

MOST IMMEDIATE
PERSONAL ATTENTION

No.U6-192851 /2019/PHQ,
Police Headquarters,
Thiruvananthapuram,
Dated, 20-01-2020.

Circular No. 04/2020

Sub:- Assessment of the Criminal Justice System in response to sexual offences – *Suo Motu* Writ (Criminal) No.4/2019 -strict compliance of all legal requirements in relation to sexual offences - instruction – reg.

- Ref:-
1. Order of the Hon'ble Supreme Court dated 18-12-2019 in *Suo Motu* Writ (Criminal) No.4/2019.
 2. Letter dated 02-01-2020 from Shri.Sanjeev S.Kalgaonkar, Secretary General, Supreme Court of India.
 3. Circular No.01/2020 dated 03-01-2020 of the State Police Chief.
 4. Circular No.25/2017 dated 21-10-2017 of the State Police Chief.

The *Nirbhaya Case* evidences the fact that the criminal justice system in our country ought to be more efficacious and responsive towards the offence of rape and other sexual offences against women and children. The delay in such matters has, in recent times, created agitation, anxiety and unrest in the minds of the people. The Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 etc., contain a number of legal requirements to ensure justice to victims of sexual offences and to punish the violation of such legal requirements. Many amendments were also introduced in criminal law to improve the situation. In order to ensure responsiveness of the criminal justice system to such violations of the law, coordinated efforts of the Police with prosecution, medico-forensic agencies, rehabilitation, legal aid agencies and also the Courts is found to be mandatorily required.

Secretary General, Supreme Court of India vide reference 2nd cited had informed that Hon'ble Supreme Court vide reference 1st cited had passed certain directions to take stock of the implementation of provisions of criminal law relating to rape cases and other sexual offences with special reference to the Criminal Law Amendments passed.

In view of the above, all officers are hereby instructed to strictly comply with the following legal provisions in relation to the investigation of sexual offences:-

1. Section 154 of the Cr.P.C. provides for the information in cognizable cases and registration of First Information Reports. As per the law laid down in Lalita Kumari Vs. Government of UP [(2014)2 SCC 1], the police is duty bound to register the offence based upon the information given by the victim/informant in case of cognizable offence. The first Proviso S.154(1) Cr.P.C., inserted by the Amendment Act of 2013 and subsequently amended by the Amendment Act of 2018, provides for registration of First Information Report in cases of rape and sexual offences by a woman police officer or any woman officer. It is further provided that if the victim is temporarily or permanently mentally or physically disabled, the first information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such persons choice, in the presence of a special educator or an interpreter and the recording of such information may be videographed. It is also provided that the police officer shall get the statement of such person recorded by a Judicial Magistrate under Section 164, as soon as possible.

2. If, after registration of FIR, upon investigation, it is found that the subject matter relates to the jurisdiction of some other police station, the FIR may be appropriately transferred to the police station in which the case falls u/s 170 Cr.P.C. The delay over the determination of the jurisdiction leads to avoidable

wastage of time which impacts on the victim and also enables the offender to slip from the clutches of the law. It is reminded that the failure to comply with the instruction of registering an FIR on receipt of information about the cognizable offence will invite prosecution of the police officer u/s 166A of the IPC for an offence specified under s.166A or departmental action or both. DPCs are instructed to check the non-recording of information by officers giving cause to offence under section 166A.

3. Under Section 166B IPC, whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions under section 357-C, Cr.P.C shall be punished with imprisonment for a term which may extend to one year or with fine or with both. Even though this is a non-cognizable offence, taking into account the gravity of the offence, appropriate action shall be taken with the sanction of the court.

4. All the District Police Units shall have the details of special educator or an interpreter in case of a mentally or physically disabled victim.

5. The medical examination of a victim of rape shall be undertaken strictly as per the provisions under section 164A Cr.P.C. and the court directions issued in this regard. The time limit, namely, "within twenty-four hours from the time of receiving the information relating to the commission of such offence" shall be strictly adhered to u/s 164A Cr.P.C.

6. The medical examination of the accused person u/s 53A Cr.P.C. shall be undertaken in time and medical report obtained.

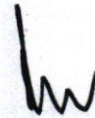
7. As forensic examination and expeditious reports after due examination are vital to the just adjudication of the case, earnest efforts shall be taken for follow up and in obtaining such reports in time.

8. Section 173 (1A) Cr.P.C. provides that the investigation in relation to an offence under Section 376,376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376-E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the police officer in charge of the Police Station. All officers shall mandatorily comply with this requirement.

9. The statement of the victim shall be recorded as soon as the commission of the offence is brought to the notice of Police without any delay whatsoever.

10. Police protection shall be provided to the victim during investigation and trial of the offence. Victim/witness protection shall be implemented as per law in collaboration with the district legal services authorities.

If any laxity or negligence is noticed on the part of officers concerned in complying with the above directions, stringent action will be initiated against the officers concerned.



LOKNATH BEHERA, IPS,
Director General of Police &
State Police Chief.

To

1. All SHOs in all Police Stations including the Crime Branch - for information and urgent necessary action.
2. All Officers in List B- for information and urgent necessary action.
3. CAs to all Officers in PHQ/DD,PR.

Copy to: Circular Register, Kerala Police Website.