(3)

IN THE HIGH COURT OF DELHI AT NEW DELHI

(EXTRAORDINARY ORIGINAL WRIT JURISDICTION)

W.P. (C) No. 5011 of 2017

IN THE MATTER OF A PUBLIC INTEREST LITIGATION:

ReenaJha& Anr.

... Petitioners

Versus

Union of India through its Secretary, Ministry of Law and Justice & Ors.

... Respondents

MEMO OF PARTIES

1. ReenaJha
   aged31 years,
   w/o Sh. Gauri Kant Jha,
   r/o H. No. 2628, Gali No.21A,
   Baljeet Nagar, New Delhi – 110008

   ... Petitioner No.1

2. Arti Gupta
   aged37 years,
   w/o Lt. Sh. Yogendra Gupta,
   r/o H.No. 244/14, Gali No.3, School Block,
   Mandwali, New Delhi - 110092

   ... Petitioner No.2

Versus

1. Union of India
   Through its Secretary,
   Ministry of Law and Justice,
   4th Floor, A-Wing, ShastriBhawan,
   New Delhi-110 001

2. Delhi Police
   Through its Commissioner,

Delhi Police Headquarters,
IndraprasthaMarg,
New Delhi – 110002

3. National Commission for Protection of Child Rights
Through its Chairperson,
5th Floor, Chanderlok Building,
36 Janpath, New Delhi-110001

4. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat
New Delhi - 110001

5. Union of India
Through its Secretary,
Ministry of Women & Child Development,
Shastri Bhawan,
New Delhi-110 001

... Respondents

Petitioners

Through

16/8/17

GAUTAM KHAZANCHI
ADVOCATE FOR THE PETITIONER
D-9, GROUND FLOOR, GEETANJALI ENCLAVE,
NEW DELHI -110017
+919891201050 | GAUTAMKHAZANCHI@GMAIL.COM

TRUE COPY

EXAMINER

FILED ON: 16.08.2017

PLACE: NEW DELHI

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5011/2017

REENA JHA AND ANR

..... Petitioners

Through Mr. Sidharth Aggarwal, Mr. Gautam Khazanchi, Mr. Ashish Kumar & Mr. Shreyas Raniwala, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr. Sanjay Ghose, ASC for GNCTD with Ms. Urvi Mohan & Mr. Naman Jain, Advocates.
Mr. Sumer Kumar Sethi & Ms. Dolly Sharma, Advocates for DSLSA alongwith Mr. Kanwaljeet Arora, Member Secretary, DSLSA.
Mr. Ajay Digpaul, Advocate for R-3 alongwith Ms. Tanushree Luthra, Member Secretary, NCPCR.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

% **ORDER**
27.01.2020

1. Mr. Sidharth Aggarwal, learned counsel appearing for petitioners points-out that Practice Directions dated 24.09.2019 as referred to in order dated 25.11.2019 are based upon amendments to Section 439 Code of Criminal Procedure 1973 (Cr.P.C.) and apply to aggravated forms of sexual offences under Section 376(3), 376-AB, 376-DA and 376-DB of Indian Penal Code 1860 (IPC). The Practice Directions however do not apply to cases under the Protection of Children from Sexual Offences Act ('POCSO Act'). He further draws attention to Section 40 of POCSO Act read with Rule 4(11) & 4(12)(viii) of the Protection of Children from Sexual Offences Rules,

2012 ('POCSO Rules).

2. It is the submission of counsel for the petitioners that Practice Directions dated 24.09.2019 or directions to the same effect should also be extended/made applicable to offences under POCSO Act.

3. Counsel points-out however that an issue in relation to POCSO offences may arise in cases where the crime has been perpetrated by a close family member; in which case, issuing notice or giving information to such family member in line with the Practice Directions, would not serve any purpose. Mr. Aggarwal suggests that in such cases notice be issued to the concerned Child Welfare Committee and a copy of such notice/information be also sent to Delhi State Legal Services Authority ('DSLSA').

4. We see merit in the submission made by Mr. Aggarwal. Accordingly, we direct that the provisions of Practice Directions dated 24.09.2019 shall *mutatis mutandis* also apply to offences under POCSO Act.

5. We further direct that the present order shall be read in conjunction with order dated 25.11.2019; and both orders shall be circulated to all District Judges in Delhi, who will be responsible to bring the same to the notice of the concerned criminal courts dealing with POCSO matters under their respective jurisdictions and to ensure that the same are implemented.

6. We also direct the National Commission for Protection of Children Rights ('NCPCR') and State Commission for Protection of Children Rights ('SCPCR') to ensure that they comply with the mandate of Rule 6 of POCSO Rules in relation to monitoring and implementation of the provisions of the POCSO Act, strictly and faithfully.

7. In view of the above, Mr. Aggarwal submits that no further orders are required to be passed in the present Public Interest Litigation.

8. Accordingly, the present petition is disposed of, with the court recording its appreciation for the valuable assistance rendered by Mr. Aggarwal, other

(7)

learned counsel for the parties and the officials who appeared in the matter, including Mr. Kanwaljeet Arora, Member Secretary DSLSA and Ms. Tanushree Luthra, Member Secretary NCPCR.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

JANUARY 27, 2020
ck

W.P.(C) 5011/2017 3/3

TRUE COPY
EXAMINER

(66) (8)

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5011/2017

REENA JHA AND ANR. ..... Petitioners

Through: Mr.Siddharth Aggarwal, Mr.Gautam Khazanchi, Mr.Krishna Datta Multani, Mr.Vishnu Menon, Ms.Tara Narula, Mr.Ashish Kumar, Advocates

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Ms.Monika Arora, CGSC with Mr.Kushal Kumar, Advocate for R-1/UOI.
Mr.Sumer Sethi and Ms.Dolly Sharma, Advocates with Mr.Kanwaljeet Arora, Member Secretary DSLSA.
Mr.Ajay Digpaul and Aaryan Verma, Advocates for R-3 with Mrs.Rupali Banerjee Singh, Member Secretary, NCPCR.
Mr.Sanjoy Ghose, ASC, GNCTD and Ms.Urvi Mohan, Advocate with Mr.Rajesh Deo, DCP, Legal Cell, Delhi Police.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **25.11.2019**

1. Learned counsel for the petitioners submits that despite the Delhi High Court Practice directions dated 24.09.2019 and format provided in Annexure 'A' to the Practice Directions being issued, in reality, no information, in compliance with Section 439 of the Code of Criminal Procedure, 1973, is being conveyed to the victim or her family members prior to entertaining an application seeking bail for offences triable under Section 376 (3), Section 376-AB, Section 376-DA or Section 376-DB of the Indian Penal Code, 1860. Practice Directions issued by

(67)

this Court are extracted as under along with annexure A:

(9)

"

HIGH COURT OF DELHI : NEW DELHI

No. 67/Rules/DHC

Dated : 24.09.2019

PRACTICE DIRECTION

Section 439 of the Code of Criminal Procedure, 1973 stood amended by the Criminal Law (Amendment) Act, 2018 (No. 22 of 2018) w.e.f. 21.04.2018 vide which, amongst others, it has been mandated that the presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code and that the High Court or the Court of Session shall, before granting bail, give notice of such application to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

The relevant provisions of "The Criminal Law (Amendment) Act, 2018" in this respect are reproduced herein below:-

"23. In Section 439 of the Code of Criminal Procedure-

(a) In sub-section(1), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application."

(b) After sub-section(1), the following sub-section shall be inserted, namely:-

"(1-A) The presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860)."

In order to ensure better and effective compliance of the above provisions, Hon'ble the Chief Justice has been pleased to direct as under:-

(a) Before granting bail to a person who is accused of an offence

triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, the High Court or the Court of Session shall give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application; and

(b) The Courts shall ensure that the Investigating Officer has, in writing as per Annexure A, communicated to the informant or any person authorized by her that her presence is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code. Annexure A shall be filed by the I.O. along with the Reply / Status Report to such bail application and the Courts shall make all endeavour to ensure presence of the informant or any person authorized by her.

These directions shall come into force with immediate effect.

By Order
Sd/-
(DINESH KUMAR SHARMA)
REGISTRAR GENERAL"

ANNEXURE A

NOTICE TO INFORMANT OF OBLIGATION TO BE PRESENT AT THE TIME OF HEARING OF THE APPLICATION FOR BAIL TO THE PERSON ACCUSED OF THE OFFENCE UNDER SUB-SECTION (3) OF SECTION 376 OR SECTION 376- AB OR SECTION 376-DA OR SECTION 376-DB OF THE INDIAN PENAL CODE, 1860

You are hereby informed that the person accused in FIR No._____ dated _____ PS _____ under Section _____ has filed an application for grant of bail which is listed for hearing in the Hon'ble High Court of Delhi / Hon'ble Court of Sh. / Smt. _____, Additional Sessions Judge, _____ District, Delhi.

Kindly take notice that as per Section 439 (1-A) of the Code of Criminal Procedure, 1973 your presence / presence of any person authorised by you is obligatory at the time of hearing of the above mentioned bail application.

(S/d)
Informant

(S/d)
Investigating Officer

(69)

(11)

I, _____, SHO of P.S. _____ do hereby certify that the I.O. of the above mentioned FIR has duly communicated the informant that her presence / presence of any person authorized by her is obligatory at the time of hearing of the bail application of the person accused in FIR No. _____ dated _____.

(S/d)
SHO, P.S. _____"

2. While the petitioners and respondents will file a note and give further suggestions, for the time-being, we direct that a copy of this order wherein the Practice Directions have been extracted along with Annexure 'A', be sent to all the District Judges, who will be responsible to bring the same to the notice of all the Criminal Courts in Delhi under their respective jurisdictions. The District Judges will also file a report in this Court as to whether these Practice Directions are being followed and if not, the reasons for such omission; and ensure that in the future the same are followed uniformly and without fail.

3. Copy of this order be also brought to the notice of the Presidents and Secretaries of all Bar Associations in Delhi and be put-up on the Notice Boards of all concerned Criminal Courts.

4. List the matter for further directions on 19.12.2019.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 25, 2019
rb

TRUE COPY
EXAMINER

THE SEAL OF DELHI HIGH COURT NEW DELHI

IN THE HIGH COURT OF DELHI AT NEW DELHI

Urgent
Final Draft

No. 4757-W /DHC/WRITS/D-3/2020
Dated 13-2-2020 DISPOSED OF

406
14 FEB 2020
D.H.C. दिल्ली

From
The Registrar General
Delhi High Court
New Delhi

To
1. The District & Sessions Judge, Tis Hazari Courts Complex, Delhi
2. The District & Sessions Judge, Patiala House Courts Complex, New Delhi
3. The District & Sessions Judge, Saket Courts Complex, New Delhi
4. The District & Sessions Judge, Karkardooma Courts Complex, Delhi
5. The District & Sessions Judge, Rohini Courts Complex, New Delhi
6. The District & Sessions Judge, Dwarka Courts Complex, New Delhi
7. The President, The Bar Association, Tis Hazari Courts, New Delhi
8. The Secretary, The Bar Association, Tis Hazari Courts, New Delhi
9. The President, The Bar Association, Patiala House Court, New Delhi
10. The Secretary, The Bar Association, Patiala House Court, New Delhi
11. The President, The Bar Association, Saket Court Complex, New Delhi
12. The Secretary, The Bar Association, Saket Court, New Delhi
13. The President, The Bar Association, Karkardooma Court, Delhi
14. The Secretary, The Bar Association, Karkardooma Court, Delhi
15. The President, The Bar Association, Rohini Court, New Delhi
16. The Secretary, The Bar Association, Rohini Court, New Delhi
17. The President, The Bar Association, Dwarka Court, New Delhi
18. The Secretary, The Bar Association, Dwarka Court, New Delhi
19. Union of India, Through its Secretary, Ministry of Law and Justice, 4th Floor, A-Wing, Shastri Bhawan, New Delhi-110001
20. Delhi Police, Through its Commissioner, Delhi Police Headquarters, Indraprastha Marg, New Delhi-110002
21. Union of India, Through its Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi-110001
22. Union of India, Through its Secretary, Ministry of Women and Child Development, Shastri Bhawan, New Delhi-110001
23. National Commission for Protection of Child Rights, 5th Floor, Chanderlok Building, 36, Janpath, New Delhi-110001
24. Delhi Commission for Protection of Child Rights, 5th Floor, ISBT Building, Kashmere Gate, Delhi-110006

WRIT PETITION (C) NO. 5011/2017

Reena Jha & Anr. ....Petitioner/s
Vs.
Union of India, Through its Secretary, Ministry of Law and Justice & Ors. ....Respondent/s

Sir/Madam,

O/C (General)
DRSJ (HQS)
14.02.2020.

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated **25.11.2019 & 27.01.2020** passed by Hon'ble **Division Bench** of this Court in the above noted case alongwith a copy of amended memo of parties.

Please acknowledge the receipt.

Yours faithfully,

12.02.20

Admn. Officer Judl. (Writs)
for Registrar General

12/02

Dt: 10.02.2020

(B)

OFFICE OF THE DISTRICT & SESSIONS JUDGE (HQs): DELHI

No. 7684-734 Genl./J.Cir./HCS /2020 Dated, Delhi the 26 FEB 2020

Sub: Writ Petition (C) No. 5011/2017 Reena Jha & Anr. Vs. Union of India, through its Secretary, Ministry of Law and Justice & Ors.

Copy of the letter bearing no. 4757-W/DHC/WRITS/D-3/2019 dated 07/12/2019 alongwith copy of order dated 25/11/2019 & 27.01.2020 passed by Hon'ble Division Bench **of Hon'ble Mr. Justice G.S.Sistani and Hon'ble Mr. Justice Anup Jairam Bhambhani, Hon'ble High Court of Delhi,** New Delhi in above noted case received from the Registrar General, Hon'ble High Court of Delhi, New Delhi is circulated for information and immediate compliance/necessary action to:-

1. All the Ld. Judicial Officers posted of Criminal Courts posted in Central District, Tis Hazari Courts.
2. The Chairman, Website Committee, Tis Hazari Courts, Delhi with request to direct the concerned officials to upload the same on the Website of Delhi District Courts.
3. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
4. For uploading the same on Centralized Website through LAYERS.
5. PS to Ld. District & Sessions Judge (HQs) Tis Hazari Courts, Delhi.

(CHARU AGGARWAL)
Officer-In-Charge, Genl. Branch, Central
Addl. District & Sessions Judge
Tis Hazari Courts, Delhi.

Encl.: As above.

No. 543 **Genl./J.Cir./HCS /2020** **Dated, Delhi the** 26 FEB 2020

Copy to the Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi, for information.

Officer-In-Charge, Genl. Branch, Central
Tis Hazari Courts, Delhi.