

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

W.PA. 17650 of 2019

Jamini Kanta Mondal & Ors.

Vs.

The State of West Bengal & ors.

For the Petitioners : Mr. Soumen Kr. Dutta
Mr. Subhash Jana
Mr. Amal Krishna Samantaadvocates

For the State : Mr. Jayanta Samanta
Mr. Benazir Ahmed ... advocates

Reserved on : 03.10.2023

Judgment on : 09.10.2023

Hiranmay Bhattacharyya, J.:-

1. The petitioners have prayed for issuance of a writ of mandamus to command the respondents to award and pay appropriate compensation in view of their detention in connection with Nandkumar Police Station case no. 173 of 2013 dated 18.06.2013 and for a further direction to reinvestigate the said case.
2. Petitioner no. 1 is the father-in-law, the petitioner no. 2 is the mother in law and the petitioner no. 3 is the brother-in-law of the 5th respondent. The 5th respondent submitted a written complaint before the Officer-in-Charge Nandkumar Police Station wherein it was stated that on 11.02.2013 after returning from the house of one of a neighbour she found her daughter lying dead on the bed. On the basis of such information Nandkumar Police Station UD Case no. 5 of 2013 dated 11.02.2013 under Section 302 of the Indian Penal Code was started. Therefore, upon receiving a complaint a case was registered at

Nandkumar Police Station Case no. 175 of 2013 dated 18.06.2013 under Section 302 of the Indian Penal Code. Upon completion of investigation, chargesheet was submitted under Section 302/34 of the Indian Penal Code against the accused/ writ petitioners herein. The learned Chief Judicial Magistrate, Tamluk after taking cognizance transferred the case to the learned Sessions Judge Purba Medinipur. The learned Additional District & Sessions Judge 3rd Court, Tamluk, District Purba Medinipur in S.T. No. -02(01) 2016 passed a judgment on 12.12.2018 holding that the accused person/ writ petitioners herein are found not guilty to the offence brought against them under Section 302/34 of the Indian Penal Code. The writ petitioners were accordingly acquitted under Section 235 (1) of the Criminal Procedure Code.

3. After being acquitted in the aforesaid criminal case this writ petition has been filed alleging that the petitioners were illegally roped in due to wrong and improper investigation by the investigating agency for which the writ petitioners had to suffer illegal detention. On such ground the writ petitioners have prayed for a direction upon the respondent State to award appropriate compensation and for a direction upon the respondents to reinvestigate the aforesaid police case.
4. Mr. Soumen Kumar Dutta learned advocate appearing for the petitioner submitted that it is the bounden duty of the Court of law to uphold the truth and for which there has to be a fair investigation. He submitted that the investigating agency did not investigate the case in a fair and impartial manner. He contended that this Court in exercise of powers under Article 226 of the Constitution of India can pass a direction for further investigation in connection with the death of a baby. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Dharam Pal vs. State of Haryana and ors.*** reported at ***(2016) 4 SCC 160*** and

Bharati Tamang vs. Union of India and ors. reported at **(2013) 15 SCC 578**. He further submitted that since the petitioners were detained illegally, this Court should pass an order directing payment of money in the nature of compensation in view of the fact that the petitioners were deprived of their fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India. In support of such contention Mr. Dutta placed reliance upon the following decisions of the Hon'ble Supreme Court.

(a) Rudul Sah vs. State of Bihar and anr. reported at AIR 1983 SC 1086

(b) Bhim Singh, MLA vs. State of J & K and ors. reported at AIR 1986 SC 494

(c) S. Nambi Narayanan vs. Siby Mathews & ors. reported at (2018) 10 SCC 804

(d) Ankush Maruti Shinde and ors. vs. State of Maharashtra reported at AIR (2019) SC 1457

5. Mr. Samanta learned advocate appearing for the State submitted that the investigation was carried out by the investigating agency in a fair and impartial manner. The petitioners after being acquitted in the criminal case have filed this writ petition praying for compensation and reinvestigation which is not maintainable in the facts of the instant case. He submitted that this writ petition is liable to be dismissed.
6. Heard the learned advocates for the parties and perused the materials placed.
7. The writ petitioners have specifically admitted in paragraph 5 of the writ petition that during the investigation and after considering the statement of the private respondent under Section 164 of the Criminal Procedure Code, the Police found the involvement of the petitioner in

the aforesaid offence and thereby arrested the petitioners. It was also stated in the said paragraph that subsequently the petitioners were released on bail.

8. Record reveals that the petitioners approached the learned Additional District and Sessions Judge, 3rd Court, Tamluk in S.C.Case No. 264 (5) 14 praying for discharging the petitioners from the charge under Section 302/34 of the Indian Penal Code. Such prayer was rejected by the learned Trial Judge and challenging the said order the petitioners approached this Court by filing an application under Section 401 read with Section 482 of the Criminal Procedure Code which was registered as CRR 1444 of 2015. The learned Single judge, by a judgment and order dated 19.11.2015, dismissed the Criminal Revisional Application thereby affirming the order dated 24.03.2015 passed by the Additional District and Sessions Judge, 3rd Court, Tamluk in SC case no. 264 (5) 14.
9. The learned Additional District and Sessions Judge by a judgment and order dated 12.12.2018 in S.T. No. 02(01) 2016 after considering the evidence observed that it appears that the prosecution has failed to prove the case sufficiently and there is doubt regarding the commission of the offence by the said accused persons. The learned Additional District & Sessions Judge, bearing in mind the settled principle of law that no innocent person be punished, gave the benefit of doubt to the accused persons/ writ petitioners herein. The learned Additional District & Sessions Judge held that the accused persons are not found guilty to the offence as brought against them under Section 302/34 of Indian Penal Code and they were accordingly acquitted under Section 235(1) of Criminal Procedure Code.
10. In the case on hand the petitioners were taken into custody at the stage of investigation and subsequently they were released on bail. The petitioners were found not guilty after trial. The detention of the petitioner was, thus, in accordance with the procedure established by

law and the same cannot, by any stretch of imagination, be said to be illegal or unlawful.

11. By referring to the statements made under Section 164 of the CRPC and those under Section 161, Mr. Dutta would contend that the 5th respondent have made contradictory statements. By referring to the post mortem report as well as other materials on record, Mr. Dutta tried to convince this Court that the investigation was not conducted in a fair and impartial manner.
12. As observed hereinbefore, the writ petitioners were held not guilty of the offence brought against them under Section 304/34 of the Indian Penal Code and they were accordingly acquitted by the learned Additional Sessions Judge. The judgment dated 12.12.2018 passed by the learned Additional Sessions Judge has been accepted by the writ petitioners. A writ court cannot sit in appeal over the findings of the judgment dated 12.12.2018 passed by the learned Additional District and Sessions Judge in S.T. No. 02(01) 2016.
13. In course of hearing of this writ petition Mr. Dutta would submit that the writ petitioners want that appropriate investigation is to be made to find out the truth about death of a baby who was aged about 5 months only at the relevant point of time. In the event the petitioners have any materials in their possession to unearth the truth, it will be open to them to take appropriate steps in accordance with law.
14. In ***Dharam Pal*** (supra) the issue which fell for consideration was whether after commencement of trial a direction for transfer of the investigation to CBI can be passed. The Hon'ble Supreme Court held that the power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure fair and just investigation. The Hon'ble Supreme Court further observed

that direction for further investigation by another agency has to be very sparingly issued. The said decision being distinguishable on facts do not have any manner of application to the case on hand.

15. In ***Bharati Tamang*** (supra) a writ of mandamus was prayed for quashing the chargesheet alleging that the whole investigation which was initially held by the State police and thereafter by CID and later by CBI was faulty in all respect. The Hon'ble Judges of the Supreme Court after noting various relevant features were of the view that the proceeding of the case by the prosecution either by the State Police or by CID and after it was taken over by CBI was not carried out in a satisfactory manner. The Hon'ble Supreme Court further noted that after occurrence of the incident there was serious lapse in apprehending many of the accused and the fact that the prime accused were still absconding as on the date of the passing of the judgment of the Hon'ble Supreme Court it was observed that such fact disclosed that there was total lack of seriousness by the prosecution agency and in carrying out the investigation. On such factual background the Hon'ble Supreme Court observed that the investigation was continued to be carried out by CBI but shall be closely monitored by its Joint Director. Apart from the above several other directions were passed. The said decision being distinguishable on facts is of no assistance to the petitioner in the case on hand.
16. In ***Rudul Sah*** (supra) the petitioner was released from jail more than 14 years after he was acquitted by the learned Sessions Judge. The detention of the petitioner for such a long period even after being acquitted was held to be unlawful and for such reason the Hon'ble Supreme Court after directing payment of compensation as an interim measure allowed the petitioner therein to bring a suit to recover appropriate damages from the State and its erring officials. The facts of the said reported decision is clearly distinguishable and therefore, the same is of no assistance to the petitioner.

17. **Bhim Singh** (supra) deals with a case of detention without being produced before the concerned Magistrate within the stipulated time limit. The Hon'ble Supreme Court further noted that the orders for remand to custody were passed even without such person being produced before the concerned Magistrate. On such facts the Hon'ble Supreme Court held that there has been a gross violation of the Constitutional rights under Articles 21 and 22(2). On such factual background the Hon'ble Supreme Court directed payment of compensation. The said decision being distinguishable on facts do not have any manner of application to the case on hand.
18. In **S. Nambi Narayanan** (supra) the Hon'ble Supreme Court passed a direction for payment of compensation taking note of the reports submitted by the CBI wherein it was observed that the entire prosecution initiated by the State Police was malicious and it has caused tremendous harassment and immeasurable anguish to the appellant therein. From the observations made in paragraph 34 of the said reports it is evident that the principles applied therein while passing a direction for payment of compensation shall not be applicable to a case where the accused is kept under custody and eventually after trial he is found not guilty. The case on hand squarely falls within the exceptions carved out in the said reports.
19. In **Ankush Maruti Shinde** (supra) the Hon'ble Supreme Court awarded compensation to the accused in the peculiar facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India. It is well settled that directions passed under Article 142 of the Constitution of India do not comprise the ratio decidendi and, therefore, lose its basic premise of making it a binding precedent. The Hon'ble Supreme Court in the case of **State of Punjab & ors. vs. Rafiq Masih (Whitewasher)** reported at **(2014) 8 SCC 883** held thus-

“12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. “Declaration of Law” as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in Indian Bank v. ABS Marine Products (P) Ltd., Ram Pravesh Singh v. State of Bihar, and in State of U.P. v. Neeraj Awasthi, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.”

20. In view of the aforesaid well settled proposition of law the direction for payment of compensation in **Ankush Maruti Shinde** cannot be said to be a binding precedent.
21. From the aforesaid discussion it follows that that though the Constitutional Courts have the power to order fresh, de novo or reinvestigation but such directions have to be issued sparingly depending upon the facts of the case. The petitioners herein have failed to make out any case for a direction to order fresh investigation or reinvestigation of the police case. That apart, the petitioners herein

have already been acquitted in the said criminal case after trial. The prosecution initiated by the State in the case on hand cannot be said to be malicious. As observed hereinbefore the detention of the petitioners were in accordance with the procedure established by law and the same therefore, cannot be said to be illegal or unlawful.

22. Since the detention of the petitioners cannot be said to be unlawful or illegal, this Court is of the considered view that no direction for payment of compensation should be passed in the case on hand.
23. For all the reasons as aforesaid the writ petition stands dismissed. The dismissal of the writ petition shall not preclude the petitioners from initiating appropriate proceedings in accordance with law.
24. There shall be, however, no order as to costs.
25. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)