

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SB: SHEEL NAGU, J.

W.P. No. 6884/2014

Smt. Kusma Rathore

Vs.

State of M.P. & Ors.

Whether reportable :- Yes /No

For Petitioner : Shri A.S. Bhadoriya, Advocate.
For Respondents No. 1 to 3/State : Shri Arvind Dudawat, Additional Advocate General
For Respondent No.4 : Shri Anil Mishra, Advocate.
For Respondent No. 7 : Ms. Sangeeta Pachouri. Advocate.
For Respondent No. 9 : Shri M.P.S. Raghuvanshi, Advocate.

ORDER

(Delivered on 03/11/ 2015)

The present petition is heard finally with the consent of learned counsel for the rival parties. The matter was listed on an application being I.A.No. 6166/2015 for recalling of order dated 20/08/2015.

2. This Court by interim order dated 20/08/2015 *prima facie* found that relief contained in clause 7.1 of the petition seeking direction for conduction of enquiry in crime No. 513/2014 registered at police station Gola Ka Mandir, Dist. Gwalior and crime No. 828/2014 registered at police station Bahodapur, Dist. Gwalior by CBI or an independent agency has become infructuous as investigation in both the offences

were handed over to the CID on 05/11/2014 vide Annexure R-1.

3. By interim order dated 20/08/2015, this Court in regard to relief contained in clause 7.2 of the petition sought registration of offence u/S. 302 of IPC against erring police personnel. This Court while declining to make any comment on merits and relying upon the decision of the Apex Court in the case of **Lalita Kumari Vs. Government of U.P. & Ors.** reported in **(2014) 2 SCC 1**, directed that information furnished by the petitioner contained in Annexures P-19 & P-20 alleging offence against police personnel ought to be acted upon in terms of law u/S. 154 of Cr.P.C. Therefore, necessary directions in that regard were issued to comply with the statutory provision u/S. 154 of Cr.P.C. in terms of the law laid down in the case of **Lalita Kumari (supra)**.

3.1 While seeking recalling of interim order dated 20/08/2015, learned counsel for the respondents raised singular contention that the said direction given in regard to prayer in clause 7.2 of the petition runs contrary to the decision of the Apex Court rendered in the case of **People's Union for Civil Liberties and Anr. v. State of Maharashtra & Ors.** reported in **(2014) 10 SCC 635**, whereby, Apex Court while dealing with the prayer of absence of any codified guidelines in regard to investigation of death in police

encounter laid down guidelines in para 31 of its judgment.

3.2 Learned State counsel submits that para 31.16 of these guidelines, the family of the victim dying in police encounter is provided a forum to ventilate all the grievances against abuse or lack of independent investigation or impartiality by any functionary of the State conducting investigation in cases of police encounter. For ready reference and convenience paragraph 31.16 of the Guidelines is reproduced herein below :-

“31.16 If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the Sessions Judge concerned shall look into the merits of the complaint and address the grievances raised therein.”

4. From the above, it is evident that family of the victim in police encounter can make complaint to the Sessions Judge within whose territorial jurisdiction the encounter took place and on doing so the Sessions Judge is directed to look into the merits of the complaint and address the grievances raised therein.

4.1 In the face of above said law laid down in the case

of People's Union (supra), learned State counsel contends that the direction issued by interim order dated 20/08/2015 is untenable. It is further contended that since a complete and exhaustive procedure is laid down by the decision in the case of People's Union (supra) dealing exclusively with police, all encounter causes and grievances arising out of the incident of police encounter vide crime No. 513/2014 registered at police station Gola Ka Mandir, Dist. Gwalior and crime No. 828/2014 registered at police station Bahodapur, Dist. Gwalior can very well be taken care of by the Sessions Judge having territorial jurisdiction over the incident.

5. This petition now survives only to the extent of relief in clause 7.2 and 7.3 of the petition which are reproduced herein below :-

7(2) यह की, प्रत्यार्थी क्र. २ व ३ को आदेशित किया जावे कि याचिकाकर्ता द्वारा दोषी पुलिस अधिकारियों के विरुद्ध की गई शिकायत एनेक्चर पी. 19 के अनुसार, दोषी पुलिस अधिकारियों के विरुद्ध भा.द.वि. की धारा ३०२ का मामला पंजीबद्ध करें ।

7(3) यह कि, प्रत्यार्थी क्र. १ को आदेशित किया जावे कि याचिकाकर्ता तथा उसके दो बच्चों के भरणपोषण के लिए बीस लाख रुपये की क्षतिपूर्ति राशि प्रदान की जावे ।

6. The petitioner who happens to be widow of the victim who died in alleged police encounter giving rise to crime No. 513/2014 registered at police station Gola Ka Mandir, Dist. Gwalior and crime No. 828/2014 registered at police station Bahodapur, Dist. Gwalior prays for direction for taking action against the erring police personnel by

registration of an offence of murder against them. The investigating process in crime No. 513/2014 registered at police station Gola Ka Mandir, Dist. Gwalior and crime No. 828/2014 registered at police station Bahodapur, Dist. Gwalior is being conducted by CID.

7. The Apex Court, after noticing hiatus in law providing for specific procedure for conducting fair and impartial investigation in matters of police encounter, rose to the occasion and laid down specific guidelines in para 31 of the said judgment.

8. Perusal of above said detailed guidelines provided by Apex Court, it is revealed that all the eventuality arising from the incident of death in police encounter are taken into account including aspect of providing forum to the dissatisfied family member of the victim in police encounter in para 31.16 of the said decision of People's Union (supra).

9. After hearing learned counsel for the rival parties, this Court is of the considered view that the interim order dated 20/08/2015 to the extent it directs for acting upon written information vide Annexures P-19 & P-20 of the petition in terms of decision of the Apex Court in the case of Lalita Kumari (supra) deserves to be recalled on the anvil of law laid down by the Apex Court in the case of People's Union (supra).

9.1 This Court is conscious of the fact that the decision

of the Apex Court in the case of Lalita Kumari (supra) was rendered by a Bench comprising of five Judges whereas decision in the case of People's Union (supra) was rendered by a Bench comprising of three Judges. However, the Apex Court in the case of Lalita Kumari (supra) in generic terms laid down the law as regards statutory obligation of the police under section 154 of Cr.P.C. on receiving information alleging commission of cognizable offence, while on the other hand the decision of the Apex Court in People's Union (supra) though rendered by a Bench of lessor strength of Judges dealt exclusively with the matter of investigation in incidents of death in police encounter and issues related therein.

9.2 The instant petition is a case arising out of an incident where death took place in alleged police encounter and, therefore, law laid down in the decision of the Apex Court in People's Union (supra) would squarely apply to the facts of the present case to the exclusion of the law laid down in the case of Lalita Kumari (supra). It is settled principle of law that special law supercedes the general law to the extent of commonality between the two (*Generalia specialibus non derogant*).

9.3 In terms of the above discussion the interim order passed on 20/08/2015 so far as it directs the respondents to act upon Annexures P-19 & P-20 in terms of decision rendered

in the case of Lalita Kumari (supra) is declared to be untenable and, therefore, is recalled.

10. As regards other direction of providing police protection, this Court by instant final order affirms the interim order of directing the Superintendent of Police, Gwalior to provide adequate and necessary security to Rameshwar Rajput who is one of the witness in the incident as and when the said witness seeks such police protection.

11. Accordingly, this petition stands disposed of with the following directions :-

- a)** CID is directed to conduct and conclude the investigation in crime No. 513/2014 registered at police station Gola Ka Mandir, Dist. Gwalior and crime No. 828/2014 registered at police station Bahodapur, Dist. Gwalior against the husband of the petitioner-widow impartially without any malice coming into play as expeditiously as possible.
- b)** The Superintendent of Police, Gwalior is directed to ensure police protection to the witness Rameshwar Rajput as and when the same is sought by him with utmost promptitude.
- c)** The petitioner is at liberty to prefer appropriate written application to the Sessions Judge within whose territorial jurisdiction the incident in

question took place, as regards grievances contained in Annexures P-19 & P-20 dated 27/10/14 & 28/10/14 respectively, abuse or lack of independent investigation or impartiality shown by any of the functionaries of the State involved in investigating process. In case any such application is moved, the learned Sessions Judge shall deal with the same with utmost promptitude in terms of guidelines laid down by the Apex Court in the case of People's Union (supra).

- d)** Prayer in regard to compensation shall remain open to the petitioner to claim in future as and when occasion arises and if law permits.

No order as to cost.

(SHEEL NAGU)
JUDGE
(03/11/2015)