

ITEM NO.6

¹
COURT NO.1

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

Writ Petition(s)(Criminal) No(s). 348/2019

G.S.MANI & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.189604/2019-PERMISSION TO APPEAR AND ARGUE IN PERSON)

WITH

W.P.(Cr1.) No. 355/2019 (PIL-W)

(FOR ADMISSION and IA No.191272/2019-PERMISSION TO APPEAR AND ARGUE IN PERSON)

W.P.(Cr1.) No. 347/2019 (PIL-W)

(FOR ADMISSION and IA No.189498/2019-PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date :12-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE S. ABDUL NAZEER

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. G.S. Mani, in-person
In WP(Cr1.)348/2019

WP(Cr1.)355/2019 Mr. Manohar Lal Sharma, In Person

WP(Cr1.) 347/2019 Mr. Mukesh Kumar Sharma, In Person

For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. J Ramchander Rao, AAG
Mr. S. Udaya Kumar Sagar, Adv.
Mr. P. Mohith Rao, Adv.
Ms. Swati Bhardwaj, Av.
Mr. Muthu T., Adv.

Ms. Uttara Babbar, Adv.
Ms. Bhavana Duhoon, Adv.
Mr. Manan Bansal, Adv.

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

Issue notice.

Counsel for respondent Nos. 2, 3 and 4 in Writ Petition (Criminal) No. 348 of 2019 are present in the Court today and service of notice is, therefore, waived.

On 28th November 2019, in an incident in Hyderabad in the State of Telangana, a young veterinary doctor was raped, murdered and her dead body burnt. Four persons, namely, Mohammed Arif, Chintakunta Chennakeshavulu, Jolu Shiva and Jollu Naveen, were arrested in connection with the said offence. The occurrence had ignited public furore and it appears that a gathering of about 40-50 thousand persons had demanded custody of the aforesaid persons to do justice. It also appears that in view of the surcharged atmosphere the four accused persons were sent to judicial custody.

Subsequently, on 4th December 2019, police custody of the four accused for ten days was ordered.

It is the case of the Police that on 6th December 2019 they had taken the four accused to the scene of crime with a view to recover certain articles belonging to the deceased rape victim and for reconstructing the scene of crime. What happened thereafter is the subject matter of the present writ petitions.

As per the police version, the four accused had snatched fire arms from the accompanying police personnel and had fired at

them. It is submitted by Shri Mukul Rohatgi, learned senior advocate, that the Police had no option but to defend themselves against the use of fire arms and from stones etc. used by the accused. The accused persons, it is alleged, refused to surrender and, therefore, the police had no option but to fire to save themselves and prevent the accused from escaping. In view of the retaliatory firing, all the four accused got killed.

Shri Mukul Rohatgi states that the aforesaid encounter is being examined by the Revenue Divisional Officer and Sub-Divisional Magistrate, Shadnagar, in terms of magisterial inquiry under Section 176 of the Code of Criminal Procedure, 1973 and the State Government has set up a Special Investigation Team (SIT) headed by the Commissioner of Police to inquire and investigate into the offence. Once the SIT submits a report, further action as per law, if required, will be taken.

After the encounter, FIR No. 803 of 2019 has been registered under Sections 307, 224, 394, 332 read with Section 34 of the Indian Penal Code, 25(1-B)(a) and 27 of the Arms Act, and under Section 174 read with Section 176 of the Code of Criminal Procedure, 1973. This is rather odd, as it is obvious that no prosecution is contemplated against dead persons who can neither be tried nor convicted. The SIT has been constituted to investigate into the offences mentioned in the FIR, though one of the clauses states that the SIT would also investigate the cause of the death of the four accused persons.

Keeping in view all the peculiarities of the case, it is desirable and necessary to know the truth relating to the incident which has resulted in death of all the four accused persons when they were in custody of the police pursuant to an order passed by the Court. In other words, police was given custody of the four accused persons under a Court order. The death had occurred when the accused were in custody of law.

We are, therefore, of the considered view that an Inquiry Commission needs to be constituted for inquiring into the circumstances in which the four accused persons, namely, Mohammed Arif, Chintakunta Chennakeshavulu, Jolu Shiva and Jollu Naveen, were killed in Hyderabad on 6th December 2019. The Inquiry Commission shall be headed by Mr. Justice V.S. Sirpurkar (Retd.), a former Judge of this Court, as Chairman and shall comprise of Ms. R.P. Sondurbaldota, a former Judge of the Bombay High Court, and Mr. D.R. Karthikeyan, former Director of the Central Bureau of Investigation as its Members. The Commission shall have all the powers of a Commission under the Commissions of Inquiry Act, 1952.

The Commission shall hold its sittings at a suitable place in Hyderabad to be provided by the State Government. The Commission shall submit its report within a period of six months from the date of first hearing in the matter. The Chairman of the Inquiry Commission shall fix the first date of hearing at Hyderabad. All arrangements towards travel, boarding and lodging of the Chairman and Members of the Commission shall be provided by

the State of Telangana. Adequate security shall be provided to the Commission by the Central Reserve Police Force (CRPF). Secretarial assistance will be chosen by the Chairman of the Commission and provisions will be made by the State Government in this regard. Shri K. Parameshwar, Adv. shall be the Commission's counsel.

It is made clear that no other Court or authority shall inquire into this matter pending the Commission of Inquiry constituted hereinabove until further orders of this Court. However, the orders passed by the High Court pertaining to the preservation of the dead body of the four accused persons shall continue until further orders of this Court.

A suggestion was made at the hearing that the Media be restrained from giving publicity to the proceedings before the Commission of Inquiry and from making comments on the Inquiry or in relation to the Inquiry. Shri Rohatgi very fairly stated that though it may be desirable that certain things are not said pending the inquiry or relating to the participants of the inquiry, it would be appropriate to hear the Media before passing any order in this regard.

We, accordingly, consider it appropriate to issue notice to the Press Trust of India and the Press Council of India, who represent the electronic and print media in the country. The notice is returnable in four weeks.

The investigation being conducted by the SIT constituted by the State Government would continue.

Shri Manohar Lal Sharma, Advocate, is granted liberty to file an application to implead Press Trust of India in Writ Petition (Criminal) No. 355 of 2019.

[CHARANJEET KAUR]
A.R. - CUM - P.S.

[INDU KUMARI POKHRIYAL]
ASSTT. REGISTRAR