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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

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2 CRIMINAL APPEAL NO. 810 OF 2013

3 (Arising out of SLP (CRL.) No. 9256 of 2012

Doliben Kantilal Patel .... Appellant(s)

Versus

State of Gujarat & Anr. .... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 08.11.2012 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 2206 of 2012 whereby the High Court dismissed the petition filed by the appellant herein.

3) Brief facts:

(a) The appellant herein is an American Citizen of Indian origin who came to India on 09.03.2010 to see her ailing father-Kantilal Ambalal Patel. Kantilal Ambalal Patel is having a number of properties in the form of lands, flats and societies in the State of Gujarat. Arvind Jani and Jayesh Dave are very close friends of the father of the appellant. They cheated the father of the appellant in respect of a land dealing at Rajkot against which Civil Suit No. 186 of 2010 was filed in the Court at Rajkot wherein the said suit was decreed in the favour of the appellant herein. The present appeal pertains to the land situated at Vadodra in the name of Gayatrinagar Cooperative Housing Society Limited (group of five societies).

(b) Since certain disputes arose with respect to the above said land at Vadodra which, as per the appellant herein, belongs to her father and the appellant had a joint account with him, one Divyangbhai Jha filed an FIR being CR No. 5/2012 dated 21.05.2012 registered with Gandhinagar Police Station under Sections 406, 409, 420, 465, 467, 468, 174, 120B and 477A of the Indian Penal Code, 1860 (in short 'the IPC') against the appellant herein and 7 other accused persons in respect of grabbing of lands of cooperative societies using forged/fabricated government permission letters.

(c) On 23/24.05.2012, the appellant herein was arrested at about midnight. On 24.05.2012, she was produced before the Judicial Magistrate and an application for remand was preferred by CID Crime, Ahmedabad. On the very same day, Judicial Magistrate granted remand for a period of 5 days.

(d) It was alleged by the appellant herein that from the very first day of remand, she was repeatedly raped in police custody by Jayesh Dave, Divyangbhai Jha (the complainant in abovesaid FIR), A.A. Shaikh, the investigating officer and also by an unknown person. However, Arvind Jani was present throughout the period of remand. It was further alleged that after the period of remand, she was sent to the Central Jail, Sabarmati, Gujarat without following the procedures prescribed under law.

(e) On 20.06.2012, she wrote an e-mail to Ms. Deepa Mehta, U.S Citizens

Services in U.S Consulate, Mumbai describing the entire incident of rape and the atrocities meted out to her. It was also alleged in the said e-mail that Arvind Jani and Jayesh Dave, in connivance with one Amam Shah, owner of a vernacular daily known as Gujarat Samachar got the complaint filed directly to the CID (Crime & Railways) to the effect that Kantilal Ambalal Patel and others are not the office bearers of the abovesaid cooperative society at Vadodra. On 11.07.2012, the appellant herein was released on bail by the High Court of Gujarat.

(f) On 14.07.2012, the appellant filed a complaint under Section 376 read with Section 120B of the IPC to the Police Inspector, Meghani Nagar Police Station, Ahmedabad narrating the alleged offence cited above to have occurred during the period of remand. On the very same date, based on the instructions of the Additional Commissioner of Police, Sector II, the investigation in respect of the above offence was transferred to the Mahila Police Station. It was alleged by the appellant herein that in spite of the complaint regarding a serious offence of rape, no FIR was lodged at Mahila Police Station. Vide notices dated 15/16.07.2012, the Police Inspector, Mahila Police Station called her to record her statement, but she refused to give any statement on the pretext of non-filing of FIR.

(g) Being aggrieved by the non-filing of FIR, the appellant herein filed Special Criminal Application No. 2206 of 2012 before the High Court praying for a direction to the authorities concerned to register an FIR and also to refer the matter to the CBI for investigation. In the meantime, on 27.07.2012, Chief of the American Citizens Services in the American Consulate, in pursuance of the e-mail dated 20.06.2012 forwarded an e-mail to gain access to the appellant herein. The High Court, vide order dated 08.11.2012, dismissed the petition filed by the appellant herein. Being aggrieved by the order of the High Court, the appellant herein has preferred this appeal by way of special leave.

4) Heard Mr. Jaideep Gupta, learned senior counsel for the appellant and Mr. L. Nageshwar Rao, learned senior counsel for the respondents.

5) In order to understand the claim of the appellant, it is useful to mention the relief prayed for in the writ petition filed under Article 226 of the Constitution of India. In the said writ petition, she prayed for appropriate direction to the authorities concerned, viz., the Police Inspector (Respondent No. 2 therein), Meghani Nagar Police Station, Ahmedabad, Gujarat to register an FIR for the offence punishable under Sections 376, 114 and 120B of the IPC in connection with the written complaint dated 14.07.2012 given by her and, thereafter, to transfer the investigation of the said registered FIR to the CBI for further investigation.

6) It is not in dispute that with reference to the land situated at Vadodra, a complaint has been filed against the appellant and her father which was registered as FIR being CR No.5/2012 at Gandhinagar Police Station. It is further seen that the appellant is an NRI/foreign national of Indian origin and she had been roped in the earlier complaint relating to the land dispute because she had a joint account with her father. Though it is pointed out that in order to pressurize the appellant for certain other land disputes at Rajkot, she has been arrested and raped, since we are concerned about her grievance about the alleged rape in police custody, there is no need to elaborate the details regarding the FIR being CR No. 5/2012. It is the grievance of the appellant that the arrest was made at midnight without the assistance of lady police personnel and during the period of police custody, she was raped by the Investigating Officer and other police personnel for which a complaint dated 14.07.2002 was made to Respondent No. 2 herein but no action was taken on the said complaint. Being aggrieved by the non-registration of the complaint, the appellant approached the High Court, under Article 226 of the Constitution, praying for the reliefs mentioned above. It is also highlighted that inasmuch as the police personnel are involved in the crime and in view of the attitude of the State police in not registering her complaint, she prayed for investigation by the CBI.

7) It is the specific stand of the respondent-State that the original complaint was made by one Divyangbhai Jha which was registered as CR No. 5/2012 under Sections 420, 406 and 120B of IPC against the father of the appellant and the appellant herein with regard to the alleged land transaction at Vadodra. It is their further claim that thereafter, she had been arrested and at the time of her actual arrest, though female police personnel were not present but immediately thereafter she was taken to the

nearest police station where female police personnel were present and they remained with the accused throughout. It is pointed out by the State that there was no complaint by the appellant with regard to any harassment from the place of her arrest till she was taken to the nearest police station and there was also no violation of the guidelines or statutory provisions. It is further pointed out that after her arrest on 24.05.2012, she was produced before the Magistrate and, thereafter, her remand was granted for 5 days, i.e., from 24.05.2012 to 29.05.2012 and on 29.05.2012, again she had been produced before the Magistrate but at no point of time, no complaint about harassment or alleged offence of rape has been made to the judicial officer. It is also pointed out that during the period of remand, she was taken to her house twice where her mother was also present and she had occasion to inform the same to her, but no grievance was made to anyone. Likewise, on 29.05.2012, when she was produced before the Magistrate and was remanded to the judicial custody, she had not made any statement or complaint to the Magistrate about the alleged offence of rape during the custody. It is further pointed out that she had not disclosed the same to anyone including her mother, judicial officer or even to the doctors who have examined her. Her medical examination was also done by the Doctors at the Civil Hospital on 26.05.2012 and 29.05.2012. It is further pointed out that thereafter, in Sabarmati Jail, she was examined by female jail doctor on 29.05.2012, 01.06.2012 and 02.06.2012. It is further pointed out that even in the bail application filed before the High Court, no such grievance has been made with regard to the alleged offence of rape while she was in custody. Finally, it is pointed out by the State that when the statement of the appellant was sought to be recorded on 14.07.2012, she did not respond and again when she was called on 16.07.2012 and a reminder was sent, she was not present at her house on 17.07.2012 and even after further efforts, she was not available. By pointing out all these instances, it is projected by the State that if the appellant has any grievance that her complaint has not been registered as an FIR, the Code of Criminal Procedure, 1973 (in short 'the Code') provides that an application could be made to the Magistrate having jurisdiction who may proceed after making an inquiry or after getting further materials. In view of the same, it is pointed out that the High Court was fully justified in dismissing the petition filed under Section 226 and directing the appellant to avail the remedy provided under the Code before the court of Magistrate.

8) It is clear that if it is a case of rape at the hands of the police officials that too in the custody, undoubtedly, the persons concerned are answerable for not registering her written complaint. We have already referred to the earlier complaint by some of the parties relating to the land dispute which resulted in the FIR being CR No. 5/2012 for which the appellant and her father were arrested. We also noted that when the appellant had various opportunities of disclosing her grievance including the alleged offence of rape to various persons, viz., her mother, female medical officers and judicial Magistrate, admittedly, such remedy was not availed by her.

9) It is the assertion of the senior counsel for the appellant that when the information regarding a cognizable offence is laid before the officer in-charge of a police station under Section 154 of the Code, he is bound to register it as an FIR without any inquiry and he has no discretion to even consider whether the allegations made are prima facie borne out or not. In order to answer this question, we have to examine the background of the case which we have already adverted to including the FIR being CR No. 5/2012 relating to the land dispute and we have also pointed out that when the appellant had various opportunities to disclose the alleged offence of rape or misdeeds, it has not been disclosed throughout the period neither to her mother when she was taken to her home twice during the period of remand nor to the female doctors of the Civil Hospital who examined her nor to the doctors of the Jail authorities. We have also noted that even at the time of production before the Magistrate after the completion of the period of remand and subsequently, when she was remanded to the judicial custody, nothing had been disclosed about any such misdeed or ill-treatment or harassment.

10) An elaborate discussion had been made with regard to Section 154 of the Code in State of Haryana and Ors. vs. Bhajan Lal and Ors., 1992 Supp (1) SCC 335. It is seen from the discussion that the police officer in charge of a police station is obliged to register a case and then to proceed with the investigation subject to the provisions of Sections 156

and 157 of the Code. It is further seen that if the police officer in-charge of a police station refuses to exercise the jurisdiction vested in him and register the case on information of cognizable offence and violates the statutory right, the person aggrieved, can send the substance of the same to the higher authority, who, in turn, if satisfied that the information forwarded to him discloses a cognizable offence, can investigate the case himself or direct the investigation to be made by a subordinate officer. The elaborate discussion clearly shows that before registration of the FIR, an officer should be satisfied. In other words, if the facts are such which require some inquiry for the satisfaction about the charges or allegations made in the FIR or he may have entertained a reasonable belief or doubt, then he may make some inquiry. To put it clear, by virtue of the expression "reason to suspect the commission of an offence", we are of the view that commission of cognizable offence, based on the facts mentioned has to be considered with the attending circumstances, if available. In other words, if there is a background/materials or information, it is the duty of the officer to take note of the same and proceed according to law. It is further made clear that if the facts are such which require some inquiry for the satisfaction about the charges or allegations made in the FIR then such a limited inquiry is permissible.

11) With regard to the direction for investigation by the CBI, a Constitution Bench of this Court in State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors., (2010) 3 SCC 571 clarified that despite wide powers conferred by Articles 32 and 226 of the Constitution, the Courts must bear in mind certain self-imposed limitations on the exercise of such constitutional powers. Insofar as the question of issuing a direction to CBI to conduct an investigation, the Constitution Bench has observed that "although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise, the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

12) Having regard to the Scheme of the Code, various provisions as to the course to be adopted and in the light of the peculiar/special facts and circumstances which we have already noted in the earlier paras, we are satisfied that the High Court was fully justified in directing the appellant to avail the recourse to the remedy as provided in the Code by filing a complaint before the Magistrate. We are also satisfied that the High Court, in order to safeguard the stand of the appellant, issued certain directions to remedy her grievance against the persons concerned. We confirm the decision of the High Court in the light of the facts relating to the background of the case, particularly, the land dispute, the complaint regarding the same and various subsequent circumstances including her silence about the non-disclosure of the alleged rape before her mother on two occasions and before the female doctors at Civil Hospital as well as Sabarmati Jail and also before the Magistrate. It is further made clear that while affirming the decision of the High Court, it cannot be presumed that we are underestimating the grievance of the appellant herein and it is for the Magistrate concerned to proceed in accordance with the provisions of the Code and arrive at an appropriate conclusion.

13) With the above observation, the appeal is dismissed.

.....J.

(P. SATHASIVAM)

.....J
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(M.Y.EQBAL)

NEW DELHI;
JULY 1, 2013.

ITEM NO. IF COURT NO. 2 SECTION IIB
(JUDGMENT)

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

CRIMINAL APPEAL NO.810 2013 @
PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO.9256 OF 2012

DOLIBEN KANTILAL PATEL	..	Appellant(s)
Versus		
STATE OF GUJARAT & ANR.	..	Respondent(s)

DATE : 01/07/2013 These matter was called on for pronouncement of judgment today.

For Appellant(s) M/s. Lawyer’s Knit & Co.

For Respondent(s) Ms. Hemantika Wahi,Adv.

Hon’ble Mr. Justice P. Sathasivam pronounced the judgment of the Bench comprising His Lordship and Hon’ble Mr. Justice M.Y. Eqbal.

Leave granted.

The appeal is dismissed in terms of the signed reportable judgment.

[Madhu Bala]		[Savita Sainani]	
Sr.PA		Court Master	

[Signed reportable judgment is placed on the file]

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