IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Before:

The Hon'ble Justice Anuj Singh

W.P.A. No. 2089 of 2024

Kabita Shaw

-Versus-

The State of West Bengal & Ors.

For the Petitioner : Mr. Syed Shahid Imam
Ms. Shaita Khan
Mr. Mohammad Khairul
..... Advocate.

For the State : Mr. Goutam Mishra
..... Advocate

Heard on :28.09.2026

Judgement on : 09.10.2026

Anuj Singh, J:.

1. The Petitioner has filed the present writ petition under Article 226 of the Constitution of India alleging police inaction and a tainted investigation in Bhowanipore Police Station Case No. 233 of 2023dated 31.12.2023 under Sections 143/147/148/149/341/324/326/307/379/34 IPC, pending before the learned Chief Judicial Magistrate, South 24 Parganas at Alipore in C.G.R. Case No. 3971 of 2023.

2. Mr. Syed Shahid Imam, Advocate for the petitioner has submitted that on 31.12.2023, at about 3:00 A.M., the petitioner's brother and his friends went to a restaurant named, Jai Hind Dhaba, for dinner. Following an altercation over delayed service, the Private Respondents, along with 40/50 staff members, brutally assaulted the victim with hockey sticks and iron rods, inflicting severe injuries.

3. A written complaint was lodged with the Bhawaniapur Police Station which led to registration of the Bhowanipore Police Station Case No. 233 of 2023 dated 31.12.2023 for investigation into the offenses punishable under Sections 143/147/148/149/341/324/326/307/379/34 IPC.

4. Mr. Imam submits that after a perfunctory investigation of the case, a Charge Sheet (No. 106 dated 20.04.2024) was submitted only against four persons under sections 341/324/326/307/34, IPC Learned Advocate for the petitioner has drawn the attention of the court to several deficiencies in the investigation inter alia, by submitting that the crucial CCTV footage of the incident which was captured in the camera installed at the said restaurant and within the control of the accused persons, were not seized, the hard disk having such data was allegedly missing, and comprehensive medical injury opinions were omitted. Learned Advocate has also argued that the prime accused persons of the case, being the owners of the said dhaba who led the attack, were not interrogated nor any attempt was made to arrest them when they were allegedly absconding and not cooperating with the investigating agency.

5. The petitioner has prayed for the following relief in the writ petition:

a. *"A Writ Of and/or in the nature of Mandamus do issue commanding the Respondent Authorities particularly Respondent No. 2 & 3 to make immediate arrest of the private respondents being respondent nos. 4 & 5 and their men and agents in respect of the alleged criminal offences;*

b. *A Writ Of and/or in the nature of Mandamus do issue commanding the Respondent Authorities to take immediate steps to stop the nuisances created by the Respondent nos.4& 5 and their men and agents in order to protect the life and liberty of the Petitioner, her brother and other family members and also other witnesses to the case;*

c. *A Writ of and/or in the nature Of Mandamus do issue commanding the Respondent Authorities to take immediate steps to submit report on the progress of the investigation to the case;*

d. *Rule calling in the nature of Certiorari upon the Respondent Authorities to produce all records of this case before this Hon'ble Court so that conscionable justice may be done.*

e. *Rule NISI in terms of prayers above; and*

f. *Any other order or orders and/or direction or directions as Your Lordships may deem fit and proper."*

6. The State is represented. The State was called upon to file a status report on the investigation of the case. The State has filed a report, inter alia, condtendingthe following:

a. During the investigation, witnesses were examined and their statements were recorded under Section 161 Cr.PC, which corroborated with statements of the complainant.
b. On completion of investigation, Charge sheet No. 106 dated 20.04.2024 was submitted against four accused persons.
c. The evidence collected transpires that complainant was physically assaulted by accused persons with hard substances.
d. Medical documents were seized, which shows that the complainant received fracture injuries to his left collar bone, left hand and legs, and other places. His right eye was also affected.
e. Police authorities served notice under Section 91 Cr.PC upon the proprietor of dhaba to provide CCTV footages of the date of incident, but the same is not provided till date.
f. Raid and searches were conducted at different places to nab the accused persons, but the same were in vain, and the named accused persons are still absconding.
g. On 08.03.2024, on the basis of source information, a raid was made at the vicinity of Sarat Bose Road and two accused persons, Sunil Kumar Chowrasia and Sukumar Dey (unnamed in FIR) were identified. On examination, they confessed to their direct involvement in the case, and were arrested and remanded to Police custody.
h. Since Charge-sheet has been submitted it cannot be said that the investigation of the case is improper.

7. The private respondents, despite service, are not represented.

8. Mr. Imam has drawn the attention of this Court to several deficiencies in the investigation of the case. Ld. Counsel has referred to the Status Report submitted by the Police, wherefrom it appears that according to the investigating officer of the case, the principal accused persons of the case, being the owners of the said Jai Hind Dhaba, did not participate in the investigation. According to the investigating officer, they were never found at their addresses. In fact, the requests made under Section 91 Cr.PC to the said restaurant for providing the CCTV footage of the incident were also not adhered to by the accused persons. It appears that some other employees of the said *dhaba*were arrested, who were subsequently enlarged on bail.

9. Subsequently, a Charge Sheet was submitted against four individuals under sections 341/324/326/307/34, IPC. The two owners of the said dhaba were shown absconding.

10. Mr. Imam strenuously argued that the picture sought to be presented before this Court by the investigating officer is, in fact, different from the actual state of affairs. It is not very difficult to look through the police report and ascertain the actual state of affairs. The principal accused persons who were shown to be absconding are persons who carry on their business in the heart of the city. Even assuming that the accused persons did not respond to the notices, the investigating officer of the case took no steps to conduct any raid at the premises, seize the CCTV footage or obtain a warrant of arrest to apprehend the absconding accused persons. In the aforementioned factual matrix, the learned advocate representing the petitioner has prayed for transfer

of the investigation of the case to some other accomplished investigating agency so that further investigation of the case can be conducted in an impartial and effective manner.

11. The court has considered the rival submissions of the parties.

12. It, indeed, appears the report filed by the Police does not show that any effort to trace the principal accused persons or ensure the participation of the said accused persons in the investigation. It does not appear that any effort was made in order to independently examine their alleged involvement in the attack upon the de facto complainant. The doctor who examined the complainant, after they were assaulted has not been examined. There is no explanation in this regard as well.

13. The concern of this Court cannot be that every person named in a complaint must be arrested. That is for the Investigating Officer, in his wisdom, to decide.However, this Court shall see that allegations against each accused must be fairly and effectivelyinvestigated.No steps were taken to apprehend the accused persons who were the main assailants of the de facto complainant. This Court notes with concern that CCTV footage was not seized, despite the IO considering the same to be relevant.Failure to comply with the notice under section 91 Cr.PCwas not followed up at all. Such evidence was capable of throwing light on the incident. Unfortunately, it was not done. The concerned doctor who examined the defacto complainant, was also not examined. There are hardly any independent witnesses interrogated or

made a witness in the charge sheet, notwithstanding the fact that the incident took place at a very busy place which remains crowded throughout the night. The Charge Sheet submitted does not explain why the investigation was brought to a conclusion while these matters remained unresolved. The aforesaidlapses in investigation when considered collectively, does not inspire confidence in the investigation of this case.

14. The Supreme Court in**VinubhaiHaribhai Malaviya Vs. State of Gujarat (2019) 17 SCC 1 (See paragraphs 38 to 43)** has laid down that fair and complete investigation is an integral component of Article 21 of the Constitution. The power to order further investigation in a case under Section 173(8) Cr.PC does not get extinguished upon submission of the charge sheet.

15. In **Anant ThanurKarmuse v. State of Maharashtra (2023) 5 SCC 802 (see paragraph 42)**, the Supreme Court reiterated that for the purpose of complete justice and in furtherance of fair investigation and fair trial, the constitutional courts have power to order further investigation or reinvestigation, even after the charge sheet is filed.

16. In **Kishan Lal v. Dharmendra Bafna (2009) 7 SCC 685, (see paragraphs 15**), the Supreme Court held that an order of further investigation can be made at various stages, including the stage of trial, i.e., after the Magistrate has taken cognizance of the offence.

17. In **Himanshu Kumar v. State of Chhattisgarh 2022 INSC 720 (see paragraphs 46 and 47)**, the Supreme Court held that for want of proper and fair investigation, the extra-ordinary powers under Articles 31 and 226 can be utilized to direct further handover of investigation to an independent agency, and submission of charge sheet or pendency of trial cannot be a prohibitive impediment in such cases.

18. Transfer of investigation cannot be directed merely because the complainant is dissatisfied with its outcome. In the present case, however, the grievance of the complainant is because of glaring omissions disclosed by the records itself.

19. Having regard to their nature and overall effect, this Court is satisfied that further investigation should be undertaken by officers unconnected with the investigation conducted so far. Entrusting that exercise to the Anti-Rowdy Section of the Detective Department, Kolkata Police, would ensure an independent examination of the remainingaspects of the matter.

20. In the light of the aforesaid lacunae, this Court directs that the investigation of Bhowanipore Police Station Case No. 233 of 2023 be transferred to the Anti-Rowdy Section, Detective Department, Kolkata Police. The Officer-in-Charge, Bhowanipore Police Station is directed to hand over the case diary, documents, and seized articles to the Anti-Rowdy Section, Lalbazar within one (1) week from the date of communication of this Order.The Anti-Rowdy Section,

LalbazarKolkata shall conduct further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 on all aspects that have not been investigated. The new agency shall investigate all aspects of the matter indicated above, including any other aspect of the case that the new IO appointed by the said department shall consider proper.

21. In the meantime, the learned Trial Court is directed not to proceed any further in connection with C.G.R. Case No. 3971 of 2023 until the supplementary investigation report under Section 173(8) CrPC is filed.If, in the interim, the absconding accused persons surrender before the trial court, the hearing of their bail application must take place in the presence of the Public Prosecutor, duly instructed by the investigating officer of the case and defacto complainant.

22. This court clarifies that this court had no occasion to adjudicate upon the merits of the allegations made by the de facto complainant, and the order has been passed based on the nature of investigation conducted by the investigating officer.

23. This Court has not expressed any opinion on the merits of the case. W.P.A. No. 2089 of 2024 is allowed, without any orders as to costs.

(Anuj Singh, J.)