

IN THE SUPREME COURT OF INDIA**CRIMINAL APPELLATE JURISDICTION**

Under Order XXII Rule 2(1), SCR, 2013

Under Article 136 of the Constitution of India

SPECIAL LEAVE PETITION (CRL.) NO. _____ OF 2021

[Arising out of the Impugned Judgment & Final Order dated 07.12.2020 passed by the Hon'ble High Court for the State of Telangana at Hyderabad in Writ Petition No.5724 of 2020)

POSITION OF PARTIES

	In the Trial Court	In the High Court	In this Hon'ble Court
Nazima Begum			
	Complainant	Petitioner	Petitioner
	Versus		
1.	The State of Telangana, Rep. by its Chief Secretary, "B" Block, 9 th Floor, BRKR Bhavan, Telangana Secretariat, Hyderabad.		
	Prosecution	Respondent No.1	Respondent No.1
2.	The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat, Hyderabad.		
	Prosecution	Respondent No.2	Respondent No.2
3.	The Director General of Police, Telangana State, Lakdikapool, Hyderabad.		
	Prosecution	Respondent No.3	Respondent No.3

**SPECIAL LEAVE PETITION UNDER ARTICLE
136 OF THE CONSTITUTION OF INDIA.**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HISCOMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:-

1. The petitioner a poor illiterate Muslim pardanashin lady is preferring the instant Special Leave Petition under

Article 136 of the Constitution of India challenging the Impugned Judgment & Final Order dated 07.12.2020 passed by the Hon'ble High Court for the State of Telangana at Hyderabad in Writ Petition No.5724 of 2020, whereby the Hon'ble High Court was pleased to dismiss the writ of habeas corpus preferred by the petitioner on the ground that it cannot be issued as the son of the petitioner was no longer alive. The petitioner submits that this is an incorrect assumption by the High Court based on a fabricated FSL report as the alleged dead body is not that of her son. The son of the petitioner was merely 12 years old height >4.5 ft and while the purported FSL was conducted from the bones obtained from 20 year old male height more than 5 ft. The FSL report contradicts the postmortem report, FIR, photographs of dead body, oral evidence of the petitioner and her husband and for this reason it does not conclusively establish the death of the petitioner son and for the reason of its fabrication itself demand that investigation is required to be re-opened by an independent agency like CBI and the son of the petitioner recovered.

2. QUESTIONS OF LAW:

The following substantial questions of law arise in the instant petition for consideration of this Hon'ble Court:

- I. Whether the Hon'ble High Court has misdirected itself in relying only on the FSL report especially

when the oral and documentary evidence including the other scientific evidence i.e. the post mortem report raise a strong suspicion and question the reliability and genuineness of the said FSL report ?

- II. Whether the said FSL report is fake and fabricated and stage managed by the police in order to close the case ?
- III. Whether the Hon'ble High Court before passing the impugned order ought to have considered that neither the said dead body is handed over to the relatives nor were the relatives informed about the said FSL report by the IO or the CCTV footage and/or other attending circumstances by the investigating officer including the exhumation of said dead body any time prior to filing of the counter affidavit by the police before the Hon'ble High Court in the habeas corpus petition and this itself is enough to lay bare the claim of the police as false and suspicious ?
- IV. Whether the Hon'ble High Court has mis directed itself in closing the writ of Habeas corpus petition instead of directing independent enquiry by any specialized agency in view of the apparent errors by the police showing faulty, suspicious and hasty investigation?

- V. Whether the Hon'ble High Court has failed to appreciate the travesty and mockery of justice caused to the petitioner and her family in the facts and circumstances of the case?

3. DECLARATION IN TERMS OF RULE 2(2):

That the petitioner states that no previous Special Leave Petition seeking Leave to Appeal has been filed by him against the Impugned Judgment & Final Order dated 07.12.2020 passed by the Hon'ble High Court for the State of Telangana at Hyderabad in Writ Petition No.5724 of 2020,.

4. DECLARATION IN TERMS OF RULE 4:

The Annexures **P/1 to P/18** produced alongwith the Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the court below against whose order the Leave to Appeal is sought for in this petition.

5. That the leave to appeal is sought for on the following amongst other grounds:-

G R O U N D S

- A. For that the oral and documentary evidence raise a strong suspicion that the FSL report is fake and stage managed by the police in order to close the case.
- B. For that the Hon'ble High Court has erred in taking into consideration only the FSL report which is

contradictory in face of the other oral and documentary evidence i.e. contrary evidence of postmortem report, FIR No. 72/2018 and other oral evidence while refusing to interfere in the habeas corpus writ petition and this has resulted in the travesty of justice.

- C. For that the Hon'ble High Court ought to have appreciated the contentions of the petitioner made in the rebuttal affidavit that she made no requisition about the DNA test and was not informed about the TSFSL report or about the non intimation of the final report and further ought to have given cogent reasons for disbelieving the affidavit before passing the impugned order.
- D. For that the Hon'ble Court should take into account that for any case registered under section 174 CrPC, certain procedure as prescribed u/s 175 to 176 CrPC is required to be followed and in the instant case there is no compliance of the same on the alleged dead body which in itself is suspicious.
- E. For that the post mortem report is the scientific examination of the deceased body by a doctor who examines the body from a medico legal perspective. In the instant case the High Court ought not to have ignored the post mortem report of the said dead body a scientific document in favour of another document the FSL report. The post mortem of the alleged dead body found on the railway track shows the same is of a male aged 20 years with height 5 ft

and the said facts cannot be said to be tainted in any manner as this postmortem in FIR No. 72/2018 was done by the doctor independent of the knowledge of existence of FIR No. 101/2018.

- F. For that the efforts of the petitioner to get her son traced with the help of local police have been futile as they kept on going to the police station and were falsely informed that their son had died in a Train accident and was buried in a Muslim graveyard at Shadnagar area , however when they visited the concerned PS Mehboobnagar, they found that the photograph of the dead body did not match that of their son. During the investigation, the blood samples of the petitioner and her husband was also collected, however they were never informed about the reason why the samples were being taken, nor were they shown the exhumed body and nor the said body was handed over to them. The so called CCTV footage was not shown to them nor they were informed about the results of the forensics. The Action was dropped by the police without the knowledge of the petitioner. All these violate Article 21 of the Constitution of India as the rule of law permits fair investigation only.
- G. For that except the alleged FSL report there is nothing to link FIR No. 101/2018 PS Dabeerapura, Hyderabad and FIR No. 72/2018 PS Mehboobnagar District and there is a distance of approx. 95 kms separating the two police stations.

- H. For that no notice was given to the petitioner about the filing of final closure report either by the Investigating officer and nor by the Ld. Magistrate till now and it does not bear her signatures and hence filing of final report by the respondent no. 5 is of no legal sanctity at all.
- I. For that the Hon'ble Supreme Court in a judgment rendered in 1997 (7) SCC 614 titled Union Public Service Commission Vs. S. Papaiah and Others has held that issuance of notice to the informant by the Magistrate at the time of consideration of the Final Report u/s 173 CrPC is a "must" and without this the acceptance of the final report and closure of the case by the Magistrate is bad. It was further held that the withholding of such vital information creates a doubt about the fairness of the investigation. In view of the legal position prevailing, the respondent no. 5 have filed the final report in April 2019 projecting the case to be closed and action dropped and this itself shows the improper functioning of the respondent no. 5 in the case of such a heinous nature.
- J. Because appreciating all the averments made by the petitioner in her reply affidavit pointing out the anomalies in the suspicious investigation, the Hon'ble High Court ought to have transferred the investigation to CBI enabling them to find out about the correct facts and for tracing the missing son of the petitioner.

- K. Because the false report has resulted in grave miscarriage of justice to the victims i.e. the petitioner and her family, the missing son and to the society at large and is helping the offenders i.e. the people who kidnapped the child, the police officers and the FSL officers go scott free who deserve to be brought to justice.
- L. Because the petitioner submits that respondent no. 6 & 7 had earlier in the year 2014 kidnapped her son and charge sheet had been filed against them and even though the matter was later compromised yet the possibility of them holding the grudge against the petitioner's son cannot be ruled out especially when the said child was a witness to their deeds and this angle requires to be investigated.
- M. For that this Hon'ble Court in 2011 (5) SCC 79 Narmada Bai Vs State of Gujarat has held that where there is improper investigation by the State Police , in order to do complete justice, direction for investigation by an independent and specialized agency like CBI is permissible. Rule of law is investigation by impartial agency.
- N. For the last 2 years the petitioner and her husband have been running from pillar to post in search of their son.

6. GROUND FOR INTERIM RELIEF:

- (a) Because an improper investigation by the State police is apparent on record and hence to meet the ends of justice, it is necessary for the independent

agency to examine and settle the issue of death of petitioner's son co-relating with the alleged dead body as expeditiously as possible so that the agencies can be directed to reopen the investigation for tracing the missing son of the petitioner;

- (b) Because every day is continuous agony for the petitioner and her family.

7. MAIN PRAYER:

It is, therefore, most respectfully, prayed that this Hon'ble Court may graciously be pleased to:

- (a) Grant special leave to appeal against the Impugned Judgment & Final Order dated 07.12.2020 passed by the Hon'ble High Court for the State of Telangana at Hyderabad in Writ Petition No.5724 of 2020; and
- (b) Pass such other or further orders/directions, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

8. PRAYER FOR INTERIM RELIEF:

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) direct independent specialized agency like CBI to investigate the matter of fabricated FSL report and for tracing the missing son of the petitioner; and
- (b) direct any independent specialized agency to exhume the body of the unknown deceased male buried in graveyard at Shad Nagar and get it

forensically tested with that of the petitioner and her husband by the CFSL or any other forensic laboratory outside the State of Telangana so that the controversy that the son of the petitioner is not dead can be put to rest; and

- (c) Pass such other or further order/ orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

DRAWN BY:

FILED BY

Advocate

Drawn on: 08.01.2021

Filed on: 11.01.2021

(MS. ANU GUPTA)
Advocate for the Petitioner