

06.05.2024.
Item No. 18
Ct. No.14
PG/KS

W.P.A. 12854 of 2024
Srikanta Ghorai & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Srijib Chakraborty
Mr. Aditya Mondal
.....for the Petitioners

Mr. Rajarshi Basu
Mr. S. T. Mina
.....for the State

Affidavit of service filed on behalf of the petitioners is taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The brother of the petitioners had earlier filed a writ petition regarding the mysterious circumstances under which the cousin brother of the petitioners died. By an order dated 23.04.2024 passed by this Court in W.P.A. 11305 of 2024, the State was directed to obtain another opinion from the medical expert of the SSKM Hospital, Kolkata regarding the post-mortem report in question vis a vis the death of the victim. However, during investigation, notices dated 28.04.2024 were issued to the present petitioners under Section 160 of the Code, which were received by the petitioners on 30.04.2024. First, a very short notice was given by the police to

appear before them. Secondly, the wordings of the notices, were such, as if, the petitioners were the accused and these were notices under Section 41A of the Code.

Learned counsel appearing on behalf of the State submits that the police are using a particular format for issuing notices under Section 160 of the Code. There was no intention either to treat the petitioners as accused or to give notices under Section 41A of the Code in the garb of Section 160 of the Code.

The portion of the notices, which require the petitioners to give full cooperation in apprehension of the “accomplice” would necessarily imply that the noticee was an accused and not a witness. This is in direct contradiction with the nomenclature of the notices.

In view of the above, the impugned notices are set aside.

However, the State shall be at liberty to issue proper notices under Section 160 of the Code of Criminal Procedure afresh to the petitioners giving at least a day’s time and requesting them to comply with the same.

With the above observations, writ petition stands disposed of.

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

(Jay Sengupta, J.)