

126. 17.08.2022
(ML) Ct. No.19
Tanmoy

W.P.A. 14341 of 2022

**Kiran Devi
-Versus-
State of West Bengal & Ors.**

Mr. Shareq Siddique, Adv.,
Mr. Shahanawaz Alam, Adv.,
Mr. Shabaz Alam, Adv.,
Ms. Gulafshan Parveen, Adv.

...for the petitioner/
de facto complainant.

Mr. Amitesh Banerjee, Ld. Sr. St. Counsel,
Mr. Tarak Karan, Adv.

...for the State.

Mr. Anand Keshari, Adv.,
Mr. Sekhar Mukherjee, Adv.,
Mr. Gourav Kumar, Adv.,
Mr. Rizwan Ansari, Adv.

...for the respondent no. 8.

Affidavit of service is taken on record.

The petitioner alleges that the investigation with regard to the Topsia P.S. Case No. 50 dated April 18, 2022 was not conducted in a free, fair and proper manner. That the statements under Section 164 of the Code of Criminal Procedure, 1973, of her brother, namely, Chandan Shaw, had not been recorded. That the Police authorities completed the investigation in a casual and hurried manner, thereby leaving several loopholes in the investigation.

A prayer has been made for transferring the investigation to the Detective Department, Kolkata for proper investigation. The first prayer in the writ petition is for a direction upon the Topsia Police Station to take effective steps and ensure adequate safety and protection of the life and property of the petitioner. Other prayers are for a direction upon the Police authorities of Topsia Police Station to hand over the investigation to the Detective Department, Kolkata.

The petitioner alleges that there are several flaws in the investigation. First of such, being that the statement of Chandan Shaw, who is an eyewitness, was not recorded either under Section 161 of the Code of Criminal Procedure, 1973, or under Section 164 of the said Code. The petitioner is the *de facto* complainant and Chandan Shaw is an alleged eyewitness.

Mr. Keshari, learned Advocate appearing on behalf of the respondent no.8/the accused, alleges that the writ petition is not maintainable. If the petitioner was unhappy with the investigation, the remedy of the petitioner would be before the appropriate jurisdictional magistrate. He further submits that the learned Magistrate has already rejected the prayer for recording the statement of Chandan Shaw under Section 164 of the Code of Criminal Procedure, 1973. According to Mr. Keshari, the said order was not challenged by the petitioner.

Mr. Amitesh Banerjee, learned Senior Standing Counsel, submits that the Police authorities investigated into the matter by following all the parameters as laid down by the Hon'ble Apex Court. On receiving intimation on April 18, 2022, the police personnel of the concerned Police Station, went to the place of occurrence, 72/1, Topsia Road (S), Kolkata – 700046, where the deceased Mukesh Shaw was lying in a motionless state. During enquiry, it was learnt from the local residents that in the early hours of the morning on April 18, 2022, a hot altercation followed by scuffle took place between the said Mukesh Shaw and one Ajay Prasad Yadav and during such scuffling, the victim fainted. Accordingly, the victim was taken to Calcutta National Medical College and Hospital where he was declared, 'Brought Dead' at 10:55 hours of April 18, 2022 by the on-duty Emergency Medical Officer. The post *mortem* was conducted at the N.R.S. Medical College and Hospital to ascertain the actual cause of death and an inquest report was prepared. The post *mortem* report and the inquest report have also been attached with the report. The cause of death, in the opinion of the Medical Officer was "due to the effect of *ante-mortem* intracranial hemorrhage".

On the basis of the complaint lodged by the petitioner, Topsia P.S. Case No.50 dated April 18, 2022, under Section 304 of the Indian Penal Code was registered. The place of occurrence was visited. Witnesses were

examined. Statements were recorded. Services of a photographer, plan maker of the scientific wing of the Detective Department were requisitioned and taken. The experts of the F.S.L., Kolkata also rendered their service.

The F.I.R. named accused was arrested on April 18, 2022 at about 21:10 hours. The accused was produced before the learned ACJM, Sealdah on April 19, 2022. He was remanded to Police custody till April 26, 2022 and subsequently remanded to Judicial custody.

During investigation, the post *mortem* report and other medico legal aspects of the victim were collected from the Department of Forensic and State Medicine, N.R.S. Medical College and Hospital. The viscera and the medico legal aspects of the victim were sent to the F.S.L., West Bengal for examination. Ultimately, the accused was released on bail by this Court.

During investigation, statements of local witnesses including Chandan Shaw were recorded under Section 161 of the Code of Criminal Procedure, 1973. The statement of Chandan Shaw corroborated the facts as stated by the petitioner, who is the F.I.R. maker. A further opinion on the post *mortem* report of the victim was collected from the Professor and Head of the Department of Forensic and State Medicine and Toxicology, N.R.S. Medical College and Hospital and it was opined that the injuries could also result from blunt force trauma which were consistent with a fall on a hard surface, like the ground.

It is also submitted by Mr. Banerjee that after receipt of the forensic/viscera report from the appropriate authority, charge-sheet had been submitted before the learned ACJM, Sealdah on August 6, 2022, bearing charge-sheet no. 67 of 2022 under Section 304 of the Indian Penal Code.

Under such circumstances, this Court is of the view that the allegation of police inaction does not survive. The remedy of the petitioner, if any, with regard to the contents of the charge-sheet and the investigation, is before the learned Magistrate. It is also on record that the statement of Chandan Shaw was recorded by the police authorities under Section 161 of the Code of Criminal Procedure. The petitioner had already approached the learned Magistrate with the prayer that the statements of Chandan Shaw under Section 164 of the Code of Criminal Procedure should be recorded. The learned Magistrate passed an order, *inter alia*, holding that as the investigation of the case had been completed, there was no further requirement for recording the statements of Chandan Shaw under Section 164 of the Code of Criminal Procedure. Such order of the learned Magistrate had attained finality.

Under such circumstances, the writ petition being W.P.A. 14341 of 2022 is disposed of without any further orders, but leaving the remedies available to the petitioner under the law, open.

The Police authorities shall keep a sharp vigil in order to ensure that peace is maintained and safety of the petitioner is assured.

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.)