

Form No. J (2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

**M.A.T. 1233 of 2025
IA NO: CAN/1/2025**

Subhash Chandra @ Chandara Paik

vs.

The State of West Bengal & ors.

With

**M.A.T. 1235 of 2025
IA NO: CAN/1/2025**

Shasanka Sekhar Das @ Sasanka Das

Vs.

The State of West Bengal & Ors.

For the Appellant in
MAT 1233/2025

: Mr. Billwadal Bhattacharyya, Sr. Advocate
Mr. Moyukh Mukherjee, Advocate
Ms. Sagnika Banerjee, Advocate
Ms. Sarmistha Basak, Advocate
Mr. Tamoghna Pramanick, Advocate

For the Appellant in
MAT 1235/2025

: Mr. Kallol Mondal, Senior Advocate
Mr. Krishan Ray, Advocate
Mr. Moyukh Mukherjee, Advocate
Mr. Souvik Das, Advocate
Mr. Anamitra Banerjee, Advocate
Ms. Sagarika Banerjee, Advocate

For the State in
MAT 1233/2025 &
MAT 1235/2025

: Mr. Kishore Datta, Ld. A.G.
Mr. Swapan Banerjee, Advocate
Ms. Sumita Shaw, Advocate
Mr. Soumen Chatterjee, Advocate

For the Union of India
in MAT 1233/2025 &
MAT 1235/2025

: Mr. Dhiraj Trivedi, Sr. Advocate
Ld. D.S.G.I.
Mr. Arijit Majumdar, Advocate

Heard & Judgment on : 05.08.2025

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing, as issues involved are similar. Prayer for second Post Mortem Report made by the writ petitioners was not allowed by the learned Single Judge in the two different writ petitions.
2. Primary issue involved in both the appeals is whether a Constitutional Court should grant the relief of a second Post Mortem.
3. Two persons expired in an incident on July 12, 2025.
4. Two complaints were lodged with regard to such death. Police registered two separate First Information Reports with regard to the two complaints. Police are investigating both the cases as of murder.

5. Police initially registered unnatural death case in respect of both deceased. Police ensured that, Post Mortem on the bodies of two deceased were held.
6. Post Mortem Reports of the two victims are on record. Appellants as de facto complainants are dissatisfied with the Post Mortem Reports of the respective victims. Essentially, they claim that the Post Mortem Reports do not specify the actual cause of death. The Autopsy Surgeon failed to note the essential features appearing on the body of the victims.
7. In M.A.T. 1233 of 2025, learned Senior Advocate for the appellant contends that, the Post Mortem Report does not take into account the nature of injuries found on the body of the victim. In support of such contention few photographs of the dead body are relied upon. The Post Mortem Report is contrasted with the photographs to suggest that injuries appearing on the body were not noted in the Post Mortem Report. It is submitted on behalf of the appellant that, a second Post Mortem Report is required in order to unearth the truth.
8. Learned Senior Advocate appearing for the appellant in M.A.T. 1233 of 2025 relies upon **2020 SCC OnLine Cal 2013 (*Gita Rani Roy & Anr. Vs. State of West Bengal & Ors.*)** in support of the proposition that, second Post Mortem Report can be directed. In fact, he submits that, in ***Gita Rani Roy & Anr. (supra)*** the High Court, directed a third Post Mortem to be conducted.

9. Learned Senior Advocate appearing for the appellant in M.A.T. 1235 of 2025 submits that, the victim was murdered alongwith the other victim involved in M.A.T.1233 of 2025. He submits that, a second Post Mortem Report of the victim involved in M.A.T. 1235 of 2025 is imperative in view of the fact that both the victims went to attend a particular occasion together and were found dead by their relatives subsequently. Cause of death is required to be unearthed and that a second Post Mortem would assist such discovery.
10. Learned Advocate General appearing for the State submits that, a second Post Mortem should not be directed as a matter of course. He submits that, there is no material on record to suggest that, the first Post Mortem Report is insufficient or incorrect. None of the appellants ever complained contemporaneously about the alleged inadequacy of the first Post Mortem Report. He submits that, if requests for a second Post Mortem Report is accepted for the asking then the same would lay down a dangerous precedent.
11. Learned Advocate General submits that, consequent upon the complaints lodged by the two complainants in respect of the two deceased, police registered two individual First Information Reports and are conducting investigation *inter alia* of murder. Investigations are yet to be concluded. It is too early to ascribe any misconduct with regard to the investigation.

12. Learned Advocate General appearing for the State draws the attention of the Court to a bunch of documents. Drawing the attention of the Court to the orders of the learned Single Judge passed from time to time, he submits that, police acted in terms of the directions of the learned Single Judge. Police recorded the statement of the Autopsy Surgeon under Section 180 of the BNSS as was directed. He draws the attention of the Court to the writing of the Autopsy Surgeon where, such Autopsy Surgeon expressed the view that, the marks found on the dead body of one of the victims as appearing from the photographs can be occasioned by such body being placed on a hard surface immediately on death.
13. Learned Advocate General appearing for the State relies upon **(1997) 7 Supreme Court Cases 156 (*Tanviben Pankajkumar Divetia vs. State of Gujarat*), (2002) 1 Supreme Court Cases 351 (*Munshi Prasad & Ors. Vs. State of Bihar*) and (2014) 12 Supreme Court Cases 419 (*Madhu alias Madhuranatha & Anr. Vs. State of Karnataka*)** in support of proposition that, it is the testimony of the Autopsy Surgeon which is material rather than Post Mortem Report itself.
14. Learned Advocate General appearing for the State submits that, there is no contemporaneous complaints from any of the appellant that the Post Mortem conducted over the two victims are incorrect. He points out that, viscera were collected during the course of the first Post Mortem.

15. Both the writ petitions are yet to be decided finally. Appellants prayed for various reliefs in the two writ petitions, including investigations by a different agency. Both the writ petitions relate to death of the near relatives of the appellants. Both the victims went to attend a particular programme where they died.
16. Initially police started unnatural death cases and thereafter on the complaint of the appellants registered First Information Reports. Police are investigating a case of murder.
17. Incident is of July 12, 2025. Investigations are yet to be concluded.
18. We are in a situation where, there are two dead bodies preserved after a first Post Mortem Report being conducted on such dead bodies. De facto complainants being the appellants before us, are not accepting the first Post Mortem Report. In other words, according to the appellants, the first Post Mortem Report does not correctly assess the cause of death of the two victims.
19. Nothing is placed before us to suggest that a second Post Mortem Report of a victim should not be directed by a constitutional Court. At the same time we hasten to add that request for further Post Mortem should not be granted on the mere asking. A Court needs to satisfy itself that adequate and proper grounds exist for the same. Needless to say what would constitute appropriate and adequate ground would depend upon facts and circumstances of each case.

20. In ***Gita Rani Roy & Anr. (supra)***, the Court, considering the facts and circumstances of that case directed a third Post Mortem Report to be conducted. In response to a query of the Court it is submitted at the Bar that, no appeal was carried against such judgment and order.
21. ***Tanviben Pankajkumar Divetia (supra)*** was rendered by the Supreme Court in an appeal directed against conviction after conclusion of trial. In the facts and circumstances of that case, Supreme Court held that, in absence of any convincing evidence holding that the Post Mortem examination deliberately gave a wrong report should not be made. At this stage, we are not called upon to pronounce as to whether the Autopsy Surgeon conducting Post Mortem on the two victims deliberately gave any false evidence or not.
22. ***Munshi Prasad & ors. (supra)***, was rendered in a conviction after a trial. In the facts and circumstances of that case, it was held that, the description of injuries, not being mentioned in his Post Mortem Report may not affect the credibility of the witness of the prosecution. In the facts and circumstances of the present case we are not at the stage of a trial of a criminal case.
23. ***Madhu alias Madhuranatha & anr. (supra)***, was rendered in a case of conviction after a trial. It observed that, inquest report is not a piece of substantive evidence and can be utilized only for contradicting the witnesses to the inquest examined during the trial. Neither the inquest

report nor the Post Mortem report can be termed as basic or substantive evidence and thus, any discrepancy occurring therein cannot be termed as fatal or suspicious circumstances which would warrant benefit of doubt to the accused.

24. None of the authorities of the Supreme Court cited at the Bar laid down that, a second Post Mortem is not available to a de facto complainant in a criminal case.
25. In the facts and circumstances of the present case, two victims went to attend a programme where they died. Body of one of the victims bears some marks as appearing from the photographs which the appellants claim to be inflicted. Post Mortem Report of victims does not reflect such injuries as the photographs suggest. Autopsy Surgeon subsequently explained the absence of such injuries in the Post Mortem Report in a particular way.
26. In our view, the explanation offered by the Autopsy Surgeon recorded in his statement under Section 180 of the BNSS is a judgement call which he took at the material point of time. Without casting any aspersion as to the quality of his judgement call or to the quality of the investigations so far undertaken, since the two bodies are still available a second opinion can be obtained. Second opinion will aid the investigations. It will also address the doubts raised by the appellants.

27. In such circumstances, we direct a second Post Mortem alongwith videography of the second Post Mortem be held on the two victims.
28. The second Post Mortem of the two victims be held at SSKM Hospital. Superintendent, SSKM Hospital is requested to constitute appropriate team for such purpose. Reports of the second Post Mortem be kept in a sealed cover to be collected from the Superintendent, SSKM Hospital by the jurisdictional Superintendent of Police. The second Post Mortem Report will abide by the decision of the learned Single Judge in the pending writ petitions. The Post Mortem at SSKM be conducted under the supervision of the jurisdictional Judicial Magistrate.
29. **M.A.T. 1233 of 2025 and M.A.T. 1235 of 2025** alongwith two connected applications are **disposed of**.

(Debangsu Basak, J.)

30. I agree.

(Prasenjit Biswas, J.)