

27-04-2022
ct no. 13
SL.42
sp

WPA 21032 of 2018
Sri Akhil Dutta (Senior Citizen)
-Versus-

The State of West Bengal & Ors.

Mr. Avijit Chakraborty
...for the petitioner

Mr. Partha Chakraborty,
Ms. Sharmistha China
...for the respondent nos. 6 to 12

Mr. Subhasish Pachhal
...for the respondent no.12

Despite service of two notices to the office of the Government Pleader, the respondents are not represented.

No accommodation is sought on their behalf either.

The petitioner is aggrieved by an investigation conducted by the Police Station in respect of Domjur Police Station Case No. 574 of 2016 under Sections 147/148/302/120B of the IPC.

The brief facts of the case are that the petitioner's son was killed in an incident that occurred on November 10, 2015 and an FIR was registered against an unidentified person. On a complaint of the elder son of the petitioner of that the victim had not been hit by a fast moving vehicle, FIR was registered and charge

sheet has since been filed in respect of the said case against an unidentified person. One and half years late, the petitioner has registered a second complaint, which has resulted in the subject FIR on June 23, 2015. The investigation into the FIR was completed and a report indicating a mistake of fact was filed before the ACJM, Howrah Sadar. The report came to be challenged by the writ petitioner under Section 173(8) of the Cr. P.C. It was also prayed before the Magistrate that the investigation should be handed over to the CID, West Bengal.

It is now well-settled that the Magistrate acting under Section 173(8) of the Cr. P.C., cannot transfer investigation from the police to any other investigating agency. However the Magistrate has directed further investigation.

Counsel for the private respondents submits that the said order is pending challenge in the revisional jurisdiction of this Court by his client.

This Court is of the view that the writ Court's jurisdiction to entertain a grievance of alleged inaction by the police is not in any way extinguished by reason of an accused challenging an order of the ACJM, Howrah, under Section 173(8) of the Cr. P.C. A grievance

can always be maintained before this Court to seek change of the investigating agency, if appropriate grounds are made therefor. The pendency of the revisional application filed by the accused person, therefore, cannot be a bar on the writ Court for entertaining an application under Article 226 of the Constitution of India for transfer of investigation to any other agency than the State police.

In the facts of the instant case, however, this Court is of the view that since further investigation has already been ordered by the learned ACJM, Howrah, the Domjur Police Station must carry out further investigation as directed as expeditiously as possible.

In that view of the matter, WPA 21032 of 2018 shall stand disposed of directing the Officer-in-Charge, Domjur Police Station to ensure completion of further investigation into the said FIR No. 574 of 2016 dated June 23, 2016, as expeditiously as possible, preferably within a period of two months from the date of communication of a copy of this order, unless the same has already been completed by this time.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)