

(2013) 05 AHC CK 0456**Allahabad High Court****Case No:** Criminal Miscellaneous Writ Petition No. 1797 of 2011

Mohammad Qasim

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 23, 2013**Citation:** (2013) 82 ALLCC 633**Hon'ble Judges:** Bachchoo Lal, J; Amar Saran, J**Bench:** Division Bench**Advocate:** Tahir Husain, V.P. Mathur and Mukhtar Alam, A.C, for the Appellant; D.R. Chaudhary, G.A., Vimlendu Tripathi, A.G.A., S.K. Jaiswal and Zafar Nayyar, for the Respondent**Final Decision:** Allowed

Judgement

Amar Saran and Bachchoo Lal, JJ.

We have heard Sri Mukhtar Alam, Amicus Curiae for the petitioner and Sri Vimlendu Tripathi, learned A.G.A. for the State. Sarvashri S.K. Raghuvanshi, Special Secretary, Home, Government of U.P. Lucknow, Anil Agarwal, Secretary, Police Recruitment Board, Ashish Gupta, I.G. (Crime), Dr. S.B. Upadhyaya, Director, FSL, Agra, Mahesh Chandra Srivastava, Executive Director, Health, Dr. G.A. Khan, Deputy Director (M) FSL, Agra, Dr. Santosh Kumar D.D.E., FSL, Agra, Dr. H.K. Agarwal, Joint Director, Health, Rakesh Tripathi, Executive Engineer, Medical and Health are present in Court today.

2. Sarvashri Ashok Saraswat, In-charge Inspector, High Court Security/Incharge Investigation Cell, Crime Branch, Amar Nath Yadav, Incharge Inspector, Civil Lines, Allahabad, Dinesh Kumar Singh Yadav, Incharge Inspector, P.S. Colonelganj, Allahabad, Gyanendra Kumar Singh, Sub-Inspector, Investigation Cell, Crime Branch, Allahabad, Ram Naresh Yadav, S.I., Investigation Cell, Crime Branch, Allahabad, Anirudh Kumar Singh, S.O. P.S. George Town, Allahabad, Surendra Singh, Inspector, CBCID Sector, Allahabad and Sri Ram Moorti Kanaujia, Inspector, CBCID Sector, Allahabad are also present.

3. A compliance affidavit of Home Department, Government of U.P. dated 20.5.2013 has been filed pursuant to the order of this Court dated 26.2.2013. So far as the direction in the order dated 26.2.2013 for completing selection process of Sub-Inspectors of Police/Platoon Commanders PAC, it is stated that the report of U.P. Police Recruitment and Promotion Board dated 9.5.2013 shows that the Government of U.P. has granted permission to start the process of direct recruitment through Combined Examination, 2011 for the post of Sub-Inspector of Police and Platoon Commander, P.A.C., but the said Board has recommended to the Government for amending the regulation regarding physical efficient test of Sub-Inspector/Platoon Commander P.A.C. The report of the Board dated 11.5.2013 also shows that for 5389 vacancies for the post of Sub-Inspectors of Police by promotion on the basis of departmental examinations, 3241 candidates were selected but the process for appointment of 3241 candidates was stayed by the Division Bench of the Lucknow Bench of the High Court by its order dated 7.1.2013, passed in Special Appeal No. 577 of 2012 Ran Vijay Pratap Singh and others v. State of U.P. and others. We are pained to find that on one ground or on other, the process for appointment of Sub-Inspectors by direct selection or by promotion has been held up. This has created major difficulties in separating the investigation wing from the law and order wing because of shortage of Sub-Inspectors for carrying out these tasks. It may be noted that after this Court expressed its anguish on the non-appointment to the vacant posts, the earlier Government had started the process of selection on 11.12.2011 but without any good reason, the already started selection process was stalled by the order of the subsequent/present Government [dated 16.3.2012. We would like the Hon"ble Department to submit an explanation why they have stalled the process of selection which was started by the previous Government, on the next listing.

4. We would also like to have a further progress report of the actual selections of Sub-Inspectors, who have qualified in the examination and also the steps taken for issuing a proper circular for modifying the requirement of physical efficiency test, if a decision in that regard has been taken. This Court would like to be informed about whether any application has been moved for vacation of the stay order passed by the Division Bench at Lucknow in Special Appeal No. 577 of 2012 in order that the process to fill up the vacant posts of Sub-Inspectors by promotion be completed at the earliest so that effective steps may be taken in the matter and for separating law and order/VIP duty wings from the investigation wing. As one of the main reasons given for non-separation of the law and order/VIP duty wing from the investigation wing has been the shortage of Sub-Inspectors.

5. We are disappointed to note that the unwillingness of the police officers who state that they have joined the police force both for law and order as well as for investigation work has also been taken as a ground for not taking urgent steps for separating the investigation from the law and order wing as is mentioned in para 7 of the affidavit of compliance (vide Annexure-6, annexed to the said affidavit). This

reference to the opinions of police officers itself suggests that the extraneous considerations for undertaking different kinds of police duties appears to be an acceptable ground for the police and home administration for refusing to carry out the direction of this Court and the Apex Court, and various Police Commission Reports for separating the law and order from the investigation wings. These therefore do not appear to be legitimate or acceptable reasons for failing to carry out the policy of separating the wings.

6. Another reason for seeking dilution of the direction of this Court and the Apex Court in [Prakash Singh and Others Vs. Union of India \(UOI\) and Ors](#), to separate the law and order from the investigation wing is the claim that contact of the investigating officers with the ordinary public would be lost, if the two duties are separated. We do not think that simply because law and order duties are separated from investigation duties, it would interfere with carrying out investigations into crimes. Rather we think that in with that separation of functions can undivided attention be given to working out the crime committed, undisturbed with the need to maintain law and order or to perform VIP duties, by the investigating wing. We think that there are already specialized agencies such as the CBCID, and CBI etc. which are already engaged exclusively with investigation work. We think that the restriction of the roles for only investigation work and their non-involvement in law and order duties does not detract in any manner from their capacity to work out crimes.

7. It is also pointed out that presently a very large number of reports of crimes are received in the police stations, and the police also have to ensure maintenance of law and order which it would be impossible to accomplish if the some of the police officers at the police station are required to do only investigation work. It is also pointed out that until the law and order and investigation wings can be universally separated, after appointment of an adequate number of police officers, steps are being taken in the interim period for creating crime branches in all 75 districts (as opposed to the earlier policy of initially separating the law and order from the investigation wings in the urban areas of only 6 bigger districts). This crime branch is to tackle difficult, blind, or heinous criminal cases, and it to come under the control of the A.S.P. (Crime). A circular dated 14.3.2013 has also been issued for this purpose by the A.D.G.P. (Law and Order), U.P. Whereas for the reasons stated above we have serious reservations about this approach, however as it is claimed to be a temporary measure, the Court is prepared to examine how this scheme actually delivers in working out crimes and improving the investigation machinery in the State.

8. However we would like to be informed on the next listing about:

(a) The period in which the Crime Branches are to be established in all 75 districts.

(b) What are the concrete steps that have been envisaged for obtaining the necessary man-power and infrastructure for ensuring that the crime branches function effectively, and the time schedule for carrying out this plan.

(c) The Court would like to be furnished with greater details about the classes of cases which are to be earmarked for investigation by the crime branch in all the 75 districts.

(d) The approximate expected number of such serious cases as per the criteria laid down for selecting such cases, which are to be tackled by the Crime Branch in each district, and whether the Inspectors and other police constables who have been specially nominated for the crime branches would be equal or adequate to fulfill the task for solving the said heinous or difficult crimes.

(e) As it is claimed that efficient police officers have been earmarked for solving criminal cases in the crime branch, we would like to be furnished with some concrete instances of their track performance of working out difficult, blind or heinous cases on the next listing, for demonstrating to this Court how this system is an improvement over the existing system.

(f) Whether any special allowances are being ear-marked for the police officers, who have joined the special crime branch in each district for working out such cases.

(g) We would also like to be informed about the expected period by which the law and order/VIP duties wing will finally be separated from the investigation wing.

9. We are also disappointed to note that the three unworked out criminal cases relating to police stations, Civil Lines, Colonelganj and George town of district Allahabad which are being monitored in this writ petition, instead of assigning such cases to the newly constituted crime branch, the same have been transferred to the CBCID, which does not have a good track record in solving such cases. However, the new Investigation Officers should be present on the next date and inform this Court about the progress of investigation of these unsolved cases.

10. We would also like to point out here that this Court was compelled to acquit the accused persons in two cases of rape with a minor girl, Criminal Capital Appeal (Jail) No. 2531 of 2010, Bhairo v. State of U.P., decided on 6.9.2011 and in Capital Case No. 863 of 2011 Chhotu alias Ajay v. State of U.P., principally because of the poor quality of evidence adduced and the failure of the investigation process. This Court had expressed distress on the poor quality of investigation and failure of the investigating agency to send the underwear of the appellant and vaginal smear slides and swab in the former case (Bhairo v. State) to the Forensic Science Laboratory. In that case, the Bench whilst hearing the appeal had directed that the said material be sent for D.N.A. examination. But regrettably the Forensic Science Laboratory reported that D.N.A. could not be extracted from the smear slides and swab because three years had already elapsed since the incident. This was a grave

loss of valuable evidence which could have proved critical for establishing whether the accused was connected with the crime or not. This Court had condemned the casualness of the investigation in not sending the samples of clothing etc. collected from the accused and the deceased and the failure to utilize modern forensic techniques after such significant advances in forensic techniques have been made all over the world. The Bench had called for creation of forensic science laboratories in each district with DNA development facilities/techniques and mobile forensic squads which could rush to the scene of crime soon after the incident and collect necessary samples, which could give clues regarding the identity of the culprits. The directions in *Bhairo v. State*, were reiterated in *Chhotu @ Ajay v. State*. In the latter case, the Bench had also directed the prosecuting and investigating agencies to develop a protocol as to what should be the criteria for selecting what samples need to be sent for DNA test, what precautions are needed for collecting the samples to prevent contamination, and also in what classes of cases and in what manner advanced forensic techniques be made available by mobile forensic units or otherwise for particular cases on a priority basis, till such time that such facilities are made available for all cases of rape or rape and murder in all districts, which could help solve the crime and identify the culprit. We had directed that the copy of the judgments be sent to the Principal Secretary (Home), U.P. and D.G.P. for compliance at their ends and for submission of compliance reports. Copy of the later judgment was directed to be placed in the present on-going PIL. The Principal Secretary (Home) and D.G.P. were directed to submit compliance reports within one month, however the said reports have yet not been submitted. The said reports may therefore, be submitted by the next listing.

11. In addition to the aforesaid direction regarding reporting compliance with the aforesaid directions, the Principal Secretary and D.G.P. should also inform this Court whether they have issued any circular or taken any steps for ensuring compliance of the various Criminal Law Amendment Acts, especially insofar as they have made provided for more stringent, women sensitive punishments and procedures. Thus section 157(2), proviso amended by Criminal Procedure Amendment Act, 2008 requires the statement of the victim of rape to be recorded at the victim's residence or a place of her choice, and preferably by a woman police officer in the presence of her parents, guardians, near relatives or a social worker.

12. Section 173(7)(a) which was introduced by Criminal Procedure Amendment Act, 2008 requires that the investigation with regard to a child rape is to be completed within three months of the report with the police station. Several amendments have been made by introducing Criminal Law Amendment Act 2013, especially in regard to the penal provisions concerning rape and allied offences such as in sections 166-A, 166-B, 326A, 326-B, 354, 354-A, 354-B, 354-C, 376, 376-A, 376-B, 376-C, 376-D, 376-E, 509 LP.C., and with regard to amendments to the Criminal Procedure Code, such as under sections 154(1), first proviso or u/s 160(1), proviso or section 161, second proviso and section 273 Cr.P.C. Section 309(1) proviso to the Cr.P.C. which

was already amended by Amendment Act, 2008 requiring the conclusion of the criminal trial against accused persons after day to day hearings in rape cases preferably within two months of the commencement of the examination of witnesses, has been further amended by the Criminal Law Amendment Act, 2013 and requires concluding the criminal trials within two months of the submission of the charge sheet. We would like to be informed by the Principal Secretary, Home and Law and the D.G.P. aforesaid as to what steps are being taken, what circulars are being issued for making police officers aware of the contents of these provisions and for ensuring their sincere implementation.

13. Expeditious investigations and trials especially in rape and murder cases where the victims are powerless or poor, can also help in preventing the witnesses from turning hostile, which we see happening in so many cases of rape and murder, resulting in unwarranted acquittals for accused because of non-production of evidence and such heinous crimes which shock the conscience of the Court going unpunished, which embolden offenders to persist with crimes against women, as was highlighted in the Delhi bus gang rape and murder case, and so many other recent sensational crimes against women or girls. List this case on 5.8.2013.

On that date, the authorities aforesaid, shall submit their compliance reports regarding the aforesaid directions.