

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 15645 of 2023

Baishali Samanta @ Baisali Maparu (Samanta)

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. Indrajeet Dasgupta

For the State : Mr. Amitesh Banerjee
Mr. Suddhadev Adak

For the CBI : Mr. Bilwadwal Bhattacharyya, Ld. DSGI
Mr. Sukanta Chakraborty

Heard on : 25.07.2023

Judgment on : 25.07.2023

JAY SENGUPTA, J:

This is an application under Article 226 of the Constitution of India praying for direction to transfer the investigation of the case of the death of the husband of the petitioner namely, Dipak Samanta from the State of Investigating Agency to the respondent no.5 and for providing adequate security, protection to the petitioner herein.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner's husband was taking part in political campaign in the last Panchayat Election of 2023. He was threatened with dire consequences by the supporters of the ruling party. In the meantime, the father in law of the petitioner aged about 82 years passed away due to natural causes. Some local anti socials belonging to the said party came to the house and assaulted the petitioner and her husband. The husband lodged a complaint with the police. But, the police instead of investigating into the allegations, forcibly took away the dead body of the father in law. After some time the miscreants again came and brutally assaulted the petitioner's husband. The husband succumbed to the injuries. The miscreants belonging to the other party are following the petitioner everywhere, even in Court. In the meantime, false complaint was lodged by taking thumb impression of the mother in law who was an illiterate lady. The petitioner in fact sent an e-mail to the concerned Superintendent of Police requesting preservation of the body so that proper post-mortem can be done. But, without her permission, the police authority cremated the body. The petitioner claimed that she had approached the police at least four times for recording an FIR while the police claimed that she had been absconding.

Learned senior counsel appearing on behalf of the State submits as follows. The dispute between the relatives over property is being given the colour of political vendetta. There was a dispute between the man and his brother's wife regarding the property in question. The deceased committed suicide. The police took proper steps and had a post-mortem examination done over the dead body. Subsequently, a report was filed on behalf of the State. Upon taking instructions, learned senior counsel for the State submits that the petitioner did approach the police once and for the rest of the relevant period, she was at her maternal home. Upon inquiry and

after taking instructions from the investigating agency, it is submitted on behalf of the State that the inquiry was done and the complaint of the petitioner allegedly not acted upon has been made a part of the instant case.

I have heard the learned counsels for the parties and have perused the writ petition, the report filed by the State and the case diary.

If a cognizable case is made out on a complaint, there is no question the police not registering an FIR and merely conducting an inquiry. This is against the ratio laid down by the Constitution Bench of the Hon'ble Apex Court in Lalita Kumari's Case (2014) 2 SCC 1.

It appears that a cognizable case is made out from the complaint lodged by the petitioner. Therefore, the police shall register an FIR and investigating to the same, whether this is treated as a counter case to the instant proceeding or not.

From a perusal of the case diary, it appears that the mother of the victim has given a statement under Section 164 of the Code supporting the present prosecution case and claiming that it was a case of suicide that was the fallout of a property dispute between two relatives. There are statements of other relatives recorded under Section 164 of the Code supporting the same.

It also does not appear from the post-mortem report that apart from the injuries connected with the hanging of the victim, there are other external injuries on the dead body.

It is another thing whether, at all, a case of abetment of suicide is made out against the petitioner in the facts and circumstances of the case.

In view of the above and in the interest of justice and to ensure an impartial investigation into the allegations made by the adverse parties, I pass the following directions:

- (i) An FIR shall be registered by the Investigating Agency on the complaint made by the present petitioner and the same shall be investigated in accordance with law.
- (ii) For conducting the investigation in both the cases i.e., the present case as well as the case which is to be registered, the Superintendent of Police of the District of Paschim Medinipur shall appoint a senior officer of the rank of Deputy Superintendent of Police.
- (iii) The investigation shall be carried out expeditiously and in accordance with law.
- (iv) The police authorities shall keep a vigil near the locale and ensure that no breach of peace takes place.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J)

