

Supreme Court of India
Record of Court Proceedings

HORI LAL

Appellants

Versus

Commissioner of Police , Delhi & Ors

Respondents

Date : 14/11/2002

This Petition was called on For Hearing Today

Coram:

HON"BLE JUSTICE M B SHAH
HON"BLE MR JUSTICE ARIJIT PASAYAT
HON"BLE MR JUSTICE D . M DHARAMADHIKARI

For Appelant (s)

Mr M.C. Bhandare Sr Adv.
Sucharita , Adv

For Respondent

Mr Manu Krishnan , Adv
Mr E C Agarwala, Adv.
Mr D S Mahra , Adv

Mr N D Pandeya, Adv
Ms Manjula Gupta , Adv

Upon Hearing Counsel the Court made the following

ORDER

Heard the learned Counsel for the Parties

Learned Counsel for the Parties submitted that today we are celebrating Children Day with all fanfare , yet the provisions of the Juvenile Justice (Care and Protection of Children) Act , 2000. He submitted that despite the aforesaid Act at present in this country we are not having sufficient number of Childrens homes , Shelter homes special homes and observation homes as defined in section 2(e) , 2(u), 2(v), and

2(o) respectively of this Act .He submitted that appropriate steps are not taken for searching the missing minor girls.

Petitioner has approached this court under Article 32 of the Constitution wherein it is submitted that the respondents be directed to search and produce before the court his daughter who is missing for over a year and a half despite lodging of FIR at Shakarpur Police Station , Delhi -92 . He points out various orders passed by this court from 6th January 1997 , directing the Investigating Officers to take appropriate search for finding out missing minor girl. As the girl was not traced out this Court on 24th October 1997, directed the Commissioner of Police , Delhi, to depute the Senior Deputy Commissioner of Police to personally investigate into the case , which was registered on 11.07.1995. with the Shakarpur Police Station and take aall possible steps to find out the missing daughter of the Petitioner .

THEREAFTER , on 29th January 1998, as it was suspected by the Petitioner that his daughter was kept by one or two persons , this court issued further notice to those newly added respondents to remain present in the court. Repeatedly directions were given to make further investigations

On 17th July 1998 notice was given to the learned Attorney General and the Matter was adjourned On 25th September 1998 after Hearing the Learned Attorney General Soli J Sorabjee this court granted four weeks time to furnish the guidelines so that investigating officer can be giv en appropriate guidelines for searching such missing children all over the country. On 19th February , 1999 tentative Guidelines were furnished by the Petitioner which were annexed to the further submissions filed on his behalf and at the request of the learned Attorney General the matter was adjourned for six months . On 13th August 1999 , it was stated before the court that the Draft Guideleines were prepared and they were under consideration of the concerened ministry . On 9 th February , 2001 this Court again adjourned the matter with a specific direction that if the proposed guidelines were not furnished to the learned Counsel for the Petitioner , the court would proceed to Hear the Matter regardless of the Guidelines . As nothing was finalized , on 3rd August 2001, this court issued rule.

Toady the learned counsel for the Petitioner submitted that for one or the other reason the concerned department is not issuing necessary guidelines for protecting or searching minor children who are kidnapped or missing . He further submitted that in any set of circumstances not only the Juvenile Justice Act should be implemented but also sections 97 & 98 of the

Criminal Procedure Code should also be implemented in true spirit.

Sections 97 and 98 of Cr P.C. reads thus:

“ 97. Search for persons wrongfully confined.- If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.”

” 98. Power to compel restoration of abducted females.- Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, present, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.”

A reading of Section 97 makes it clear that the Provisions section is one of emergency. It authorizes the Magistrate to issue such search warrant if he has reason to believe that any person has been confined. The Police Officer to whom the search warrant is addressed is to execute it according to its tenor.

Further Section 98 confers on the Magistrate specified therein powers to pass orders directing the restoration of a female Child under the age of 18 years to her parents , guardian or other person having the lawful charge of such Child. This section aims at summary disposal of an application because a protracted enquiry in the matter would defeat the very object for which this section is capable of execution and once an order has been passed it is open to the Magistrate to use all lawful means for restoration of female Child.

Further Sections 7, 8, and 9 of the Juvenile Justice Act provides for the establishment and maintenance of Observation Homes and special homes. Section 34 provides for establishment and maintenance of Children’s Homes and Section - 37 provides for the establishment and maintenance of Shelter homes for Juveniles / childrens.

For the time being as suggested by Learned Authority General and learned counsel for the parties for having effective search of the Kidnapped minor girls , following steps shall be taken by the Investigation Officer in all the States:

- (1) Publish photographs of the missing persons in the Newspaper , telecast them on Television promptly , and in case not later than one week of the Receipt of the complaint .Photographs of a missing person shall be given wide publicity at all the prominent outlets of the city /town / village concerned that is at the Railway Stations , Inter state bus Stands , airport , regional passport office and through law enforcement personnel at Border checkpoints. This should be done promptly and in any case not later than one week of the receipt of the complaint. But in case of a minor/major girl such photographs shall not be published without the written consent of the parents /guardians.
- (2) Make inquiries in the neighborhood , the place of work/study of the missing girl from friends colleagues , acquaintance , relatives etc. immediately . Equally all the clues from the papers and belongings of the missing person should be promptly investigated .
- (3) Contact the Principal , Class teacher and Students at the missing persons most recent school /educational institutions. If the missing girl or woman is employed somewhere , then to contact the most recent employer and her colleagues at the place of employment.
- (4) Conduct an inquiry into the whereabouts from the extended family of relatives , neighbours , school teachers including school friends of the missing girl or woman .
- (5) Make necessary inquiries whether there have been past incidents or reports of violence in the family.

There after the investigation officer/agency shall:

- (a) Diligently follow up to ensure that the records requested from the parents are obtained and examine them for clues.
- (b) Hospitals and Mortuaries to be searched immediately after receiving the complaint

- (c) The reward for furnishing clues about missing person should be announced within a month of her disappearance.
- (d) Equally Hue and Cry notices shall be given within a month.
- (e) The Investigation should be made through women police officers as far as possible.
- (f) The concerned police commissioner or the DIG/IG of the State Police would find out the feasibility of establishing a multitask force for locating girl children women.
- (g) Further , in the Metropolitan cities such as Delhi , Mumbai, Kolkata and Chennai the Investigating Officer should immediately verify the red light areas and try to find out the minor girls. If any minor girl (may or may not be recently brought there) is found her permission be taken and she may be taken to the children's home (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000, and the I.O. to take appropriate steps that all medical /other facilities are provided to her.

The Registry is directed to communicate this order to the Chief Secretaries of all the State Governments and the Union Territories for taking effective steps for implementation .Adjourned for six months.

(A.S. Bisht)
Court Master

(Janki Bhatia)
Court Master