

08.08.2022
Court No. 19
Item no.10 (DL)
CP/GB

WPA No. 16894 of 2022

Robin Kumar Saha
VS
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharyya,
Mr. Dwaipayan Basu Mallick,
Mr. Arka Prava Sen,
Mr. Sayak Chakraborti,
Mr. Mujibur Ali Naskar,
Mr. Arka Chakraborty,
Mr. Rahul Kr. Singh
Mr. Wrickabrata Roy.

... for the Petitioner.

Mr. Subhabrata Datta,
Mr. Banibrata Datta.

... for the State.

Mr. Soumya Nag,
Mr. Abhinav Rakshit.

... for the Respondent No.9.

The writ petition has been filed for a direction upon the respondent no. 1 to 5 to act in accordance with the provisions of Police Act, 1861 and Police Regulation of Bengal, 1943 and to take cognizance of the petitioner's complaint dated May 19, 2022 being Annexure P/13 to the writ petition.

The petitioner further prays for a writ of a mandamus upon the respondent no. 3 to initiate disciplinary proceedings against the respondent nos. 4, 5 and 6, for acting in violation of the guidelines of the Hon'ble Apex Court.

The other prayer is for a direction upon the respondent police authorities to restrain the respondent no. 9 from destroying the evidence which

has been preserved at 'Udita Housing Complex' based on the order dated May 20, 2022 passed by the learned Additional District & Sessions Judge, Fast Track 4th Court at Alipore.

The petitioner also seeks a transfer of the Survey Park Police Station Case No. 21 of 2022 and Survey Park Police Station Case No. 22 of 2022 to some other investigating agency.

The petitioner alleges that both the petitioner and the respondent no. 9 lodged two separate complaints before the Survey Park Police Station. Although, the police authorities registered Survey Park Police Station Case No. 22/22 against the respondent no. 9 on the complaint of the petitioner, no steps have been taken by the said police authorities in furtherance of the investigation.

It is further alleged that the respondent no. 5 and a team went to the petitioner's house at New Town, assisted by the Officer-in-Charge, New Town Police Station and searched the house. The petitioner and his learned Advocates were present. The police officers were in an inebriated condition in course of investigation. The search was in connection with Survey Park Police Station Case No. 21 of 2022. The search of the residence had been conducted pursuant to a direction of this court on the complaint of the respondent no. 9. It is alleged that the search

took place from 7.00 pm on July 23, 2022 upto 3.30 am on July 24, 2022.

It is the specific allegation that the learned advocates of the petitioner who were present at the time of search and seizure were harassed and detained by the police officers of the Survey Park Police Station till late in the night. The police authorities were bent upon seizing the articles, which had been personally purchased by the petitioner. The seizure list did not contain any indication that jewellery had been found in the house. Rather empty boxed and other household stuff, clothes, suits, furniture etc. had been seized by the police authorities, although they were directed to recover the stridhan articles.

When the petitioner raised his objection and recorded the same in the seizure list, the concerned police authorities abused the petitioner and also his learned advocates and pressurized them to withdraw the objection from the seizure list. The four year old daughter and her nanny were alone at the residence in Survey Park, but the police authorities purposely detained the petitioner.

The allegation is that the officers who had conducted the search and seizure ought to have been put to test so that their intoxicated condition at the time of search and seizure would be revealed.

Further allegation is that the police authorities have taken the side of the respondent no. 9 all through the investigation.

The learned advocate for the respondent no.9 submits that the search and seizure took place on the basis of the order of this Court. The petitioner refused to allow the police authorities to conduct the seizure in accordance with law. The resistance was primarily from the end of the petitioner and his learned advocates. It is further submitted that similar prayers were made by the petitioner in WPA 4098 of 2022. The court did not entertain the disputes and differences between the parties with regard to the custody and safety of the child. The parties were directed to approach the appropriate forum. The Court also did not pass any directions with regard to the investigation, which was going on, on the basis of the complaint filed by the petitioner, although prayers had been made.

It appears that the earlier writ petition was disposed of on March 8, 2022 with a direction upon the Survey Park Police Station was to accommodate the respondent no.9 temporarily in a private accommodation as would be indicated by the petitioner. It is further submitted by the learned counsel for the respondent No.9 that the learned Judge, while disposing of the application for

cancellation of bail, had also directed that the investigation will continue with regard to the recovery of the jewellery and it would be entirely for the investigating officer to decide where such jewellery would be kept, in accordance with the provisions of law and by intimating the concerned bank authorities regarding the steps to be taken.

The police report from the Survey Park Police Station indicates that Survey Park Police Station Case No.21, dated March 2, 2022 under Sections 498A/341/323/506 of the Indian Penal Code was registered against the petitioner on the complaint of the respondent No.9. On the allegation of the petitioner, Survey Park Police Station Case No.22, dated March 2, 2022 under Sections 341/324/506 of the Indian Penal Code was recorded against the respondent no.9. Section 406 of the Indian Penal Code was added in respect of Survey Park Police Station Case No.21 of 2022, subsequently. Such fact also appears to have been noted by the learned coordinate Bench while disposing of the application for cancellation of bail.

The investigating officer visited the place of occurrence with regard to investigation in both the cases. Statements under Section 161 of the Code of Criminal Procedure were recorded. Notices under Section 41A of the Code of Criminal Procedure were

also served upon the respondent no.9. The respondent no.9 surrendered before the learned Additional Chief Judicial Magistrate, 24 Parganas (South) on March 7, 2022. She was granted bail till August 8, 2022. The injury report of the petitioner was collected, which had been issued by Apex Institute of Medical Sciences. After completion of the investigation with regard to the Survey Park Police Station Case No.22 dated March 2, 2022, a prima faice case under Sections 341/324/506 of the Indian Penal Code was found to have been established against the respondent no.9 and charge-sheet no.22 of 2022 dated March 29, 2022 had been submitted before the learned Additional Chief Judicial Magistrate, 24 Parganas (South) on August 1, 2022, upon intimation to the jurisdictional magistrate.

The police authorities have submitted that on the prayer of the respondent no.9 alleging misappropriation of her 'Stridhan' articles, Section 406 of the Indian Penal Code was incorporated.

With regard to the allegation of harassment and threat, caused to the petitioner and his learned advocates during the search and seizure, it is submitted that the said search was made on the basis of the direction of the learned court in a proceeding for cancellation of bail. The allegation of the petitioner was also allegedly enquired into by the

Assistant Commissioner of Police, Bidhannagar Police Commissionerate as the search took place at New Town which was under his jurisdiction. The Assistant Commissioner of Police, New Town, Bidhannagar Police Commissionerate, has filed a separate report in the form of an instruction, alleging that the search and seizure was on the basis of the order of the court and the team returned to New Town Police Station after recovering some articles. There are counter-allegation against the learned advocates, who had accompanied the petitioner, during such seizure. It is stated that at about 4.45 hours, on July 24, 2022 the team returned to the police station after having seized several articles. Thereafter, an e-mail of the petitioner complaining of harassment, had been received at 9 p.m. on July 25, 2022. An enquiry was conducted. The enquiry officer tried to reach the petitioner over telephone, but the petitioner did not answer. The security guards of the building were examined and the enquiry officer was intimated that the allegation against the police personnel of threat and intimidation, misbehaviour, inebriated condition of the police authorities and harassment to the petitioner and his lawyers, were not correct.

The sum and substance of the petitioner's allegation are as follows:-

- (a) The police authorities did not conduct the investigation with regard to the Survey Park Police Station Case No.22 of 2022 in accordance with law.
- (b) Although it was the specific contention of the petitioner that the jewellery and other 'Stridhan' articles of the petitioner had been taken away by the petitioner, the said fact was ignored and as such, incorporation of Section 406 of the Indian Penal Code in the FIR relating to Survey Park Police Station Case No.21 of 2022 was illegal and not in accordance with law.
- (c) That the police authorities had all along been biased and had conducted the raids, although it was an admitted position that the complainant/petitioner had indicated to the police officer time and again, that the respondent no.9 had taken away all her jewellery. Such fact was also supported by the seizure list, which has been prepared by the police, after the raid was conducted in the New Town premises. Only empty jewellery boxes had been recovered, but no jewellery was found. Such angle ought to have been gone into by the police authorities, instead of completing the

investigation with regard to the Survey Park Police Station Case No.22 of 2022 in a mechanical manner.

- (d) Such angle also ought to have also been taken into consideration before Section 406 of the Indian Penal Code was incorporated in the investigation relating to Survey Park Police Station Case No.21 of 2022.

It appears that the allegations of the petitioner as per his complaint, were with regard to the commission of offences under Section 341/324/506 of the Indian Penal Code and the respondent no.9 was, prima facie, found to be guilty of the offences complained of. The investigation of Survey Park Police Station Case No.22 of 2022 was completed and has been filed. The petitioner has not raised any objection with regard to the sections which had been incorporated either in the FIR or in the charge sheet.

The respondent no.9 prayed for cancellation of the interim bail of the petitioner. This Court turned down such prayer and directed the learned Magistrate to decide the issue, while considering the prayer for confirmation of the bail of the petitioner. Such issue is sub judice. While disposing of the application for cancellation of bail, His Lordship observed that the issue with regard to recovery of the 'Stridhan' articles was entirely left to the

investigating agency and the investigating agency would decide how such articles would be preserved. The investigation with regard to the Survey Park Police Station Case No.21 of 2022 is still going on. The issue with regard to the recovery of the jewellery has still not reached its finality. The petitioner has reason to believe that the jewellery may have been taken to other locations, namely, maternal house of the respondent no.9 or any other premises, or premises belonging to the friends and relatives of the respondent no.9.

When the investigating agency has not come to a final decision with regard to the recovery of the jewellery, this Court is of the view that search with regard to the jewellery as directed by a coordinate Bench of this Court, shall continue. The petitioner shall be examined on this issue, as it is the specific case of the petitioner that the respondent no.9 had left the premises where she was staying, with all the jewellery and the petitioner also believes that the jewellery may have been taken away to some other location.

This Court is not in a position to advice the investigating agency as to how such search shall be conducted and all the angles which have been raised by all the parties, shall be looked into as the only job of the investigating agency would be to unearth the

truth and conclude the investigation in a free, fair, judicious and impartial manner. At the time of investigation, the allegation of the learned advocates that they were forced to pen through the objection in the seizure list, shall also be looked into.

As there are allegations of bias against the officers of the Survey Park Police Station, this Court deems it fit to direct the Deputy Commissioner of Police, East Division to monitor the investigation of Survey Park Police Station Case No.21 of 2022 and reach the same to its logical conclusion impartially. Further search and seizure for the alleged 'Stridhan' articles shall also be monitored by the said authority.

If the petitioner is aggrieved by the filing of the charge-sheet or the contents thereof, the remedy of the petitioner would be before the appropriate court. The petitioner is always at liberty to assist the investigating authority in accordance with law as per requirement of the investigating authority for further insight into the issues. However, this order shall not have any impact on the proceedings, which are pending before the learned Magistrate or before any other forum. The petitioner can always approach the jurisdictional magistrate for further orders.

The writ petition is disposed of accordingly. 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.)