

16.08.2023
Item No.2-3
RP/AN
Ct. No.1

MAT 1148 of 2023
+
IA No.CAN 1 of 2023
State of West Bengal
VS.
Salim Ahmed & Ors.
With
MAT 1518 of 2023
The Indian Institute of Technology,
Kharagpur & Ors.
VS.
The State of West Bengal & Ors.

Mr. Samrat Sen, Sr. Adv, Ld. AAAG
Mr. Suddhadev Adak
... for appellant in MAT 1148/2023

Mr. Anindya Kumar Mitra
Mr. R.N. Majumder
Mr. Ayan Bhattacharjee
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... for appellant in MAT 1518/2023

Mr. Ranajit Chatterjee
Mr. Arnab De
Mr. Prasenjit De
Mr. Asit Kumar Biswas
Mr. Niladri Sekhar Ghosh
Mr. Aniruddha Mitra
Ms. Sompurna Chatterjee
Mr. Sourav Mondal
... for the private respondents

Mr. Sandip Kumar Bhattacharya
... Amicus Curaie

1. These intra-Court appeals are directed against the order dated 14th June, 2023 passed in WPA 23497 of 2022. The State of West Bengal is the appellant in MAT 1148 of 2023 and the Indian Institute of

Technology, Kharagpur is the appellant in MAT 1518 of 2023. The order impugned in both the appeals is the order passed by the learned Single Bench concerning the death of a student in the hostel of the Indian Institute of Technology, Kharagpur. There are series of orders, which were passed by the learned Single Bench from time to time and against one of such orders earlier the State had preferred an appeal, being MAT 849 of 2023. The said appeal was disposed of by this Bench by an order dated 19th May, 2023 with certain clarifications.

2. The State of West Bengal challenged three different orders passed WPA 23947 of 2022 and all the orders concern the circumstances under which the son of the writ petitioners died, who was a student of the Indian Institute of Technology, Kharagpur. The Court noted that the State has not resisted the direction issued by the learned writ Court for conduct of the second post-mortem by Dr. Ajoy Kumar Gupta but the only apprehension of the State appears to be that in that process the investigation should not be taken over by the said forensic expert or by way of any other third party. The Court opined that the stage is yet to come for any investigation to take forward the investigation and it can happen only after Dr. Ajoy Kumar Gupta

conducts the second postmortem in terms of the direction issued by the learned writ Court. The Court was of the clear view that the order passed by the writ Court should not be and shall not be construed to mean that the investigation will be done by Dr. Ajoy Kumar Gupta which shall be done by the appropriate investigation which wishes alone. With this clarification MAT 849 of 2023 was disposed of.

3. In terms of the interim directions issued in the writ petition second post-mortem was conducted and the report has been submitted. From the report it appears that the findings in the second post-mortem report is slightly different from the findings recorded in the first post-mortem report. Thus, the learned Court faced with this situation that by the impugned order the learned writ Court was inclined to replace the existing investigating officer in the matter with an independent team and, accordingly, directed appointment of Mr. K. Jayaraman, IPS, ADG Headquarters, West Bengal to lead the investigation in the matter. He shall be in-charge of the investigation as a whole. He shall be assisted by Mr. Susanta Dhar, a retired senior officer of the Homicide Division of the Calcutta Police, who shall also act as a liaison with the Investigating officer. Mr. Kaushik Basak, Officer-

in-Charge, Homicide of the CID, West Bengal was appointed as a new Investigating Officer, who was required to function under the supervision and guidance of Mr. K. Jayaraman, IPS, ADG Headquarters, West Bengal. Direction was also issued to handover the entire case diary, evidence and material collected by the existing investigating officer to Mr. K. Jayaraman, IPS, ADG Headquarters, West Bengal. Further, the Court observes that in view of serious omissions in the first postmortem report and the misdirection of the earlier investigation the Court permitted the newly appointed investigating team to, if necessary, conduct a truth serum and narco analysis test on any of the witnesses or persons they deem necessary to throw light on the incident. Further, liberty was reserved to the investigating team to approach the Amicus Curie Mr. Sandip Bhattacharya, Advocate for any clarification or to approach this Court. The Court had directed the matter to be listed on July 12, 2023 when the newly appointed investigating team was required to submit their report.

4. The State being aggrieved by a portion of the order directing replacement of the investigating officer has preferred this instant appeal. It is submitted by the learned Assistant Additional Advocate General

that on going through the interim directions issued by the learned writ Court it will be seen that nowhere the Court has doubted the efficacy of the investigation being done by the officer nor there has been any allegation that the officer has misdirected himself or the investigation has been carried out in a manner not sanctioned in law and in such circumstances the question of change of any investigating officer would not arise. In this regard the learned Assistant Additional Advocate General would like to place various decisions on the said point.

5. It is a settled principle that change of an investigating agency is done in rarest of rare cases and the fundamental principle on which the change of investigation is sought in order to ensure that the person, who has lodged the complaint/FIR, is being conducted in a proper manner and is not derailed by any external sources. However, in the instant case the factual situation appears to be slightly different. There was a first postmortem report and subsequently by virtue of the order passed by the Court the second postmortem was conducted and this Court in MAT 849 of 2023 has recorded the submissions made on behalf of the State that State does not resist the direction issued for conduct of the second

postmortem report. In such circumstances, the question of falling back on the first postmortem report would not arise and the second postmortem report for all purposes stand superseded over and above the first postmortem report. Therefore, it is necessary that the investigation should proceed in the manner based on the second postmortem report.

6. Mr. Mitra, learned senior advocate appearing for the Indian Institute of Technology, Kharagpur submitted that when the writ petition was being heard the learned Advocate General appearing for the State had produced a copy of the investigation report submitted pursuant to completion of the investigation based upon the first postmortem report. However, the Court had directed the second postmortem report to be conducted.
7. As observed earlier and direction for conduct of the second postmortem report has been implemented and has attained finality. Therefore, the question of falling back on the first postmortem report does not arise. If final report or the draft final report has already prepared by the investigating officer based on the first postmortem report it is necessary that a fresh look is required in the matter and, therefore, we are of the view that the learned writ Court was justified in directing new investigating officer to be

appointed and undertake the investigation. This order would ensure that the newly appointed officer will have an open mind and proceed on the basis of material which are available on hand. So far as the direction issued by the learned writ Court stating that a retired senior officer of the Homicide Department of the Kolkata Police to assist Mr. K. Jayaraman, IPS, ADG Headquarters, West Bengal, in our view, the said order is not necessary and uncalled for the officer having been retired. It is better that such officer should not be a part of any investigating team nor act as a liaison with the investigating officer. No useful purpose would be served on account of such direction.

8. We make it clear that we have not expressed any opinion against the retired senior officer of the Homicide Department of Kolkata Police. However, an officer having been retired, it is better for the officer not to involve in the investigation of any crime.
9. So far as nominating a particular investigating officer of a particular department of the CID, West Bengal is concerned, in our opinion, the choice of the investigating officer should be left with Mr. K. Jayaraman, IPS, ADG Headquarters, West Bengal instead of the Court naming the officer concerned. The Court having reposed confidence in the ADG,

Headquarter, West Bengal is left the discretion to the said officer who is an officer of IPS cadre to decide as to who will be the new investigating officer.

10. Mr. Mitra, learned senior advocate would submit that the writ petition is filed with certain oblique motive with a view to extract money from the institution and the prayer sought for in the writ petition is clearly revealed the same. However, such stage is yet to come since the writ petition is pending. The Court also noted the submission of the learned senior advocate that the investigation is also raising the question of maintainability of the writ petition which is to be heard and decided by the learned Single Bench.
11. Much has been stated about the role of the Amicus Curaie. The Court appoints an Amicus Curaie for the purpose of assisting the Court as a friend of the Court and it may not augur well that a learned member of the Bar is assisting the investigating team in any way or assisting the doctor, who has conducted the postmortem. Practice of legal profession would not envisage such direction from a Court though it may be well open to any learned member of the Bar to advise on legal aspect. Therefore, we are of the view that the role of Mr. Sandip Bhattacharya, learned Advocate who has

officially appointed as Amicus Curaie, having been completed, the learned advocate shall have no role in further proceedings or investigation and/or in any manner concerning the subject issue. We make it clear, all other issues are not gone into and it is well open to the parties to agitate the same before the learned Single Bench. Accordingly, the appeals are **partly allowed** with the following directions. Consequently, CAN 1 of 2023 is disposed of.

- i) The direction to appoint Mr. K. Jayaraman, IPS, ADG Headquarters, West Bengal to lead the investigating team is confirmed.
- ii) The direction to appoint Mr. Susanta Dhar, a retired Senior Officer of the Homicide Division of the Calcutta Police is set aside.
- iii) The direction to appoint Mr. Kaushik Basak, OC, Homicide of the CID, West Bengal as new investigating officer is set aside.
- iv) Direction is issued to Mr. K. Jayaraman, IPS, ADG Headquarters, West Bengal to nominate a young and energetic officer, who shall proceed with open mind based on the material placed before the investigating officer.
- v) Other directions for handing over the entire case diary, evidence and materials collected be complied with.

- vi) In terms of the observations made above, while thanking Mr. Sandip Bhattacharya, advocate for having acted as an Amicus Curiae, his role stands discharged.
12. It is made clear that directions issued by the learned Single Bench nor this judgement and order affirming a portion of the subject order of the learned Single Bench should not be understood to have cast any aspersion on the investigating officer, who had done the first investigation. Equally so, we make it clear, we have not made any aspersion or any comments about competency or erudition of the officers, who are directed by the learned Single Bench to assist the investigation.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)