

Criminal Appeal NO. 104 OF 2012
(arising out of S.L.P. (Criminal) No. 5877 of 2004)

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 104 OF 2012
(arising out of S.L.P. (Criminal) No. 5877 of 2004)

STATE OF M.P. & ANR.

Appellant (s)

VERSUS

RAM PRAKASH SINGH & ANR.

Respondent(s)

J U D G M E N T

R.M. Lodha, J.

Leave granted.

2. On March 23, 2001, a gang of four criminals comprising of Rambabu Gadariya, Dayaram, Pratap and Gopal, while returning from Dabra to Gwalior after attending court, escaped from the police custody. Allegedly, these four criminals escaped with the help and connivance of the police officers and/or negligence/inaction of the guards escorting them. After escaping from the police custody, these four criminals murdered 14 persons in village Bhanwarpura. This led to harassment and torture of persons from gadariya

(Baghel) caste by the police. They initially filed complaint with the District Judge, but later on the first respondent-Ram Prakash Singh filed a Writ Petition (being Writ Petition No. 747 of 2001) in the nature of Public Interest Litigation before the High Court of Madhya Pradesh, Bench at Gwalior.

3. In that Writ Petition, it was alleged that after escape of four dacoits noted above from police custody, the police has started torturing the persons from *Baghel* community in the Gwalior district. Accordingly, it was prayed that the State of Madhya Pradesh and its functionaries (respondents therein) be directed to refrain from causing torture to the people of *Baghel Samaj* in the district of Gwalior and directions be issued for protection of their life and liberty.

4. The matter came up for consideration before the High Court on various dates. As the matter was in the nature of public interest litigation and the grievance was raised that the above criminals after their escape were causing havoc and they have not been taken into custody by the police which has caused huge fear in the minds of the people of the area, the High Court issued various directions from time to time. The High Court asked the State Government to hold an enquiry into the escape of above

criminals from the police custody and submit the report regarding action taken against the officers responsible for the lapse. Despite numerous opportunities, the State Government failed to respond to the directions given by the High Court satisfactorily which constrained the High Court to direct the Director General of Police, Madhya Pradesh, to remain present in the Court. It appears that the Advocate General of the State of Madhya Pradesh made a statement before the High Court that the enquiry into the episode shall be conducted by a very senior office of the State and report submitted to the Court. However, nothing happened in the matter. The High Court then called the Principal Secretary (Home) in the Court. The Principal Secretary (Home) appeared and made a statement that the enquiry into the matter shall be conducted within a period of two months from March 9, 2004. On June 30, 2004, on behalf of the State Government, time was sought for submission of the enquiry report, but no enquiry report was submitted. In the backdrop of consistent inaction on the part of the State Government in the matter, on November 8, 2004, the High Court asked the Central Bureau of Investigation (CBI) to hold enquiry into the matter of escape of the above criminals from the police custody and the role of the officers posted at Gwalior, particularly the role of

Superintendent of Police, Gwalior, Inspector General of Police, Gwalior, Superintendent, Central Jail, Gwalior, Jailor, Central Jail, Gwalior, District Magistrate, Gwalior, Town Inspector, Gwalior and Sub-Divisional Officer posted at Dabra. It is this order which has been challenged by the State of Madhya Pradesh and Superintendent of Police in this Appeal, by special leave.

5. On December 17, 2004, this Court issued notice to the respondents and stayed operation of the order of the High Court impugned in the Appeal.

6. On November 28, 2007, this Court directed the Chief Secretary, State of Madhya Pradesh, to appoint the Additional Chief Secretary to conclude the enquiry into the matter as expeditiously as possible and in any event within three months from the date of the order and submit a report to this Court.

7. In pursuance of the order dated November 28, 2007, an enquiry has been conducted by Shri Rakesh Bansal, IAS, President Board of Revenue, Gwalior.

8. In his report dated May 29, 2008, the President Board of Revenue, Gwalior, recorded his conclusions thus :-

"10. ..., I reach to the conclusion that the then S.P. Shri Anvesh Manglam, can not be held responsible for the incident of escape of dacoits from police custody.

13., I reach to the conclusion that Shri Yogesh Choudhary and Shri K.P. Sharma the then Deputy Superintendent of Police (Headquarters) can not be held responsible for this incident of escape of Gadaria gang from police custody.

14. ... For the whole chain of events, most responsible person is Reserve Inspector Ajay Tripathi only.

15. It is worth to mention here that Government has already dismissed/compulsorily retired from service two Head Constables and four constables deployed in the escort duty of dacoits for carrying them for appearance before court at the time of their escape."

9. It appears that the disciplinary proceedings initiated against the Reserve Inspector Ajay Tripathi have not been taken to logical conclusion in view of the stay order obtained by him in a judicial proceeding.

10. In his report, Shri Rakesh Bansal, IAS, President Board of Revenue, Gwalior has also made certain suggestions in order to prevent repetition of such incident. These suggestions are :-

"16(1) It should be provided in the Rules that dangerous prisoners must not be taken out of jail for journey by public transport vehicles or private vehicles, under any circumstances.

(2) Keeping in view the possibility of escape during transport of prisoners, it

appear to be prudent that one regular court room be constructed in proximity to the central Jails.

The suggestion of the same intent has also been mentioned by the then Commissioner of Gwalior Division in his enquiry report on the page 27.

(3) It must be provided in the Jail Manual, that whenever any dangerous or sensitive prisoner is to be transferred from one jail to another jail, for court appearance or on administrative grounds, the jail superintendent should inform the concerned Superintendent of Police and District Magistrate vide a demi-official letter and by meeting them personally."

11. No affidavit has been filed by the present appellants indicating whether the above suggestions of the President, Board of Revenue, have been accepted by the State Government or not. However, Ms. Vibha Datta Makhija, learned counsel for the appellants, submitted that the State Government did not have any reservation in accepting the suggestions made by the President, Board of Revenue, in his report as noted above.

12. As regards the arrest of the above criminals who escaped from police custody on March 23, 2001, in the additional affidavit filed by U.R. Netam, I.G. of Police, Police Headquarters, Bhopal, Madhya Pradesh, dated April 01, 2007, it has been stated that 4 out of 5 dacoits of the gang

have been killed in police encounters and only Rambabu Gadaria is believed to be alive. It has also been stated that all the weapons snatched by the above criminals while escaping from police custody have been recovered.

13. Ms. Vibha Datta Makhija, learned counsel for the appellants, stated that Criminal Writ Petition No. 747 of 2001 was still pending before the High Court.

14. Having regard to the fact that the order dated November 8, 2004 whereby the High Court directed the matter to be referred to CBI for holding enquiry into the matter of escape of above criminals from the police custody and the role of various officers posted at Gwalior has been stayed by this Court way back in the year 2004, and in 2007 the direction was given to the Chief Secretary, Madhya Pradesh to appoint the Additional Chief Secretary to conduct the enquiry into the above matter and pursuant thereto Shri Rakesh Bansal, IAS, President Board of Revenue, Gwalior, was nominated by the Chief Secretary to hold the enquiry and he has already held the enquiry and submitted his report dated May 29, 2008, we are satisfied that the direction given by the High Court to refer the matter to CBI to hold an enquiry into the matter has lost its relevance. We, accordingly, set aside the said direction.

15. The escape of four dreaded criminals from the police

custody and the murder of 14 innocent persons by these criminals after their escape are extremely serious matters. In the matter as grave as this, the State Government was expected to act promptly by taking action against the erring police officials but it failed to act, necessitating drastic order by the High Court. Though we have set aside the order of the High Court impugned in this Appeal for the reasons noted above, but the handling of the matter by the State Government and its functionaries has been far from satisfactory. We would like the State Government to take appropriate action against the erring official/s without any further delay and also take all remedial measures to ensure that such things do not happen in future.

16. We direct the first appellant-State of Madhya Pradesh, as suggested in the report submitted by Shri Rakesh Bansal; (i) to make amendment in the existing rules and provide that dangerous prisoners shall not be taken out of jail for journey by public transport vehicles or private vehicles under any circumstances, and (ii) provide in the Jail Manual that whenever any dangerous or sensitive prisoner is to be transferred from one jail to another jail, for court appearance or on administrative grounds, the Jail Superintendent should inform the concerned Superintendent of Police and District Magistrate by a written communication as

well as by meeting them. We also direct that the State Government shall, in consultation with the High Court, take a decision about construction of single court room complexes for holding trial of dreaded criminals/dangerous prisoners in proximity to the Central Jails.

17. The Action Taken Report about compliance of the above directions shall be submitted by the first appellant before the High Court.

18. With the above directions, Appeal stands disposed of.

19. It shall be open to the High Court to issue further directions, if necessary, in Criminal Writ Petition No. 747 of 2001, which is said to be still pending before the High Court of Madhya Pradesh, Bench at Gwalior.

.....J.
(R.M. LODHA)

NEW DELHI;
JANUARY 10, 2012

.....J.
(H.L. GOKHALE)