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STATE OF U.P. AND ANR.

v.

NITIN AGNIHOTRI AND ANR.

(Criminal Appeal No.1126 of 2008)

B

JULY 21, 2008

[DR. ARIJIT PASAYAT AND HARJIT SINGH BEDI, JJ.]

C

*Cost – Imposition of – FIR lodged – Allegation that daughter of complainant was abducted by Respondent No.1 – Writ petition by Respondent No.1 for quashing of FIR – High Court quashed FIR and all consequential proceedings against Respondent No.1 – However, imposed cost on State and complainant – On appeal, held: Order of High Court so far as it related to imposition of cost was without basis since there was*

D

*no finding recorded by it that the police officials were remiss in any way and/or had committed any lapse during investigation – In absence of any reason for imposing cost, direction for payment of cost cannot be sustained and is set aside – Constitution of India, 1950 – Art. 226 – Penal Code, 1860 – s.366.*

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**Respondent No.2 lodged FIR stating that Respondent No.1 alongwith his mother and sister had abducted his daughter. The FIR was registered as Crime Case under Section 366, IPC. Respondent No.1 filed writ petition seeking for issuance of writ in the nature of certiorari for quashing of the FIR. High Court quashed the FIR and all consequential proceedings against Respondent No.1 and imposed cost of Rs.50,000/- on the State and Respondent No.2.**

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**In appeal to this Court, Appellant-State contended that the police authorities had investigated into the matter on the basis of the complaint and the High Court was not justified in directing imposition of cost when it did not notice any lapse on the part of the concerned authorities.**

H

**Allowing the appeal, the Court**

**HELD:1.**The impugned order of the High Court so far as it relates to the imposition of cost is founded on no basis. There is not even a finding recorded that the police officials were remiss in any way and/or had committed any lapse during investigation. In the absence of any reason having been indicated by the High Court as to why the Court felt necessary for imposing cost, the direction for payment of cost cannot be sustained and is set aside. [Para 5] [29-E,F,G]

**2.** The Courts should not impose cost in the manner done in the present case without recording any finding as to why imposition of cost was considered necessary. Unless any lapse on the part of any authority is found and opportunity is granted to the alleged erring official, cost should not be imposed. Whenever it is felt that cost is to be imposed, the reason for such a conclusion has to be recorded. [Para 6] [29-G, 30-A]

**CRIMINALAPPELLATE JURISDICTION :** Criminal Appeal No. 1126 of 2008

From the final Judgment and order dated 28/6/2005 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 4120(MB) of 2005

Shail Kumar Dwivedi, A.A.G., Sahdev Singh Gunnam Venkateswara Rao and Vibha Dwivedi for the Appellants.

Siddharth Bambha, M.A. Krishna Moorthy, K. Krishna Kumar and Anish Kumar Gupta for the Respondents.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court, Lucknow Bench, Lucknow in Writ Petition No. 4120 (M/B) of 2005.

A 3. Background facts in a nutshell are as follows:

B The aforesaid writ petition was filed by respondent No.1,  
C a practicing advocate in the High Court of Allahabad for issuance of writ petition in the nature of certiorari for quashing the  
D FIR registered as Crime Case No.165/2005 under Section 366  
E of the Indian Penal Code, 1860 (in short the 'IPC') in Police  
F Station, Krishna Nagar, Lucknow and for certain other reliefs. It  
G was stated that FIR dated 9.6.2005 was lodged by Sardar  
H Mahendra Singh- respondent No.2 at the aforesaid police station. In the FIR it was stated that respondent No.1 alongwith his  
mother and sister had abducted daughter of respondent No.2  
on 8.6.2005 at 7.30 p.m. After the FIR was lodged, police started  
investigation and recorded the statement of wife of the complainant. Statement of one Kamaljit Kaur was also recorded  
whose version was same as that of Smt. Manjit Kaur. The statement of Jagjit Kaur, aunt of the abducted girl was also recorded.  
On 20.6.2005 statement of Arun Kumar Singh was recorded by the police. According to him at about 8.00 p.m. he had seen the  
girl alongwith present respondent No.1-Nitin Agnihotri on a rickshaw. The statements of Raj Kumar and Sanjeev Sabarwal  
neighbours of the complainant were also recorded. Father and mother of the accused were arrested by the police on 21.6.05.  
The High Court by an interim order stayed the further investigation in Crime Case No.165/05. By an order dated 27.6.05 it  
further held that FIR against Nitin Agnihotri by respondent No.2  
was filed with oblique motive. The High Court restrained the authorities and directed that they should not interfere with the  
peaceful living of the accused persons in connection with the FIR referred to above. The High Court also directed grant of  
protection to Ms. Neena Agnihotri and observed that she was free to go and stay at any place she desired. A direction was  
given for her appearance on 25.6.2005 under police force protection. On 28.6.2005 the High Court quashed the FIR and all  
consequential proceedings including Crime Case No.165/05 pending before learned Special Chief Judicial Magistrate (Customs),  
Lucknow. The accused persons in the FIR were directed

to be set free and the Judicial Magistrate was directed to take cognizance under Section 181 of the Code of Criminal Procedure, 1973 (in short 'the Code') against respondent No.2 for filing with oblique motive the FIR. Before the said order was signed Ms. Neena Arora complained that she was being threatened by her-in-laws. The concerned Bench of the High Court was again constituted and order was passed that Shri Manoram Agnihotri and his wife were to be released, and security was to be provided to Nitin Agnihotri and his wife and the authorities were to ensure that the aforesaid persons were not harassed in any way. The High Court thereafter in the concluding para of the judgment held that it was a fit case where cost of Rs.50,000/- was to be imposed against the State and respondent No.2- the father of the girl. The High Court further observed that imposition of cost on respondent No.2 would create rift between the two families and cost should not be paid by respondent No.2 on giving an undertaking that he would re-concile to the situation:

4. Learned counsel for the appellant-State submitted that the police authorities had investigated into the matter on the basis of the complaint. They were performing their duties and have recorded the statements of various persons. The High Court did not notice any lapse on the part of the authorities and yet directed imposition of cost as aforesaid.

5. We find that the impugned order of the High Court so far as it relates to the imposition of cost is founded on no basis. There is not even a finding recorded that the police officials were remiss in any way and/or had committed any lapse during investigation. In the absence of any reason having been indicated by the High Court as to why the Court felt necessary for imposing cost, the direction for payment of cost cannot be sustained and is set aside.

6. Before parting with the case, we would like to indicate that the courts should not impose cost in the manner done in the present case without recording any finding as to why im-

A sition of cost was considered necessary. Unless any lapse on the part of any authority is found and opportunity is granted to the alleged erring official, cost should not be imposed. Whenever it is felt that cost is to be imposed, the reason for such a conclusion has to be recorded.

B 7. The appeal is allowed. There shall be no order as to costs.

B.B.B.

Appeal allowed.