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C.R.R. No.2502 of 2021

In Re: An application under Section 482 read with 401 of the Code of Criminal Procedure, 1973;

Tapan Kumar Pan
Versus
The State of West Bengal & Anr.

Mr. Sudipto Moitra,
Mr. Samiran Mandal,
Mr. Abhinaba Dan,
Mr. Nitish Samanta,
Mr. Dwaipayan Biswas.
...for the petitioner.

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.
...for the State.

Mr. Sujoy Sarkar,
Mr. Rahul Chachan.
...for the opposite party no.2.

Petitioner approached this Court being aggrieved by the order dated 23.11.2021 and it is firm believed of the petitioner being the father of the deceased that the provisions of Section 306 of the Indian Penal Code under which charge has been framed are based on materials restricted to the case diary and the Investigating Agency did not have the zeal to unearth the truth.

Learned senior advocate appearing for the petitioner draws the attention of this Court to the relevant statements under Section 161 of the Code of Criminal Procedure and submits that many of the witnesses whose statements have been recorded are

relied upon by the Investigating Agency do not relate to the correct dates on which the incident occurred. The post-mortem report is questionable and no conclusive opinion was obtained from the medical experts before the charge-sheet was submitted before the jurisdictional court.

Mr. Sarkar, learned advocate appearing for the opposite party no.2, on the other hand, resists such submissions and states that according to medical opinion the case is one of suicide, further the statements which have been recorded do not alter the findings of the Investigating Officer that alleged offence under Section 306 of the Indian Penal Code has been made out.

Mr. Sur, learned advocate appearing for the State produces the case diary and draws the attention of the Court to the statement of the witnesses.

I have perused the charge-sheet and the case diary and I find that no medical expert has been relied upon by the prosecution in the list of witnesses available in the charge-sheet. The post-mortem report which has been questioned by the petitioner/complainant falls short of certain details which calls for an alternative medical opinion.

The accused in the present case happens to be nurse of the local hospital and the learned advocate appearing for the petitioner apprehends that any medical board formed would prejudice to the findings in the present case.

There was a casual approach by the Investigating Officer of the instant case. Accordingly, I direct the DIG, CID, West Bengal

to monitor the investigation by engaging an Officer of his choice for conducting further investigation of the case. Further, the investigation would be restricted to an opinion expressed by a body of medical experts who would be associated with AIMS, Kalyani, West Bengal. After such report is received, if the police authorities are of the opinion that further witnesses are to be examined, then in that case such witnesses may be examined. In the alternative, the police authorities will cite the list of witnesses in addition to the earlier list of witnesses which were cited because the earlier list lacks any medical expert/post-mortem expert or any other expert being cited as a witness by the prosecution.

The incident is of the year 2018. As such, the newly Investigating Authorities so appointed may take steps so that within a reasonable period of time the directions so passed may be complied with.

The order dated 23.11.2021 passed by the learned Additional District and Sessions Judge, Bolpur, Birbhum in Sessions Case No.02 of 2020 so far as it relates to refusal of the prayer for further investigation is hereby set aside.

Accordingly, CRR 2502 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

It has been informed that the next date has been fixed on 27th February, 2023 for evidence.

Learned trial court is directed that the next date of the case be fixed in the month of June, 2023 and the learned trial court would issue notice upon the Investigating Officer newly appointed to

produce the records for the purpose of ascertaining regarding the progress of the investigation.

Mr. Sur, learned advocate appearing for the State is directed to communicate this order to the DIG, CID, West Bengal.

Learned Registrar General, High Court, Calcutta is also directed to communicate this order to the DIG, CID, West Bengal.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)