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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**W.P.A. No. 2934 of 2020
(via video conference)**

**Valutech Metalliks Limited & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Piyush Chaturvedi,
Mr. Atarup Banerjee,
Mr. Banibrata Datta,
Mr. Aranya Saha
... for the petitioners

Mr. Amitesh Banerjee,
Mr. Tapas Ballav Mondal
...for the respondent-authorities

The present writ petition arises from a complaint regarding theft lodged by the petitioners with the police. Investigation in that regard was undertaken. Subsequently, however, upon a *na-raji* petition having been filed by the petitioners, re-investigation was directed.

The petitioners allege that such fresh investigation suffers from various gross irregularities on the part of the police-authorities. Placing reliance on the supplementary affidavit, filed by way of exception to the report filed by the police-authorities, learned counsel appearing for the petitioners submits that, despite the FRT being re-opened, no statement under Section 164 of the Code of Criminal Procedure was

taken by the police. By place reliance on Section 160 of the Code of Criminal Procedure, learned counsel argues that any police officer making an investigation, by order in writing, may require the attendance before himself or any person being within limits of his own or any adjoining station, who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case, which recourse, it is submitted, was not adopted by the police authorities.

Learned counsel for the petitioners further argues that the statement allegedly taken by the police under Section 161 from the petitioners, as annexed to the writ petition, differs from the complaint of the petitioners (annexed to the supplementary affidavit of exception).

Learned counsel further contends that, despite the petitioners having listed several documents, being 44 in number, in the complaint, the police have taken only six of them from the petitioners, in a patently illegal manner.

Learned counsel submits that such action on the part of the police itself indicates that the investigation is not being conducted impartially.

Learned senior counsel appearing for the respondent-authorities submits that the petitioners' contention, that the investigating officer Nema Ghosh was not acting at his own behest but one Timpu Das, Sub Inspector, was conducting the investigation in

violation of law, is not tenable. By placing reliance on the rejoinder as well as enquiry report filed by the police, learned senior counsel contends that, such documents clearly disclose that Timpu Das, SI, is the Officer-in-Charge of the concerned police station and merely endorsed the case to the investigating officer, Nemai Ghosh. However, it is the investigating officer, namely Nemai Ghosh, who was assigned to the matter and has been conducting investigation duly.

Learned senior counsel further submits that there is no requirement of compliance of Section 160 of the Code of Criminal Procedure as a prerequisite of examination of witnesses under Section 161 of the Code by the police. Learned senior counsel, by placing reliance on the language of Section 161 of the Code, argues that, the said provision confers power upon any police officer making investigation to examine orally any person supposed to be acquainted with the facts and circumstances of the case. As such, there is no embargo on the police taking recourse of Section 161 of the Code and recording statement under the said provision without complying with Section 160 of the Code.

Learned senior counsel, by placing reliance on paragraph 7(iv) of the rejoinder, contends that the complainant produced only six original documents out of the 44 documents sought to be relied on by the

complainant. As such, since photocopies do not have any evidentiary value as such, the investigating officer seized only such six original documents and not the photocopies of the others. As such, the allegation with regard to the police ignoring other documents of the complainant, does not hold water.

Learned senior counsel, next placing reliance on the names of witnesses mentioned by the petitioners in paragraph 3(a) of the supplementary affidavit, argues that the police report filed before this Court, coupled with the rejoinder of the respondent-authorities, clearly indicate that all the said witnesses were examined and their statements duly recorded. In fact, the circumstances under which such witnesses were examined have also been indicated in detail in the report and the rejoinder.

That apart, learned senior counsel appearing for the respondent-authorities places reliance on paragraph 6 of the writ petition itself to indicate that the petitioners only alleged that “some” of their machinery were stolen. Page 115 of the writ petition corroborates such fact. In the absence of any specific detail or description of the machinery actually stolen being furnished by the petitioners, who are in the best position to disclose the same, there was no option before the police-authorities but to proceed only on the original documents handed over by the petitioners.

As such, learned senior counsel argues, there is no irregularity in the fresh investigation. The prayer for transfer of investigation to some other agency than the police is unwarranted and not called for in the circumstances.

A perusal of the report, supplementary affidavit and rejoinder filed by the respondent-authorities, coupled with the materials annexed to the writ petition, makes it evident that there is no gross irregularity in the conduct of investigation by the police authorities.

Regarding the statement purportedly taken by the police under Section 161 of the Criminal Procedure Code not tallying with the initial complaint of the petitioners, such discrepancies, *ipso facto*, cannot lead to the conclusion that the statement under the said provision was recorded wrongly by the police, let alone deliberately. It may very well be that the petitioners differed in their statement under Section 161 of the Code from the original complaint. In the absence of any further material to substantiate impartiality, there is no scope of presuming that the police deliberately manipulated the statement recorded by them to the extent that it deviated from the actual statement made by the petitioners.

As far as SI Timpu Das having endorsed the investigation to Nemai Ghosh, there is no irregularity in such action. The consistent stand of the police

authorities is that, the said SI, Timpu Das, is the Officer-in-Charge of the concerned police station and, in due course of business, he assigned the investigation to Nemai Ghosh, which does not contravene any provision of law. As regards the alleged non-compliance of Section 160 of the Code of Criminal Procedure, such allegation is redundant in view of the police having exercised their authority under Section 161 of the Code in taking statement from the petitioners.

As far as the allegation of non-examination of the appropriate witnesses is concerned, the rejoinder and the report filed by the police-authority sufficiently indicate that the relevant witnesses have been duly examined. Even the circumstances and situation under which they were examined have been detailed by the police, thereby obviating any interference for foul play therein. Undoubtedly, since the petitioners themselves failed to produce the exact details and description of the machinery, which were allegedly stolen, the police have to rely on the original documents regarding purchase of such machinery which are furnished by the petitioners. Since learned counsel for the petitioners submits in Court today that the petitioners are in possession of all such original documents, as enumerated in the complaint, but were never given an opportunity to produce those, it would be in consonance with proper justice to permit the

petitioners to produce such original documents before the investigating officer-in-question, particularly since the importance of such originals is also stressed by the respondent-authorities.

In the circumstances discussed above, there is no necessity for assigning the investigation to some other agency than the local police. In any event, it is always open to the petitioners, being the complainant, to approach the appropriate Magistrate further in case the charge sheet discloses that the investigation was not conducted in proper manner, subject to decision thereon by the said Magistrate.

Accordingly, W.P.A. No. 2934 of 2020 is disposed of by directing the petitioners to hand over the originals of all documents relied on by the petitioners in connection with the allegedly stolen machinery, which are in custody of the petitioners, to the Investigating Officer, on January 18, 2021 at 11.00 a.m. at the concerned police station. Upon receipt of such originals, the Investigating Officer shall issue a seizure list in accordance with law and make such documents part of the Case Diary for the purpose of investigation.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Parties shall act on the communication of this order by learned counsel and/or server copies of the order without insisting upon prior production of the certified copies.

(Sabyasachi Bhattacharyya, J.)