

18.07.2022

WPA(P) 184 of 2022

Tiyasa Biswas & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Promit Roy, Sr. Adv.
Mr. Satarup Banerjee
Mr. Krishnendu Bhattacharyya
Mr. Lokenath Chatterjee
Mr. Sukanta Ghosh
Ms. Sayani Roy Choudhury
Ms. Rini Bhattacharyya
Ms. Moumita Ganguly

... ... for the petitioners

Mr. S. N. Mookherjee, AG
Ms. Ipsita Banerjee
Mr. Tarak Karan

... ... for the State

Mr. Anish Kumar Mukherjee
Mr. Amrit Sinha

... ... for the respondent no.2

Mr. Billwadal Bhattacharyya

... ... for the CBI

Mr. Dhiraj Trivedi
Mr. Shailendra Kr. Mishra

... ... for the Union of India

This petition was filed highlighting the incident of rape of a minor girl within the jurisdiction of Baduria Police Station and raising the issue of improper investigation.

On the earlier occasions, on the direction of this Court reports were filed and affidavits were exchanged between the parties.

Learned Advocate General has pointed out that now the investigation is complete and charge-sheet has already been filed. It has also been pointed out that similar petition being WPA (P) 185 of 2022 in respect of incident of aggravated sexual assault under the

jurisdiction of another Police Station in the case of Tiyasa Biswas & Anr. Vs. The State of West Bengal & Ors. involving the similar issue had come up and after completion of investigation and on filing of charge-sheet it has been disposed of with certain directions, therefore similar order may be passed in this case also.

Learned counsel for the petitioners has initially raised the issue that the seized items were not sent for DNA testing but when the learned Advocate General referring to paragraph 6 (xv) of the affidavit dated 17th June, 2022 has pointed out that the necessary seized items were sent to CFSL for DNA profiling of all the biological samples, then the said objection was given up by learned counsel for the petitioners.

Once the investigation is complete and charge-sheet is filed then the concerned party has remedy under section 156(3) of the Cr.P.C. before the competent Magistrate and all legally permissible issues can be raised before the competent Magistrate.

Similar petition being WPA (P) 185 of 2022 in the matter of Tiyasa Biswas (supra) on the filing of the charge-sheet was disposed of by this Court by order dated 27.06.2022 by observing as under :

“Having heard the learned Counsel for the parties and on perusal of the record it is noticed that the petitioner has not placed the charge sheet on record for demonstrating any lapse in the investigation. The Counsel for the petitioner

has mainly advanced argument on the basis of Standard Operating Procedure (SOP) but has failed to point out any statutory force of this SOP.

Any lapse or non-compliance is required to be demonstrated with reference to the material which has been collected during the investigation and which form a part of the charge sheet which in the present case has not been done. Even otherwise once the charge sheet is filed the aggrieved party has full opportunity to demonstrate before the concerned Magistrate under Section 156(3) of Cr.P.C. if there is any lapse in the investigation and to pray for further investigation. The Hon'ble Supreme Court in the matter of **Sakiri Vasu vs. State of Uttar Pradesh and Others** reported in **(2008) 2 SCC 409** has held that the power of Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of report under Section 173(8) of the Code. Thus, Magistrate can order reopening of the investigation even after the police report is submitted if he is satisfied that proper investigation has not been done. In the matter of **Rajiv Ranjan Singh 'Lalan' (VIII) and Another**

vs. Union of India and Others reported in **(2006) 6 SCC 613**, the Hon'ble Supreme Court has placed reliance upon its earlier judgment in the matter of **Union of India and Others vs. Sushil Kumar Modi and Others** reported in **(1998) 8 SCC 661** wherein it is held that once a charge sheet is filed in the competent Court after completion of the investigation, the process of monitoring by the Court comes to an end.

Learned Advocate General has place reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Disha vs. State of Gujarat and Others** reported in **(2011) 13 SCC 337** wherein the Hon'ble Supreme Court taking note of the earlier judgment on the point has opined that the cases were transferred to the CBI or other special agency when the Court was satisfied that accused had been very powerful and influential person or State authorities like high police officials were involved and the investigation had not proceeded with in proper direction or it had been biased, in order to do complete justice and having belief that it would lend the final outcome of the investigation credibility. Learned Advocate General had also relied upon the judgment of the Division Bench of this Court in the matter of **Director General of Police (W.B.) and Others vs. Gopal Kumar**

Agarwal and Another reported in **2020 SCC OnLine Cal 755** wherein it is held that the Magistrate has sufficient powers under the Cr.P.C. to order further investigation and to ensure defects/loopholes in the investigating process are remedied. He has also relied upon the judgment of the Hon'ble Supreme Court in the matter of **Sunil vs. State of Madhya Pradesh** reported in **(2017) 4 SCC 393** in support of his submission that non-holding of DNA test is not fatal.

Having examined the present case in the light of above pronouncement, it is noticed that there is no proper allegation of biased investigation in the case. It has not been pointed out that the accused are highly influential persons or they are connected to any particular political party or are influencing investigation. Only allegation in the present petition is that local Councilor had demanded release of the accused persons, but even that allegation is unsubstantiated.

Hence, in the aforesaid circumstances of the case, we do not find any justification to transfer the case to the CBI.

However, we make it clear that we have reached to the above conclusion on the basis of the material placed on record by the writ

petitioner in this public interest petition, therefore, any observation made in this order would not affect any of the rights of the victim or her family members”.

Since the present case also stand on the same footing except for the fact that in the present case DNA samples have already been sent, therefore we dispose of the present petition by holding that the direction issued in the case of Tiyasa Biswas (supra) will be applicable mutatis mutandis in the present case also.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)