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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C)No...../2018 (to be registered)

COURTS ON ITS OWN MOTION Petitioner
Through : *Nemo*

versus

UNION OF INDIA & ORS. Respondents
Through : Ms. Monika Arora, Standing
Counsel for UOI.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
13.04.2018

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1. An incident of an alleged gang rape and murder in the State of Jammu & Kashmir has made national headlines. Unfortunately, the nature and manner of reporting of the alleged offence is being effected in absolute violation of specific prohibition of law disrespecting the privacy of victim which is required to be maintained in respect of the identify of a victim. The victim in the case in question is stated to be a girl child who is only eight years of age.

2. Two provisions of law which have to guide disclosure of identity of the victim, are not only in public domain but are well

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known. To emphasize the importance thereof, reference is made to Section 23 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). This provision has been placed in Chapter V of the enactment captioned as "*Procedure for reporting of cases*". The media when reporting such cases is expected to not only know but follow the strict stipulation of law.

3. Additionally, reference needs to be made to Section 228A of the Indian Penal Code, 1860 which has been placed in Chapter XI thereof captioned as "*Of false evidence and offences against public justice*".

4. The above statutory provisions are extracted hereunder :

"Protection of Children from Sexual Offences Act, 2012

Chapter V - Procedure for reporting of cases

23. Procedure for media-

1. *No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.*

2. *No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:*

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

3. The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

4. Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both."

"Indian Penal Code, 1860

Chapter XI - Of false evidence and offences against public justice

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.

(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—

(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

(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: **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.**

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.

(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.**

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.”

(Emphasis by us)

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5. Violation of Section 228A of the IPC therefore, is treated as an offence against "*public justice*". There can be no manner of doubt that the objects, spirit and intendment of the above provisions have been placed at the highest pedestal by the Legislature. Disrespect and violation of privacy of a victim of an offence under Sections 376 and 376A to E, which are concerned with sexual offences including rape, cannot be permitted under any circumstances. If the victim has unfortunately expired, the prohibition on the media is absolute under sub-section 2(c) of Section 228A of the IPC.

6. Section 23 of the POCSO Act more specifically relates to the identity of a child and prohibits any reporting or comments which "*may have the effect of lowering his reputation or infringing upon his privacy*".

7. Our attention has been drawn to extensive reporting, both in the print and electronic media, regarding the allegations of gang rape and murder of the 8 year old girl child. Some of the reports which have been brought to our notice include the following (name/identity mentioned in the reports redacted):

- (i) *The Times of India* dated 13th April, 2018 captioned as "*Across India, horror turns to outrage at gang-rape & murder of 8-yr-old girl*"; 13th April, 2018 captioned as "*Kathua rape – murder : [REDACTED]'s family flees village*".
- (ii) *The Hindu* dated 13th April, 2018 captioned as "*Mehbooba vows to ensure justice in Kathua rape case*".

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- (iii) The Statesman dated 12th April, 2018 captioned as "J&K mulls law to ensure death penalty for rapists"
- (iv) The Pioneer dated 13th April, 2018 captioned as "Don't kill conscience".
- (v) The Navbharat Times dated 13th April, 2018 captioned as "Gussa Ubla # Justicefor [REDACTED] hua trend".
- (vi) The NDTV News Channel dated 12th April, 2018 captioned as "[REDACTED]'s Gang-rape And Murder; Civil Society Outraged, Demands Justice".
- (vii) FIRSTPOST dated 13th April, 2018 captioned as "Kathua rape case "Eight-year-old [REDACTED]'s death exposes faultlines in Jammu and Kashmir's polity and social construct".
- (viii) The Week dated 12th April, 2018 captioned as "[REDACTED]'s lawyer accuses Jammu Bar president of threat and intimidation".
- (ix) The Republic TV dated 12th April, 2018 captioned as "Kathua Rape Case: 'Fake Nationalists, Fake Hindus,' Says Sonam Kapoor".
- (x) The Deccan Chronicle dated 12th April, 2018 captioned as "Hope for justice after VK Singh says, 'failed [REDACTED] as humans'".
- (xi) The India TV dated 13th April, 2018 captioned as "Kathua rape case: 'We've failed [REDACTED] as humans, but she'll not be denied justice', tweets Union minister VK Singh".

(xii) The Indian Express dated 12th April, 2018 captioned as “Cries for #JusticeFor [REDACTED] ring high on social media as chilling details emerge in Kathua rape – murder case”.

8. These reports not only carry the photographs and name of the minor girl child victim, disclosing her complete identity but the manner and contents of reporting actually also does injustice to the privacy and dignity of the child victim. What is even more unfortunate is that such disclosure and publication of an image is being repeated by almost the entire media.

9. We are also pained by the fact that no authority including the National Commission for Protection of Child Rights (NCPCR); the National Commission for Women (NCW) or the Delhi Commission for Women (DCW) have even reacted to this terrible development

10. In these circumstances, we are compelled to take *suo motu* cognizance of this extremely distressing situation.

11. The Registry is directed to register this matter as a writ petition in public interest.

12. The Union of India through Secretary Ministry of Information and Broadcasting as well as the National Commission for Protection of Child Rights (NCPCR), the National Commission for Women and the Delhi Commission for Women shall stand impleaded as party respondent nos. 1 to 4 respectively.

Inasmuch as we do not have complete information regarding

the list of all the newspapers and journals on the print media which have effected similar publications and full details of the channels on the electronic media, for the time being we are restricting the issuance of the notice in this matter to the entities detailed in para 4 above, who shall stand impleaded as party respondent nos. 5 to 16.

13. Upon further enquiry and details of other persons who may have committed the said violations, we shall take action against them as well.

14. Issue court notice, without process fee, to the above respondents to show cause as to why action against them for violation of the statutory provisions detailed above should not be initiated. Notices shall be served through a special messenger.

15. We have redacted the name of the victim while noting the reports above. The Registry is directed to manually redact the name of the victim from the reports and conceal her photograph by pasting in all reports attached with this order. A copy of these reports, duly redacted and pasted, shall be sent alongwith the notice to the respondents.

16. Ms. Monika Arora, Standing Counsel accepts notice on behalf of the Union of India.

17. We hereby prohibit the media respondents from effecting any publication including the name, address, photographs, family details, school details, neighbourhood or any other particulars, which may have an effect of leading the disclosure of the identity

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of the child victim.

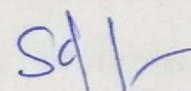
18. The official respondents shall forthwith take steps to prohibit any disclosure of the name, address, photographs, family details, school details, neighbourhood or any other particulars, which may have an effect of leading the disclosure of the identity of the child victim, by any person(s) or authorities.

19. The media has to be circumspect in reporting to the extent it is in contravention of the law. Freedom of the press has to be balanced with the integrity of the judicial process, and must comport with the requirements of the law. No violation is permissible.

20. Mr. Arvind Nigam, Senior Advocate assisted by Mr. Rajshekhar Rao, Advocate are appointed as *amici curiae* to assist this court in this matter. The registry is directed to furnish a copy of this order, and the reports to the learned *amici curiae*.

21. List on 18th April, 2018.

Dasti under signatures of the Court Master.


ACTING CHIEF JUSTICE


C.HARI SHANKAR, J

APRIL 13, 2018

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