

D/L 85
05.11.2024
Kausik
ct.no.35

W.P.A. 24267 of 2024

**Gita Sarkar
Versus
The State of West Bengal and Ors.**

Mr. Subrata Bhattacharjee
...for the petitioner.

Ms. Subhasree Patel
Mr. Soham Banerjee
...for the private respondent.

Mr. Wasim Ahmed
Mr. Sk. Md. Masud
...for the state.

Petitioner and the respondent no. 5 are brothers and sisters. Petitioner complains that from the pension account of her mother, after her death even, by way of using ATM card, money has been withdrawn by the respondent no. 5.

Affidavit of service so filed be kept with the record.

Learned advocate for the respondent no. 5 appears and submits that the mother was in his custody and he has spent during her days of illness continuously and as such had to withdraw all the money. The same is disputed by the petitioner and the petitioner claims that she was restrained from entering the premises or meeting the mother and had

to obtain court order for meeting her mother. It has also been submitted that the petitioner has also incurred medical expenses as and when she had the scope of meeting and availing the permission so granted by a court of law.

Be that as it may Mr. Ahmed learned advocate appearing for the state has submitted that the state should not be involved in a dispute between the brother and the sister.

I have considered the submissions of the learned advocate for the petitioner, who emphasized that after the death of her mother, the brother cannot, as a matter of right, misappropriate the funds which cannot be his exclusive possession. The said fact is disputed by the respondent no. 5 that he has never misappropriated.

Be that as it may, having considered the issues basically arise out of sibling rivalry, however, the same do not as such, exonerate the respondent no. 5 if he has misutilised the funds without the consent of the petitioner. Having considered the same I grant liberty to the petitioner to approach the jurisdictional criminal court for invoking the provisions under section 175 BNSS or section 223 BNSS. The jurisdictional criminal court would adhere to the provisions of law and take into account the

observations made above before exercising its discretion.

With the aforesaid observations WPA 24267 of 2024 is disposed of.

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

(Tirthankar Ghosh, J.)