

CRR 2540 of 2018

Smt. Sutapa Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Uttiya Ray

... for the petitioner.

Mr. Arijit Ganguly

Mr. Avik Ghatak

... for the State

Mr. Samiran Mondal

Mr. Nitish Samanta

Mr. Abhinaba Dan

... for the opposite party nos. 2 to 15

Mr. Ghatak, learned advocate for the State has submitted a report, which is kept on record. Mr. Ghatak submitted that that dates have been fixed for examination of CSW, the defacto-complainant but for various reasons the same could not be initiated.

The grievance of the defacto-complainant who is the petitioner before this Court is two fold. Firstly, the investigating agency did not effectively conduct the investigation as the medical papers or the weapons used for assault by the investigating officer were not collected/seized. Secondly, no opportunity was granted to the defacto complainant when the learned Magistrate accepted the final report in respect of some of the accused persons who have been discharged from the case. I find that investigating agency on conclusion of investigation filed their report under Section 173 of the Code of Criminal Procedure on 22.11.2016. Since then more than four and a half years have passed and the report of the police authority submitted today

reflects that charge has already been submitted. As it is a changed circumstance, it is very difficult for this Court to put the clock back in this type of offence.

Accordingly, this Court is of the view that the following directions are required to be passed.

(1) If the defacto-complainant engages a lawyer of her choice to assist the public prosecutor, the learned Magistrate would allow such prayer and if any application is subsequently filed by such lawyer of the defacto-complainant the same should be presented and the learned Magistrate should ensure that such application is placed before the Court for consideration.

(2) If after examination-in-Chief of the CSW1 the Court finds that apart from the present accused persons facing trial certain other names surface, the learned Magistrate would be at liberty to invoke the provisions under Section 319 of the Code of Criminal Procedure.

(3) Thirdly, if in course of examination of CSW1 if it is revealed that there was medical treatment involved and the medical prescriptions and treatment sheet by doctors were not collected by the investigating officer. In that case if an application is preferred by the learned lawyer of the defacto-complainant which should be placed through the public prosecutor, the learned Magistrate should invoke jurisdiction under Section 311 of the Code of Criminal Procedure and for the ends of justice consider the same at the appropriate stage of trial.

With the aforesaid observation, CRR 2540 of 2018 is disposed of.

All pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties are to act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)