

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Jay Sengupta**

WPA 18315 of 2023

**Sharmistha Chakraborty
Vs.
The State of West Bengal & Ors.**

For the petitioner: Mr. Sourav Chatterjee
 Mr. Moyukh Mukherjee
 Ms. Rajnandini Das
 Mr. Sayan Mukherjee

For the Private Opposite Party: Mr. Anirban Dutta
 Mr. Bikram Mitra

For the State: Mr. Amal Kumar Sen
 Ms. Ashima Das

Item No.50

Heard & Judgment on: 21.08.2023

Jay Sengupta, J.

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to investigate Garfa P.S. Case No. 152 of 2023 dated 15.07.2023, especially through a superior lady officer of the rank of Deputy

Commissioner of Police, for adding Section 307 of the Penal Code in the array of charge and to preserve CCTV video footages in an around Garfa P.S. for the dates 15.07.2023, 16.07.2023 and 17.07.2023.

Affidavit of service filed on behalf of the petitioner be taken on record.

Supplementary affidavit filed on behalf of the petitioner is taken on record. Copies of the same are handed over to the learned counsel for either side.

Copies of the documents filed on behalf of the private respondent are taken on record. Copies of the same are handed over to the learned counsel for either side.

Learned counsel on behalf of the petitioner submits as follows. The petitioner happens to be a neighbour and relative of the private respondents. On a particular date, the private respondents inflicted severe injuries on the petitioner, even on the chest knowing fully well that she was a chronic heart patient. In spite of this, Section 307 of the Penal Code was not added as a charge. FIR was registered under lesser charges. In violation of the proviso to Section 161 of the Code, her statement was not recorded by a lady officer. In violation of Section 164(5A) of the Code, a date was fixed for examination of the victim under Section 164 of the Code after about one and half month. On several occasions the petitioner went to the police station to hand

over relevant documents including the CCTV video footage, but the Investigating Officer refused to accept it. If there is any CCTV footage in and around the police station, recordings would bear this out.

Learned counsel on behalf of the private respondents submits as follows. The allegations made in the writ petition are denied. In fact, the private respondents were the victims. The private respondents have already co-operated with the investigation by handing over CCTV footages of the incident available with them.

Learned counsel on behalf of the State submits as follows. As would appear from the orders passed by the Judicial Magistrate in the month of July, 2023, it was the learned Magistrate who fixed the longish dates for examination of the victim under Section 164 of the Code. The police cannot be faulted for this. On several occasions the victim was asked to hand over documents like the injury report, but the same was not done. This prompted the Investigating Officer to go to the hospital and collect the injury report himself. From the injury report, no case under Section 307 of the Penal Code is made out by any stretch of imagination.

I have heard the learned counsels on behalf of the parties and have perused the writ petition, the supplementary affidavit filed by

the petitioner, copies of the documents filed by the private respondents and the case diary produced on behalf of the State.

There was indeed a violation of the proviso to Section 161 of the Code of Criminal Procedure inasmuch as a lady officer was not made to record the victim's statement.

The violation of Section 164(5A) of the Cr.P.C. cannot be attributed to the police officer because a long date was fixed by the learned Judicial Magistrate himself.

The injury report as appended in the writ petition and as contained in the case diary mentions only about pain over the assaulted area. It nevertheless records the history given by the patient herself. It will be for the Investigating Agency to find out whether at all any serious charge is also made out in this case.

If the petitioner is aggrieved with the outcome of the investigation, it shall be also open to her to challenge the same by filing an appropriate petition after the submission of final report.

This is not a case of such a nature where CCTV footages in and around the police station have to be collected to find out who among the victim and police officer is telling the truth about co-operating with investigation. It would suffice if the Investigating Agency takes proper steps for investigating the case.

Let the investigating agency conduct the investigation expeditiously and in accordance with law.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Jay Sengupta, J.)