

Abcd vs Union Of India on 10 December, 2019

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Bench: Uday Umesh Lalit, Indu Malhotra, Krishna Murari

Writ Petition (Criminal) Appeal No.191 of 2018
ABCD v. Union of India

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.191 OF 2018

ABCD

VERSUS

UNION OF INDIA & ORS.

ORDER

Uday Umesh Lalit, J.

1. This writ petition has been filed by the petitioner¹ above-named seeking following directions:

“I. Writ of Mandamus to the extent that the investigation arising out of FIR No.58/2018 U/S 376,328,506 & 509 IPC 1860, be transferred from Delhi Police to an independent Central Agency. II. Writ of Mandamus to State of West Bengal to suspend the accused (Respondent No.7) herein and In terms of Section 228A of the Indian Penal Code, 1860, the Identity of the Petitioner is not being disclosed Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India direct him not to influence the witness of this crime to ensure free and fair investigation.

III. Order the transfer of the investigation arising out of FIR No.256/2018 dated

03.06.2018 under Section 384, 389, 34 IPC registered at Basirhat PS, West Bengal to a Central Agency and till then stay the investigation.

IV. Direct the Investigating Agency to immediately collect Call Detail Records (CDR) of the mobile numbers and confiscate the two mobile phones of the accused and to retrieve the CCTV footage of Lalit Hotel on 27.01.2018 to 29.01.2018 of the lobby, restaurant and room number 2603 where the accused took the petitioner to commit the offence of rape. V. Order protection to the petitioner and her family members.

VI. Any other order or directions to secure justice to the petitioner which this court may deem fit and proper.”

2. FIR No.58 of 2018 filed by the petitioner with Police Station Barakhambha Road, New Delhi alleged:

That the petitioner and Respondent No.7 herein (an IPS Officer) became friends through exchanges on Facebook and started meeting each other.

There were talks of marriage. On 28.01.2018, Respondent No.7 had come to Delhi and was putting up at Hotel Lalit. After having spent the entire day with Respondent No.7, the petitioner went to the room of Respondent No.7 where he offered some chocolates to her. She fell quite Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India dizzy after she had the chocolates. Taking advantage of her situation Respondent No.7 made physical advances and had sexual intercourse with her. Thereafter for some time, there were discussions between the families to carry forward their relationship to the next level of marriage but Respondent No.7 abruptly told the petitioner on 10.02.2018 that there could be no relationship between them. Alleging that Respondent No.7 had taken undue advantage of her situation and had forcible intercourse with her on 28.01.2018 said FIR was filed on 26.05.2018.

3. On or about 03.06.2018, FIR No.256 of 2018 was filed by the mother of Respondent No.7 submitting that the petitioner and her family members had been pressurising the family of Respondent No.7 to pay to them a sum of Rs.15 lakhs failing which they were threatened with filing of cases with allegations of rape and other criminal cases against Respondent No.7. It was alleged that succumbing to the pressure so exerted, a sum of Rs.5 lakhs was paid to the brother of the petitioner on 04.02.2018 and the rest of the amount was to be paid within three months. FIR, thus alleged commission of offences punishable under Sections 384, 389 read with 34 IPC2.

Indian Penal Code, 1860 Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India

4. It must be stated that protection under Section 438 of the Code3 was granted to the present petitioner and her family members which protection is still continuing and a petition under Section 482 of the Code3 has also been filed by the petitioner seeking quashing of said FIR No.256 of 2018, on which notice has been issued.

5. It was in the background of these two FIRs that this writ petition came to be filed submitting, inter alia that since the Respondent No.7 belonged to police service, there was apprehension that the investigation by Delhi Police into the FIR lodged by the petitioner may not be proper and fair. The petitioner also adverted to certain facets of the matter, namely, that the investigating agency had delayed the recording of the statement of the petitioner under Section 164 of the Code; that no CCTV footage of Hotel Lalit were attempted to be obtained. In these circumstances it was prayed that the investigation be transferred from Delhi Police to an independent police agency. Further, the FIR lodged by the mother of Respondent No.7 was stated to be a deliberate attempt to rope in the petitioner and her family and it was prayed that the investigation into said FIR may also be entrusted to an independent agency. Code of Criminal Procedure, 1973 Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India

6. On 19.06.2018 the investigation into FIR No.58 of 2018 was transferred to Crime Branch of Delhi Police and thereafter sometime in August 2018, the present writ petition came to be filed for the reliefs stated hereinabove.

7. This writ petition was heard from time to time and it may be relevant to note the following developments.

(a) On 23.07.2019 the submissions of the petitioner were recorded that the investigating agency had not recovered CCTV footages from the concerned Hotel and that material available in electronic form with Respondent No.7 was also not retrieved by the investigating agency. The Investigating Officer who was present in Court, submitted that no CCTV footage could be procured as the footages are preserved by the Hotel only for a month and the incident itself was reported more than three months later. It was also stated that a mobile belonging to Respondent No.7 was taken into custody by the Investigating Officer while the other mobile belonging to him did not have any material and as such the same was returned to Respondent No.7. In the circumstances it was directed that the investigators shall take into custody the other mobile of Respondent Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India No.7 and send both the mobiles for forensic analysis. It was also directed that the investigation into the matter be conducted at an early date;

(b) On 11.09.2019 it was informed that after due investigation charge-sheet was filed in the matter. It was stated that second mobile of Respondent No.7 was also taken into custody and attempts were made to extract the Metadata for the opinion of the experts. The submissions of the petitioner and Respondent No.7 were recorded as under:

“It was submitted by Ms. Aishwarya Bhati, learned Senior Advocate that the investigation in connection with recovery of data from these two phones was not proper and there was no co-operation from the accused. It must be stated that the Charge-sheet does not suggest that because of any lack of cooperation on part of the

accused in not providing or supplying the Code Number, the Mobile Phone could not be operated or opened. It must also be stated that Ms. Sonia Mathur, learned Senior Advocate for the accused has very fairly supplied the Code Number (No.220192) and stated that this Code Number applies to both the Mobile Phones, with the help of which said Mobile Phones could normally be opened.”

(c) On 21st October, 2019 Crl.M.P. No.162386 of 2019 was filed by the petitioner seeking police protection after having highlighted an incident that had occurred on 18.10.2019. In respect of said incident, Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India the petitioner had filed FIR No.314 with Police Station Kotla Mubarak Pur, District South Delhi, alleging, inter alia:

“I was going back to my home from Defence Colony in front of I phone store opposite red light suddenly one car came from back side and hit me. I was bruised and tried to stop the driver but he run away from there. I was injured so I made call 100 number help and hired an auto from there because I was feeling very unsafe there. I reached at my residence. PCR came and took me to AIIMS Trauma Centre. I immediately made a call to SIT (reference FIR bearing No.0058/18 with PS Barakhamba Road New Delhi dated 26.05.2018) but they didn’t take my calls. I made a call to concerned DCP and Whatsapp msg for the same.” The FIR also stated that the petitioner had strong apprehension that Respondent No.7 had attacked her. It was further stated that CCTV Footage available be seized.

In the application filed in this Court it was stated:

“Needless to say that the Petitioner’s life has been shadowed and her life has been under threat and clandestine scanner by the Accused who being an IPS officer had been adopting all means to make the Petitioner succumb to his deeds. Henceforth the Petitioner submits that her life under the radar of the Accused IPS officer would come to an end, if adequate protection and measures are not granted by this Hon’ble Court.” Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India

(d) On 24.10.2019, the order stated that in terms of the directions issued on 11.09.2019 attempts were made to retrieve data from the second mobile of Respondent No.7 as well as from the mobile of the Investigating Officer. The order further recorded:

“According to the learned counsel, the data could be retrieved from the official mobile phone of the accused. However, as regards the personal mobile phone of the accused and the mobile of the investigator, no data could be retrieved as both the mobile phones were damaged. Therefore, the matter was referred to CBI CFSL.

At this stage, Ms. Sonia Mathur, learned Senior Advocate appearing for respondent no.7 submitted that the relevant details including iCloud ID and Password of the

mobile belonging to him were extended to the CBI CFSL by respondent no.7.

Consequently, relevant iCloud data has now been retrieved by CBI CFSL from both the mobile phones of respondent no.7 i.e. official mobile phone as well as personal mobile phone. However, no data could be retrieved from the mobile phone belonging to the Investigating Officer as said mobile phone did not have the back-up in the form of any iCloud as it was not an iPhone.

We therefore call upon the concerned Investigating Officer to file an appropriate affidavit stating all these details without disclosing what exactly was the material which was retrieved as a result of the entire exercise.

Mr. Manoj V. George, learned counsel appearing for the writ petitioner then submitted that on 17.10.2019, the petitioner was hit by a vehicle resulting in some Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India injuries for which she was treated at AIIMS Trauma Centre, New Delhi, whereafter an appropriate complaint was also lodged with Police Station Kotla Mubarakpur. FIR No.314 dated 18.10.2019 PS Kotla Mubarakpur, District South, New Delhi and medical papers have been placed on record along with Cr. M.P. No.162386 of 2019.

Ms. Suhasini Sen, learned counsel submitted that considering the nature of allegations and the injuries suffered by the petitioner, the respondents, on their own, have extended police protection to the petitioner in the form of a Security Officer. She also submitted that FIR No.314 is being investigated and appropriate response shall be filed before the next date of hearing.”

(e) Thereafter, a Status Report was filed on 26.11.2019 by Investigating Officer, Crime Branch, New Delhi, regarding status of investigation into the crime registered pursuant to the FIR dated 26.05.2018 and it was stated that after retrieving the data from the mobile phones of Respondent No. 7, supplementary charge-sheet was prepared which would be filed after getting the approval. Another Status Report was filed on the same date by Assistant Commissioner of Police, Sub-Division, Defence Colony, New Delhi that CCTV footages of the concerned place where the petitioner was allegedly struck by a car showed that no such incident had actually occurred. It was asserted:

Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India “13. That the CCTV footages so obtained were analysed. In the available CCTV Footage of about 8.52 p.m. dated 17.10.19, a Thela driven by a child is seen scraped the left leg of the Petitioner/complainant while she was attempting to hire a TSR/Auto at place of occurrence. Complainant is seen looking towards the Thela and then moving away. She made no attempt to stop him. The CCTV footage has not revealed that the complainant was hit by a car which she had tried to stop. On the contrary, she walked away from the place of occurrence. (Still photographs of the CCTV footage are

enclosed).

14. Local investigation was done and no witness could be found, who could corroborate the version of the complainant regarding four-wheeler (offending vehicle) as alleged by the complainant/petitioner.

15. That the investigation conducted in this case so far reveals that as per the time frame and place of incident provided by the complainant/petitioner, she was scraped by a "Thela".

16. As per the available CCTV footage complainant was hit by a Thela near Gurudwara Chowk, Kotla Mubarak Pur, New Delhi at about 8.52 p.m. dated 17.10.2019. She made PCR calls from her place of stay i.e. Indira Niketan Working Girls Hostel, Sarojini Nagar, New Delhi at 9.00 p.m. and 9.07 p.m. She was taken to Jai Prakash Narayan Apex Trauma Centre, AIIMS, New Delhi where she was examined at about 9.56 p.m. She was found entering the Jai Prakash Narayan Apex Trauma Centre, AIIMS, New Delhi with PCR staff at about 9.24 p.m. The call was initially sent to Police Station Sarojini Nagar and thereafter to Police Station Defence Colony and finally to Police Station Kotla Mubarak Pur, New Delhi. The details of investigation are mentioned in Para 12 to 15." Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India

(f) Consequently, on the next date i.e. on 27.11.2019 liberty was given to the petitioner and her counsel to watch the CCTV footages and the matter was adjourned.

(g) After having availed the facility of watching the CCTV footages, a response was filed by the petitioner on 03.12.2019 to the status report as under: -

"8. The petitioner submits that the autorickshaw which encircled at 12th minute 36 seconds (12:36) the tricycle which is stated to be driven by a child to knock her down and a car which appears within a few seconds with closed doors raised serious suspicions in the mind of the petitioner who construes this as a chain of events orchestrated by some vested interest. The petitioner who was suffering and was bleeding also realized that any telephone call to Police saying that a tricycle hit her without mentioning about the car which is found suspicious would not put them into action and her claim would be rubbished as a hit by a cycle driven by a child.

9. The petitioner required immediate medical attention and it was only with this intention that she had stated that a car had come from the backside to hit her even though now it is clear that it was a Thela (tricycle fitted with carriage) which had hit her from the back as the car reaches only after 28 second of the hit by the tricycle (Thela).

The chain of events in the staged road accident when an auto rickshaw encircles and dodges her in a jerk and a child rides into the junction only to hit her from the back and a Car/Van appearing in the scene as if in a lookout for the fallen pedestrian invariably Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India reinforces the apprehension in the mind of the petitioner, regarding a foul play.”

(h) A response was also filed by the petitioner to the other status report. Submitting inter alia continuation of Respondent No. 7 in service would affect fair trial.

8. In the aforesaid background and circumstances on record, it was submitted by the learned Additional Solicitor General:-

(i) The investigation into the crime, lodged pursuant to FIR by the petitioner, was conducted fairly under the supervision of a Special Investigation Team headed by ACP Shweta Singh Chauhan. After due investigation, charge-sheet has also been filed; prompt steps were taken by the investigating agency and as such nothing further need be done in the present writ petition.

(ii) The allegations made by the petitioner that a car had struck her and the suggestion that Respondent No.7 was instrumental for such incident were completely unsustainable. It was not a car but a thela mounted on a tricycle which had simply brushed against the petitioner.

Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India However, the petitioner deliberately flared it up to show as if it was Respondent No.7 who was behind the incident.

(iii) On her own showing, she was aware that she was not hit by a car but by a thela but she did not state the facts truthfully and correctly as she anticipated that the claim could be rubbished as a minor incident. Moreover, the petitioner used such minor and innocuous incident to make insinuations against Respondent No.7.

9. On the other hand, Mr. Manoj George, learned Advocate for the petitioner submitted that:-

(i) Respondent No.7 belonged to police service and as such there was definite apprehension that the investigation into the crime pursuant to FIR lodged by the petitioner, would not be conducted in fair and transparent manner;

(ii) The crime registered pursuant to the FIR lodged by the mother of Respondent No.7 was an indication of undue influence exerted by Respondent No.7, a police officer;

(iii) Certain audio recording and video recording with the petitioner were not taken note of while conducting investigation;

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(iv) Complete data from two mobile phones of Respondent No.7 was not recovered while the mobile phone of the Investigator was completely damaged with the result there could be no retrieval of any data from the mobile phone of the Investigator; and

(v) Soon after the petitioner was hit by a thela she had seen a car in the vicinity and therefore apprehended that it was an attempt on part of someone.

10. The investigation into the crime registered pursuant to FIR No.58 of 2018 lodged by the petitioner was conducted by a Special Investigation Team headed by ACP Ms. Shweta Tiwari Singh and a charge-sheet has been filed. The apprehension that was expressed at some stage that the mobile phones belonging to Respondent No.7 were not being taken in custody, was dealt with by this Court and it was ensured that said mobiles would be in the custody of the investigating agency. The data from those mobiles was also sought to be recovered and it must be stated that Respondent No.7 did extend cooperation in ensuring that the data could be retrieved. However, the assertion on behalf of the petitioner is that complete data has not been retrieved. Both the mobile phones were also sent for forensic analysis. It is suggested by the petitioner that certain pictures may have been taken by Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India Respondent No.7, which data is not presently available. However, what has been extracted from iCloud is fully available with the investigating agency. The data, in any case, would at best point that at various stages there were exchanges and conversation between the petitioner and Respondent No.7 but what needs to be gone into at the appropriate stage is the basic submission that Respondent No.7 had taken undue advantage of the petitioner on the fateful night. The contention that the mobile phone of the Investigating Officer was damaged may not be material as details of any conversation between the petitioner and the Investigating Officer, may also be proved through the mobile phone of the petitioner herself. There is thus, nothing substantial which could either show that the investigation was not well directed or had failed to look into a particular direction. In our considered view, nothing further is required to be done. At this stage, it may be stated that if any video or audio recordings are still being retained by the petitioner, they may be handed over to the Special Investigation Team within two days from today. It is left to the Special Investigation Team to consider whether that parts needs to be dealt with in the supplementary charge-sheet which, as indicated above, is contemplated to be filed.

11. As regards the crime registered pursuant to FIR lodged by the mother of Respondent No.7, protection has been afforded to the petitioner Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India and her family members and the application under Section 438 of the Code³ has also been dealt with. An application filed by the petitioner under Section 482 of the Code³ is presently pending with the High Court. It is, thus, clear that the petitioner has been invoking the processes of the court and adequate protection is being afforded to the petitioner and her family members. We, therefore, do not see any reason why the matter presently pending pursuant to the FIR lodged by the mother of Respondent No.7 be transferred and investigation be entrusted to any other agency.

12. In the aforesaid circumstances we do not see any reason why investigation into both the aforesaid FIRs, at this stage, be entrusted to any Central Investigating Agency. All that we can say at this juncture is that the charge-sheet filed in the crime registered pursuant to FIR lodged by the petitioner shall be considered by the concerned court on its own merits and in accordance with law.

13. In the end, we must observe that the matter was considered by this Court only from the standpoint of ensuring that there was fair investigation into the crime registered pursuant to FIR filed by the petitioner and any observation made by us or directions issued by us shall not be considered as Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India reflection on merits of the matter or on the quality of investigation. The matter shall be considered on its own merits and in accordance with law.

14. We may now refer to the development which occurred during the pendency of the writ petition. In FIR No. 314, as well as in the application preferred thereafter, insinuation was definitely made that Respondent No.7 was responsible for the incident that occurred on 17.10.2019. It was also submitted that the petitioner was hit by a car and suspicion was expressed in clear terms that Respondent No.7 was behind the episode. As it now turns out, she was not hit by a car but by a thela which prima facie means that the allegations in her sworn statement before this Court were not truthful.

15. Making a false statement on oath is an offence punishable under Section 181 of the IPC² while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 of the IPC². These offences by virtue of Section 195(1)(a)(i) of the Code³ can be taken cognizance of by any court only upon a proper complaint in writing as stated in said Section. In respect of matters coming under Section 195(1)(b)(i) of the Code³, in Pushpadevi M. Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India Jatia vs. M.L. Wadhawan etc.⁴ prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.

16. It has also been laid down by this Court in Chandra Shashi v. Anil Kumar Verma⁵ that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks imprisonment. It was observed as under:

“1.The stream of administration of justice has to remain unpolluted so that purity of court’s atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court’s environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish

them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to (1987) 3 SCC 367 (1995) 1 SCC 421 Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt.” In K.D. Sharma v. Steel Authority of India Limited and others⁶ it was observed:

“39. If the primary object as highlighted in Kensington Income Tax Commrs.⁷ is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.” In Dhananjay Sharma v. State of Haryana and others⁸ filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the concerned persons were punished.

(2008) 12 SCC 481 (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) (1995) 3 SCC 757 Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India

17. In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court “why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code”³. The Registry is directed to register the matter as suo motu proceedings and send a copy of this Order to the Petitioner, who is directed to appear in-person before this Court on 14.01.2020.

18. With the aforesaid observations this writ petition stands disposed of.

.....J. [Uday Umesh Lalit]J. [Indu Malhotra] New Delhi;

December 10, 2019.