

S/L 459(ML)
20.07.2022
Court. No. 19
GB

WPA 8923 of 2022

Julaikha Khatun
VS
The State of West Bengal & Ors.

*Mr. Pranit Bag,
Ms. Minal Palna,
Ms. Puja Tripathi,
Mr. Nishant Shukla.*

...for the Petitioner.

*Mr. Ansar Mondal,
Mr. Sougata Mitra.*

...for the State.

The petitioner claims to be an eyewitness to the alleged incident. It is the specific contention of the petitioner that she was in the house when the alleged incident took place and the mother of the petitioner died. The allegation in the writ petition is that the police authorities while investigating into the matter, did not record the statement of the petitioner and her brother and sister and also did not send the petitioner for recording statement under Section 164 of the Code of Criminal Procedure before the learned jurisdictional Magistrate. Several letters were written by the petitioner to the officer-in-charge of the Duttapukur Police Station and to the Superintendent of Police, Barasat Police District.

The Superintendent of Police, Barasat Police District was directed to furnish instruction to the learned advocate appearing for the State, as to why the statements of the petitioner had not been recorded under Section 164 of the Code Criminal Procedure. The police report indicates that the statement of the petitioner, her younger brother and

sister were recorded under Section 161 of the Code of Criminal Procedure.

The apprehension of the police is that the statements of the petitioner, if recorded under Section 164 of the Code of Criminal Procedure, would dilute the offence. The police suspect that the petitioner will try to save her father.

This should not be the concern of the investigating agency. The truth must surface and that should be the sole objective of a free and fair investigation. Thus, when the petitioner repeatedly requested that her statements be recorded under Section 164 of CrPc, the police authority should have taken steps.

The petitioner is the child of the deceased and the accused. The petitioner is a vital witness, not only because she was with her parents in the house, when the incident took place, but being the child and having lived in close proximity with the parents, her deposition may help the investigating agency to arrive at the final conclusion, by unearthing the truth. The object of every investigating agency must be to ascertain the truth. All available witnesses, especially the eyewitnesses are required to be examined.

Thus, the police authorities are directed to produce the petitioner before the learned jurisdictional Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure and upon completion of the said process, the investigation shall be reached to its logical conclusion, in a free, fair, impartial manner and upon taking

into consideration all the materials on record. These observations shall be restricted to the disposal of this writ petition.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)