

2022 LiveLaw (SC) 899

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

UDAY UMESH LALIT; CJI., BELA M. TRIVEDI; J.

NOVEMBER 01, 2022

CONTEMPT PETITION (C) NO.555 OF 2022 IN SPECIAL LEAVE PETITION (CRL.) NO.5073 OF 2011
versus M. MAHENDER REDDY & ORS.

Code of Criminal Procedure, 1973; Section 164 - Rape victim's statement made under Section 164 CrPC should not be disclosed to any person (including accused) till charge-sheet/final report is filed - *Referred to State of Karnataka by Nonavinakere Police vs. Shivanna alias Tarkari Shivanna (2014) 8 SCC 913 and A vs. State of Uttar Pradesh (2020) 10 SCC 505* - Appropriate modifications / amendments be made to the Criminal Practice/Trial Rules incorporating provisions consistent with the directions issued by this Court in these decisions.

For Petitioner(s) Ms. Tanya Agarwal, Adv. Mr. Shashank Singh, Adv. Mr. Anil Kumar, AOR

For Respondent(s) Mr. R. Basant, Sr. Adv. Mr. S. Udaya Kumar Sagar, AOR Ms. Sweena Nair, Adv. Mr. Siddhartha Dave, Sr. Adv. Mr. Kumar Vaibaw, Adv. Ms. Devina Sehgal, AOR Ms. Vidhi Thaker, Adv. Mr. S. Uday Bhanu, Adv.

ORDER

The present contempt petition seeks to highlight the conduct on part of the alleged contemnors in willfully violating the mandatory directions issued by this Court. The directions which are put in focus are those which were issued in the decision delivered in ***State of Karnataka by Nonavinakere Police vs. Shivanna alias Tarkari Shivanna – (2014) 8 SCC 913***. Para 10 of said decision reads as under:

“10. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the Police Stations-in-Charge in the entire country to follow the directions of this Court which are as follows:

10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.

10.2. The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

10.3. The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

10.4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

10.5. Medical examination of the victim : Section 164-A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of investigating officer to get the victim of the rape immediately

medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.”

On a similar issue the matter was again dealt with by this Court in **A vs. State of Uttar Pradesh and Another – (2020) 10 SCC 505**, in which after referring to the decision of this Court in **Shivanna alias Tarkari Shivanna (supra)**, it was observed thus :

“19. Thus, merely because the charge-sheet was filed by the time the High Court had passed the order [*Chinmayanand v. State of U.P.*, 2019 SCC OnLine All 6594] in the present matter, did not entitle Respondent 2 to a copy of the statement under Section 164 CrPC.

20. That apart, the reason that weighed with the High Court in placing reliance on the decision [*Raju Janki Yadav v. State of U.P.*, 2012 SCC OnLine All 856 : (2012) 6 All LJ 486] of the Division Bench of the High Court rendered in the year 2012 which was before the directions were passed by this Court in *Shivanna* [*State of Karnataka v. Shivanna*, (2014) 8 SCC 913 : (2014) 6 SCC (Cri) 420] was completely incorrect. As logical extension of the directions passed by this Court, no person is entitled to a copy of statement recorded under Section 164 CrPC till the appropriate orders are passed by the court after the charge-sheet is filed.

21. The right to receive a copy of such statement will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 CrPC and not before. The application of Respondent 2 was, therefore, rightly rejected by the Additional Sessions Judge and the order so passed did not call for any interference by the High Court.”

It is alleged by the contempt petitioner that in violation of directions issued by this Court in the aforesaid decisions, a copy of statement of the daughter of the petitioner recorded under Section 164 of the Code of Criminal Procedure, was applied for and furnished to the accused in the matter.

Taking note of the submission, this Court issued notice and thereafter directed the concerned Court which supplied the copy to answer certain queries. The documents now placed on record indicate that the accused did apply for such copy and was furnished the copy under stamp issued by the Copying Department, though the response filed by the concerned Court in answer to the queries raised by this Court, states that no such copy was given by the Court to anyone.

In theory what is projected in the contempt petition is quite correct that is to say despite authoritative pronouncements and directions issued by this Court the copy was applied for and furnished to the accused. Further, the copy of statement under section 164 of Cr.PC was extensively referred to in the proceedings before the Court. It is quite unfortunate that the concerned Court also did not notice the violation of the directions issued by this Court.

Be that as it may, we are not quite convinced that any action in our contempt jurisdiction is required to be initiated in the present facts and circumstances of the case. Though we do not approve of the practice we refrain from exercising our jurisdiction in contempt.

Ms. Tanya Agarwal, learned counsel appearing for the petitioner, has filed a note of submissions which is taken on record. One of the submissions is to the effect that Criminal Practice Rules framed by various High Courts must include and incorporate provisions consistent with the law declared by this Court in **Shivanna alias Tarkari Shivanna (supra)** and in **Ms. A (supra)**. It is suggested as under :

“Issue 2 : Criminal Practice Rules framed by High Courts do not incorporate provisions in tandem with directions in Shivanna and Miss A

10. In Rules of Criminal Practice/Criminal Trial framed by the High Courts across the country, there are no provisions in tandem with the directions passed by this Hon’ble Court in Shivanna and Miss A. Moreover, the Rules framed by most High Courts are widely worded and appears not to be in tandem with the intent and spirit of these directions.”

We see force in the submissions made by Ms. Agarwal, learned counsel. we suggest to every High Court that the appropriate modifications/amendments be made to the Criminal Practice/Trial Rules incorporating provisions consistent with the directions issued by this Court in the decisions in ***Shivanna alias Tarkari Shivanna and A vs. State of Uttar Pradesh and Another***.

With these observations, the contempt petition is disposed of.

Pending interlocutory application(s), if any, also stands disposed of.

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