

ITEM NO.20

Court 3 (Video Conferencing)

SECTION II

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

Petition(s) for Special Leave to Appeal (Crl.) Nos.3704-3705/2020

(Arising out of impugned final judgment and order dated 23-07-2020 in CRLP No. 55/2020 23-07-2020 in IA (CRL) No. 61/2020 passed by the Gauhati High Court)

LEENA DOLEY

Petitioner(s)

VERSUS

GAURAV UPADHYAY & ORS.

Respondent(s)

(With appln.(s) for interim relief and permission to file additional documents/facts/Annexures)

Date : 11-09-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Parthiv Goswami, Adv.
Mr. Rahul Pratap, AOR
Ms. Palak Mahajan, Adv.

For Respondent(s) Mr. A.M. Bora, Sr. Adv.
Mr. P.N. Goswami, Adv.
Mrs. A. Verma, Adv.
Mr. Subodh Kr. Pathak, Adv.
Mr. Pawan Kumar Sharma, Adv.
Mr. Dharmendra Kumar Sinha, AOR

Mr. Shuvodeep Roy, AOR

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

- 1 The Special Leave Petitions have been directed against an order of the Gauhati High Court dated 23 July 2020. While dealing with a petition initially filed under Article 226 of the Constitution which has since been converted to a petition under Section 482 of the Code of Criminal Procedure, 1973 the High Court issued the following directions in paragraph 3 of its order:

“3. I hereby direct the Investigating Officer to conduct investigation as to whether the victim belongs to SC/ST category and, therefore, whether the penal provisions of the SC/ST Act can be attracted. For the said purpose, the Birth Certificate of the victim; the School Certificates appended with the additional affidavit (supra) and other related documents be referred to. The conclusion thus drawn be brought to the notice of the Court along with supporting documents.

The petitioner is directed to furnish copies of the documents available with him, which might help the investigating agency in coming to the right conclusion; and the truth can be culled out.”

- 2 The complainant who is in appeal against the order of the High Court urged before this Court at the preliminary hearing that the above observations of the High Court may be construed to have directed that the investigation is being channelized by the High Court confined to documentary evidence in regard to the caste status of the victim, constraining thereby the authority of the investigating officer.
- 3 While issuing notice on 24 August 2020, this Court noted the submission of Mr Parthiv Goswami, learned counsel appearing on behalf of the petitioner, in the following terms:

“The submission is that by the above directions the High Court has constrained the Investigating Officer from fully investigating the complaint and that it was not open to it to direct that the investigation be carried out in a particular manner. The submission is that petitioner who is a member of the Miri community, which is listed as on ST (P), married an individual belonging to an OBC community. According to the petitioner, after the death of her husband, their child has been brought up by her as a member of the ST (P) community. In this

context reliance has been placed on the decision of this Court in **Rameshbhai Dabhai Naika v State of Gujarat**, in support of the principle that a child born to parents belonging to different communities does not invariably assume the caste of the father. Hence, it has been submitted that the above directions of the High Court impermissibly restrict the ambit of the investigation only to certain documentary material.”

- 4 In pursuance of the above order of this Court, the State of Assam has appeared through Mr Shuvodeep Roy, learned counsel. The complainant namely, the petitioner before the High Court has appeared through Mr A M Bora, learned senior counsel. Mr Roy appearing on behalf of the State of Assam submits that after the order of the High Court dated 23 July 2020, the investigating officer had addressed a communication on 31 July 2020 to the complainant requesting her to produce any documentary material which she has in her possession having a bearing on the caste status of the alleged victim who is her minor daughter. Mr Roy submits that the Investigating Officer has not construed the observations of the High Court in paragraph 3 quoted above, as restricting the ambit of the investigation. Mr Roy submits that the investigation is under progress.
- 5 At this stage, since the investigation is in progress, we are not entering upon any aspect of the factual controversy. We clarify that the observations contained in paragraph 3 of the impugned order of the High Court dated 23 July 2020 are not intended to nor can they confine the authority of the investigating officer to investigate into the complaint fully and effectively in terms of the powers which are vested under the law. As a matter of fact, this is evident from the first sentence of paragraph 3 of the order of the High Court extracted above. The learned counsel appearing for the State of Assam and the investigating officer has also, as we have noted above, stated that the order of the High Court was not construed to constrain the authority which is entrusted to the investigating officer.
6. We dispose of the present proceedings with the clarification that the directions contained in paragraph 3 of the order of the High Court shall not constrict the duty of the Investigating Officer to investigate into all aspects of the complaint nor do they confine the investigation to documentary

material.

7 The Special Leave Petitions are accordingly disposed of.

8 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
AR-cum-PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER