

April 12, 2022
Sl. No. 4-5
Court No.1
(PA – RB)

WPA (P) 157 of 2022

Shaista Afreen and Others
vs.
The State of West Bengal and Others

With

WPA (P) 154 of 2022

Anindya Sundar Das
vs.
The State of West Bengal and Others

Mr. Sabyasachi Chatterjee,
Mr. Sayan Banerjee,
Ms. Debolina Sarkar, Advocates

... for the intervenor

Ms. Susmita Saha Dutta,
Mr. Sanjeeb Seni, Advocates

... for the petitioner
in WPA (P) 157 of 2022

Mr. Phiroze Edulji,
Mr. Rajdeep Biswas,
Mr. D. Dandapath,
Mr. A.K. Upadhyay,
Mr. Biswapriya Samanta,
Mr. Debapriya Samanta,
Mr. Avijit Ray,
Mr. Indratanu Das Mahapatra,
Mr. Mansa Ram Mondal,
Mr. Sourav Mallick,
Mrs. Avipra Sarkar, Advocates

... for the petitioner
in WPA (P) 154 of 2022

Mr. S. N. Mookherjee, Id. AG
Mr. Samrat Sen, Id. AAAG
Mr. Tapas Mukherjee,
Ms. Srijita Ray, Advocates

... for the State

Mr. Dhiraj Trivedi, Id. ASG
Mr. Aganabha Raha, Advocate

... for the Union of India

Mr. Samrat Goswami, Advocate

... for the CBI

1. In these Public Interest Petitions, an unfortunate incident of alleged gang rape and death of a minor girl aged about 14 years belonging to the scheduled caste category has been highlighted. It has been alleged that on 4th April, 2022, the said minor girl was invited in the birthday party by one Brijgopal Goalain, Shyamnagar area in Hanskhali in Nadia district of West Bengal, who is stated to be the son of an influential political leader of the ruling Trinamool Congress Party (TMC) and a member of Gazna Gram Panchayat. It is further alleged that the girl was gang raped by Brijgopal Goalain with 4-5 other friends. The record reflects that the girl was sent back to her house at around 8 p.m. in a sick condition. She was unable to stand up and was bleeding from her private parts and was smelling of alcohol. It was alleged that she was forced to consume alcohol. The mother of the girl went to local doctor to take medicine and after returning, she found that her daughter was lying dead on the bed. It has been alleged that the family members were prevented from taking her to any private or government hospital and the girl died on account of excessive bleeding from the private parts.

2. Submission of learned Counsel for the petitioner is that the family members of the victim were threatened and that police had refused to register the report on the next date and with the intervention of the local NGO, the FIR was finally registered by the police after five days. It

is also submitted that the father of the accused is a TMC leader, therefore, the police is not properly investigating the matter and that no MLC and post-mortem of the girl has been done and she has been hurriedly cremated and that even the highest executive of the State is calling it to be an incident of love affair, hence, the people do not have faith that the State police machinery will carry out a fair investigation.

3. This matter was taken up in the first half of the day when learned Counsel for the State took time to produce the case diary along with the report in the second half, therefore, matter was passed over.

4. Learned Counsel for the State has produced the case diary and the report of the investigation.

5. The submission of learned Counsel for the State is that the police authorities are properly investigating the matter. The arrest has been made and that the statements under Section 164 of Cr.P.C. of the concerned persons have been recorded.

6. We have heard the learned Counsel for the parties and perused the record.

7. The unfortunate incident of death of a minor scheduled caste girl aged about 14 years is undisputed. Nothing relevant has been pointed out to counter the allegation of the petitioners that the victim has been cremated hurriedly without any medico-legal examination, without any post-mortem examination and

without any death certificate. The incident had taken place on 4th April, 2022 whereas, the FIR has been registered on 10th April, 2022. In the FIR, we find that no reason for delay in reporting the complaint has been recorded. Learned Counsel for the petitioner in WPA (P) 157 of 2022 has made following allegations and requested us to examine the following points in the case diary.

- a. While recording the statement of the witnesses under Section 164 of Cr.P.C., no videography as required in terms of proviso of Sub-section 1 of Section 164 of Cr.P.C. has been done.
- b. The victim was found on the road bleeding and was taken by someone but blood-stained mud has not been seized from the spot of recovery of the girl.
- c. No crime reconstruction scene of the incident has been done.
- d. The chemical test to trace out the blood-stains was not done. He has submitted that the West Bengal Police does not have necessary facility for that test and it can be done only by CFSL, Delhi.
- e. The clothes of the victim have not been seized for the DNA sampling.

f. The clothes of the accused, which he was wearing at the time of the incident, have not been seized. He has submitted that those clothes were required to be seized and sent for forensic examination and referring to the article "Persistence of DNA from laundered semen stains: Implications for child sex trafficking cases" published by Forensic Science International: Genetics 19 (2015) 165-171, he has submitted that with the advanced techniques, complete DNA profile can now be obtained from laundered semen stains on clothing even after a long time and multiple washes.

g. He has also submitted that the FIR is to be uploaded but the name of the complainant may not have been blurred in that.

h. The bedsheet, which was used at the time of commission of offence, which may be filled with blood-stains, has not been seized.

i. Entire case may be based upon the circumstantial evidence because the dead body has been cremated hurriedly, therefore, minute investigation with advanced technology is required.

8. We have examined the case diary and have also considered the above points which the learned Counsel

for the petitioner has raised. We find that the investigation suffers from serious lapses on several important aspects. We cannot lose sight of the fact that the accused is the son of a powerful leader of the ruling party and that there is material available in the case diary indicating that the family members of the victim have been threatened. The fact that there is no MLC, no post-mortem report and no death certificate also creates a suspicion about an attempt to suppress the entire incident and to wipe out the evidence. Learned Counsel for the State submits that there is no death certificate because there is no crematorium in the village, but the said statement appears to be incorrect because a perusal of the case diary shows that the victim was cremated in Shyamnagar Atirpur Burning Ghat (Shamsan). The case diary further reflects that the rape may have been committed upon the victim not only by the person named in the FIR but by other persons also.

9. This Court in the matter of **The Court on its own Motion In re: The Brutal Incident of Bogtui Village, Rampurhat, Birbhum** by order dated 25th March, 2022 in **WPA (P) 130 of 2022**, considering the circumstances and scope of handing over the investigation to an independent agency like CBI has taken note of the legal position as under:

“Hon’ble Supreme Court in the matter of **Gudalure M.J. Cherian and Others vs. Union of India and Others** reported in **(1992) 1 SCC**

397 in a case of alleged rape of two nuns at Gajraula in Uttar Pradesh where after filing of charge-sheet, a prayer for transfer of investigation to the CBI was made, has held that in a given situation to do justice between the parties and to instill confidence in the public mind, it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency. The Hon'ble Supreme Court in that case had directed the CBI to take up the investigation.

In the matter of **R.S. Sodhi v. State of U.P. and Others** reported in **AIR 1994 SC 38**, in a case where allegations were leveled against the local police and it was held that the investigation by State police would lack credibility and that it would be desirable to entrust the investigation to an independent agency like the CBI so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of investigation credible. In the facts of the case, it was observed that however faithfully the local police may carry out the investigation, the same would lack credibility since the allegations were against them.

In the matter of **Punjab and Haryana High Court Bar Association, Chandigarh vs. State of Punjab and Others** reported in **AIR 1994 SC 1023**, in a case where a practicing lawyer, his wife and child were abducted and murdered and the lawyers' fraternity was not satisfied with the police investigation though the investigation was already completed, Hon'ble Supreme Court, considering the facts of the case, in order to do complete justice in the matter and to instill

confidence in the public mind had directed fresh investigation through specialized agency, i.e., CBI.

In the matter of **State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others** reported in **AIR 2010 SC 1476**, considering the scope of power of the Court to direct investigation by the CBI, it is held that direction to the CBI can be given by the Writ Court even in absence of consent of the State and such direction is not incompatible with federal structure or doctrine of separation of power. It has further been observed that being protectors of civil liberties of the citizens, the Supreme Court and High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly. It has been held that such power should be exercised sparingly, cautiously and in exceptional situations. It has been also held that the extraordinary power can be exercised when it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental right.

In the matter of **Rubabuddin Sheikh vs. State of Gujarat and Others** reported in **AIR 2010 SC 3175**, the Hon'ble Supreme Court has held that in order to do complete justice, even after filing of charge-sheet, Court can direct to hand over investigation to the CBI more so, when

high profile officials of the State are involved in crime and investigation is not made in proper direction.

In the matter of **Ashok Kumar Todi vs. Kishwar Jahan and Others** reported in **AIR 2011 SC 1254**, in the case of unnatural death, where the mother and brother of the deceased were suspecting murder at the hands of the in-laws of the deceased and the State CID was interested in protracting the investigation, considering the circumstances of the case and the fact that the complainants had expressed doubt about fair investigation under the CID, the Hon'ble Supreme Court had found investigation by CBI to be proper.

In respect of the incident of deaths by police firing in Nandigram, this Court had registered the suo motu petition and in order to ensure fair investigation and avoid possibility of loss/destroying of the relevant evidence, had directed the investigation by the Special Team deputed by the Director of CBI. (**Association for Protection of Domestic Rights vs. State of West Bengal and Others; 2007 SCC OnLine Cal 672**). Counsel for the petitioners have also brought to the notice of this Court, the Division Bench judgment in the matter of **Bar Association of High Court at Calcutta** reported in **(2011) 4 CHN 736 (Cal)** wherein considering the circumstances of the case and being prima facie satisfied that the local committee of CPI(M) was involved in the incident the Court had directed the investigation by the CBI.”

10. In the circumstances of the case and after considering the above legal position, we are of the opinion

that in order to have fair investigation in the matter and to instill confidence in the family members of the victim and also the residents of the locality and the State, the investigation should be carried out by the CBI instead of the local police. Hence, we direct the State Investigating Agency to hand over the investigation to the CBI with immediate effect. The State Investigating Agency will hand over all the papers relating to the investigation along with the custody of the accused persons to the CBI forthwith. The CBI will furnish a report about the progress of investigation before this Court on the next date of hearing. The concerned authorities are also directed to extend full protection to the family members of the victim and witnesses of the case.

11. List on 2nd May, 2022.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]