

18.11.2022.
Court No.13
Item No. 32
pk

**WPA 7235 of 2021
CAN 1 of 2022**

**Shelly Manna
Versus
State of West Bengal & Ors.**

Mr. Rabindra Narayan Dutta,
Mr. Sibasish Ghosh,
Mr. Hare Krishna Halder,
Mr. A.Mukherjee

...For the petitioner.

Mr. Anirban Ray,
Mr. D.Ghosh,
Mr. V. Kothari

... for the State.

In Re: CAN 1 of 2022 (Restoration)

Sufficient grounds are available to explain the absence of the petitioner and/or his Counsel on 11.11.2022.

The said order is recalled and the writ petition is restored to its original file and number.

Accordingly, CAN 1 of 2022 is disposed of.

There will be, however, no order as to costs.

In Re: W.P.A No. 7235 of 2021

The writ petitioner is aggrieved by investigation into FIR being Madhyamgram Police Station Case No. 631 of 2018 dated 18.11.2018. During pendency of the writ petition, Madhyamgram Police Station after investigation has filed a report in the final form being FRMF No. 321 of 2021 dated 29.06.2021.

The remedy of the petitioner is against the said final report before the Magistrate under Section 173(8) of the Cr. P. C.

Counsel for the petitioner submits that the magistrate has failed to take into account an application for cancellation of bail granted to the accused person and has kept the application pending. The said application would have become infructuous by reason of the final report having been filed by the Madhyamgram Police Station

Counsel for the petitioner relies upon a decision of the Hon'ble Supreme Court in the case of **Amar Nath Chaubey Vs. Union of India and others** reported in **(2021) 11 SCC 804**. The said decision would be relevant in the event of either a failure on the part of the police to conduct investigation or a finding at least by a Magistrate that there is an error in the investigation by the police.

In the opinion of this Court, it would be extremely premature for a writ Court to find fault with the investigation. Since the petitioner has effective alternative remedy in the form of a Naraji and/or protest petition under Section 173(8) of the Cr. P. C., she may avail such remedy first.

The Magistrate has power to direct further investigation and it is only thereafter that any higher forum, including the Writ Court, can consider as to

whether the investigation ought to be entrusted to any other investigating agency.

Having regard to the facts of the case that the dispute is primarily between the family members, this Court is of the view that the petitioner must avail her remedy under Section 173(8) of the Cr. P. C. first.

Reserving liberty to the petitioner to challenge the final report of the Madhyamgram Police Station, the writ petition is disposed of.

There will be no order as to costs.

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

(Rajasekhar Mantha, J.)