

been exhaustively dealt with by the Apex Court where the Apex Court has laid down the law thus:

83. Thus, it is seen from the decision in Menaka Gandhi that there are certain exceptional circumstances and situations where under the application

of the rule of audi alteram. partem is not attracted.

84. Paul Jackson in Natural Justice at pages 112 and 113 observed thus:

...It was seen that anybody making a decision affecting party's right or legitimate expectation must observe the rules of natural justice. Conversely

a decision which does not affect rights, because for example, it is a prelude to taking further proceedings in the course of which the party

concerned will have an opportunity to be heard will, very likely, not itself be subject to the requirements of natural justice, or only in a modification

form. A fortiori, the decision by, for example, the responsible Minister or official to initiate the procedure necessary to reach a preliminary

conclusion or to examine the existence of a prima facie case can be taken

77. The rule of audi alteram without first giving the person affected a hearing....

85. See also (1) Wiseman v. Borneman 1971 AC 297 (2) Pearlberg v. Varty (Inspector of Taxes) (1972) 1 WLR 534; (3) Regina v. Barnett and

Camden Rent Tribunal, Ex. p. Frey Investments Ltd. (1972) 2 QBD 342 and (4) Herring v. Templeman (1973) 3 AllER 569.

86. In *R. v. Peterborough Justice, Ex. p. Hicks* (1977) 1 WLR 1371. it has been held that search warrants under the Forgery Act, 1913, Section

13 may issue without the party affected being heard.

87. A Division Bench of the Allahabad High Court in *Indian Explosive. Ltd. (Fertiliser Division) Panki, Kanpur v. State of Uttar Pradesh* (1981) 2

Lab LJ 159: (1981 LabIC 148) after referring to the decision in *Regina* (1972 (2) QB 342) (supra) and *Norwest Hoist Ltd. v. Secretary of State*

for Trade (1978) 1 ChDiv 201 said thus:

Thus, it has been recognised by Judges of undoubted eminence that a decision on substantive rights of parties is one thing and a mere decision that

another body investigate and decide on those substantive rights is quite another, and the principle of hearing is not applicable to the latter class of

cases.

88. The principle of law that could be deduced from the above decisions is that it is no doubt true that the fact that a decision, whether a prima

facie case has or has not been made out, is not by itself determinative of the exclusion of hearing, but the consideration that the decision was purely

an administrative one and a full-fledged enquiry follows is a relevant and indeed a significant factor in deciding whether at that stage there ought to

be hearing which the statute did not expressly grant.

89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for

ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report u/s 173(2) follows in a trial before the Court

or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram. partem superimposes an obligation to issue a

prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but

where the occasion for its attraction exists at all.

90. Under the scheme of Chap. XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of

being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.

91. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, this Court to which both of us (Ratnavel Pandian and K. Jayachandra Reddy,

JJ.) were parties after making reference to the decision of the Privy Council in AIR 1945 18 (Privy Council) and the decision of this Court in

Abhinandan Jha and Others Vs. Dinesh Mishra, has pointed out that the field of investigation of any cognizable offence is exclusively within the

domain of the investigating agencies over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the

investigation so long as the investigation proceeds in compliance with the provisions relating to investigation....

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the

entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a

police report till the investigation culminates in filing of a final report u/s 173(2) of the Code or in a proceeding instituted otherwise than on a police

report till the process is issued u/s 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint

notwithstanding the said offence is triable by a Magistrate or triable exclusively by the Court of Session, the accused has no right to have

participation till the process is issued. In case the issue of process is postponed as contemplated u/s 202 of the Code, the accused may attend the

subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate

those decisions.

(Under line Emphasis Mine And Supplied)

14. Further the Supreme Court in the case of Janta Dal v. H.S. Chawdhari and Ors. 1993 SCC 36 has approved in para 154 the view of Bombay

High Court in the case of Kekoo J. Maneckji Vs. Union of India (UOI) and Others, wherein it has been held by the Bombay High Court as

follows:

This is admittedly a stage where the prosecuting agency is still investigating the offences and collecting evidence against the accused. The petitioner,

who is the accused, has therefore, no locus standi at this stage to question the manner in which the evidence should be collected. The law of this

country does not give any right to the accused to control, or interfere with, the collection of evidence.

15. In the same judgment the larger bench view of this Court rendered in Ram Lal Yadav's case was also affirmed by the Apex Court in the

following terms:

155. The Seven-Judges Full Bench of the Allahabad High Court went into the matter very exhaustively in Ram Lal Yadav v. State of U.P. 1989 Cri

LJ 1013 and held that "the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and

cannot be interfered with by the High Court in exercise of its inherent powers u/s 482, Cr.P.C." "This decision has overruled two earlier decisions

of that Court in Prashant Gaur v. State of U.P. 1988 AWC 828 (FB) and Puttan Singh v. State of U.P. 1987 ALJ 599.

(Under line Emphasis Mine And Supplied)

Further in the case of Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others, the

Apex Court has laid down the law as follows:

There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of such

obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the

opportunity of being heard.

16. Now coming to the facts of the present petition and applying the law laid down by the Apex Court referred to above in this petition it is

perceptibly clear that the two applicants who are the accused of offences of gang rape and illegal detention of a girl had no right to be heard

regarding mode and manner in which the investigation is to be carried out when the investigation was in still under progress. Consequently their

recall applications, for recalling the order dated 1.12.04/2.12.04 passed by this Court in this petition, are also meritless and deserves rejection.

Further now that the charge sheet has been submitted against them in the court their prayers for impleadment and recall, for all the practical

purposes, have become infructuous and can not be allowed because the charge sheet of cognizable offences triable by court of Session"s can not

be quashed on the ground that the offences had been wrongly investigated by the C.B.C.I.D. So far as above mentioned arguments advanced by

the Sri Naqvi are concerned it is futile to adjudicate them since the two applicants can not be impleaded and be heard in this petition. The question

of passing of the order dated 1.12.2004/2.12.2004 after a long gap of many years, therefore, can not be questioned by the two applicants and

they can not raise any grievance against the said order. Since now, the charge sheet has been submitted against them they have got a right to take

recourse in the appropriate forum which is available to them if they so desire. Rest of the submissions of Mr. Naqvi needs no examination in this

petition in view of what has been stated above and probably, they were harangued only to be repelled.

17. Summarisingly, for the reasons stated above, the four applications filed by the two applicants Digvijai Singh and Devendra Kumar Misra for

their impleadment and for recall of the order dated 1.12.04/2.12.2004 passed by this Court, quoted above, being numbered as impleadment

applications number 155613 of 2006 & 185136 of 2006 and recall applications number 155616 of 2006 & 185139 of 2006 are rejected.

18. In view of what has been stated above the relief claimed by the petitioner Sudhir Kumar Gupta also can not be allowed and deserves to be

rejected. Neither he nor any body on his behalf has appeared to argue the matter even though the name of his counsel is printed in the cause list.

He had not only enticed away a young girl but forced her to marry him against her wishes and even attempted to get her murdered. He has illegally

detained her in his parental house at Jabalpur and raped her there. He has brought such an ignominy to Santa @ Laxmi which is worst than death.

She has to live with it through out her life. He has also brought the whole family of victim to a disrepute for which they must be compensated. The

victim desired to go with her mother on her own free will and therefore, she was allowed to join the company of her mother and brother who are

respondents No. 2 and 3 in this petition by this Court.

19. Resultantly this Habeas Corpus petition is dismissed but the victim deserves an exemplary compensation for her kidnapping, illegal detention

and offences committed on her body which compensation amount is quantified as Rs. Two lakhs to be realized from the petitioner Sudhir Kumar

Gupta. For the said purpose Chief Judicial Magistrate, Allahabad is directed to realize it in the mode and in manner he deems fit with one month

from the date of receipt of the copy of this order by him. After realizing the said amount Chief Judicial Magistrate, Allahabad will disburse it to the

victim forthwith without any surety or security.

20. The concerned Magistrate before whom the charge sheet has been submitted is directed to commit the case for trial to the court of Session"s

without delay, in case need be, with further direction to the concerned Session"s court to take up the Session"s trial on an urgent basis and

conclude the proceedings of the trial as expeditiously as possible without unreasonable and uncalled for delay.

21. With the aforesaid directions the four applications filed by the two applicants Digvijai Singh and Devendra Kumar Misra mentioned above and

this Habeas Corpus petition are dismissed.

22. Office of this Court is directed to send forthwith a copy of this order alongwith copy of writ petition to CJM, Allahabad for his intimation and

compliance.