

#14

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 05.10.2015

W.P.(CRL) 2133/2015

SHIVANI BHAT

..... Petitioner

Through: Ms Maneka Guruswamy,
Ms Arundhati Katju, Mr Ali
Chaudhary and Mr Himanshu
Aggarwal, Advocates along with
petitioner-in-person.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Mr Avninder Singh, Addl. Standing
Counsel (Crl.) with Ms Sumi Anand,
Advocate for State.

Mr Rakesh Khanna, Sr. Advocate with
Mr Rajesh Punj, Ms Ritu Punj and
Ms Shefali Jain, Advocates.

SI Pawan Kumar, PS- Kalkaji.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

*“Go not to the temple to put flowers
upon the feet of God,
First fill your own house with the
Fragrance of love and kindness.*

*Go not to the temple to light candles
before the altar of God,
First remove the darkness of sin,
pride and ego,
From your heart.....*

*Go not to the temple to bow down
your head in prayer,
First learn to bow in humility before
your fellowmen.
And apologise to those you have
wronged.*

*Go not to the temple to pray on
bended knees,
First bend down to lift someone who is down-trodden.
And strengthen the young ones.
Not crush them.*

*Go not to the temple to ask for forgiveness for your sins,
First forgive from your heart those
who have hurt.....”*

- Rabindranath Tagore

1. Shivani is a brave-heart.

2. The present petition highlights and brings to the fore the socio-economic marginalization and exclusion of those whose behaviour is considered “inappropriate” by society. It clearly demonstrates that those who do not conform, render themselves vulnerable to harassment and violence not just by the Police but also by society that ridicules them. Transgenders have long lived on the fringes of society, often in poverty, ostracised severely, because of their gender identity. They have for too long had to endure public ridicule and humiliation; have been socially marginalized and excluded from society, their basic human rights have been severely denuded.

3. Despite the decision of the Hon’ble Supreme Court in *National Legal Services Authority v. Union of India and Ors*: (2014) 5 SCC 438, the trauma, agony and pain, which members of the transgender community have to undergo continues unabated.

4. In *National Legal Services Authority (supra)* the Supreme Court observed as follows:-

“The spirit of the Constitution is to provide equal opportunity to every citizen to create and achieve their potential irrespective of caste, religion or gender”.

5. The Supreme Court in its infinite wisdom took into consideration the role played by the members of the third gender in Indian culture. The Supreme Court noticed that transgenders were always been treated with great respect and find notable mention in the ancient Hindu scriptures as well as the greatest epics of India, namely, the Ramayana and the Mahabharata. The Supreme Court took notice of the circumstances which led to the fall of transgenders from the onset of Colonial rule. The Criminal Tribes Act, 1871, categorized the entire transgender community as innately “criminal” and profiled them as being “addicted” to committing serious crimes.

6. The Supreme Court lamented that even after the said law was repealed transgenders remain socially excluded, living on the fringes of society in ghettoised communities, harassed by the Police and abused by the public.

7. It is common knowledge that the Rajya Sabha has already passed a Private Bill to promote the rights of transgenders.

8. Kabir, famously said:

*“Hari se tu mat het kar, Kar harijan se het,
Maal mulk hari det hai, Harijan hari hi det.”*

9. In this connection, the words of Swami Vivekanand also assume great importance. He said and I quote,

“All the powers in the universe are already ours. It is we who have put our hands before our eyes and cry that it is dark”

10. Every human being has certain inalienable rights. This is a doctrine that is firmly enshrined in our Constitution. Gender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom. These freedoms lie at the heart of personal autonomy and freedom of individuals. A transgender's sense or experience of gender is integral to their core personality and sense of being. Insofar as, I understand the law, everyone has a fundamental right to be recognized in their chosen gender. This view is buttressed by the landmark decision of the Supreme Court in *National Legal Services Authority (supra)*.

11. There is, thus, no gainsaying the fact that transgenders enjoy basic human rights including protection from violence and discrimination. They have the right to dignity and self-determination.

12. The time has come for us to mainstream the transgender community.

Prejudice is so rampant, so authoritatively practiced that even families fall prey to its all pervasive pressure.

13. Shivani Bhat has triumphed. The indomitable spirit that she has demonstrated may not yet have brought society to its senses, but has definitely persuaded her family to alter its view.

14. Shivani's parents, who are present in person have expressed the love, understanding and support that one has naturally come to expect from all parents. They have readily undertaken to finance Shivani's education for the next three years so long as she pursues a Bachelor's Degree in Neurobiology. In this behalf they have assured this court that in addition to her tuition fee they will provide Shivani with US \$500 per mensem for her personal expenses.

15. Shivani's Passport and Green Card have been returned to her. Shivani has been given a ticket to San Francisco via New York on Flight No.UA83 departing at 11.35 p.m. tonight from Delhi.

16. It is made clear that Shivani shall travel unaccompanied and will not be subjected to any harassment by the extended family upon arrival in the United States of America.

17. All's well that ends well.

18. Before I part with the present order there is yet another aspect that has to be considered. Worried at her absence without information and fearing the worst, her mother, Seema Bhat, instituted a complaint before the New Agra Police Station. I am informed at the bar that FIR No.899/2015 dated 17.09.2015 has been registered by the concerned Police Station in Uttar Pradesh, *inter alia*, under Section 364 of the India Penal Code against unknown persons. Ms Seema Bhat, who is present in person, informs this court that in view of the rapprochement between the parents and Shivani, she is no longer keen to pursue the complaint that fructified into the said FIR No.899/2015.

19. Ms Guruswamy and Ms Katju, learned counsel appearing on behalf of the petitioner state that unknown persons claiming to be officers of the respondent No.2 (State of Uttar Pradesh) along with persons claiming to be from the Police Station- Kalkaji came to the house of certain individuals who

had provided shelter and support to Shivani in her time of need, ostensibly to ascertain the whereabouts of Shivani.

20. It has been averred in the petition that these individuals have been subjected to illegal confinement, harassment and rebuke by persons claiming to be officers of respondent No.2.

21. Despite service of notice none appears on behalf of the respondent No.2.

22. Mr Avi Singh, learned Additional Standing Counsel (Crl.), has filed a status report in the present petition, which reads as follows:-

“Most respectfully, it is submitted that on 21/09/2015 a team head by SI Nitya Nand and comprising of SI Lalit Bhati, Ct./38 Pramod Kumar, Ct./1545 Jitender Kumar, Ct.52 Sushil Kumar (DIG Agra Surveillance team) from Police Station New Agra, Uttar Pradesh approached the Police Station-Kalkaji and sought assistance for investigation in case FIR No.899/15, u/s 364 IPC, PS New Agra, UP. Accordingly, D.D No.45B time 3:40 PM dated 21.09.2015 was lodged at Police Station-Kalkaji and Lady Constable Santosh NO.3148/SE and HC. Ram Kishore was sent along with them for their assistance.

The U.P. police officials conducted investigation at F-26, 1st floor, F-Block, Kalkji, where the office of NGO Nazariya is located. Ms. Devi Banerjee was found present who informed that Ms. Shivani Bhatt, the petitioner is not residing there. She has further informed that she may be

residing with Ms. Leslie Esteves, at 182, Mandakani Enclave, New Delhi.

Thereafter, above police Team went to the above address, which falls in the jurisdiction of Police Station- C.R. Park. Hench, the information was conveyed to PS C.R. Park telephonically and SI Avinash Kumar along staff from PS C.R. Park also reached there. As the above place falls under the jurisdiction of PS C.R. Park, hence the Police official of PS Kalkaji had not entered the above premises. In this regard, an information was also lodged by SI Avinash Kumar at PS C.R. Park vide DD No. 74B dated 21.093.2015. According to which, the lady Shivani Bhatt, the petitioner was not found there.

Thereafter, the U.P police officials came back to Police Station-Kalkaji and departed to their destination vide D.D No.58B at 08:10PM.

The local Police was provided to above UP Police Team only for assistance in the investigation. Neither Ms. Devi Banerjee was detained nor taken to PS Kalkaji by the UP Police officials. She was relieved of investigation at her place of stay. The allegations with regard to illegal detention are false and denied. The undersigned is duty bound to abide by any directions passed by which this Hon'ble court.”

23. Mr Singh, assures this court that Shivani Bhat has already been provided with adequate protection which shall continue to be afforded to her till she leaves the shores of this country.

24. Mr Singh lastly assures this court that the Delhi Police does not intend to take any coercive steps either against Shivani or against those who offered her support.

25. In this view of the matter, all the prayers sought in the present petition have been satisfied. The only thing that remains to be done is to issue a direction to the respondent No.2 (State of Uttar Pradesh) not to harass or illegally confine anybody from within the territorial jurisdiction of this court except in accordance with the procedure established by law. Ordered accordingly.

26. The writ petition is disposed of accordingly.

27. A copy of this order be given *dasti* under signature of Court Master to counsel for the parties.

SIDDHARTH MRIDUL, J

OCTOBER 05, 2015
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