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CRL. M.P. NO. 13621 OF 2022

IN

CRL. O.P. NO.12934 OF 2021

M.DHANDAPANI, J.

The present miscellaneous petition has been filed by the petitioner seeking the following three prayers :-

- a) *direct all forms of Media (online/off-line/print media) to refrain from effecting any publication/disclosure of name, address, photographs, family details, neighbourhood or any other particulars, which may have an effect of leading the disclosure of the identity of the rape victims during pre or post trial of the case;*
- b) *take stringent action against the responsible persons of 'Nakkheeran Magazine' who had revealed the identity of the victims and other details including the photographs of the victims in heinous gang rape case by their publication dated 13-16 Aug., 2022 and 12.01.2021; and*



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c) *take steps to seize the circulations of Nakkheeran publications.*

2. This Court, vide order dated 11.08.2021, considering the gravity of the offence committed against innocent children and the depravity with which the said offence alleged to have been committed by the accused and also taking into consideration the ramifications involved in the trial, more particularly, the social standing and outreach of the accused vis-à-vis the victims and the necessity for safeguarding the identity of the victims as also their family members and in line with the orders passed by the Hon'ble Apex Court in ***Mahender Chawla & Ors. – Vs – Union of India & Ors. (MANU/SC/1421/2018)***, slew of directions were issued by this Court, with specific directions for safeguarding the identity of the victims and their family members for the unbiased conduct of the trial. In the aforesaid backdrop, the present petition has been filed by the Central Bureau of Investigation, the investigating agency entrusted with the conduct of investigation and trial alleging that inspite of the explicit and pointed directions issued by this Court, there has been a total breach of the said directions by one of the print media, viz., a weekly magazine, 'Nakkheeran' which has a cascading



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effect on the safety of the victims and also in the proper conduct of the trial and, therefore, the directions as above have been sought for.

3. While the averments in the petition filed by the petitioner culls out the movement of the case from the committing of the offence to the moving of investigation into the hands of the Central Bureau of Investigation, the apprehending of the accused culminating in the filing of the charge sheet and the onset of the trial through examination of witnesses, the petition also places significant thrust on the very many decisions, which have been rendered by the Hon'ble Supreme Court, in the interest of the victims of sexual abuse as also their family members and the orders passed in relation to the same with regard to publishing of materials with regard to the case by the print and electronic media and in a bird's eye view, the decisions alone are quoted for ready reference :-

- i) *Nivedita Jha – Vs – State of Bihar;*
- ii) *Mahender Chawla & Ors. – Vs – Union of India & Ors.;*
- iii) *Nipun Saxena – Vs – Union of India; and*



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iv) *Sangita, W/o Yeshwant Tanpure – Vs – State of Maharashtra & Ors.*

4. The abovesaid decisions have been relied upon by the petitioner only to impress upon this Court the importance and necessity of the Witness Protection Scheme and the underlying aspects, which were considered when the said Scheme was formulated by the Hon'ble Supreme Court. This Court, in its decision in the main original petition on 8.11.2021, had threadbare analysed the orders of the Hon'ble Supreme Court and the vision with which the directions have been given in the said decision and in view of the enormity of the offence alleged to have been committed, more especially targeting innocent girls by deceptive means, the vision of the Hon'ble Supreme Court was sought to be achieved by this Court by putting into practice the directions as has been issued in the aforesaid decisions.

5. For better appreciation, the operative part of the decision, is quoted hereunder for reference :-

“50. Further, on the basis of the directions issued by the Hon'ble Supreme Court in Mahender Chawla's case (supra) and



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also with a view to ensure that the safety and security of the victims, who would be witnesses in the trial as also the other witnesses, who would be deposing during the trial, this Court, in the interest of justice, issues the following directions :-

i) As undertaken by the respondent/CBI, all earnest efforts be made to commence the trial by the 1st week of September, 2021 and to that extent the respondent/CBI shall take all earnest efforts to apprehend all the persons, if not already apprehended and file necessary report before the commencement of the trial.

ii) It is open to the respondents to file necessary application seeking identity protection of the witnesses before the Competent Authority, who, on receipt of the same, shall pass appropriate order in terms with Para-III of the Scheme.

iii) The trial court shall, during the course of hearing of such application, shall ensure that the name of the witness is not revealed to any other person, which is likely to lead to the identification of the witness.

iv) The Witness Protection Measures as spelt out in in Part-II, Part-III, Part-IV and Part-V of the Witness Protection Scheme, 2018, shall be strictly adhered to once the competent authority has passed an order protecting the identity of the witness.

v) The State Government also shall ensure that the types of protection measures, as envisaged under Clause-7 of the Witness Protection Scheme, is strictly adhered to, so that the identity of the witness would be closely guarded pre-trial and post-trial so that



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the safety and security of the victims and witnesses would stand protected.

vi) The State Government shall provide the necessary funds for implementing the witness protection programme pursuant to the Witness Protection Order passed by the competent authority.

vii) The State shall also take all necessary steps for providing Live Link for taking deposition of the victims and the witnesses for the purposes of interacting with the competent authority as also for the purpose of deposing before the Court.

viii) The Forensic Lab, which comes under the control of the State Government, shall submit the necessary reports relating to the items, which have been sent by the respondent for analysis, to the respondent/CBI within a period of two weeks from the date of receipt of a copy of this order. The learned Public Prosecutor appearing for the State shall ensure that the reports are dispatched by the Forensic Lab, within the time frame as given above.

ix) In view of the sensitivity of the case, the trial court shall take all necessary steps to conduct "In Camera Proceedings", wherever necessary as provided under Clause 2 (f) of the Witness Protection Scheme.

x) As informed by the learned Public Prosecutor for the State, the State shall issue necessary notification nominating Ms.J.Mutharasi, Superintendent of Police, CBCID – Unit-2, for the



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purpose of assisting the respondent CBI in prosecuting the case before the trial court.

xi) The Government shall initiate appropriate departmental action forthwith against the then Superintendent of Police and also the other police personnel, who were involved in divulging the names of the victims and the accused to the media.

xii) The learned Sessions Judge, Mahalir Neethi Mandram, Coimbatore, is directed to conduct the trial on day-to-day basis and complete the trial within a period of six months from the date of commencement of the trial, as undertaken by the respondent/CBI.

xiii) The Public Prosecutor appointed by the CBI before the trial court for the purpose of conducting the trial before the Sessions Judge, Mahalir Neethimandram, Coimbatore, shall take the assistance of Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases, High Court, Madras, for effective conduct of the trial in accordance with. The Public Prosecutor appointed for conducting the trial shall also keep the Special Public Prosecutor for CBI Cases, High Court, Madras, informed of the day-to-day affairs in the conduct of the trial so that the Special Public Prosecutor for CBI Cases, High Court, Madras, can give his rich experience in the proper conduct of the case for ensuring fair delivery of justice to all the parties concerned."

(Emphasis Supplied)



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6. While issuing the aforesaid directions, this Court had taken into consideration the necessity of conducting 'In-Camera Proceedings' while recording the deposition of the victims and also had directed taking up of departmental action against the concerned officers, who were involved in divulging the names of the victims to the media. However, as a matter of prudence, this Court had not impleaded the print and electronic media to be party respondents in the aforesaid petition for the simple reason that this Court had reposed faith on the print and electronic media to conduct itself, mindful of its duty to its citizens and also in the fond hope that media would realize and understand the turmoil which the victims and their family members would have gone through in the aftermath of the aforesaid offence committed against them, which is not only against them, but against the entire humanity. However, this Court has been made to understand that its impressions are mere hallucinations and that the print and electronic media are not mortals to understand the implications of the act that they commit, which, in effect, affect the victims and their family members gravely, but are merely guided by the ratings and the monetary considerations that fall out of the news that they take to the palm of its citizenry. Such an act has been perpetrated by the print media, who, inspite



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of the fact that this Court had directed initiation of action against the concerned officers, who had divulged the names of the victims to the media, which was carried on in the print and electronic medium, have once again come to the fore and have published not only the identity of the victims, but also the depositions of the victims.

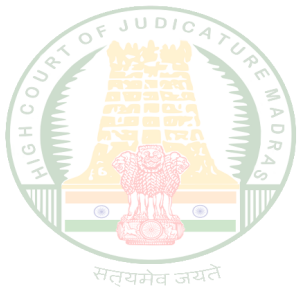
7. The petitioner has placed before this Court the publication carried out by the Weekly Magazine 'Nakkheeran' in which the names of the victims as also their detailed deposition before the respective investigating officers have been published along with the names of the accused, unmindful of the fact that the above would not only jeopardize the ultimate outcome of the trial, but would have an intimidating effect on the victim forcing them to go into a shell and desist from coming out with the real truth for fear of their lives and that of their loved ones. This will only lead to the offenders walking out scot-free and ultimately the entire investigative mechanism as also the justice delivery system would be ridiculed not only by the public, but also by the very print and electronic media. True it is that the print and electronic media thrive on the pulse of the people and the news which they take to its citizens at the earliest



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point of time, determines their place and rating in the league, but that cannot be the basis to play with the lives and liberties of the citizens and equally with the justice delivery system, which is the ultimate saviour of the common man.

8. In the case on hand, the weekly magazine, 'Nakkheeran' had published materials, which are matters, which this Court had, in its earlier order, directed to be kept within a closed sphere so that the victims and their family would feel at ease and secure thereby enabling them to disclose the true facts during trial mindful of the fact that their security is not jeopardized and it is protected. However, the materials, which have been published, which is placed before this Court, has given intricate details about the depositions of the victims including their names and the manner in which they have come in contact with the accused, thereby putting their lives in peril and at the mercy of the accused. The materials published, which this Court had gone through, not only identifies the victims, but gives a verbatim version of the deposition given by them to the investigating agency. The above act of publication of the aforesaid materials is not only in bad taste, but against the very spirit of the order and is a direct interference in the dispensation of justice.



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9. In such a scenario, this Court is of the considered view that the said weekly magazine 'Nakkheeran' definitely requires to be impleaded in this petition as a party respondent to show cause as to the necessity for publishing the said material, when it has been specifically held by this Court that the Witness Protection Scheme is to be implemented by the State in the interest of the victims and witnesses, which in effect means that the print and electronic media were restrained from publishing any information with regard to the identity of the victims and their depositions so also the identity of their family members.

10. Though three prayers have been sought for of which the third prayer is for seizing the publications made by the weekly magazine 'Nakkheeran', however, this Court is of the view that the said prayer would no longer be beneficial, for the publication has been made and it has reached the eyes of the common man as also the victims and their family members and the witnesses, who would depose during the trial. The mark that it has made in the minds of the public as also the victims and the witnesses cannot be erased by this Court



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merely by ordering seizure of the publications as by now the damage has already been caused by the publication of the news, which, this Court, had felt, that the Press, in its wisdom, would not publish. But the wisdom of the weekly magazine 'Nakkheeran' is writ large in the publication made by it. Therefore, no useful purpose would be served in granting any relief insofar as the third limb of the prayer is concerned.

11. In the aforesaid backdrop, for the reasons aforesaid, this Court passes the following order with regard to the other two limbs of the prayer :-

- i) *Nakkheeran Publications, No.105, Jani Jahan Khan Road, Royapettah, Chennai, represented by its Editor, Nakkheeran Gopal, is suo motu impleaded as party respondent No.2 to the present miscellaneous petition;*
- ii) *Nakkheeran Gopal, Editor, Nakkheeran Publications, Jani Jahan Khan Road, Royapettah, Chennai, is suo motu impleaded as party respondent No.3 to the present miscellaneous petition;*
- iii) *Since the matter pertains to sexual abuse and sexual violence, all the print and electronic media are restrained from publishing and telecasting or broadcasting any*



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materials pertaining to deposition of the victims or any of the witnesses.

- iv) The print and the electronic media are also further restrained from publishing and telecasting or broadcasting the identities of the victims, their family members and the witnesses, who depose at the trial either in morphed form or blurred form;*
- v) The print and the electronic media are also restrained from publishing any documentary evidence or any digital evidence that may be marked during the course of trial. In essence, the print and electronic media are restrained from publishing any oral or documentary material connected with the trial of the case.*
- vi) It is made clear that any infraction by the print or electronic media of the aforesaid directions would entail in severe action being initiated by this Court against the said entity;*
- vii) Registry is directed to communicate a copy of this order to the Press Council of India, New Delhi and also to the State Press Council, Chennai, for being circulated among all the print and electronic media in the country.*
- viii) Notice to the newly impleaded respondents 2 and 3 returnable by 15.09.2022. Petitioner is also permitted to*



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*serve private notice on the newly impleaded respondents 2
and 3.*

ix) *List the matter on 15.09.2022.*

02.09.2022

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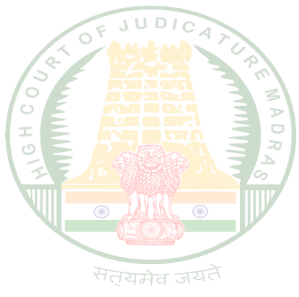


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