

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Petn. No.15 of 2011

Smt. Anjana Pal (Saha),
W/O. Sri Nepal Pal
Vill – Nidaya, P.S. – Jatarpur,
Dist. West Tripura.

..... *Petitioner*

- Vs. -

1. The State of Tripura.
(Represented by Secretary
cum Commissioner,
Home Department)

2. Sri Subrata Majumder,
S/O. Sri Hiralal Majumder
Of I.C. Nagar,
P.S. – Belonia,
South Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner : Mr. S. Sarkar, Advocate.

For the respondents : Mr. R.C. Debnath, Addl. P.P.
Mr. S.C. Das, Advocate.

Date of hearing & : 24.06.2015.
delivery of
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER (ORAL)

This petition under Article 482 Cr.P.C. by the original informant is directed against the order dated 14.06.2011 passed by learned Additional Sessions Judge, Belonia, South Tripura in

Case No.ST-2011 (ST/B) 2011 whereby the prayer for further investigation of the case has been rejected.

2. The informant Smt. Anjana Pal (Saha) is the sister of the deceased. According to the complaint lodged by the informant her sister namely Nandita Majumder died as a result of torture inflicted on her in connection with demand of dowry. The police submitted its report under Section 173 Cr.P.C. and the report was submitted only against the husband and not against the father-in-law and mother-in-law of the deceased. The sister filed an application for further investigation of the matter highlighting the following points:-

- "1) In the FIR form, the husband's name of the informant is written as Nepal Pal in place of Nepal Saha,**
- 2) I.O. of the case examined one Dipali Pal, W/O Mantu Kr. Pal, but in the witness list she is named as Dipali Pal W/o Nantu Kr. Pal as PW-12,**
- 3) I.O. of the case examined one Kalpana Pal, W/o Hirendra Pal of Kalikrishnanagar, but in the witness list, her name mentioned as Kalpana Pal, W/o Indra Kr. Pal as PW-8,**
- 4) I.O. of the case examined one Anil Pal S/o Late Nabadwip Pal of Kalikrishnanagar, but none in this name is actually available at Kalikrishnanagar,**
- 5) One Gita Pal, W/o Sunil Pal was examined by I.O. and her statement was recorded, but in the witness list, she was described as Gita Pal, W/o Sumit Pal as PW-2,**
- 6) I.O. of the case did not examine and record statement of Sunil Pal, father of the deceased though he was a vital witness. I.O. also did not examine Niranjana Pal, Subhankar Kar, Sanjoy Ghosh and Pradip Sarkar who accompanied the informant and her husband to the house of the victim hearing about the incident and as such were vital witnesses.**
- 7) Lastly, considering the evidence of the witnesses the I.O. could not have prayed for discharge of Hiralal Majumder and Basanti Majumder, parents of Subrata Majumder, principal accused who was only prosecuted."**

3. Before the learned trial Court, it was contended that vital witnesses were not examined by the investigating officer. The names of the witnesses were wrongly mentioned and on behalf of the defence, it was urged that these are the minor lapses which could be made up. Another grievance of the petitioner was that the parents of the husband, Hiralal Majumder and Basanti Majumder had wrongly been left out and not shown as accused. In a case in which a lady has died one expects that the investigation should be handled competently, efficiently and sensitively. To say the least, all three aspects are missing as far as the present investigation is concerned.

4. I would also like to point out the following observation of the learned Additional District Judge, which reads as follows:-

"Learned Addl.P.P. virtually did not make any submission."

A Public Prosecutor is there to assist the Court. After the Code of Criminal Procedure was enacted in the year 1973, we have Public Prosecutors and not Police Prosecutors. The role of the Public Prosecutor is to bring the true facts to the notice of the Court. These facts may be against the accused, these facts may be in favour of the accused, but when a Public Prosecutor is assisting the Court it is his duty to ensure that all the true facts are brought to the notice of the Court.

5. Time and again I have been noticing that in the State of Tripura Public Prosecutors/Assistant Public Prosecutors in the trial Courts are not performing their job properly. Unfortunately, in the State of Tripura, there is no cadre of Public Prosecutors. Public Prosecutors are appointed by the powers that be and it is a system of spoils of office. The Public Prosecutors are not properly trained and what to talk about Public Prosecutors in the State there is not even a Directorate of prosecution. There is only one Deputy Director of prosecution and he is not virtually exercising control over the Public Prosecutors.

6. Be that as it may, it was the duty to Public Prosecutor to have assisted the Court in the matter. He may have supported the application of the informant or he may have opposed the same, but he had no business of remaining silent in such an important matter.

7. Now I proceed to refer to some of the findings of the trial Court itself. The trial Court has found that all the points mentioned again point Nos.1 to 4 by the informant are correct. He also found that the apprehension of the learned counsel for the informant is correct. The learned trial Court has held that the non-examination of the father may not be fatal to the prosecution. Even if that be true when the father of a victim of a dowry death is alive is it not the duty of the Investigating Officer to examine the

father because more often than not it will be the father who will have to pay the dowry. I fail to understand how there can be proper investigation in regard to claim of dowry if the parents and brother and sisters of the victim are not examined to find out whether any dowry was demanded or not. I am of the view that the statement of the father should have been recorded and this lapse shows that the Investigating Officer was either not competent or he was conniving with the accused to help them.

8. Even with regard to the allegation made by the informant that the parents were wrongly left out and not mentioned in the list of accused, the trial Court after going through the record has found that even if the I.O. was correct that no case was made out against the father some case was made out against the mother. He has clearly indicated that the I.O. would have been better advised to have included the name of the mother in the charge sheet. After held as above, the learned trial Court found himself restrained from taking any action in view of the judgment delivered by a Division Bench of the Gauhati High Court, Agartala Bench in ***Rana Sinha @ Sujit Sinha vs. State of Tripura & ors, 2011 (2) GLT 610***. This is an extremely long and detailed judgment where the entire law on the subject has been discussed, but the crux of the judgment is that after the charge sheet has been filed further investigation cannot be ordered by the Court except at the instance of the investigating officer and if there is

any fault then it is only the High Court which can exercise such powers under Section 482 Cr.P.C., 226 or 227 Cr.P.C.

9. At this stage, I am not going into the question whether this judgment needs reconsideration in view of certain amendments made to the Cr.P.C. in the year 2009. Though Section 173 Cr.P.C. has not been amended, victim has been defined in the definition Clause. Proviso to Section 372 Cr.P.C. now gives a right to the victim to file an appeal and these aspects may have to be taken into consideration in some other matter.

10. I am also prima facie of the view that in this case, the record itself shows shoddy investigation to say the least. The names of the witnesses have been wrongly mentioned. Their parentage or names of spouses have been wrongly mentioned. The facts have not been clearly stated. One of the most important witnesses i.e. the father of the deceased was not even examined and according to the trial Court, a case was made out for proceeding against the mother, but she has not been arrayed as an accused. The trial Court only found itself hampered because of this judgment in ***Rana Sinha @ Sujit Sinha (supra)*** and held that it powerless to do anything further in the matter.

11. This Court is not powerless. This Court has ample powers under Articles 226 and 227 of Constitution of India as well

as Section 482 Cr.P.C. to pass any orders which are deemed fit to ensure that justice is done. It may also be clarified that justice is not only done when the rights of the accused are taken into consideration. The rights of the victim and the family members of the victim are also important. Our criminal jurisprudence is now changing and various amendments have been brought into the Cr.P.C. both in the year 2009 and 2013 which bring in very important rights of victims. These as already observed by me above may be the subject matter of some other more learned judgment but as far as the present case is concerned, I find that even from the findings of the trial Court, there is ample justification to order further investigation in the matter.

12. Therefore, it is directed that the further investigation shall be done and the Superintendent of Police concerned is directed to ensure that the investigation is handed over to some other officer to ensure that the investigation is absolutely fair and is done by an officer, who is competent to do such investigation and thereafter, such officer if may file his additional report to the trial Court.

13. Copy of this judgment shall be sent to Superintendent of Police, South Tripura to ensure that needful is done as early as possible.

14. Further investigation should be completed latest by 31st August, 2015 and thereafter, a report must be filed before the trial Court.

CHIEF JUSTICE

sima