

Sadhan Haldar vs The State Nct Of Delhi & Ors on 22 January, 2019

Author: Hima Kohli

Bench: Hima Kohli, Manoj Kumar Ohri

\$~4.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 1560/2017

SADHAN HALDAR

..... Petitioner

Through: Ms. Neena Malhotra, Advocate

versus

THE STATE NCT OF DELHI & ORS

..... Respondents

Through: Mr. Rahul Mehra, St. Counsel, (Crl.)

with Mr. Chaitanya Gosain, Advocate for State

and DCP Rajesh Deo, Legal Cell, PHQ,

DCP Arnesh Roy, Cyber Cell, Spl. Cell,

Insp. Aajay Gosain, Legal Cell,

SHO Rajiv Kumar, Geeta Colony and

Insp. Mahesh Pandey, AHTU/Crime Branch

Mr. H.S. Phoolka, Sr. Advocate with

Ms. Prabhsahay Kaur and Ms. Shashi Chaussia,

Advocates for Intervener/BBA

Ms. Maninder Acharya, ASG with

Mr. Ripu Daman Bhardwaj, CGSC with

Mr. Sahil Sood, Mr. Harshul Choudhary and

Mr. Viplav Acharya, Advocates for UOI

Mr. Ramesh Singh, Standing Counsel, GNCTD

Mr. A.K. Singh, Advocate for DCPCR

Mr. Anant Kumar Asthana, Advocate

for DSLSA.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% 22.01.2019

1. On the last date of hearing, DCP, Shahdara, Delhi had filed a Status Report dated 14.12.2018. Further, DCP, AHTU/Crime Branch had filed a separate Status Report dated 16.01.2019. In so far as the Status Report of the DCP, Shahdara is concerned, it brings out the complete lack of initiative demonstrated by the local police in a case where a complaint about his 13 year old missing daughter, Sheela Haldar was made by the petitioner as long back as on 28.07.2014, with P.S. Geeta Colony.

We find that no concrete steps were taken by the Delhi Police after 27.12.2014, to make effective enquiries. The next effective step was taken in September, 2015, when attempts were made to search for the missing girl at the Interstate Bus Stops and Railway Stations. After a gap of another six months, i.e., in March, 2016, the police sent information of the missing girl to the Missing Persons Squad. It took yet another six months for the police to issue a notice to the family of the alleged suspect, Babulal @ Babul and make enquires about the missing girl. This also took place only after the petitioner had filed an application before the learned MM, Karkardooma Court, stating that he suspected the said person. In other words, in this entire period the police did not make any sincere and concerted efforts to locate the missing girl. In this background, vide order dated 23.05.2017, the matter was directed to be transferred to the AHTU/Crime Branch. A copy of this order be placed before the Commissioner of Police for his perusal and to initiate appropriate departmental proceedings against the erring officials involved in the shoddy investigation.

2. Coming to the Status Report filed by the AHUT/Crime Branch, it refers to the information regarding the details of the missing girl having been sent to the Directorate of Social Welfare of various States and publicity of her photograph in some news channels in Noida and U.P. On 05.01.2019, the father of Ashish @ Babulal is stated to have been interrogated, but no clues were received for the recovery of the missing girl. On 09.01.2019, the details and photographs of the girl were provided to Doordarshan, Prasar Bharti and All India Radio for transmitting the same to the public at large. However, nothing material emerged from the above.

3. The AHTU/Crime Branch is directed to continue taking concrete steps to trace the missing girl, who would have by now turned 17 ½ years old (approx.). Even if it is assumed to be a case of elopement, as is suggested to us, the girl could not have simply vanished in the air.

4. Coming to the larger issue of missing children that has engaged this Court and was highlighted in our previous orders dated 28.11.2018 and 14.12.2018, Mr. Rahul Mehra, Standing Counsel (Crl.) hands over two affidavits, one of the DCP, Legal Cell, PHQ, Delhi and the other of the Special Commissioner of Police, Legal Cell, PHQ, Delhi. The affidavit of the DCP, Legal Cell, PHQ encloses therewith a consolidated district-wise report of the missing children and those who have been finally traced between 01.01.2016 to 31.12.2018. The annexure to the affidavit contains the month-wise details of follow up action that is taken by the Delhi Police after a child is found/recovered, as laid down in the SOP for the year 2018. It is a matter of concern that out of a total number of 19,916 cases of missing children, only 14,756 children have been traced and reunited with their family members whereas, 5160 children have yet to be traced. Such a large number of children going missing in Delhi and that too in a span of three years, is a matter of grave concern. These are voiceless children primarily belonging to the economically distressed strata of society with hardly anyone to take up their cause. The situation becomes more serious when the parents of such children who do not have the financial backup or any wherewithal, are left to run from pillar to post in search for their missing children.

5. Mr. Phoolka, Sr. Advocate appearing for the NGO, Bachpan Bachao Andolan draws our attention to the orders dated 16.01.2013 and 05.09.2017 passed by the Supreme Court in W.P.(C) No.75/2012 and submits that compliances have not been made so far, as Delhi Police has not ensured the

presence of one exclusive officer in the Special Juvenile Police Unit stationed at every police station. Similarly, he submits that the Delhi Commission for Protection of Child Rights (DCPCR) is not monitoring the Standard Operating Procedure required to be followed in cases of missing children. There is also no analysis being conducted on the missing children who are traced and restored to their families so as to understand the pattern, the motive, including identifying groups if any indulging in ransom, child trafficking, maiming and other illegal activities.

6. We find that the draft SOP enclosed with the affidavit of the Special Commissioner of Police, Legal Cell, PHQ, Delhi does not carve out categories of different age groups of missing children from 0 to 18 years and the procedure required to be followed in respect of each category. In the absence of a separate set of procedure for those in the tender age group of 0- 5 years, who are relatively more susceptible and vulnerable, a uniform application of the SOP across all age groups could result in considerably delaying the recovery process. Also, there is need for the DLSA to keep in active touch with both, the Delhi Police as also the DCPCR through their Advocates deputed for the said purposes.

7. Counsel for all parties state in unison that lack of sensitivity in cases of this nature poses a great challenge at every stage. In other words, not only should the police officers tasked with tracing missing children be sensitised by conducting workshops, seminars etc., even lawyers attached with the DLSA and officers of the DCPCR need to hone their skills by participating in the workshops, seminars etc. for a constant upgradation and sensitisation.

8. In the course of arguments, we are informed that efforts have been made by the Delhi Police to segregate Law and Order Division from the Crime and Investigation Division in various Police Stations. As on date, out of 180 Police Stations in Delhi, necessary steps have been taken to establish two Divisions in 30 Police Stations, on a pilot basis.

9. We think that segregation of work in all the police stations will go a long way in expediting investigation of such like cases. Once, segregation between the two Divisions takes place in all the said Police Stations in Delhi, a dedicated team for tracking the missing children under the Crime and Investigation Division can be constituted at all the Police Stations. After segregation of the Divisions, officers investigating such cases need to be equipped with adequate facilities besides imparting training, so that steps to trace the missing children can be initiated at the earliest, particularly, in the case of those who have a footprint in the social media. Where the missing children do not have any presence in the social media, necessary alternate tools need to be identified for tracking them expeditiously.

10. We are also of the view that steps ought to be taken by the Delhi Police to establish in each Police Station in each District, a 'Missing Persons Desk' to simplify procedures and cut red tape. All the stake holders are directed to examine the draft Standing Orders enclosed with the affidavit filed by the Special Commissioner of Police, Legal Cell, PHQ, Delhi and give their inputs in writing within three weeks.

11. The Central Government is directed to try and simplify the prescribed procedure stated in the website, i.e, www.trackthemissingchild.gov.in, as we are given to understand that parents of missing children are unable to access the said website or get proper assistance. Learned CGSC is requested to have the said complaints examined by the concerned Department and give a response on an affidavit within three weeks with copies furnished to the rest.

12. We are told that use of 'Facial Recognition Software' has not helped in cracking any case of missing children so far, which comes as a surprise. It is most unacceptable that the software adopted by the Delhi Police after due diligence has not borne any results. Mr. Phoolka, Sr. Advocate submits that earlier, his client had offered a Facial Recognition Software free of costs to the Delhi Police, which was declined. He suggests that the NGO may be permitted to interact directly with Mr. Rajan Bhagat, DCP, CRO, so that this aspect can be examined and remedial measures taken at the earliest.

13. We think that many of the issues related to tracking of missing children in Delhi without losing precious time can be effectively thrashed out if all the Agencies put their heads together and work towards this common goal. For the said purpose, Mr. Mehra, Standing Counsel (Crl.) is directed to ensure that a meeting of all the stakeholders represented today, takes place in his chamber and necessary inputs collated. The first meeting shall take place on 01.02.2019, at 4.30 P.M. in the chamber of Mr. Rahul Mehra, Standing Counsel (Crl.) in the High Court Complex. Subsequent meetings can be fixed as per mutual convenience. An affidavit of giving an update shall be filed by the Delhi Police before the next date.

14. List on 25.02.2019.

DASTI under the signatures of the Court Master.

HIMA KOHLI, J MANOJ KUMAR OHRI, J JANUARY 22, 2019 na/rkb