

28.05.2024

Sl.No. 1
Ct.No. 5
Amalranjan

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 14781 of 2023

Sankar Kanti Chowdhury
Vs.
The State of West Bengal and ors.

Mr. Argha Banerjee

...for the petitioner

Mr. Jayanta Samanta

Mr. Dipjyoti Chakraborty

...for the State respondents

A report, pursuant to the order dated 25th October, 2023 as has been submitted in court today, i.e., by the Officer-in-Charge, Dakshineswar Police Station, Barrackpore Police Commissionerate dated 27.05.2024, is taken on record.

It appears that the previous case being Belgharia PS case no. 315/2009 dated 06.10.2009 is pending at present against the present respondents.

So far the case, i.e., Dakshineswar Police Station case no. 48/2023 dated 26.02.2023 under section 380 IPC is concerned, the report mentions that the complainant did not produce any articles connected with the present case in response to the notice under section 91 of the

Criminal Procedure Code. Therefore, for want of evidence, the police has submitted FRT being no. 204/2023 dated 25.09.2023 under section 380 IPC.

Mr. Argha Banerjee, learned advocate appearing on behalf of the writ petitioner has vehemently opposed to such FRT as submitted by the police. He submits that the investigation has been done in a perfunctory manner. He seeks that a proper investigation be done or otherwise the writ petitioner shall suffer jeopardy. He has also mentioned about the reply obtained by him in an application under Right to Information Act, showing that neither the notice under section 41A of the Criminal Procedure Code has been issued to the accused persons nor the search has been carried out by the police authorities, during investigation. He seeks adequate relief for the petitioner.

Mr. Jayanta Samanta, learned advocate, is appearing on behalf of the State respondents. He submits that there would not have been any necessity for investigating authority to proceed with the investigation any further, since the complainant in response to the notice under section 91 Cr.P.C. could not produce any supporting documents as regards alleged stolen

articles, excepting some broken padlocks. He submits further that the FRT was appropriately lodged by the police in this case in the court. He would further submit that, in case of a FRT being filed, the writ petitioner, would have appropriate statutory remedy, to pursue, in due course.

Record reveals that the writ petitioner has lodged an FIR dated 26.02.2023. The same was registered as Dakshineswar PS case no. 48/2023 dated 26.02.2023 under section 380 IPC. In connection with the same notice was issued to the complainant/writ petitioner issued under section 91 Cr.P.C, on 11th March, 2023.

In response to the same, the writ petitioner submitted broken padlocks of the concerned premises, where the offence is said to have been committed. Though, it is submitted on behalf of the State respondents that the writ petitioner has not been residing therein for days together and has not been able to produce supporting documents regarding ownership of alleged stolen articles, the Court finds that duty of the police does not end there only. It appears on perusal of the reply to the application under Right to Information Act, that neither the accused persons have been questioned nor any

search has been conducted to at least confirm about the substantively of the allegations made in the FIR the court finds the same to be lacuna in investigation. Availability of the proof of ownership of the alleged stolen articles may not be the only relevant fact for deciding beforehand about non-availability of evidence at all. A fair investigation is the foremost criterion for a fair trial, which would be the moto of the entire criminal justice system.

Under such circumstances, this court is inclined to dispose of the writ petition with the direction to the respondent authorities for conducting further investigation in the case by undertaking due process for examination of the accused persons, search and seizure of the place of occurrence, and taking other steps as would be necessary and proper for fairness of the investigation.

With the above directions, this writ petition being WPA 14781 of 2023 is disposed of.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Rai Chattopadhyay, J.)