

Sl.03 14.12.2022
NB Ct. 39

WPA 27799 of 2022

Central Bureau of Investigation
Vs.
The State of West Bengal

Mr. D. P. Singh,
Mr. Dhiraj Trivedi Ld. DSG,
Mr. Manu Mishra,
Mr. Samrat Goswami,
Ms. Shreya Dutt.

...for the CBI.

Mr. S. N. Mookherjee Ld. AG,
Mr. Samrat Sen,
Mr. Anirban Ray Ld. GP,
Mr. T. M. Siddiqui,
Mr. Debhasish Ghosh,
Mr. Nilotpal Chatterjee.

...for the State.

This is an application under Article 226 of the Constitution of India, inter alia, praying for directions upon the respondent to show cause as to why the FIR being Rampurhat FIR No.612 of 2022 dated 13.12.2022 under Sections 448, 323, 325, 302, 385, 386, 509 and 427 read with Section 120B of the Indian Penal Code not be transferred to any independent agency or body over which the State of West Bengal exercises no control and to restrain the respondents from taking any action on the basis of the said FIR.

Mr. D. P. Singh, learned senior counsel appearing on behalf of the petitioner, submits as follows. Lalan Sk., the victim/deceased, was the prime accused in a case which was being investigated by the CBI pursuant to a direction passed by this Court. In that case, infamously termed as 'Bogtui Massacre', 10 persons were burnt to death and several others were injured. The victim/deceased was arrested on 03.12.2022 and remanded on a number of occasions. On the fateful day in

the morning, he was taken to a doctor for a check up, who recorded that there was no external injury on his body. Thereafter, he was taken to his in-laws' house for recovery of some articles. After coming back to the camp, he wanted to take bath. He was allowed to go to the bathroom with a 'gamchha'. Later, it was found that he hanged himself from a pipe with the said 'gamchha'. At the relevant time, the investigating officers of the CBI were not present in the camp. They had gone to Court. Only a constable of the CBI and CRPF personnel were there to guard. However, the police recorded the FIR, purportedly from the end of the victim's wife, implicating even officers investigating the Cattle Smuggling Scam and the parent case. This is only an effort to scuttle the investigation of those cases where politically influential individuals are named as accused. From a plain reading of the FIR, it is clear that the same could not be the version of a rustic woman. Merely on the purportedly deep belief of the informant, the FIR should not have been recorded in such fashion. At least a preliminary enquiry should have been done. Of late, there have been several incidents where investigations into the post-poll violence or the cattle smuggling scam or the coal scam were tried to be scuttled by the State by harassing the investigating authorities or by foisting false cases implicating them. In the interest of justice, investigation should be handed over to an agency which is not under the control of the State Government and the CID must be restrained from doing any further investigation into the alleged offences. Although a prayer for a second post mortem examination has been made in another proceeding, it is open to this Court to direct one.

Learned Advocate General assisted by the learned Government Pleader relies on copies of the FIR and the Post Mortem Report and submits as follows. All parties required to be heard were not added in the present case. For example, the de facto complainant and wife of the victim is an essential party, though not made a respondent. It is doubtful whether the CBI can espouse the cause of its officers in this fashion. Since cognizable offences were made out in the FIR, there was no other option for investigation agency, but to register an FIR. In the writ petition, mere apprehensions have been spelt out, without any basis, of alleged witch-hunt and destruction of evidence. The same are not sufficient to seek transfer of investigation. Reliance is placed on the decisions reported at (1985) 1 SCC 317 and AIR 2021 SC 192. Unless sufficient ground is made out, a direction of “no coercive steps” should not be granted. The State is open to the proposition of having a second post mortem done on the dead body.

Later on, it was pointed out on behalf of the State that last rites might have been concluded for the dead body.

I have heard the learned counsels appearing on behalf of the parties and have perused the writ petition.

An unfortunate case of death of an individual has led to the adverse sides making allegations against each other.

First, it is an absolutely imperative that the wife of the victim deceased and purported maker of the FIR should be added as a party.

Although this may not be the ideal time to get into the details of the FIR, however, the way in which the same was

drafted has prompted the petitioner to raise the plea that at the least some external influence might have been at work.

It is uncanny indeed to see the names of the investigating officers of other high profile cases being taken as names of accused in the present case. Even high ranking officers of the CBI like a DIG have been named there, in a rather far-fetched manner.

In fact, learned counsel for the CBI has also referred to a few instances and alleged that in such cases, pressure has been applied upon the investigating officers of the CBI to deter them from unearthing truth.

All these issues need to be gone into for deciding the present application. Therefore, the matter is required to be heard at length.

In view of the above facts and circumstances and considering the significance and sensitivity of the case, this Court is inclined to pass the following directions-

- (i) For the present, the CID shall continue to investigate the case until further orders.
- (ii) All the steps taken during investigation have to be videographed, especially the recording of statements of witnesses and the recovery of articles, if any.
- (iii) The investigating agency shall not take any coercive measures against the officers of the CBI including officers investigating the cattle smuggling cases until further orders.
- (iv) No final report shall be filed by the investigating agency without the leave of this Court.

The petitioner shall add the de facto complainant as a respondent in this case.

The question of holding a second post mortem examined is kept open.

List this matter on 21st December, 2022.

The State shall produce the original case diary on that day.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)