

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 13815 of 2023
With
CRR 2696 of 2023
Jabbar Khan @ Jabbar Khan
Versus
The State of West Bengal.

For the petitioner : Mr. Samim Ahammed,
Mr. Arka Ranjan Bhattacharya,
Ms. Gulsanwara Pervin,
Ms. Saloni Bhattacharyya,
Mr. Santanu Mondal
.....Advocates

For the State : Mr. Rudradipta Nandy Id.APP,
Mr. Iqbal Kabir,
Mr. Saryati Dutta,
Mr. Samim ul Bari,
Mr. Sabyasachi Bhattacharya.
.....Advocates

Heard lastly on : 01.04.2024

Judgment on : 01.04.2024

Jay Sengupta, J:

In Re:- WPA 13815 of 2023

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the de facto complainant in Rajnagar PS Case No.12 dated 08.02.2014 under Sections 364, 302 and 201 of the Penal Code. He is also the father of the nine-years-old boy who was allegedly murdered. The petitioner's son went missing in the night between 04.12.2024 and 05.12.2014. He lodged an FIR on 05.12.2024 by specifically naming one Sahidul Khan and some others as accused. He mentioned that he had last seen the victim together with the said prime accused Sahidul. But, the Investigating Agency did not investigate the case properly and excluded the prime accused Sahidul from the charge sheet. Protest petitions had to be filed twice. Further investigations were directed. In spite of this, the said prime accused was not added in the array of charge sheeted accused. There was a specific order passed by the learned Magistrate on 4th August, 2016 that a Section 164 statement of the petitioner should be recorded. Yet, the same was not done. After submission of charge sheet, charges have been framed. Subsequent prayer for further investigation was turned down by the learned Trial Court/Sessions Court on the ground that the points could be taken up in terms of Section 319 of the Code of Criminal Procedure.

Learned Additional Public Prosecutor representing the State relies on the written note, which is taken on record, and the case diary and submits as follows. A thorough investigation has been done in the case. There are statements of independent witnesses who had seen the other accused along with the victim near the place of occurrence in the dead of night. That is why, they were made accused in this case. No further material was available against the alleged accused, Sahidul. That is why, he was not charge sheeted. It is true that there was a mistake in non-complying with the order of the learned Magistrate in recording a statement of the petitioner under Section 164 of the Code. But, that does not vitiate the entire investigation. In any event, all these issues can fairly be taken up in an application under Section 319 of the Code of Criminal Procedure. The proceeding is at a mature stage and charges have been framed, although, evidence have not been recorded. After the writ petition was filed, the prosecution prayed for recording of a statement of the petitioner under Section 164 of the Code, but the prayer was turned down. Ordinarily, a Court would refrain from directing further investigation at a mature stage of trial.

It appears that in the instant case, only charges have been framed and no evidence has been recorded as yet.

In the judgment of the Hon'ble Apex Court being **Anant Thanur Karmuse Vs. State of Maharashtra & Ors.** reported at (2023) 5 SCC 802, the Hon'ble Apex Court held that a constitutional Court can direct

further investigation even after commencement of trial and examination of witnesses.

From a perusal of the case diary, it appears that some investigation was done in the instant case and statements of several witnesses were recorded.

However, there are two things that stand out in favour of the petitioner.

First, despite a direction passed by the learned Magistrate, no statement of the victim was recorded under Section 164 of the Code. A belated prayer was made after institution of the writ petition, which was turned down.

Secondly, after recording of the First Information Report on 08.02.2014, which contained a clear version given by the petitioner that the said Sahidul was the prime accused and he committed such crime in conspiracy the other accused (charge sheeted later), on the very same day another version was recorded as a further statement of the petitioner under Section 161 of the Code striking out the incriminating part against the said Sahidul and modifying the averment regarding the accused Sahidul by giving a rather watered down version about his role.

The above-referred facts create a grave suspicion about the manner in which investigation was done vis-à-vis the accused Sahidul. This calls for further investigation and a recording of the statement of the petitioner under Section 164 of the Code.

Accordingly, the orders passed by the learned Trial Court on and from the date of framing of charge are set aside.

Further investigation of the case is transferred to the CID.

Let the CID further investigate into the case and file an appropriate report before the Sessions Court after recording statement of the petitioner under Section 164 of the Code and taking any other step that they would deem fit and proper.

Further investigation shall be concluded within a period of three months from this date upon filing of further report/supplementary charge sheet before the trial Court.

Learned ADG, CID is requested to take appropriate steps at the earliest in accordance with law.

The learned Trial Court shall proceed with the matter from such stage.

With these observations, the writ petition is disposed of.

In Re:- CRR 2696 of 2023

The criminal revisional application is disposed of in terms of the order passed in the writ petition.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)