

GAHC010098842021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL(Suo Moto)/5/2021

XXX
GUWAHATI, ASSAM

VERSUS

IN RE - STATE OF ARUNACHAL PRADESH AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY, CIVIL SECRETARIAT,
ITANAGAR - 791111

2:THE DIRECTOR GENERAL OF POLICE
ARUNACHAL PRADESH
POLICE HEADQUARTERS
CHANDRANAGAR
ITANAGAR - 791111

3:DEPARTMENT OF SOCIAL WELFARE
WOMEN AND CHILD WELFARE
REPRESENTED BY THE COMMISSIONER
D SECTOR
CONA
NAHARLAGUN
ITANAGAR - 791110

4:NANI MARIA CHILD CARE INSTITUTE
REPRESENTED BY ITS CHAIRPERSON
ROING
P.O. AND P.S. ROING
DIST. LOWER DIBANG VALLEY
ARUNACHAL PRADESH

5:CHILD WELFARE COMMITTEE
ROING

DIST. LOWER DIBANG VALLEY
ARUNACHAL PRADESH

Advocate for the Petitioner : MR. U K NAIR, SR. ADV

Advocate for the Respondent : MR. A CHANDRAN, ADDL. SR. GA, AP

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

30-06-2021

(Sudhanshu Dhulia, CJ)

The matter is taken up through video conferencing.

This is a Suo Moto Public Interest Litigation which is being taken up by this Court on a note placed before the Chief Justice on the administrative side, raising a concern about the plight of a raped victim where the victim was a child and the incident alleged to have happened was in the State of Arunachal Pradesh.

The matter is listed today. This Court has been assisted by learned senior Advocate, Mr. N Dutta, who is Advocate General of Arunachal Pradesh, Mr. UK Nair, who is a senior Advocate representing the Gauhati High Court, Mr. BD Goswami, learned Additional Advocate General, Arunachal Pradesh and Mr. A Chandran, learned senior Government Advocate, Arunachal Pradesh, appearing for respondent Nos.1, 2 and 3, Ms. Bulin Pulu, learned counsel for respondent No.4 and Mr. CW Mantaw, learned counsel appearing for the father of the victim.

A missing report was filed at Roing Police Station by one Mr. Aka Kalung alleging that his domestic help who is a child, has been missing since 01.03.2021. On the basis of the said missing report, effort was made by the police to trace the girl who was later recovered the next day, i.e. 02.03.2021. The girl child was reluctant to go to the house of the informant Aka Kalung with whom she was allegedly working as a domestic help. Then she was given in the custody of the Child Care Institute (hereinafter referred to be as 'CCI'), Roing. Later on, it transpired from the statement given by the girl child, who is the victim here, that she is between 12-15 years of age, whom we will be presently addressing as Ms. 'A', in order to not to disclose her identity. She made allegations of rape and sexual abuse against the informant Aka Kalung, for the last many years. From the evidence available before us, it appears that the child was brought from Nepal as a domestic help to the informant in the year 2017. Meanwhile, the Child Welfare Committee (CWC) directed for filing of first information report in this matter and police proceeded to investigate the matter under the provision of Indian Penal Code as well as under the provisions of POCSO Act.

This Court has also been informed that by now a charge-sheet has also been filed before the Special Court (POCSO) in this case. Meanwhile, the father of the child who is being represented by Mr. CW Mantaw moved an application before the learned Sessions Judge, Tezu, Lohit District of Arunachal Pradesh for handing over the custody of the child to him and thereafter by an order dated 04.06.2021 directed the CCI to hand over the child to the "local guardian". This local guardian is none else but the sister-in-law of the accused. This order, however, was challenged in revision before the Itanagar Bench of Gauhati High Court but the revision was dismissed by the Court on 24.06.2021. Since the girl

was not handed over to the local guardian, another application was moved by the father of the child in which further direction was given to hand over the child to the local guardian.

The fact of the matter is that the girl child who is a victim, is presently in the custody of the CCI, Roing. What this Court has to see in its capacity now as a *Parens Patriae* is only the best interest of the child and since the local guardian to whom the custody is being handed over is a close related of none else but the accused, in our opinion, it would not serve the interest of justice and definitely it would not be in the best interest of the victim child.

In view thereof, we stay the order of the learned Sessions Judge dated 04.06.2021 passed in IA 22(LDV)/2021 and the subsequent application i.e. IA 26(LDV)/2021 and the order passed therein and all such application where the subject matter relates to the custody of the child shall not be taken up. This will, however, subject to our further orders which will be passed in the present PIL. For the moment the child will stay under the management and custody of those who are in-charge of CCI, Roing. Purely in order to determine as to what are the facilities being given in this CCI and whether these facilities are up to the mark, we direct the Deputy Commissioner, Lower Dibang Valley district to conduct an enquiry. The Deputy Commissioner should personally visit the CCI and furnish us the details with regard to the facilities available in the CCI, including the fact that such an institute is registered or not.

We make it very clear that there is no stay to the charge-sheet which has been filed by police with regard to Roing PS Case No.22/2021 before the Special Court. That matter shall proceed in accordance with law.

The Superintendent of Police of the concerned district, where the CCI is located, would further ensure that the child is given every protection in the

institute and she shall not be allowed to be visited either by the accused or his relative or even by her father till the next date of listing. However, we make an exception here of the mother of the child. The mother of the child shall be allowed to visit the child and in fact, she may be allowed to stay with the child, if she so desires.

Although the clinical examination so far has revealed that the child is between 12-15 years of age but purely in order to have a scientific determination of the same, we direct the Director of Health Services, Arunachal Pradesh to depute a team of medical officers, including a lady doctor who shall conduct medical examination on the victim, only for the determination of her age. We make it clear that this examination shall be limited to bone ossification test and no other test be done as other details are already there as the victim had already been medically examined.

Let all the reports which are now to be prepared in pursuance of this order, are placed before this Court on the next date of listing which is now fixed on **16.07.2021**.

We direct that the Registrar (Vigilance) shall communicate this order to all concerned.

JUDGE

CHIEF JUSTICE

Comparing Assistant