

ITEM NO.32

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Criminal) No.113/2016

KAUSHAL KISHOR

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH AND ORS.

Respondent(s)

(With appln.(s) for ad interim orders and bringing on record the additional facts and permission to file additional documents)

Date : 08/11/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY

Mr. Fali S. Nariman Sr. Adv. (A.C.)

Mr. S.C. Sharma, Adv. (A.C.)

For Petitioner(s) Mr. Kislal Pandey, Adv.
Ms. Manju Jetley, AOR

For Respondent(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Lakshmi Raman Singh, AOR

Mr. Ravi Prakash Mehrotra, AOR

Mr. Mukesh Kumar Maroria, AOR

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

Let the matter be listed on 17.11.2016, to enable Mr. Lakshmi Raman Singh, learned Advocate-on-Record, who is assisting Mr. Kapil Sibal, learned Senior Counsel, to file the counter affidavit on behalf of respondent no.2.

We may note that Mr. Fali S. Nariman, learned Amicus Curiae, has filed a written note of submissions which states the facts in detail by mentioning whatever had been stated by the electronic and print media namely, Zee News, NDTV, The Indian Express, The Hindustan Times, The Times of India and News18. He has also referred to the order dated 29.8.2016 whereby this Court had framed four issues for determination. He has also stated with regard to the concepts namely a) public confidence in the fairness of trial, (b) Circumstances interfering with the police investigation of the case and principle of law stated thereon, (c) necessity to abide by the principle of non-interference with the investigation or the investigating agency, and (d) in the absence of any opinion of this Court, what is to be done in a case if the court is satisfied that there are comments on the investigation or on the victim by a public personality or a public servant. Learned Senior Counsel would say "this Court is constitutionally obliged to evolve new tools to enhance the cause of justice".

According to Mr. Nariman, learned Amicus Curiae, the observations made by the Constitution Bench in Manoj Narula vs. UOI - 2014 (9) SCC 1, about the "constitutional morality", "constitutional trust", "good governance" and "oath of office", cannot be allowed to remain in the realm of abstraction but have to be practically implemented and activated if the factual score of a case so warrants. He has also brought to our notice the language used in the oath of Ministers and the gravity of the said oath. He has referred to a passage from Halsbury's Laws of England Vol.20 5th Edition, 2014- the report on Committee of Standards in public life (popularly known as Nolan's Principles) and thereafter, the principles laid down by the former Prime Minister of United Kingdom and the Code of Conduct prevalent in India which has been framed for the purpose of Union and the State

Ministers.

Apart from the aforesaid submissions, Mr. Nariman, learned Amicus Curiae, would submit that respondent no.2, if the factual allegations are proved or established, may be liable under tort law that includes the public law remedy and for the said purpose, he has commended us to the Hamlyn Lecture in 1949 titled "Freedom under the Law" by Lord Denning, the decisions in the State of U.P. vs. Kishori Lal Minocha - 1980 (3) SCC 8, Bhagalpur Blinding Case (Khatri) (II) vs. State of Bihar - 1981 (1) SCC 627, Rudul Sah vs. State of Bihar - 1983 (4) SCC 141, Nilabati Behera vs. State of Orissa - 1993 (2) SCC 746, D.K. Basu vs. State of West Bengal - 1997 (1) SCC 416, Sube Singh vs. State of Haryana and others - 2006 (3) SCC 178, and Sanjay Gupta vs. State of U.P. - 2015 (5) SCC 283 (popularly known as "the great Meerut Fire Tragedy").

Mr. Nariman has also drawn our attention to the views of the Supreme Court of Canada which has gone to the extent of propounding the doctrine of the "negligent investigation" that attracts principles of tort and view of the Supreme Court of United Kingdom which has not accepted the said principle. Be that as it may, we will debate on this issue after we get the response from respondent no.2. At this juncture, it is requisite to note that on a query being made in case the factual score is disputed in toto or is stated to have a different context, what should be the method to resolve the controversy, Mr. Nariman, learned Amicus Curiae, would submit that the electronic and print media that have published the press conference report of the respondent no.2 should be added as party respondents in the instant case and their stand should be taken into consideration and eventually necessary directions can be issued.

Mr. Kislay Pandey, learned counsel for the petitioner, would submit that dignity of the petitioner has been extremely maligned and the individual hazard that has been faced by her is irredeemable by such kind of comments, and the reputation of the victim has been enormously affected. We have noted the submission as it has been reiterated today.

As agreed to by the learned counsel for the parties, the matter shall be taken up as the first item at 2 P.M. on the date fixed.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master