

09.06.2022
Sl. No.31
srm

W.P.A. No. 1184 of 2022

Zamir Ahmed @ Pappu

Versus

The State of West Bengal & Ors.

Mr. Ayan Bhattacharjee,
Mr. Anand Keshri,
Mr. Gaurav Kumar,
Ms. Ritu Das

...for the Petitioner.

Mr. Amitesh Banerjee, Id. Sr. St. Counsel,
Mr. Debasish Ghosh

...for the State-respondents.

The petitioner was arrested in the morning of January 1, 2022 at 1.30 am. The allegation against the petitioner is that a confrontation occurred in front of Quest Mall and the police officials were attacked by the petitioner and his associates. Karaya Police Station Case No.1 of 2022 under Sections 353/114 of the Indian Penal Code was initiated.

The petitioner was produced before the learned Chief Judicial Magistrate at Alipore on January 1, 2022. The petitioner was remanded to police custody for two days. Thereafter the petitioner was sent to the judicial custody by an order dated January 3, 2022. On January 4, 2022, the petitioner was released on bail. The petitioner, upon release on bail, got

himself examined by a doctor. The doctor opined that there were some injury on the petitioner.

The petitioner alleges that he was beaten up in police custody by the respondent Nos.5 and 6. Complaints were also lodged before the Commissioner of Police, Kolkata alleging custodial torture with a prayer for initiation of disciplinary proceedings against the respondent Nos.5 and 6. The petitioner also lodged a complaint case before the learned Chief Judicial Magistrate, Alipore, being Complaint Case No. 165 of 2022. The said complaint case was filed on January 20, 2022. By an order dated February 16, 2022, the learned Chief Judicial Magistrate, 24-Parganas at Alipore, dropped the complaint case for want of requisite sanction under Section 197 of the Code of Criminal Procedure. While dismissing the said complaint case, the learned Chief Judicial Magistrate arrived at certain findings. Such findings were contrary to the allegation of the petitioner on custodial torture. Aggrieved by the said order, the petitioner has filed a revisional application, which is pending.

Mr. Bhattacharjee, learned Advocate appearing on behalf of the petitioner, submits that the learned Chief Judicial Magistrate had acted without jurisdiction in dismissing the complaint case and as such the findings of the learned Chief Judicial Magistrate cannot be relied upon while deciding this

writ petition. He prays that the authorities be directed to take strict disciplinary action against the respondent Nos.5 and 6, who had committed serious misconduct by torturing the petitioner in custody and the petitioner had sustained injuries. He further submits that the criminal proceeding, initiated against the respondent No.5 and 6, can go parallelly with any departmental proceeding that may be initiated by the disciplinary authority, against the respondent Nos.5 and 6, for such alleged misconduct. As such, according to Mr. Bhattacharjee, the writ Court should intervene.

Mr. Banerjee, learned Senior Standing Counsel, appearing on behalf of the State-respondents, submits that as per the report filed by the police authorities the allegation of custodial torture against the Inspector Swarup Kanti Pahari and Sub-Inspector Manish Singh has been proved to be false. The Deputy Commissioner of Police, South East Division, Kolkata made an enquiry into such allegations and arrived at a finding that the petitioner was not tortured by the respondent Nos.5 and 6. It has been specifically stated in the report dated April 5, 2022 by the said Deputy Commissioner of Police that although the petitioner was produced before the learned Chief Judicial Magistrate at different points of time, such allegation was never made. Before the petitioner was released on bail, the petitioner was in judicial custody, even at

that point of time, the allegation was not made against the police authorities, who had interrogated the petitioner when the petitioner was in police custody. On these facts, the allegation was found to be incorrect.

Heard the learned Advocates for the respective parties. Perused the report filed by the State-respondents and exceptions filed by the petitioner.

This Court finds that there are allegations against the respondent Nos.5 and 6 of custodial torture. The petitioner had already initiated a proceeding by filing a complaint case before the learned Chief Judicial Magistrate, Alipore. The complaint case was dropped. The petitioner has already approached the revisional Court by filing an appropriate application. Thus, the complaint with regard to custodial torture shall be decided by the revisional Court. *Prima facie*, for the disposal of the writ petition, the report of the Deputy Commissioner of Police is sufficient. The superior authority of the respondent Nos.5 and 6 has, at present, arrived at a finding that the allegations of custodial torture upon the petitioner who was in police custody, could not be substantiated. The writ court, at this stage, cannot direct the disciplinary authority to initiate departmental proceedings against the said respondents. That is entirely within the domain of service jurisprudence and circumscribed by service

rules. As of now, the allegations have been negated by the criminal court and the Deputy Commissioner of Police. However, such allegation cannot be given a complete go-bye until the revisional Court decides as to whether the complaint case should be revived or until the revisional Court passes necessary orders.

However, this Court is of the view that the petitioner shall not be unnecessarily harassed. Karaya P.S. Case No. 1 of 2022 shall be reached to its logical conclusion, in accordance with law. Petitioner will co-operate with the investigation. The proceedings, which are pending before the respective Courts, shall continue independently. The report relied upon by Mr. Banerjee is relevant for the purpose of disposal of the writ petition. All defences shall be available to the petitioner in the criminal case, if the same is revived by the revisional court and the order of dismissal of the complaint case, is set aside. Disciplinary proceedings may be initiated even at a later stage if the allegations against the respondents Nos. 5 and 6 are proved.

The writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)