

ITEM NO.33

COURT NO.14

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SMW (CRL) No(s). 1/2019

IN RE ALARMING RISE IN THE NUMBER OF REPORTED CHILD RAPE INCIDENTS
Petitioner(s)

VERSUS

Respondent(s)

(Mr. V. Giri, Sr. Advocate (A.C.), Mr. Krishna Dev Jagarlamudi, Adv
 and Ms. Uttara Babbar,

IA No. 14891/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 14888/2020 - INTERVENTION/IMPLEADMENT)

Date : 31-01-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For the parties:

By Courts Motion, AOR

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**UPON hearing the counsel the Court made the following
O R D E R**

These applications bearing Nos. 14888 and 14891 of 2020 have been filed by the accused Birendra Singh @ Bauaa Singh for transfer of cases bearing R.C. Nos. 9 and 10 of 2018 from the Court of Sh. Dharmesh Sharma to any other court and for impleadment. The main grievance of the Petitioner is that while dealing with case bearing R.C. No. 8 of 2018, the learned judge has made the following observations.

“(iii)Indeed, the incident of rape was not reported immediately by ‘AS’ nor disclosed by her in her statement u/s 164 Cr.P.C. dated 22.05.2017 before the Magistrate during investigation in FIR No. 316 of 2017

PS Makhi (RC No. 11(S)/2018). However, the delay of two months and 10 days in reporting the incident on first time on 17.08.2017 vide letter Ex.PW 9/D addressed to Hon'ble the Chief Minister, state of UP has been cogently and reliably explained by PW-10 victim girl 'AS' PW-8 her mother 'MS' and her uncle PW 9 Mahesh Singh

(iv) That it is explained by PW 10-victim girl 'AS' as well as PW-8 'MS' and PW 9 that such facts were not disclosed by her on 22.6.2017 before the Judicial Magistrate, Unnao, UP as she had been threatened by accused Kuldeep Singh Sengar (A-2) to keep quite or else she and her family would not be spared, and it established on the record that no sooner the incident was reported, a vicious tirade against PW-9 Mahesh and his deceased brother 'SS' (father of victim 'AS') was orchestrated by (A-2) to keep PW-9 Mahesh Singh, uncle of victim girl 'AS' behind the Bars, who was the mainstay of the family and leading to the alleged incident of beatings of 'SS' on 03.04.2018."

Mr. Siddhartha Dave, learned counsel for the applicant(s) submits that the aforesaid observations show that the learned Judge had made up his mind and therefore the applicant(s) apprehend that they will not get justice from the learned Judge. He, therefore, submit that the case be transferred to some other Court. This plea has been opposed by learned counsel for the victim and learned counsel for the Union of India.

We have gone through the entire order of the judge and the observations at paras (iii)& (iv) were necessitated only to explain the delay in filing the complaint by the prosecutrix. These observations are not on the merits of the allegations made therein. Even the judge is cognizant of this and therefore had recorded the following observations in para (xiv):

(xiv)"Lastly, it is specifically provided that any

observation or expression of opinion by this Court in the instant case, shall not tantamount to an expression on the merits of crime case/FIR No. 316/17 now RC No. 11(S)/2018 or for that matter RC No.9(S)/2018 & RC No. 10(S)/2018."

We therefore direct that the learned judge will decide the matters bearing R.C. Nos. 9 & 10 of 2018 only on the basis of the evidence on record of the case bearing R.C. Nos. 9 & 10 of 2018 totally uninfluenced by the evidence which may be recorded or the observations made in R.C. No. 8 of 2018.

With these observations the applications are disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER