

06 07.07.2023
NB Ct. 14

WPA 15203 of 2023

Smt. Sunita Devi
Vs.
The State of West Bengal & Ors.

Mr. Debasis Kar,
Mr. Arka Tilak Bhadra,
Mr. Husen Mustafi.
...for the petitioner.

Mr. Asish Kumar Guha,
Mr. Rajendra Chaturvedi.
....for the State.

It appears that an inadvertent typographical error had crept into the order dated 04.07.2023 passed by this Court.

At the heading of the order sheet instead of “WPA 15023 of 2023”, it should actually be “WPA 15203 of 2023”.

The inadvertent typographical error is hereby corrected and the order dated 04.07.2023 shall always be read conjointly with this order.

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to show cause as to why the petitioner and her own family members or the daughter of the mother was compelled to put a signature on a draft by another person and on a direction upon the superior authority to conduct investigation as the concerned police station was not only trying to save the other accused.

Learned senior counsel appearing on behalf of the petitioner submits as follows. The petitioner is the mother of the victim. It is now submitted that it was the petitioner's other

daughter who was compelled to sign of a prewritten FIR. Only Section 306 of the Penal Code was imputed although it was a case of murder. The incident took place at the residence of the accused/private respondents. Evidence was not collected properly. This prompted the petitioner to file an application.

Learned counsel representing the State relies on the report filed earlier as well as on the case diary produces today and submits as follows. After investigation, the case has ended as a final report on the ground of mistake of fact with the Naihati Police Station Case No.150 dated 19.05.2023.

The materials in the case diary do not make out any case either of murder or of abatement to suicide against the accused or anyone else.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the writ petition, the report and the case diary filed by the State.

It appears from the postmortem report that the death was caused due to effects of infection of ante mortem upon injuries as mentioned. There is no indication of any other injury whatsoever. Additionally, there is a dying declaration recorded by a doctor of SSKM hospital in the presence of the investigating officer. This dying declaration clearly exonerates of all.

A prosecution cannot be continued on the surmises of the relatives of the victim.

At this stage, learned counsel appearing on behalf of the petitioner submits that his client was not aware of anything like dying declaration. The petitioner would pray for copies of the

same so that she can file a proper application before the criminal Court by way of a protest petition or otherwise. For such reason, the petitioner is not willing to press the prayers in the writ petition before this Court.

In view of the above, the writ petition is dismissed as not pressed.

However, in the meantime, if a prayer is made for obtaining documents like the postmortem report which can be of the dying declaration by the mother of the victim, the investigating agency shall provide authenticated copies of the same.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)