

Assistant Registrar(LAW)
Tel. No.: 011-2338 5368
Fax No.: 011-2338 6521
Telegraphic Add.: "HUMANRIGHTS"
Home Page : <http://nhrc.nic.in>

Case No. 50/9/5/08-09-WC/UC
NATIONAL HUMAN RIGHTS COMMISSION
(L A W D I V I S I O N)
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FARIDKOT HOUSE
COPERNICUS MARG, NEW DELHI - 110 001

Dated 07/04/2010
-9 APR 2010

To
THE SECRETARY
JAMMU & KASHMIR STATE HUMAN RIGHTS
COMMISSION, DAWN BUILDING, PB No.14,
Medical Boulevard, Srinagar

Sir/Madam,

The complaint dated 09/06/2008 received from SUHAS CHAKMA, DIRECTOR in respect of GIRL, was placed before the Commission on 02/04/2010. Upon perusing the complaint, the Commission directed as follows.

As per the complaint, a 17 years old girl was kidnapped from Nowshera, Jammu & Kashmir, on 31.5.2008, and was gang-raped by Const. Shabir Ahmed and his associates at Jammu. The report dated 20.9.2008 received from the DGP, Jammu & Kashmir, confirmed the allegations made in the complaint. The Commission was informed that the FIR No.100/08 u/s 363, 366A, 342, 376, 109, 354 & 511 RPC was registered against accused Shabir Ahmed and his two accomplices and after completion of the investigation charge sheet was filed in the court on 11.7.2008. Hence, the Commission vide proceedings dated 17.10.2008 issued a show cause notice u/s18 (a) (i) of the Protection of Human Rights Act, to the Govt. of Jammu & Kashmir. However, the State Government failed to respond to the show cause notice and hence, the Commission recommended payment of compensation of Rs.2 lacs to the victim vide proceedings dated 6.7.2009 and the Chief Secretary of the State was directed to submit compliance report alongwith proof of payment.

The Government of Jammu & Kashmir has responded vide letter dated 11.3.2010 of the Finance Commissioner, Home Department, only after multiple reminders and DO letter issued by the Secretary General of the Commission. The letter says that a recommendation had already been made for discharge of the accused Const. Shabir Ahmed from service and also for withdrawal of President's Police Medal awarded to him. As to payment of compensation to the victim, the letter says as follows:

"The NHRC does not have jurisdiction in this case in view of the fact that with respect to Jammu and Kashmir only matters contained in list I and list III of the 7th Schedule of the Constitution of India come within the preview of the NHRC. The item "Police" falls in list II and, therefore, the NHRC cannot make recommendations to the State Government in respect of acts of omission and commission by the State Police".

The Commission has carefully considered the stand taken by the State of Jammu & Kashmir. As per the proviso to Section 1 (2) of the Protection of Human Rights Act, 1993, the Act extends to the whole of India and in respect of State of Jammu & Kashmir it applies only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State. The subject "Police" appears in List II of the Seventh Schedule of the Constitution of India. Hence, the stand taken by the Govt. of Jammu & Kashmir appears to be correct.

In view of the facts and circumstances of the Commission considers it necessary and expedient to transfer this case to the State Human Rights Commission of Jammu & Kashmir for disposal in accordance with the provisions of the Protection of Human Rights Act, 1993. The complete case file duly indexed be forwarded to the State Human Rights Commission of Jammu & Kashmir immediately.

2. Accordingly, I am forwarding a copy of the complaint to you for its disposal at your end.

Yours faithfully,

ASSISTANT REGISTRAR (LAW)

CC To :

✓ SUHAS CHAKMA, DIRECTOR
R/O N.C.P. OF TORTURE, C-3/441-C, JANAKPURI
WEST DELHI, DELHI.


ASSISTANT REGISTRAR(LAW)