

05.08.2022
Court No. 19
Item no.73 (ML)
CP

W.P.A. No. 13333 of 2022

Debasish Banerjee
Vs.
The State of West Bengal & ors.

Mr. Anindya Bose
Mr. Santanu Maji
Ms. Payel Shome

...for the petitioner.

Mrs. Jhuma Chakraborty
Mr. Aritra Ghosh

....for the State.

Mr. Angshuman Chakrabarty
Mr. S. S. Laha

....for the private respondent.

Leave is granted to the petitioner to correct the name of the respondent no. 10, in the cause title here and now.

The petitioner prays for a direction upon the Superintendent of Police, Diamond Harbour Police District to start a reinvestigation of Kalitala Ashuti Police Station Case No. 152/21. According to the petitioner, although the case was started under Sections 420/406/506/34 of the Indian Penal Code, the concerned investigating agency filed a charge-sheet by incorporating only Sections 341/323 and 506 of the Indian Penal Code. According to the petitioner, the deletion of Sections 420 and 406

reflected the biased and mala fide investigation. It is the further case of the petitioner that the articles which were taken away by the respondent no. 10, had not been recovered by the police authorities. The police report is taken on record.

It is submitted by the respondent no. 10 that the investigating agency upon completion of the investigation has filed a charge-sheet. Notice under Section 41A of the Cr.P.C. was complied with. Bail was obtained.

The learned advocate for the State respondents has filed a report. It appears from the report that the notice Under Section 91 of the Cr.P.C. was not complied with by the petitioner. The local witnesses including the landlord were examined. Their statements were recorded under Section 161 of the Cr.P.C. Spot enquiry was made. Sketch map with the index of the place of occurrence was prepared. The local witnesses and the landlord revealed that on November 12, 2021 an altercation took place which was followed by a scuffle. The petitioner and the respondent no. 10 both claimed to be owners of the machines and the factory. During investigation the respondent no. 10 produced documents, namely, electricity bills issued by CESC in the name of the said respondents. Copies of bank statements of Punjab National Bank of Thakurpukur Branch and

Bank India of James Long Sarani Branch were collected. The bank statements revealed that the respondent had paid the petitioner an amount of Rs. 12 lakhs as the price for the paper cup manufacturing machine. A notarized affidavit in the nature of a sale deed was recovered which also indicated that the petitioner had sold the paper cup manufacturing machine to the respondent no. 10 for Rs. 12 lakhs. Thus, upon completion of the investigation, the police authorities filed the charge-sheet incorporating the sections which, according to them, would be attracted in the facts and circumstances of the case.

As the charge-sheet has already been filed, the prayer of the petitioner for a direction upon the Superintendent of Police to start the reinvestigation cannot be allowed. The petitioner has the remedy to proceed in accordance with law before the appropriate court by filing appropriate application.

This order shall not be construed as a declaration of the right of the petitioner to claim reinvestigation. The question shall be decided in accordance with law.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)