

07.04.2025
Item No.7
gd/ssd

FMA/385/2025
VIVEKANANDA GHOSAL AND ANR.
VS
STATE OF WEST BENGAL AND ORS.
IA NO: CAN/1/2025

Mr. Debashis Banerjee,
Ms. Gargi Roy,
Mr. Rakesh Jana
..for the Appellants.

Mr. K.J. Yusuf,
Mr. Saurav Chaudhuri
..for the State.

1. This intra court appeal by the writ petitioners is directed against the order dated 17th January, 2025 in WPA 20043 of 2024.

2. The said writ petition was filed by the appellants for a direction to forthwith take steps by transferring the Chanditala Police Station U/D Case No.61 of 2024 dated 10.6.2024 and Chanditala Police Station FIR No.410 of 2024 to the respondent no.7, namely, the Additional Director General, Central Investigation Department, West Bengal Police Directorate having office at Howrah.

3. When the writ petition was being heard, certain orders were passed by the learned Single Bench and the order dated 17.9.2024 is quoted hereinbelow:

“The son of the petitioners died under suspicious circumstances on 10th June, 2024. The petitioners allege inaction on the part of the police in conducting the investigation leading to the death of their son in a proper manner.

It has been submitted that the vehicle which the victim was riding on the fateful day has neither been examined nor seized. The mobile phone of the victim is in the custody of the petitioners. The police have not seized the same.

The petitioners submit that valuable evidence may be gathered if the mobile phone of the victim is opened and the call records and other details checked.

A report has been placed before this Court prepared by the Officer-in-charge, Chanditala Police Station signed on 9th August, 2024.

Let a copy of the same be handed over the learned advocate appearing on behalf of the petitioners.

Let an updated report be placed before the Court on the adjourned date.

List the matter on 7th October, 2024.

The Officer-in-charge, Chanditala Police Station is directed to communicate this order to the respondent no.9 with intimation to appear on the adjourned date.”

4. In terms of the above direction, a report was filed by the officer-in-charge of Chanditala Police Station signed on 4th October, 2024 which was taken on record.

5. The submission made on behalf of the appellants that the police are not conducting the investigation in a proper manner and the digital evidence have not yet been seized, was recorded by the learned Single Bench in the order dated 8.1.2025 which reads as follows:

“1. Report filed by the Officer-in-Charge, Chanditala Police Station, signed on 4th October, 2024 is taken on record.

2. Learned advocate for the State seeks further time to file an updated report in the matter.

3. Learned advocate representing the private respondent submits that, final report has already been tendered before the learned Trial Court.

4. Learned advocate for the petitioner reiterates his submission that the police are not conducting the investigation in a proper manner. The digital evidences have not yet been seized from the petitioner.

5. To allow the State to come up with an updated report, list the matter on 14th January, 2025. The updated report shall specify the identity and the details of the offending fourwheeler and shall also mention as to whether the driver/owner of the offending vehicle was arrested or not.”

6. It appears from the above order the learned Single Bench was not satisfied with the report signed on 4th October, 2024.

7. Therefore, a direction was issued to file an updated report which shall specify the identity and the details of the offending four-wheeler and shall also mention as to whether the driver/owner of the offending vehicle was arrested or not.

8. Subsequently the matter was heard on 14.1.2025 and a report dated 13th January, 2025 was filed which was taken on record and a copy was directed to be served on the learned advocate appearing for the appellant/writ petitioners.

9. When the matter was pending for consideration before the learned Single Bench, a final

report dated 20th December, 2024 has been filed by the investigating officer stating the case to be a mistake of fact.

10. When the writ petition came up for hearing subsequently, the above fact was brought to the notice of the court and the writ petition stood disposed of by the impugned order dated 17th January, 2025 in which the learned Single Bench has recorded that the learned Magistrate has already posted the matter on 18th January, 2025 upon notice to the de facto complainant/appellants and that it will be open to the appellants to address the court with regard to the prayer for change of investigating agency and the loopholes of the final report that has been filed. The learned Magistrate was directed to take a decision in the matter upon hearing the parties.

11. To be noted that the learned Magistrate while considering a protest petition filed against the final report stating it to be a case of mistake of fact can consider as to whether the investigation was appropriate and is confined with power only to order re-investigation and not for change of investigating agency.

12. It is not clear as to why the respondent police were in such a hurry to file a final report stating the case to be a mistake of fact on 20th December, 2024 when the writ petition was still pending and the learned

writ court was monitoring the matter and the initial report filed by the police was found to be not satisfactory and an updated report was directed to be filed, copy of which was only to furnish to the appellant/writ petitioners pursuant to order dated 14th January, 2025.

13. Therefore, it appears to be a matter where the attempt was to make the prayer sought for in the writ petition infructuous.

14. Be that as it may, having held that the learned Magistrate will have no power to change the investigating agency if it is not found that the investigation was perfunctory, we are inclined to interfere in the matter.

15. Apart from that when we peruse the final report, we find that the specific direction given by the learned Single Bench while not accepting the initial report and directed that the updated report shall specify the identity and the details of the offending four-wheelers and shall also mention as to whether the driver/owner of the offending vehicle was arrested or not.

16. On a perusal of the final report dated 20.12.2024, we find this aspect has not been covered.

17. Apart from that one major loophole we find in the report is that if the case of the investigating agency is that the deceased had dashed against a four-

wheeler which was the cause of the head injuries, ultimately resulting the death of the deceased then the investigating agency was bound to investigate that angle of the case as to which the other offending vehicle. The absence of investigation in this direction is a serious flaw as this is a very vital aspect has to be looked into more particularly the learned writ court directed the investigating agency to do so.

18. Apart from that the contention of the appellant/writ petitioners is that the complaint which was lodged against another doctor who was a pillion rider and it appears that the police took away the said pillion rider but the deceased was left lying on the road and after couple of hours the ambulance had taken to the primary health centre.

19. It is not clear as to why the pillion rider was taken away by the police at the first instance and the deceased was left lie in the place of accident where the accident occurred with bleeding injuries.

20. This aspect has come out in the statement recorded under Section 164 Cr.P.C. of one Suparna Majhi. This aspect also needs to be gone into.

21. The appellants' consistent case is that it was not a case of a road traffic accident and there are photographs to show that the deceased was lying with the helmet intact and the question of such injuries

would not have occurred except by specifically uplifting the same at the instance of certain third party.

22. All these above facts as convinced us to hold that the investigation done was improper and several aspects have not been dealt with by the investigating officer and consequently the final report dated 20.12.2024 filed by the investigating officer, namely, the Sub-Inspector of Police, Chanditala Police Station, Hooghly Rural deserves to be quashed and accordingly quashed. The entire case file be placed before the respondent no.7, namely, the Additional Director General, Central Investigation Department, West Bengal Police Directorate having office at Howrah who shall nominate an efficient investigating officer, who shall conduct a thorough investigation and proceed to take action in accordance with law. The entire case file shall be placed before the respondent no.7 within three days from date and the nomination of the new investigating officer shall be done within a week and the investigation shall proceed in accordance with law.

23. Accordingly, the matter stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)