

13.07.2022
Court No. 19
Item no.362
CP

W.P.A. No. 2257 of 2022

Samija Bibi
Vs.
The State of West Bengal & ors.

Ms. Rita Patra

...for the petitioner.

Mr. Amitesh Banerjee
Mr. Tarak Karan

...for the State respondents.

The writ petition has been filed by the wife of an accused. It is alleged that the husband of the petitioner was arrested illegally by the police authorities. That the allegation of smuggling was wrongly levelled against the accused in order to shield other miscreants who were involved in the racket. Allegation of illegal gratification has been made.

It is alleged that the petitioner's husband was arrested within the jurisdiction of Samsheganj Police Station and, thereafter, transmitted to Baishnabnagar Police Station. It is further pointed out that on the date of the arrest, i.e., on July 27, 2020, the police did not preserve the CCTV footages of the 'PTS More', only to suppress the actual state of affairs. The writ petition narrates the incident as perceived by the petitioner.

The police authorities have filed a report from which it appears that on receiving a tip off from its sources that Fake Indian Currency Notes were being smuggled to Bangladesh by the petitioner's husband through PTS More, the police authorities reached the spot and intercepted the petitioner's husband from 'PTS More'.

On the basis of such information a suo motu written complaint was lodged by SI Amarendra nath Saha. Baishnabnagar PS Case No. 383/20 dated July 28, 2020 under Sections 489(B)/489(C) of the Indian Penal Code was registered. Statements of witnesses were recorded under Section 161 of the Cr.P.C. The counterfeit notes were recovered from the petitioner's husband. The notes were sent for examination to the Bharatiya Reserve Bank Note Mudran Private Ltd. through the learned CJM, Malda. The report was collected and the notes were certified to be counterfeit notes.

The investigation resulted in the submission of the charge-sheet vide Baishnabnagar PS Charge-sheet No. 513/20 dated October 13, 2020 under Sections 489(B)/489(C) of the Indian Penal Code, against the petitioner's husband.

The allegation that the petitioner's husband was arrested by the Samsheganj Police Station on July 27, 2020 has been denied. The CCTV footages at

Samsherganj Police Station, which the petitioner had asked for preservation after expiry of a period of one year, could not be retrieved. According to the police authorities, the said CCTV footages are stored only for 15 days.

All the queries of the petitioner under the Right to Information Act, was communicated to the petitioner by a proper reply.

The allegation that the police authorities had taken away a motorcycle, forcibly has also been denied. No vehicle was seized in the course of the investigation. The case is pending trial before the learned Additional Sessions Judge, 5th Court, Malda.

It appears that the petitioner did not file any naraji petition before the learned court below, after the charge-sheet was filed. Now, the trial has commenced. All the defences which are available and which have been urged before this court, will be available to the petitioner at the stage of trial.

At this stage, the question of directing investigation by an independent authority does not arise, as the trial has commenced.

The petitioner has relied on a decision of the Hon'ble Apex Court in the matter of Vinay Tyagi vs. Irshad Ali, reported in 2013 (5) SCC 762 in support of her contention that the High Court under Article 226 of the Constitution of India, has adequate power

to direct reinvestigation by an independent agency. Paragraph 44 of the said decision being relevant, is quoted below:

“44. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. Wherever a charge-sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in *Disha v. State of Gujarat* [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628] , *Vineet Narain v. Union of India* [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] , *Union of India v. Sushil Kumar Modi* [(1996) 6 SCC 500] and *Rubabbuddin Sheikh v. State of Gujarat* [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] .”

It has been stated that whenever a charge-sheet has been submitted before the court, even the Hon'ble Apex Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialized agency. However, in appropriate cases when the court feels that the investigation by the police was not done in a proper manner and in order to do complete justice, the investigation may be handed over to the specialized agencies. The Hon'ble Apex Court went on to add that the power to order

reinvestigation or de novo investigation, falls within the domain of the higher court, in very exceptional cases. In the case in hand, recovery of the counterfeit notes was made from the body of the petitioner's husband precisely from the right side pocket of his trousers.

The police authorities started the suo motu investigation on the basis of an information received from the informant. 26 nos. of fake Indian Currency Notes of Rs.2000/- denomination along with one currency note of Rs.500/-, and one Samsung mobile handset were recovered. The seizure list bears the signature of the petitioner's husband and the signature of three witnesses who are police authorities. The information was received on July 27, 2020 at 21.05 hours and a team of police officers proceeded to PTS More at about 21.45 hours and at 12.15 of July 28, 2020, the petitioner's husband who was crossing the place, was apprehended.

This is not such an exceptional case, that in the course of trial, further investigation should be directed by a specialized agency. No grounds have been made out.

The observations made hereinabove, are for the purpose of disposal of the writ petition and they shall not have any impact on the pending trial.

The writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)