

WPA (P) 185 of 2022
Tiyasa Biswas and Another
vs.

The State of West Bengal and Others

Mr. Pramit Kumar Ray, Sr. Advocate
Mr. Krishnendu Bhattacharya,
Mr. Swatarup Banerjee,
Mr. Lokenath Chatterjee,
Ms. Rini Bhattacharyya,
Mr. Sukanta Ghosh,
Ms. Sharda Shah,
Ms. Sayani Roy Choudhury,
Ms. Moumita Ganguly,
Ms. Sabita Roy,
Ms. Ashima Roy Choudhury,
Mr. Arjun Goopta,
Ms. Simantini Bhadra, Advocates
... for the petitioners

Mr. S. N. Mookherjee, Id. Advocate General
Mr. Amitesh Banerjee, Sr. Standing Counsel
Ms. Ipsita Banerjee,
Mr. Nilotpal Chatterjee,
Mr. Tarak Karan, Advocates
... for the State

Mr. Anish Kumar Mukherjee,
Mr. Amrit Sinha, Advocates
... for the respondent No. 2

Mr. Dhiraj Tribedi, Id. Asst. Solicitor General
... for the Union of India
Mr. Billwadal Bhattacharyya, Id. Asst. Solicitor
General
Mr. Amajit De, Advocates
... for the CBI

This public interest petition has been filed with a
prayer to transfer the investigation in Police Station Case
No. 134 of 2022 dated 21st April, 2022 to the Central
Bureau of Investigation (CBI) or to the Special

Investigation Team (SIT) headed by a retired Judge of this Court.

In the writ petition it is alleged that on 1st of March, 2022, a class twelve student was drugged and was subjected to aggravated sexual assault and this incident was videographed and later released in the social media resulting in subsequent gang rape by the four FIR named persons. The report of the incident was lodged by the victim's father on 21.04.2022. The accused were arrested but the writ petitioner being a public spirited person dissatisfied with the investigation has approached this Court.

Learned Advocate General had filed the report in the form of affidavit dated 6th of May, 2022 disclosing the steps taken by the investigating agency. Thereafter he has informed that the investigation is complete and charge sheet has been filed.

Submission of learned Counsel for the petitioner is that there are lapses in the investigation and that DNA analysis has not been done and that steps which were required in terms of the Standard Operating Procedure (SOP) for investigation and progress against the rape against the woman have not been fully taken.

As against this, submission of learned Advocate General is that if there is any lapse in investigation then the aggrieved party has a remedy under Section 156(3)

of the Cr.P.C. before the concerned Magistrate and that DNA is not necessary in every case and that option is still available and proper investigation in the matter is done, no circumstances exists for transferring the case to the CBI.

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 bias 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.

The petition is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)