

12.8.2022  
Sl.No.4  
sn

**W.P.A. No.17293 of 2021**

**Mahendra Kumar Jain**

**Versus**

**The State of West Bengal & Ors.**

**Mr. Kalyan Bandopadhyay..Sr.Adv.**

**Mr. Debanjan Mondal**

**Mr. Anuj Singh**

**Mr. S. Chowdhury**

**Mr. Ajay Agarwal**

**Mr. Sanket Sarawgi**

**Mr. Arka Banerjee**

**... for the Petitioner**

**Mr. Amitesh Banerjee**

**Mr. Siraj Gooptu**

**Ms. Ipshita Banerjee**

**..for the State**

**Mr. Joydip Kar..Sr.Adv.**

**Mr. Ayan Bhattacharyya**

**Mr. Niloy Sengupta**

**Mr. Ankit Agarwal**

**Mr. Sujit Banerjee..for the applicant**

**In re: C.A.N. 1 of 2022**

C.A.N. 1 of 2022 is an application filed by Kushal Agarwal, the principal accused in Alipore Police Station Case No. 15 of 2021, to be added as a party respondent in WPA 17293 of 2021.

Mr. Kar, learned senior advocate appearing on behalf of the applicant submits that as the investigation by the Special Investigating Team (SIT) directly affects the right applicant, he is a proper party in this proceeding. It is submitted that any order that may be passed in this proceeding or had already been passed, would have an impact on the life and liberty of the applicant. Thus, It is prayed

that the application be allowed and the applicant be permitted to contest this proceeding.

**In re: C.A.N. 2 of 2022**

C.A.N. 2 of 2022 is an application filed by the principal accused, for a direction upon the Special Investigation Team constituted as per the order of this Court, to also investigate Kalighat Police Station Case No. 78 of 2021 dated July 22, 2021. Such prayer is made on the ground that the factual background and the allegations in both the cases were similar.

Mr. Kar, learned senior advocate submits that the SIT, which is already investigating Alipore Police Station Case No. 15 of 2021, should necessarily investigate Kalighat Police Station Case No. 78 of 2021, lest two different investigating agencies come up with conflicting and contradictory findings.

Mr. Bandopadhyay, learned senior advocate appearing on behalf of the petitioner opposes the prayers in both the application. According to Mr. Bandopadhyay, the applicant/principal accused did not have a right to contest the writ petition. He submits the applicant need not be heard at the stage of investigation. He further submits that Kalighat Police Station Case No. 78 of 2021 related to a separate incident and as such the question of clubbing the two investigations would not arise. He

also submits that the de facto complainant in Kalighat P.S. Case No. 78 of 2021 is not the applicant, and the prayer could not be allowed on his application.

Mr. Amitesh Banerjee, learned senior standing counsel files a report prepared by the Special Commissioner of Police (II), Kolkata. It appears that the SIT was constituted, comprising of eight officers. The parents and brother of the deceased were examined. Invoices and bills relating to purchase of jewellery, clothes etc. were seized from the de-facto complainant. Bills of the properties at Jodhpur where the marriage and the other events were hosted were also seized. Some other articles were seized, but there was no recovery of gold and silver articles. Electronic evidences such as pen drive etc containing the voice recording of the deceased was seized and have been sent to the Central Forensic Science Laboratory, Bhopal for examination. Other witnesses were examined under Section 161 of the Code of Criminal Procedure. The doctors and nursing staff of the hospital where victim was admitted and subsequently died, were examined. The principal accused was arrested on July 13, 2022. He is now under judicial custody at the Presidency Correctional Home. The accused was interrogated.

Having prima facie found that offences under Sections 304B/498A/406/34 of the Indian Penal Code against three accused persons had been established, a charge sheet dated August 10, 2022 was submitted before the learned Chief Judicial Magistrate, Alipore keeping the option of filing a supplementary charge sheet open. It appears that the SIT is awaiting the reports of the State Forensic Science Laboratory, Kolkata and Central Forensic Science Laboratory, Bhopal with regard to the voice recording and other materials which have been sent for forensic examination.

The police report is taken on record.

Having heard the learned advocates for the respective parties, this Court is of the view that the application for addition of party and the application for a direction upon the SIT to investigate Kalighat Police Station Case No.78 of 2021, need not be entertained at this stage. This court is of the view that no useful purpose would be served by keeping the writ petition pending. This writ petition was filed alleging inaction of the police as the investigation in Alipore Police Station Case No. 15 of 2021 had not been properly conducted. The SIT was constituted on the direction of the Court. The SIT has completed the investigation of Alipore Police Station

Case no. 15 of 2021 and has filed the charge sheet before the learned jurisdictional Court.

Nothing further remains to be decided in the writ petition as the grievance of the petitioner has been addressed.

The apprehension of Mr. Kar, learned senior advocate that further proceedings may be initiated by the petitioner behind the back of the applicant and without any notice to them, is not a ground for addition of the applicant in this proceeding, especially when this Court has decided to dispose of the writ petition upon holding that after conclusion of the investigation which ended in filing of the charge sheet, the cause of action in the writ petition does not survive,.

The right of the accused under the provisions of the Code of Criminal Procedure is always open. The applicant/accused can take all such steps as he may be advised before the learned Magistrate, where the charge sheet has been filed or before all other fora, in accordance with law.

The next prayer for clubbing both the investigations and a direction upon the SIT to conduct the investigations also cannot be allowed as the investigation with regard to Alipore Police Station Case No. 15 of 2021 has been concluded and a charge sheet has been filed. Only the SIT has

reserved the right to file a supplementary charge sheet upon receipt of the report from the State Forensic Science Laboratory, Kolkata and Central Forensic Science Laboratory, Bhopal.

The Court appreciates the prompt action taken by the SIT.

The rights of the parties at all stages, including the trial are kept open.

Under such circumstances, this writ petition and both the applications are disposed of, without any further orders or directions.

The observations made in this writ petition shall not have any impact in other proceedings that may be initiated by the parties. The remedies of the parties before all other courts/fora are kept open.

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.)**