

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:
The Hon'ble Justice Jay Sengupta

WPA 16301 of 2023

XXX (The Victim)
-vs-
State of West Bengal & ors.

For the petitioner : Mr. Rameshwar Sinha

For the State : Mr. Ashim Kumar Ganguly
Mr. Manas Kumar Sadhu

For the private respondents : Mr. Subhojit Saha
Mr. Shibaji Das
Mr. Sayan Sarkar
Ms. Ishrat Benazir

Heard on : 19.07.2023, 04.08.2023, 07.08.2023, 09.08.2023

Judgment delivered on : 09.08.2023

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities, especially the respondent no.6 to protect the life and property of the petitioner and to restore the possession of the shop to the petitioner.

A further report filed on behalf of the State is taken on record.

On 04.08.2023 the Investigating Officer of the case and the Inspector-in-charge of Uluberia Police were present in Court with the Case Diary. Their presence was noted and dispensed with.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is a tea stall owner. The private respondents applied pressure on her and her family members to part with the said shop. As the petitioner did not yield to their pressure, the private respondents committed gangrape on her. There was also an attempt to rape her minor daughter. The shop was practically taken over by the miscreants. In spite of this, even the petitioner's complaint was not entertained by the local police station. In the meantime, the petitioner's husband committed suicide. She was constrained to file two applications under Section 156 (3) of the Code. The accused were not arrested. No charge-sheet was submitted. Later on, three of the accused were arrested although the prime accused is still roaming around in the same area. The miscreants are still threatening and intimidating the petitioner and her family members. The private respondents are also having a strong political clout. In such circumstances, it is absolutely imperative that some police protection be immediately given to the victim and her family.

Learned counsel appearing on behalf of the State relies on the report and the case diary and submits as follows. Investigation is going on. Three accused were arrested. Raids have been made to nab

the other accused. In fact, the police have got warrants of arrest issued against them. However, there is a mass petition made by the local people that the defacto-complainant victim was committing some wrong doing in that area. This had prompted the victim to issue a declaration that she would not to do such things again. That apart, according to a document sent with the mass petition, it can be seen that the petitioner had agreed to sell away her shop on the PWD land to the private respondents for valuable consideration. Medical examination has been done of the victim lady. However, she refused medical examination for the minor daughter. A Section 164 statement of the victim lady has also been recorded.

Learned counsel appearing on behalf of the private respondents denies all the allegations leveled against his clients and submits that the petitioner had agreed to sell away her stall to the private respondents and taken sum of rupees five lakhs as an advance sum.

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

It is the allegation of the defacto-complainant petitioner that she was brutally gangraped by the private respondents and an attempt was made to rape her minor daughter. In spite of that, the police did not take any complaint. She had to approach a learned

Magistrate under Section 156 (3) of the Code even for the registration of an FIR.

The police, on the other hand, relies on certain documents indicating, as if, the petitioner was committing doing some wrong things in the locality. Even if, for arguments' sake, it is assumed that she had committed some wrong doing that gives no justification for the private respondents to commit such a crime or for the police not to entertain an allegation of gangrape.

The collusion between the so-called villagers making a mass petition against the petitioner and the private respondents is absolutely clear. The purported document agreeing to sell the tea stall to the private respondents that should have been there with the accused were allegedly submitted to the police along with the mass petition.

It also appears that the victim was made to give some kind of an undertaking.

However, a prima facie case is made out as would be evident from the materials including the statement of the victim recorded under Section 164 of the Code.

The police have failed to have the other culprits including the main accused arrested. They are in a way encouraging victim shaming with their outrageous stand.

This is indeed an unfortunate state of affairs.

This is a fit case which should immediately be transferred to the CID for investigation.

Further investigation of the case be immediately handed over to the CID.

In the precarious situation that the petitioner is presently in, the Inspector-in-Charge of Uluberia Police Station is directed to depute an armed police officer for the security of the petitioner and her family members. This protection shall continue till filing of the report in final Form.

The local police authorities shall also ensure that no breach of peace takes place.

Appropriate steps be taken by the concerned authorities so that the identities of the victim and her minor victim daughter are not disclosed.

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.)