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v.

THE STATE OF JHARKHAND & ORS.

(Writ Petition (Civil) No. 1352 of 2019)

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JANUARY 20, 2021

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

Crime Against Women:

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Rape victim – Rehabilitation of – Writ petition u/Art. 32 – By the victim – Seeking rehabilitation – Alleging that many people raped her for which criminal proceedings were initiated – She, with her three children has no means of survival and is not able to give education to her children – Her identity has been disclosed by media as a rape victim – The administration, media and society has been

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alleged to compel her to lead a life with no security, no job and no shelter – Held: The petitioner is a rape victim and hence deserves treatment as rape victim by all the authorities – There is a statutory scheme already enforced in the State concerned framed u/s.357A Cr.P.C. for grant of compensation and the petitioner has already

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been paid the compensation under the Scheme – The Authorities concerned are directed to take measures to ensure free education to the minor children of the petitioner till they attain the age of 14 years and also to consider her case for allotment of housing accommodation under any of Central or State Schemes – Police is directed to review the police security provided to her from time to time – Legal Services Authority is directed to render legal services to her as may be deemed fit – Jharkhand Victim Compensation Scheme, 2012 – Code of Criminal Procedure, 1973 – s.357A.

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Penal Code, 1860:

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s.228-A – Disclosure of identity of rape victim – Is an offence – All including media (print as well as electronic) have to follow the law.

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Disposing of the petition, the Court

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HELD : 1.1 There can be no denial that the petitioner is a rape victim. Even if other criminal cases filed by the petitioner under Section 376 IPC are not take into consideration, in Case No.162/2002 where allegation of rape was made on 08.06.2002, the accused has been convicted under Section 376(2)(g) IPC for 10 years RI. The petitioner being a rape victim deserves treatment as rape victim by all the authorities. A rape victim suffers not only a mental trauma but also discrimination from the society. [Paras 16 and 17][161-G-H; 162-A-B]

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1.2 The petitioner has two sons and one daughter. The eldest son, of the petitioner, as on date is major and two children of the petitioner are still minor. The Deputy Commissioner, Ranchi is directed to take measure to ensure that minor children of the petitioner are provided free education in any of the Government Institutions in District Ranchi where the petitioner is residing, till they attain the age of 14 years. [Parsa 19 and 27 (1)][162-F-G; 165-D-E]

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Nipun Saxena and Another vs. Union of India and Others (2019) 2 SCC 703 : [2018] 14 SCR 755 – relied on.

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2. Section 228-A of the Penal Code which has been inserted by Amendment Act 43 of 1983 with effect from 25.12.1983 makes disclosure of the identity of the victim an offence. The law with regard to Section 228A is well established, all including the media, both print and electronic have to follow the law. [Paras 21 and 23][163-B-C; 164-E-F]

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3.1 With regard to the payment of compensation to the petitioner as a rape victim, along with additional documents the petitioner has brought on record materials to indicate that the decision was taken by the District Legal Services Authority, Ranchi to pay compensation of Rs.1,00,000/- by letter dated 06.03.2017. The grant of compensation has been considered under the Jharkhand Victim Compensation Scheme, 2012 as amended in 2016. [Para 24][164-F-G]

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A **3.2 There is a statutory scheme already enforced in the State of Jharkhand framed under Section 357A of the Code of Criminal Procedure Code, 1973, which provides procedure for grant of compensation. The petitioner had already made application to seek compensation under the above Scheme and payment of compensation has already been made. [Para 25]**

B **[164-H; 165-A]**

C **4. There are various Central as well as State Schemes for providing residential accommodation to persons living below poverty line and other deserving cases. The Deputy Commissioner, Ranchi may consider the case of the petitioner for allotment of any housing accommodation under Prime Minister Awas Yojna or any other Scheme of the Centre or the State. [Para 26][165-B-D]**

D **5. The Senior Superintendent of Police, Ranchi and other competent authority shall review the Police security provided to the petitioner, from time to time and take such measures as deem fit and proper. [Para 27 (3)][165-F-G]**

E **6. The District Legal Services Authority, Ranchi on representation made by the petitioner shall render legal services to the petitioner as may be deemed fit to safeguard the interest of the petitioner. [Para 27 (4)][165-G]**

Case Law Reference

[2018] 14 SCR 755 relied on para 17

F **CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 1352 of 2019.**

(Under Article 32 of the Constitution of India)

Tapesh Kumar Singh, Aditya Pratap Singh, Ms. Bhaswati Singh,
Advs. for the Respondents.

G **Petitioner-in-person**

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

H **This writ petition has been filed by a rape victim invoking the jurisdiction of this Court under Article 32 of the Constitution.**

2. This Court entertained the writ petition and while issuing notice on 29.11.2020 passed the following order: A

“Issue notice.

Mr. Tapesh Kumar Singh, learned standing counsel for the State of Jharkhand, accepts notice on behalf of respondent/State. B

Let the respondent/State file an affidavit giving details of all proceedings initiated by the petitioner or against her and the status of those proceedings.

We, however, observe that the respondent no.3/Home Secretary shall also ensure that the concerned police authorities are instructed to ensure protection of the petitioner. C

List after four weeks.”

3. A counter-affidavit has been filed on behalf of the State of Jharkhand to which rejoinder has also been filed by the petitioner. The petitioner has also filed certain additional documents. D

4. From the pleadings of the parties following facts emerged:

The petitioner claims to be a Scheduled Tribe in the State of Jharkhand. The petitioner was born on 24.12.1984. On 31.03.1998, petitioner was taken away by one Basant Yadav. Petitioner’s father, Rajender Badaik, lodged a complaint. Basant Yadav was apprehended on 02.04.1998. Father of the petitioner and Police of the concerned Police Station got the marriage of the petitioner solemnised with Basant Yadav. After one year of the marriage, one son was born, named Manish Yadav. Petitioner filed a complaint as well as case for maintenance against her husband, Basant Yadav. E F

5. The petitioner obtained divorce from Basant Yadav and the custody of son was given to Basant Yadav. On 08.06.2002, petitioner went to Dultonganj on asking of Basant Yadav to meet her son on which date she was raped by one Mohd. Ali and three other accused. Case No.162 of 2002 under Section 376/34 read with Section 3(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered in which accused, Mohd. Ali was apprehended and put on trial. G

6. The petitioner lodged an FIR against the DY. Inspector General of Police on 02.08.2005 under Section 376,376(2)(a)IPC and Section H

- A 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on which on 03.08.2005 Case No.304 of 2005 was registered. The petitioner also lodged an FIR against an Inspector General of Police on which Sessions Trial No.257/2006 was registered. Certain other criminal cases got registered by the petitioner against different persons, some of which were filed under Section 376 IPC. In the Sessions Trial 11 of 2006, the accused Mohd Ali was convicted on 15.02.2014 with 10 years RI.
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7. In the FIR lodged against Dy. Inspector General of Police final report was submitted which was accepted by the Court on 06.08.2007 insofar as FIR lodged against Inspector General of Police, Sessions Judge acquitted the Inspector General of Police by judgment and order dated 23.12.2017 against which criminal appeal has been filed in the High Court of Jharkhand. A criminal case was also lodged against the petitioner.

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8. The petitioner's case in the writ petition is that she being the rape victim, whose identity was disclosed by the media and after knowing that the petitioner is a rape victim, no one is ready to give her accommodation even on rent. The petitioner in the writ petition invoked jurisdiction of this Court in the matter of rehabilitation of the petitioner. The petitioner also prays for direction to the respondent to protect the petitioner and her children's life. The petitioner after divorce from her first husband got married to one Rajesh Kujur with whom a son was also born. The petitioner has also lodged criminal case being No.56/2004 against her husband Rajesh Kujur which resulted in acquittal.

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9. The petitioner has also filed a copy of the legal notice dated 09.08.2019 which was sent by the landlord of the petitioner asking the petitioner to vacate the premises on the ground of non-payment of rent. The petitioner sent a letter dated 05.12.2019 stating that the landlord had sealed the house on 04.12.2019.

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10. In the counter-affidavit by the State, the State has given a tabular chart containing status of 7 criminal cases which were initiated by the petitioner. In paragraph 7 one of the cases mentioned in the chart is the case filed against Mohd. Ali, Mohd. Ali was convicted on 15.02.2014 under Section 376(2)(g) IPC and Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In other criminal cases either the accused were acquitted or

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trial is pending in some cases. In two FIRs lodged by the petitioner, in the year 2018 under Section 354 A(ii) as well as under Section 376, 448 and 506 IPC respectively the investigation is said to be going on.

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11. The petitioner has appeared in person. Shri Tapeshe Kumar Singh, learned counsel has appeared for the State of Jharkhand.

12. The petitioner submits that due to the petitioner being rape victim she is not getting any help from family friends or society. She, with three children, has no means of survival and she is not able to give education to her children. The administration, media and society has compelled the petitioner to lead a life with no security, no job and no shelter in future.

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13. Shri Tapeshe Kumar, learned counsel appearing for the State submits that the petitioner has lodged various FIRs alleging rape against several persons. It is submitted that against the petitioner also an FIR was lodged at Palamau Sadar Police Case No.194 of 2002 for the commission of the offences under Section 25(1-b) of Arms Act, on the basis of a written report submitted by the Assistant Sub-Inspector of Police in which charge-sheet has also been filed. It is submitted that since 02.10.2019 an armed Lady Constable, namely, Suman Surin has been deputed with the writ petitioner for her security.

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14. It is further submitted that the State has taken care of making security arrangement of the petitioner and in pursuance of the order dated 06.01.2020 another security personnel has been deputed with the writ petitioner. Learned counsel, however, submits that the Police authority may be permitted to review the security from time to time to take appropriate measures in that regard. Shri Singh further submits that the petitioner is in a habit of making false allegations against several persons and officers. A complaint has recently been submitted making allegations of offences under Section 376 IPC. It is submitted that the petitioner has vacated the earlier accommodation of Subodh Thakur.

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15. We have heard the petitioner in person as well as learned counsel appearing for the State.

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16. There can be no denial that the petitioner is a rape victim. Even if we do not take into consideration other criminal cases filed by the petitioner under Section 376 IPC, in Case No.162/2002 where

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A allegation of rape was made on 08.06.2002 the accused, Mohd. Ali has been convicted under Section 376(2)(g) IPC for 10 years RI. The petitioner being a rape victim deserves treatment as rape victim by all the authorities.

B 17. A rape victim suffers not only a mental trauma but also discrimination from the society. We may refer to the judgment of this Court in **Nipun Saxena and another vs. Union of India and others, (2019) 2 SCC 703**, wherein following observations were made by this Court:

C “12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being.”

D 18. The petitioner herself has brought on record few orders passed in Writ Petition (Cr.)No.229 of 2014 (**Padma @ Shushma Badaik vs. The State of Jharkhand and others**) filed by the petitioner before the High Court of Jharkhand where in the order dated 12/11.09.2015 statement on behalf of the Counsel for the State was recorded by the High Court that State is ready to provide free education to the children of the writ petitioner. Following is the statement recorded by the High court on 12/11.09.2015:

E “Counsel for the State has submitted that State is ready to provide free education to the children of the writ petitioner. If she will give her consent, her children shall be admitted in the Govt. Boarding School at Gumla and the expenses shall be borne by the Government.”

F 19. The petitioner has two sons and one daughter. Manish Yadav appears to have been born after one year of the marriage which took place in the year 1998, eldest son, thus, as on date is major, two children of the petitioner are still minor.

G 20. On an inquiry by the Court as to which authority is to ensure that the minor children of the petitioner are provided free education, learned counsel submitted that it is Deputy Commissioner, Ranchi who can take the appropriate measures to ensure that the minor children of the petitioner are provided free education. Learned counsel for the

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State has submitted that education upto the age of 14 years in the State of Jharkhand is free which is provided by the State. We, thus, are of the view that Deputy Commissioner shall take appropriate steps to ensure that minor children of the petitioner are provided free education in any Government Institution at Ranchi. A

21. The petitioner has also raised grievance regarding her identity which has been disclosed by the media. The petitioner has annexed certain materials along with writ petition and the additional documents. Section 228-A of the Indian Penal Code which has been inserted in the Indian Penal Code by Amendment Act 43 of 1983 with effect from 25.12.1983 makes disclosure of the identity of the victim is an offence. Section 228-A is as follows: B C

“Section 228A. Disclosure of identity of the victim of certain offences etc.—(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. D

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is— E

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or F

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim: G

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation. H

A Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

B (3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

C Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.”

D 22. This Court in **Nipun Saxena and another (supra)** has occasion to consider Section 228-A wherein this Court in para 50.1 has issued following directions:

E “50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.”

23. The law with regard to Section 228A is well established, all including the media, both print and electronic have to follow the law.

F 24. With regard to the payment of compensation to the petitioner as a rape victim, along with additional documents the petitioner has brought on record materials to indicate that the decision was taken by the District Legal Services Authority, Ranchi to pay compensation of Rs.1,00,000/- by letter dated 06.03.2017. The letter of the Secretary, District Legal Services Authority, Ranchi has been brought on record by the petitioner herself. The grant of compensation has been considered under the Jharkhand Victim Compensation Scheme, 2012 as amended in 2016.

G 25. There is a statutory scheme already enforced in the State of Jharkhand framed under Section 357A of the Code of Criminal Procedure Code, 1973, which provides procedure for grant of

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compensation. The petitioner had already made application to seek compensation under the above Scheme and payment of compensation has already been made. A

26. The next grievance which has been highlighted by the petitioner is the petitioner's inability to get any rented accommodation in Ranchi due to she being a rape victim. In the counter-affidavit filed by the State, it is clear that the petitioner has lived at several/ different places but due to the dispute with the landlord she has to leave the premises. There are various Central as well as State Schemes for providing residential accommodation to persons living below poverty line and other deserving cases, the Deputy Commissioner, Ranchi may consider the case of the petitioner for allotment of any housing accommodation under Prime Minister Awas Yojna or any other Scheme of the Centre or the State. B C

27. In view of the foregoing discussion, we dispose of this writ petition with the following directions: D

- (1) The Deputy Commissioner, Ranchi is directed to take measure to ensure that minor children of the petitioner are provided free education in any of the Government Institutions in District Ranchi where the petitioner is residing till they attain the age of 14 years. E
- (2) The Deputy Commissioner, Ranchi may also consider the case of the petitioner for providing house under Prime Minister Awas Yojna or any other Central or State Scheme in which petitioner could be provided accommodation. F
- (3) The Senior Superintendent of Police, Ranchi and other competent authority shall review the Police security provided to the petitioner from time to time and take such measures as deem fit and proper. G
- (4) The District Legal Services Authority, Ranchi on representation made by the petitioner shall render legal services to the petitioner as may be deemed fit to safeguard the interest of the petitioner.