

03.08.2022
Sl. No.25(ML)
srm

W.P.A. No. 11460 of 2022
Smt. Nirmala Devi Agarwala
Versus
The State of West Bengal & Ors.

Mr. Krishnendu Bhattacharya,
Mr. Rajib Mullick,
Ms. Saheli Sen,
Mr. Priyankar Ganguly,
Ms. Shalini Bairagi,
Mr. Deep Bairagi

...for the Petitioner.

Mr. Pinaki Dhole,
Ms. Kakali Samajpati

...for the State-respondents.

Mr. Ranadeb Sengupta,
Ms. Sonia Mukherjee

...for the Respondent No.5.

Despite service, none appears on behalf of the respondent No.6. Affidavit-of-service is taken no record.

The petitioner is the mother-in-law of the respondent No.6 and mother of the respondent No.5. According to the petitioner, the respondent No.6 injured the petitioner. The petitioner underwent hospitalisation for three days. The report has been relied upon, in order to show the nature of injury that was sustained by the petitioner.

The police report is taken on record. The daughter of the petitioner approached the Officer-in-Charge, Behala

Police Station on May 12, 2022 with the allegation that on May 9, 2022 she had received a phone call from the security guard of the building informing her that the respondent No.6 tried to kill the petitioner. It is alleged that as no FIR was registered the daughter of the petitioner filed an application under Section 156(3) of the Code of Criminal Procedure before the learned jurisdictional Magistrate. On the direction of the learned Magistrate, Behala Police Station Case No.144 dated May 24, 2022 under Sections 341/323 of the Indian Penal Code was registered. The investigation is progress.

It also appears that the respondent No.6 had filed a complaint against her husband, namely the respondent No.5, Madhu Rajgaria (sister-in-law) and her husband, and brother-in-law, namely Subhash Agarwal. On the basis of such complaint, Behala Police Station Case No.142 dated May 23, 2022 under Sections 498A/354/323/ 504/506/509/34 of the Indian Penal Code, was registered and the investigation is in progress.

The contention of the petitioner is that in view of the injury sustained by her, Sections 325 and 307 of the Indian Penal Code ought to have been incorporated in the FIR.

The investigation is at its initial stage. The police authorities have submitted that on the basis of the hospital records, traumatic injury on the right ankle, right knee and

right shoulder had been mentioned, due to a domestic fall. Section 323 of the Indian Penal Code was attracted at the first instance.

At this stage, when the investigation is pending it would not be proper for the Court to direct what sections should be incorporated. The police authorities shall continue the investigation intensively and if it transpires during such investigation that further sections are required to be incorporated, the police authorities shall take steps in accordance with law. The writ court cannot pre-judge the issue and monitor investigation. Moreover, the petitioner also has the remedy before the learned jurisdictional Magistrate at the appropriate stage. However, as the petitioner is an octogenarian lady, the Officer-in-Charge, Behala Police Station shall ensure that peace and tranquility is maintained in the house, as admittedly these are family disputes.

The writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)