

Item No. 02.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 20.01.2025

DELIVERED ON: 20.01.2025

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
(CHIEF JUSTICE)
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 218 of 2023
with
IA No. CAN 1 of 2023**

**The State of West Bengal Service
Through The Principal Secretary & Ors.
Vs.
Dipankar Das & Anr.**

Appearance:-

Mr. Sirsanya Bandopadhyay, Id. Sr. Standing Counsel
Mr. Arka Kumar Nag

... For the State Appellant

Mr. Sabyasachi Chatterjee
Mr. Badrul Karim

... For the Respondents/Writ Petitioners

JUDGMENT

(Judgment of the Court was delivered by T. S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the State is directed against the common order dated 16.01.2023 passed in WPA 6715 of 2018 and CRR 1199 of 2019. The respondents/writ petitioners filed the writ petition praying for

transfer of the investigation relating to a case of murder of his parents to the Central Bureau of Investigation (for short, CBI) to ensure free and fair investigation. The other prayer sought for was to release the dead bodies of the parents directing the State to pay a compensation of Rs. 40 lacs. The criminal revision case being CRR 1199 of 2019 was filed by the accused in the case registered against them which was also disposed of by the common impugned order.

2. We have elaborately heard learned counsel for the parties.

3. The question is as to whether the learned Single Judge was right in directing fresh investigation/re-investigation to be done and nominating an Indian Police Service Officer to re-visit the investigation and re-investigate the F.I.R. 87 of 2018 dated 17.05.2018. The said Indian Police Service Officer has been empowered to form a team of Police or other persons or Personnel of her choice and re-verify the alibis of the persons originally named in the complaint and such or other persons may be interrogated afresh, if necessary. This, in fact, was a suggestion from the learned writ court. Further, the learned writ court observed that the named Officer shall be entitled to take all and necessary steps necessary for the purpose of arriving at the conclusion behind the murder of the two victims. The State is in appeal against the said order by contending that the observations made by learned Single Judge that the investigation was perfunctory and it did not meet the normal standards of the investigation and, therefore, the matter is to be re-investigated is not borne out by the records and, in this regard, learned senior counsel representing the State elaborately referred

to the statements of various witnesses, accused which were recorded before the learned Judicial Magistrate.

4. In this appeal, we are required to see as to whether the learned Single Judge had recorded the reasons as to why and for what purpose the re-investigation had to be ordered. If such view expressed by the learned Single Judge is to arrive at the ultimate conclusion and ordering re-investigation, satisfies the test of reasonableness, this Court will refrain from interfering with this order. If the Court is to examine threadbare the statement of various witnesses at this stage of the matter, it would tantamount to expressing any opinion in the case and the very purpose of ordering re-investigation would stand defeated. Therefore, we are required to see as to whether the prima facie view expressed by the learned Single Judge in the impugned order would justify the directions issued. It is to be pointed out that when the writ petition and the criminal revision case were heard together by the learned Single Judge, the State was not represented. However, the affidavit-in-opposition filed by the State and the written notes submitted by the I.O. were part of the record which has been taken note of by the learned Single Judge.

5. The parents of the writ petitioner were murdered who belonged to a particular political party. The Panchayat Election was scheduled to be held in the State in the month of May, 2018 and a day before the election i.e. on 13.05.2018, the parents of the writ petitioner were killed and the house was set on fire. A complaint was lodged before the Kakdwip Police Station on 14.05.2018 naming ten persons. It appears that initially the State Police refused to accept the complaint and only after a pressure from the local people, a

complaint was received but no F.I.R. was registered. The learned Single Judge noted that the State came with a plea that the Police were busy with election duties and, therefore, the F.I.R. was not registered to be a lame excuse. On 15.05.2018, a Minister of the State as well as the Director General of the Police had stated to have made public statements that the victims died due to fire caused by short circuit. The writ petitioner pointed out that an endorsement was made by the Superintendent of Police, Sunderban Police District on the complaint to the effect that "Enquire into the matter. Get P.O. examined by FSL. Get post mortem examination done. If any foul play is found, then start specific case over this complaint".

6. The learned Single Judge found that this endorsement was in violation of the judgment of the Hon'ble Supreme Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh** reported at **(2014) 2 SCC 1** wherein it has been held that the F.I.R. should be registered immediately when a cognizable offence is disclosed in the complaint. Ultimately, the F.I.R. was registered after three days i.e. on 17.05.2018 being F.I.R. No. 87 of 2018. The State in their written notes had accepted the fact that notices under Section 41A of the Criminal Procedure Code came to be issued in an F.I.R. under Sections 436, 302, 201 read with Section 34 IPC.

7. The time lost between the date of occurrence and the date on which the FIR was registered was a very vital issue and this was rightly noted by the learned Single Bench that vital time was lost. The bodies of the victims were sent for postmortem on 15th May, 2018. The initial query as stated by the Investigating Officer is that fire occurred due to electric short-circuit and in this

regard opinion from West Bengal State Electricity Distribution Company Limited is stated to have been obtained. The learned Single Bench pointed out that none of the original accused were taken into custody and their statements under Section 161 of the Criminal Procedure Code were recorded sometime in July 2018 after directions were issued in the writ petition after orders issued in the writ petition. The learned Single Bench noted that the statement under Section 164 of the Code of Criminal Procedure of the complainant, who stated in the complaint that, he saw the accused persons fleeing away after burning the house, were never recorded by the Investigating Officer. Thus, the learned Single Bench found that the investigation proceeded on the basis of short-circuit theory until 13th August, 2018 when the FSL report was received. The report revealed that the condition of the electric wire and bulb recovered from premises were not due to any electrical short-circuit. The wires were burned and the bulbs had marks of burning due to external factors, which caused the fire.

8. Another vital issue which borne in the mind of the learned Single Bench is the statement given by one Dipankar Mondal @ Dipa before the Investigating Officer on 14th August, 2018 and that while he was going into the house of one Gurupada Dhara he found Debu Das and one Bidyut Halder were also present thereat. Bidyut Halder, who is the principal accused in the charge sheet, is stated to have threatened Dipankar Mondal @ Dipa if he discloses the actual fact he will also be murdered. After remaining silent for quite sometime, the said Dipankar went to the investigating officer and stated that the real culprit was Bidyut Halder. The learned Single Bench after going through Dipankar's statement opined that he was the best witness of the alleged threat

given by the said Bidyut Halder. Thereafter, the said Bidyut Halder had gone missing and ultimately he was located and arrested in the State of Telengana and he was brought to Kakdwip Police Station and produced before the Additional Chief Judicial Magistrate on 20th August, 2018 and five days police custody was allotted. In the statement given by Bidyut Halder details of the plan for murder of the victims were stated to have been given and this, according to the learned Single Bench, need not be gone into for taking a decision in the writ petition. However, in page 6 of the impugned order the learned Single Bench also noted the name of the persons who were involved in the crime.

9. Learned senior standing counsel for the State would submit that the learned Single Bench could not have made an observation that the details need not be gone into for the purpose of the decision and accepted that Bidyut Halder had named certain persons who were chargesheeted and if such was the finding of the learned Single Bench the writ petition could not have been disposed of by nominating an officer of the State to re-investigate the matter. In our opinion, the observations of the learned Single Bench that the details need not be gone into for the purpose of taking decision in the writ petition is well justified since at this stage of the matter if any opinion is expressed by the writ Court which took a decision on the basis of affidavits it would ultimately not only prejudice the rights of the complainant but also of the alleged accused.

10. Learned Single Bench has noted that the statements of Bidyut Halder indicates that he instigated and coerced the two of the accused persons to first strangulate the wife-victim to death with a towel. Then they started searching the

house of the husband-victim, who upon returning to his house a few minutes later was attacked and he was also strangled to death with a towel. The learned Single bench noted that Bidyut Halder is stated to have told them that mere killing of the victims would not suffice and house should be burned down. A can of kerosene was procured and the house was set on fire leaving the victims inside. After noting the statement of Bidyut Halder the learned Single Bench expressed a prima facie opinion that the confessional statement of Bidyut Halder is in direct contradiction with the post mortem report of the two victims. The post mortem report indicates that the “hyoid bone and thyroid cartilage” of both the victims were intact. None of the normal medical consequences of strangulation or compression in the throat area is mentioned. The bodies of the victims were handed over to the family of the victim only after an interim direction was issued in the writ petition and the dead bodies were cremated thereafter.

11. The learned Single Bench has commented upon the endorsement made by the Superintendent of Police, Sunderban Police District that non-registration of FIR on receipt of complaint disclosing a cognizable offence, the delayed registration of the FIR and issuance of notices under Section 41A of the Cr.P.C. in respect of such FIR would stand out as a clear omission by the Investigating Officer of the case is that the statement under Section 164 of the CrPC of the complainant, who is the son of the two victims was never recorded. Learned Single Bench further made a prima facie observation that he was the only and clear eyewitness.

12. The learned Single Bench has also commented upon the reason for not naming any of the original accused named in the complaint and FIR in the charge sheet despite having clear verifiable alibi that they were not present. Therefore, this led to forming of opinion by the learned Single Bench that the matter requires detailed investigation and further examination.

13. As noted above, the prayer sought for by the writ petitioner to transfer investigation to a central agency, namely, CBI, this prayer was not granted by the learned Single Bench taking note of the fact that several cases are pending with CBI as well as CID, West Bengal and, therefore, the learned writ Court thought fit to appoint an IPS officer serving in the State of West Bengal to revisit the investigation and reinvestigate the FIR No.87 of 2018 dated 17th May, 2018. The said officer has been given a free hand by the learned Single Bench to form a team of police or other persons/personnel of her own choice to re-verify the alibis of the persons originally named in the complaint or other persons, who in the opinion of the officer are to be interrogated afresh. The learned Single Bench has carefully observed that these are mere suggestions from the Court. In our opinion, the learned Single bench was fully justified in not issuing any positive direction as it would tantamount to direct the officer nominated to revisit the FIR case and proceed in a particular fashion which seldom the writ Court does. This observation of the learned Single Bench also stands fortified by the observations that the said officer was entitled to take necessary steps for the purpose of arriving at the truth of the murder of the two victims. This, in our view, is not a case where the learned Single Bench did not form an opinion as to why the matter requires to be re-investigated by a State level officer. Therefore,

the direction issued cannot be faulted. The reasons which the learned Single bench recorded was for issuance of such direction cannot be said to be wholly unreasonable for this Court to interfere in this intra-Court appeal.

14. Thus, for the above reasons, we find no ground to interfere with the impugned order and, accordingly, the appeal and connected application are **dismissed**.

15. The entire case diary, evidences, statements of witnesses recorded and all other case materials shall be handed over to Ms. Sen by the Investigating Officer of the case within a period of three days from the date of receipt of server copy of this order.

16. We make it clear that the observations which ultimately led to direction issued by the learned Single Bench is to justify the need for fresh/further investigation/re-investigation and such opinion recorded cannot be construed to be any opinion on merits of the matter for which the officer has been given free hand to take all and every step necessary for the purpose of arriving at truth behind the murder of the two victims.

17. Urgent Photostat copy of the judgment, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)