

MISS 'A'

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v.

STATE OF UTTAR PRADESH AND ANR.

(Criminal Appeal No.659 of 2020)

OCTOBER 08, 2020

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**[UDAY UMESH LALIT, VINEET SARAN AND
S. RAVINDRA BHAT, JJ.]**

Code of Criminal Procedure, 1973 – ss.164, 173, 190, 207, 208 – Statement recorded u/s.164 – Copy to accused – Case of sexual exploitation – Suo motu case registered by Supreme Court – Direction to set up SIT – Appellant-victim's statement recorded u/s.164 – Respondent No.2-accused's application seeking certified copy thereof was rejected – Order challenged – Allowed by High Court – Before the said decision could be challenged by filing the instant SLP, a copy of appellant's statement u/s.164 was made over to respondent no.2 – Held: Right to receive a copy of statement u/s.164 will arise only after cognizance is taken and at the stage contemplated by ss.207 and 208 and not before – Merely because the chargesheet was filed by the time the High Court passed the order in the present matter, did not entitle respondent no.2 to a copy of the statement u/s.164 – High Court erred in appreciating the directions issued by this Court in State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna [2014] 5 SCR 812, especially in a matter of sexual exploitation – In such matters utmost confidentiality is required to be maintained – Order passed by the High Court is set aside – Penal Code, 1860 – ss.376C, 354D, 342, 506.

Allowing the appeal, the Court

HELD: In *Shivanna* it was directed by this Court that a copy of the statement of the victim recorded under Section 164 of the Code be handed over by the concerned Judicial Magistrate to the Investigating Officer with a specific direction that the contents of such statement under Section 164 of the Code should not be disclosed to any person till charge-sheet/report under Section 173 of the Code was filed. The Scheme of the relevant provisions of the Code of Criminal Procedure, 1973 shows that

- A after the conclusion of the investigation, an appropriate report under Section 173 of the Code is to be filed by the police giving information as required by Section 173. In terms of Section 190 of the Code, the concerned Magistrate may take cognizance of any offence *inter alia* upon a police report. At the stage of exercise of power under Section 190 of the Code, the Magistrate may deem fit that the matter requires further investigation on certain aspects/issues and may pass appropriate direction. It is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 of the Code, to copies of the documents referred to in said provisions. The filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement under Section 164 of the Code, unless the stages indicated above are undertaken. Thus, merely because the charge-sheet was filed by the time the High Court had passed the order in the present matter, did not entitle Respondent No.2 to a copy of the statement under Section 164 of the Code. The reason that weighed with the High Court in placing reliance on the decision 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* 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 of the Code till the appropriate orders are passed by the court after the charge-sheet is filed. 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 of the Code and not before. The application of Respondent No.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. The High Court completely erred in appreciating the directions issued by this Court, especially in a matter where the offences alleged against accused are of sexual exploitation.
- G In such matters utmost confidentiality is required to be maintained. The High Court completely failed in that behalf. Though, a copy of the statement recorded under Section 164 of the Code was made over to the accused, the order passed by the High Court is set aside. Under no circumstances copies of statements recorded under Section 164 of the Code can be
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furnished till appropriate orders are passed by the Court after A
taking cognizance in the matter. [Paras 14-19][523-C-H;
524-A-E]

State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna (2014) 8 SCC 913 : [2014] 5 SCR 812 – relied on.

Bhagwant Singh v. Commissioner of Police (1985) 2 SCC 537 : [1985] 3 SCR 942 – referred to.

Raju Janki Yadav v. State of U.P. and others (2012) 6 All LJ 486 –referred to.

Case Law Reference

[2014] 5 SCR 812	relied on	Para 8
[1985] 3 SCR 942	referred to	Para 15

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. D
659 of 2020.

From the Judgment and Order dated 07.11.2019 of the High Court of Judicature at Allahabad in Criminal Misc. Application No. 39538 of 2019.

Vikramjit Banerjee, ASG, Siddharth Seem, Satya Mitra, Ms. Garima Prashad, Vashasvi Virendra, Gaurav Agarwal and Raj Singh Rana, Advs. for the appearing parties.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

1. Leave granted.

2. This appeal arises out of order dated 07.11.2019 passed by the High Court¹ in Criminal Miscellaneous Application No.39538 of 2019.

3. On 25.08.2019, the father of the Appellant lodged a Complaint with Police Station Kotwali, District Shahjahanpur that he had seen a video of the Appellant on her Facebook account alleging that Respondent No.2 and some others had sexually exploited the Appellant and many other girls; that the Appellant was not contactable; that he was apprehending danger to the Appellant; and that prompt action be taken in the matter.

¹High Court of Judicature at Allahabad

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- A 4. Thereafter, pursuant to a complaint filed by one Mr. Om Singh, Advocate, to the effect that he looked after the legal work of the Ashram run by Respondent No.2; and that an unknown person had threatened that unless Rupees Five Crores were paid, the reputation of Respondent No.2 in the society would be harmed. Said Complaint was immediately registered as FIR No. 442 of 2019.
- B 5. The Complaint filed by the father of the Appellant was registered two days later as FIR No.445 of 2019 in respect of offences of abduction and sexual harassment under Sections 506 and 364 of Indian Penal Code (for short, 'IPC').
- C 6. The Facebook video of the Appellant having gone viral, letters were written to this Court by some advocates whereafter Suo Motu Writ Petition (Crl.) No. 2 of 2019 was registered in this Court. On 30.08.2019 it was reported to this Court that the Appellant was found in District Dausa of State of Rajasthan. On 30.08.2019, this Court recorded the statement of the Appellant that she did not intend to go back to Uttar Pradesh but would meet her parents in Delhi. Certain directions were therefore passed.
7. In its Order dated 02.09.2019, this Court observed:-
- E "We are not expressing any opinion regarding the grievances expressed by the girl Miss "A" and apprehensions of her parents. All that we wish to point out is that the correctness of the grievances/apprehension has to be addressed as per the procedure established in law.
- F In view of above, we direct the Chief Secretary, State of Uttar Pradesh, to constitute a Special Team headed by a police officer in the rank of the Inspector General of Police to be assisted by the Superintendent of Police and a team of police officers to enquire into the grievances expressed by Miss "A" and insofar as the apprehension expressed by the parents of Miss "A".
- G At this stage, Mr. Vikramjit Banerjee, learned Additional Solicitor General, representing the State of Uttar Pradesh along with Ms. Aishwarya Bhati, learned Additional Advocate General, has submitted that an FIR No.0445 dated 27.08.2019, against the management of the Institution has been registered under Section 364 and 506 IPC., based on the complaint lodged by the complainant-father of the girl Miss "A". Mr. Vikramjit Banerjee
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has also submitted that a cross FIR No. 0442 dated 25.08.2019 A has been registered.

The investigation team to be constituted shall take note of both the FIRs and proceed with the investigation in accordance with law in both the investigations and file status report before the High Court. B

Considering the facts and circumstances of the case, we request the Chief Justice of the High Court of Judicate at Allahabad to constitute a Bench to monitor the investigations in this regard.

Insofar as the apprehension expressed by the father of the girl about their safety, we direct the Chief Secretary, State of Uttar Pradesh, to direct the Superintendent of Police of the concerned district, namely, Shahjahanpur, to afford protection to the parents and family members of the girl on assessing the threat perception. We request the High Court to also review the protection accorded to the family members of Miss “A” and pass appropriate orders.” C D

8. Accordingly, Special Investigation Team (SIT) was set up and the statement of the Appellant was recorded on 16.09.2019 by Judicial Magistrate under Section 164 of the Code of Criminal Procedure (for short, ‘the Code’). On 17.09.2019, an application was filed by the Appellant that there were certain lapses while recording her statement under Section 164 of the Code. On 17.09.2019 itself, an application was moved by Respondent No.2 seeking certified copy of the statement of the Appellant under Section 164 of the Code. The application was rejected by the Additional District and Sessions Judge, Shahjahanpur, by order dated 19.09.2019. Relying on the decision of this Court in *State of Karnataka by Nonavinakere Police vs. Shivanna alias Tarkari Shivanna*², it was stated:- E F

“....If the copy of statement under section 164 is provided at this preliminary stage of investigation then besides spilling all the beans of investigation before the concerned person(s) who shall also come to know names of all the key witness(es) involved in this case, the health and safety of the victim(s) but also that of all the key witnesses will be in peril. It is also very likely that of all affected and concerned person(s) will leave no stone unturned in influencing the investigation itself and all key witnesses in their G

²(2014) 8 SCC 913 H

- A favour much before any report is made under S.173 CrPC. All this is surely bound to ‘dent’ the prosecution case. However, once the investigation is over and a report is filed under section 173 of CrPC at that stage the copy of the statement under Section 164 CrPC along with other relevant documents can be asked by the concerned person.
- B In view of the above, application filed by the learned counsel of the applicant Swami Chinmyanand Saraswati to obtain copy of the statement under Section 164 of CrPC is rejected for all the reasons discussed above.”
- C 9. On 20.09.2019 Respondent No.2 was arrested and his application for bail was rejected by the Chief Judicial Magistrate, Shahjahanpur on 23.09.2019. On 22.10.2019 Criminal Miscellaneous Application No.39538 of 2019 was filed by Respondent No.2 in the High Court challenging the order dated 19.09.2019. On 05.11.2019 charge-sheets were filed by SIT in connection with FIR No. 442 of 2019 and
- D FIR No. 445 of 2019. The charge-sheet filed in Crime registered pursuant to FIR No. 445 of 2019 states that Respondent No.2 committed offences punishable under Sections 376C, 354D, 342, 506 of IPC.

- E 10. On 07.11.2019, Criminal Miscellaneous Application No. 39538 of 2019 was allowed by the High Court. The following observations from the decision of the Division Bench of the High Court in *Raju Janki Yadav vs. State of U.P. and others*³ were relied upon :-

- F “On these terms, we are of the view that any application, if made, by any concerned person to obtain a copy of the statement under Section 164 Cr.P.C., the same could never be denied to him if he is ready to pay the costs admissible under Rules. ...”

The High Court also recorded the statement of the learned Advocate for the State as under:-

- G “Learned A.G.A. had sought time to seek instructions for taking up the matter. Now he has received the instructions. He has stated that a copy of the statement of victim recorded under Section 164 Cr.P.C. ought to have been given to accused-applicant. Impugned order has been erroneously passed by the trial court by which it

³(2012) 6 All LJ 486 = Criminal Miscellaneous Writ Petition No.3567 of 2012 decided on 08.05.2012.

had refused to provide a copy of the statement of the victim A recorded under Section 164 Cr.P.C. to the accused-applicant.”

The High Court found that the decision of this Court in *Shivanna*² would not get attracted for the following reason:-

“It was argued by the learned counsel for the applicant that the said directions were issued only for the police to be followed and not to the Court. I agree with the said argument and I am of the opinion that correct law has been laid down by the Division Bench of this Court in the case of Raju (supra), in view of that it was bounden duty of the trial court to provide a certified copy of the statement of the victim recorded under Section 164 Cr.P.C. to the applicant subject to payment of usual charges. B C

Accordingly, the impugned order is set aside and it is directed that trial court shall provide a certified copy of the statement of victim recorded under Section 164 Cr.P.C. to the applicant subject to payment of usual charges.” D

11. Before the Appellant could challenge the decision of the High Court, by filing the instant Special Leave Petition on 13.11.2019, a copy of her statement recorded under Section 164 of the Code was made over to Respondent No.2.

12. When this Appeal was taken up for hearing, the learned Advocate for the Appellant reported “*no instructions*” in the matter and prayed for withdrawal of appearance. Since the matter raised questions of law, we rejected the prayer and proceeded to hear the learned counsel for the parties. E

13. The directions issued by this Court in *Shivanna*² were in the F following backdrop:-

“2. We had noted that the Fast Track Courts no doubt are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but we are perturbed and anguished to notice that although there are Fast Track Courts for disposal of such cases, we do not yet have a fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly. G

3. We had further observed that there is a pressing need to introduce drastic amendments into CrPC in the nature of fast H

- A track procedure for Fast Track Courts when we considered just and appropriate to issue notice and called upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into the Criminal Procedure Code, 1973 involving trial for the charge of “rape” by directing that all the witnesses who are examined in relation to the offence and incident of rape cases should be straightaway produced preferably before the Lady Judicial Magistrate for recording their statement to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross-examination. We were and are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 CrPC skipping over the recording of statement by the police under Section 161 CrPC to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination.”
- B The directions issued by this Court were to the following effect:-
- C “**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.
- D **10.2.** The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- E **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.
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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. A

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." B

14. It was, thus, directed by this Court that a copy of the statement of the victim recorded under Section 164 of the Code be handed over by the concerned Judicial Magistrate to the Investigating Officer with a specific direction that the contents of such statement under Section 164 of the Code should not be disclosed to any person till charge-sheet/report under Section 173 of the Code was filed. C

15. The Scheme of the relevant provisions of the Code shows that after the conclusion of the investigation, an appropriate report under Section 173 of the Code is to be filed by the police giving information as required by Section 173. In terms of Section 190 of the Code, the concerned Magistrate may take cognizance of any offence *inter alia* upon a police report. At the stage of exercise of power under Section 190 of the Code, as laid down by this Court in number of decisions, the notable being the decision in *Bhagwant Singh vs. Commissioner of Police*⁴, the Magistrate may deem fit that the matter requires further investigation on certain aspects/issues and may pass appropriate direction. It is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 of the Code, to copies of the documents referred to in said provisions. D

The filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement under Section 164 of the Code, unless the stages indicated above are undertaken. E

16. Thus, merely because the charge-sheet was filed by the time the High Court had passed the order in the present matter, did not entitle F

⁴(1985) 2 SCC 537 para 4 G

- A Respondent No.2 to a copy of the statement under Section 164 of the Code.

17. That apart, the reason that weighed with the High Court in placing reliance on the decision 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*² 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 of the Code till the appropriate orders are passed by the court after the charge-sheet is filed.

- The right to receive a copy of such statement will arise only after C cognizance is taken and at the stage contemplated by Sections 207 and 208 of the Code and not before. The application of Respondent No.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.

18. In our view, the High Court completely erred in appreciating D the directions issued by this Court, especially in a matter where the offences alleged against accused are of sexual exploitation. In such matters utmost confidentiality is required to be maintained. In our view, the High Court completely failed in that behalf.

19. Though, a copy of the statement recorded under Section 164 E of the Code was made over to the accused, we must set aside the order passed by the High Court and lay down that under no circumstances copies of statements recorded under Section 164 of the Code can be furnished till appropriate orders are passed by the Court after taking cognizance in the matter.

- F 20. We must also observe that the decision of the Division Bench of the High Court on which reliance was placed in the present matter must be held to be subject to the directions issued by this Court in *Shivanna*², as explained hereinabove.

21. This appeal is, therefore, allowed.