

616

SUPREME COURT CASES

(2014) 16 SCC

**(2014) 16 Supreme Court Cases 616**

*(Record of Proceedings)*

(BEFORE ALTAMAS KABIR, C.J. AND VIKRAMAJIT SEN AND  
S.A. BOBDE, JJ.)

BACHPAN BACHAO ANDOLAN .. Petitioner;

*Versus*

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 75 of 2012 with CP (C) No. 186 of 2013 in  
WP (C) No. 75 of 2012, decided on May 10, 2013

**A. Constitution of India — Art. 32 — Complaint about missing girl child before police vis-à-vis before court — Held, clarifying doubt raised on behalf of Madhya Pradesh regarding recording of FIR relating to a missing child, held, no difficulty in orders, already passed — There will be an initial presumption of either abduction or trafficking, unless, in investigation, same is proved otherwise, whenever any complaint is filed before police authorities regarding a missing child, same must be entertained under S. 154 CrPC — However, even in respect of complaints made otherwise under S. 155 CrPC, upon making an entry in book to be maintained for said purposes and after referring information to Magistrate concerned, police to continue with inquiry — Magistrate, upon receipt of information recorded under S. 155 CrPC, to proceed, in meantime to take appropriate action under sub-s. (2), especially, if complaint relates to a child and, in particular, a girl child — Fact that out of more than 3000 children missing in 2011, only 517 FIR lodged, and remaining children still untraced remain as mere slips of paper in police stations, taken note of CrPC, 1973 — Ss. 154 and 155 — Penal Code, 1860 — Ss. 359, 362, 366-A, 368, 369, 370 and 370-A — Criminal Law — Crimes Against Women and Children — Trafficking (Paras 3 and 8)**

*Bachpan Bachao Andolan v. Union of India*, (2014) 16 SCC 612, clarified

*Bachpan Bachao Andolan v. Neeraj Kumar*, Contempt Petition (C) No. 186 of 2013, order dated 26-4-2013 (SC), referred to

**B. Crimes Against Women and Children — Trafficking — Search of missing children — Earlier directions of Supreme Court being implemented and affidavits filed — Some information given therein if shown as incorrect, in order to rectify situation, suggestion made by advocate for NHRC accepted that each police station should have, at least, one especially instructed and trained Juvenile Welfare Officer in terms of S. 63 of Juvenile Act — Further suggestion accepted that there should be, in shifts, a Special Juvenile Officer on duty in police station to ensure directions are duly implemented — NALSA's suggestion that para-legal volunteers, recruited by Legal Services Authorities, should be utilised to keep watch over complaints regarding missing children and other offences against children, accepted — Efforts of petitioner organisation, counsel appearing on behalf of petitioner and on behalf of different authorities like NALSA and NHRC appreciated, and hoped that such interest will continue — For States having not yet filed**

a status reports, time extended till next date — Juvenile Justice and Children's Acts — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 4, 29 and 63 (Paras 4 and 5)

b C. Crimes Against Women and Children — Trafficking — Search of missing children — Held, suggestion for developing a computerised programme, creating network between Central Child Protection Unit as Head of Organisation and all State Child Protection Units, District Child Protection Units, City Child Protection Units, Block Level Child Protection Units, Special Juvenile Police Units, police stations, Juvenile Justice Boards and Child Welfare Committees to be seriously taken up and explored by NALSA with Ministry of Women and Child Development — Website link should also be made known to public at large — Other suggestions including installation of computerised cameras to be considered (Para 6)

c D. Crimes Against Women and Children — Trafficking — Search of missing children — Rehabilitation — State Legal Services Authorities to work out a network of NGOs, for tracing and re-integrating missing children with families — As suggested by NALSA, every found/recovered child must be immediately photographed by police for advertisement and awareness and should be published on website, newspapers and TV to enable parents of missing children to recover them from police custody —  
d Ministry of Home Affairs to provide additional support by way of costs for installing requisite photographic material and equipment in police stations — All parties to have due regard to various directions given in *Sampurna Behrua*, WP (C) No. 473 of 2005 — After recovery, police authorities to carry out further investigation as to involvement of trafficking and to take appropriate action — State authorities to arrange for adequate shelter homes for recovered missing children, having no place to go and funds to be provided by State Government together with proper infrastructure within three months — Private homes running for purpose of sheltering children shall not be entitled to receive a child, unless forwarded by Child Welfare Committee and all provisions of Juvenile Justice Act, including registration are complied with by such private homes (Paras 8, 9, 11 to 14)

f *Sampurna Behura v. Union of India*, (2011) 9 SCC 801 : (2011) 3 SCC (Cri) 916;  
*Sampurna Behrua v. Union of India*, (2011) 15 SCC 232 : (2012) 4 SCC (Cri) 580, relied on

g E. Crimes Against Women and Children — Trafficking — Search of missing children — Standard Operating Procedure to handle cases of missing children — In addition to suggestions of NHRC suggestion of NALSA taken into account — Appropriate provisions of law to be invoked where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after recovery of child — Protocol to be established by local police with High Courts and State Legal Services Authorities for monitoring such cases — For example in Delhi, All India Legal Aid Cell on Child Rights, set up by NALSA, in association with Delhi State Legal Services Authority, and petitioner Bachpan Bachao Andolan,  
h treated as a nodal agency of All India Legal Aid Cell on Child Rights (Para 10)

**F. Crimes Against Women and Children — Trafficking — Missing child — Definition of — OM dt. 31-1-2012, by Ministry of Home Affairs, Government of India, advisory on missing children and trafficking defining missing child as a person below 18 yrs of age, whose whereabouts are not known to parents, legal guardians and any other person, legally entrusted with custody of child, whatever may be circumstances/causes of disappearance, accepted by Supreme Court — Further held, such child will be considered missing and in need of care and protection within meaning of latter part of Juvenile Act, until located and/or his/her safety/well being is established — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 34, 35, 36, 37, 39, 40, 42, 44, 45, 62, 62-A and 63**

**G. Crimes Against Women and Children — Trafficking — Held, cases of missing child not recovered within four months from date of filing FIR may be forwarded to Anti-Human Trafficking Unit in each State for more intensive investigation and such Unit to file periodical status reports after every three months to keep Legal Services Authorities updated — In cases where FIR not lodged at all and child is still missing, FIR to be lodged within a month from date of communication of instant Supreme Court order — Penal Code, 1860, Ss. 359, 362, 366-A, 368, 369, 370 and 370-A**

(Para 13)

SB-M/52185/SR

*Chronological list of cases cited*

- |  | <i>on page(s)</i> |
|--|-------------------|
| 1. (2014) 16 SCC 612, <i>Bachpan Bachao Andolan v. Union of India</i>  | 618g, 619d-e      |
| 2. Contempt Petition (C) No. 186 of 2013, order dated 26-4-2013 (SC),<br><i>Bachpan Bachao Andolan v. Neeraj Kumar</i> | 618e-f            |
| 3. (2011) 15 SCC 232 : (2012) 4 SCC (Cri) 580, <i>Sampurna Behrui v. Union of India</i>                                | 620e              |
| 4. (2011) 9 SCC 801 : (2011) 3 SCC (Cri) 916, <i>Sampurna Behura v. Union of India</i>                                 | 620e              |

ORDER

1. This matter has been listed pursuant to the direction<sup>1</sup> given on 26-4-2013, when the contempt petition filed in the writ petition by the petitioner, complaining of the manner in which a complaint made regarding a missing child was sought to be handled by the police station concerned, was being considered. It has also come up on account of the other directions which had been given for implementing the various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 (“the Juvenile Act”, for short).

2. On 17-1-2013, when this matter came up for consideration, we had given an interim direction<sup>2</sup> that in case a complaint with regard to any missing children was made in a police station, the same should be reduced

1 *Bachpan Bachao Andolan v. Neeraj Kumar*, Contempt Petition (C) No. 186 of 2013, order dated 26-4-2013 (SC), wherein it was directed:

“On mentioning, let this matter be taken on Board and let the contempt petition filed in the writ petition, be listed for consideration on Monday (29-4-2013).”

2 *Bachpan Bachao Andolan v. Union of India*, (2014) 16 SCC 612

into a first information report and appropriate steps should be taken to see that follow up investigation was taken up immediately thereafter.

- a **3.** An element of doubt has been raised on behalf of the State of Madhya Pradesh regarding the recording of first information report relating to a missing child, having regard to the provisions of Section 154 of the Code of Criminal Procedure, 1973 (“CrPC”, for short), which relates to information in cognizable cases. We do not, however, see any difficulty in the orders, which we have already passed. We make it clear that, in case of every
- b missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. Accordingly, whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under Section 154 CrPC. However, even in respect of complaints made otherwise
- c with regard to a child, which may come within the scope of Section 155 CrPC, upon making an entry in the book to be maintained for the purposes of Section 155 CrPC, and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint. The Magistrate, upon receipt of the information recorded under Section 155 CrPC, shall proceed, in the meantime, to take appropriate action under sub-section (2), especially, if the complaint relates to a child and, in particular, a girl child.
- d **4.** On the last occasion, when the matter was taken up, we were informed by some of the States that the directions, which we had given in our order dated 17-1-2013<sup>2</sup>, had been duly implemented and affidavits to that effect have also been filed. Some of the information given therein is seriously objected by Mr H.S. Phoolka, learned counsel appearing for the petitioner. In any event, even if the figures shown are incorrect, in order to rectify the
- e situation, we are inclined to accept the suggestion made by Ms Shobha, learned advocate, appearing for the National Human Rights Commission, that each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act.
- f **5.** We are also inclined to accept the suggestion that there should be, in shifts, a Special Juvenile Officer on duty in the police station to ensure that the directions contained in this order are duly implemented. To add a further safeguard, we also direct the National Legal Services Authority, which is being represented by its Member-Secretary through Ms Anitha Shenoy, learned advocate, that the para-legal volunteers, who have been recruited by
- g the Legal Services Authorities, should be utilised, so that there is, at least, one para-legal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children, are dealt with.
- h **6.** Ms Shobha, learned counsel, has also made another useful suggestion regarding a computerised programme, which would create a network between the Central Child Protection Unit as the Head of the Organisation

and all State Child Protection Units, District Child Protection Units, City Child Protection Units, Block Level Child Protection Units, all Special Juvenile Police Units, all police stations, all Juvenile Justice Boards and all Child Welfare Committees. The said suggestion should be seriously taken up and explored by the National Legal Services Authority with the Ministry of Women and Child Development. Once introduced, the website link should also be made known to the public at large. The State Legal Services Authorities should also work out a network of NGOs, whose services could also be availed of at all levels for the purpose of tracing and re-integrating missing children with their families which, in fact, should be the prime object, when a missing child is recovered. a

7. Various other suggestions have been made by Ms Shobha in her written submission, regarding installation of computerised cameras, which can also be considered by all the authorities concerned. b

8. A similar response has been made on behalf of the National Legal Services Authority, and similar suggestions have been made. The details, as indicated in the response, can always be worked out in phases by the Juvenile Justice Boards and the Child Welfare Committees in consultation with the National Legal Services Authority, since each has a responsible role to play in the welfare of children, which, if the statistics given are to be believed, are difficult to accept. In fact, as has been pointed out by Mr Phoolka, out of more than 3000 children missing in 2011, only 517 first information reports had been lodged. The remaining children remain untraced and are mere slips of paper in the police stations. c

9. One of the submissions, which has been made in the response filed by NALSA, is with regard to the role of the police and the directions given by this Court, from time to time, in *Sampurna Behura v. Union of India*<sup>3</sup>. Accordingly, in addition to what has been recorded, as far as the suggestions made on behalf of the National Human Rights Commission is concerned, we add that, as suggested on behalf of NALSA, every found/recovered child must be immediately photographed by the police for purposes of advertisement and to make people aware of the missing child. Photographs of the recovered child should be published on the website and through the newspapers and even on the TV so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police. The Ministry of Home Affairs shall provide whatever additional support by way of costs that may be necessary for the purpose of installing such photographic material and equipment in the police stations. Apart from the above, all the parties involved shall have due regard to the various directions given in *Sampurna Behura case*<sup>3</sup> where also provision has been made for a child to be sent to a home and for taking photographs and publishing the same so that recovery could be effected as early as possible. d  
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<sup>3</sup> WP (C) No. 473 of 2005. The reference may be made to *Sampurna Behura v. Union of India*, (2011) 9 SCC 801 : (2011) 3 SCC (Cri) 916 and *Sampurna Behrua v. Union of India*, (2011) 15 SCC 232 : (2012) 4 SCC (Cri) 580. h

**10.** The other suggestion of NALSA is that a Standard Operating Procedure must be developed to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child, when the information suggests the commission of such offences. As part of the Standard Operating Procedure, a protocol should be established by the local police with the High Courts and also with the State Legal Services Authorities for monitoring the case of a missing child. In Delhi, such a protocol could be established with the help of the All India Legal Aid Cell on Child Rights, set up by NALSA, in association with the Delhi State Legal Services Authority, and the petitioner herein, Bachpan Bachao Andolan. In fact, the same could be treated as a nodal agency of the All India Legal Aid Cell on Child Rights.

**11.** We have given directions in regard to the utilisation of the para-legal volunteers, which is one of the suggestions made on behalf of NALSA.

**12.** As has been pointed out by Mr Phoolka, learned counsel appearing on behalf of the petitioner, an Office Memorandum was issued on 31-1-2012, by the Ministry of Home Affairs, Government of India, by way of an advisory on missing children and the measures needed to prevent trafficking and for tracing of such children. In the said office memorandum, a missing child has been defined as a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person, who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection within the meaning of the latter part of the Juvenile Act, until located and/or his/her safety/well being is established.

**13.** In case a missing child is not recovered within four months from the date of filing of the first information report, the matter may be forwarded to the Anti-Human Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child. The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the Legal Services Authorities updated. It may also be noted that, in cases where first information reports have not been lodged at all and the child is still missing, an FIR should be lodged within a month from the date of communication of this order and further investigation may proceed on that basis. Once a child is recovered, the police authorities shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and if, on investigation, such links are found, the police shall take appropriate action thereupon.

**14.** The State authorities shall arrange for adequate shelter homes to be provided for missing children, who are recovered and do not have any place to go to. Such shelter homes or after-care homes will have to be set up by the State Government concerned and funds to run the same will also have to be

provided by the State Government together with proper infrastructure. Such homes should be put in place within three months, at the latest. Any private home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply with all the provisions of the Juvenile Justice Act, including registration. *a*

**15.** Having regard to the order passed herein, the contempt proceedings, which have been initiated by the petitioner, are dropped.

**16.** In the event, all the States have not yet filed their status reports, the time for filing the same is extended till the next date. *b*

**17.** We appreciate the efforts of the petitioner organisation, Mr H.S. Phoolka, learned counsel appearing on behalf of the petitioner, all the other counsel, who have appeared in this matter on behalf of the different authorities, including NALSA and the National Human Rights Commission, and we hope that such interest will continue to subsist hereafter. *c*

**18.** Let this matter be listed again after three months.

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