

14.06.2022
Sl. No.30
srm

W.P.A. No. 17293 of 2021

Mahendra Kumar Jain

Versus

The State of West Bengal & Ors.

Mr. Kalyan Bandopadhyay, Sr. Advocate
Mr. Anuj Singh,
Mr. S. Chowdhury,
Mr. Ajay Agarwal,
Mr. Sanket Sarawgi,
Mr. Arka Banerjee

...for the Petitioner.

Mrs. Chama Mookherji,
Mr. Siraj Goopta

...for the State-respondents.

The petitioner is the father of the deceased victim. The victim was married to one Kushal Agarwal on February 9, 2020. Records reveal that there were instances when the deceased had met her parents time and again soon after the marriage and intimated them about the alleged physical and mental torture inflicted by her husband and the alleged debauchery the husband had indulged in.

It appears that the parents did not pay much attention to such complaints and ultimately on February 16, 2021 the petitioner received a call from the mother-in-law of the deceased, informing him that his daughter had fallen from the

terrace of her matrimonial home and was taken to Woodlands Hospital.

The victim succumbed her injuries on the same day. A whatsapp message was received by the petitioner. It was sent by his deceased daughter, which reads as follows:-

“It’s better that I die than live in this family or with what will be done to me if I leave this family...so please don’t miss me and byebye.”

The petitioner lodged a complaint on February 17, 2021 before the Alipore Police Station and Alipore Police Station Case No.15 of 2021 dated February 17, 2021 under Sections 306/498A/34 of the Indian Penal Code was initiated. A *post mortem* was conducted. On February 25, 2021, the petitioner submitted another complaint narrating the details of the behaviour of the in-laws of the deceased. Investigation was transferred to the Detective Department of the Women's Grievance Cell, Lalbazar. After the post mortem, a prayer was made by the investigating officer for adding Section 304B along with Section 406 of the Indian Penal Code before the learned Chief Judicial Magistrate at Alipore, which was allowed. On the basis of the order passed by the learned Magistrate, seized articles and the mobile phones were sent to the Central Forensic Science Laboratory at Bhopal, for data extraction and expert opinion.

The records reveal that the husband of the victim filed an application for anticipatory bail before this Court, and thereafter withdrew the same. A non-bailable warrant was issued by the criminal court on the prayer of the investigating officer. The warrant was not executed.

Thereafter the husband, once again, moved this Court. An interim protection was granted to the husband till the disposal of the application for anticipatory bail. The warrant of arrest was recalled. The application for anticipatory bail was rejected by this Court, by an order dated February 23, 2022. The husband is at large.

The allegation is that the investigating agency has failed and neglected to proceed with the investigation with the judiciousness, seriousness, expedition and sensitivity which this case deserved. It is alleged that the investigating agency did not make any endeavour for restoration of the warrant of arrest after the rejection of the application for anticipatory bail. That no report has yet been obtained from the Central Forensic Science Laboratory at Bhopal. Hence, interference of this court has been called for as the father has lost hope on the system and the feels that the truth relating to the death of his bright, young and beautiful daughter would never be unravelled. The

petitioner feels that the Sub-Inspector who is the investigating officer, is under tremendous pressure.

Mrs. Mookherji, learned Senior Government Advocate, appearing on behalf of the police authorities, files a report prepared by the Officer-in-Charge, Women's Grievances Cell, Detective Department, Kolkata and submits that the investigation has been conducted to the best of the ability of the respondent No.6. The learned Magistrate also rejected the prayer for day to day monitoring of the investigation. According to the learned Magistrate, the investigation was going on in an unbiased manner and there was no need for day to day interference by the Court. The police report is taken on record.

Having considered the graveness of the allegations, the social position of the parties and the unfortunate events which led to the death of the young lady and especially in view of the delay which has occurred in the interregnum period, this Court is of the view that the investigation ought to have been conducted in a more speedy and systematic manner. It has been rather slow and directionless. The offences relate to dowry death and crime against women. It has a huge social impact. Although, this court does not find anything irregular with the approach of the respondent No.6 in dealing with the

investigation other than her lack of experience and lack of adequate support and machinery. Thus, in view of the gravity of the offences, and the delay in obtaining the report from the CFSL, the Court opines that a Special Investigating Team consisting of senior and experienced police officers should be constituted. The respondent No. 6 may continue to be a part of the investigation.

The Court directs Smt. Damayanti Sen, Special Commissioner of Police (II), Kolkata Police, to constitute her own team of competent officers to take over the investigation. At least a team of five officers must be constituted. The respondent No.6 shall be involved in the investigation as a part of the team. Smt. Sen shall lead the team, supervise and monitor the investigation.

It is expected that the team shall be constituted within a week from the date of communication of this order and immediate steps shall be taken to proceed with the investigation, with the independence and the effectiveness that is required. One and a half years have already passed, without much development.

Let this matter appear on **August 12, 2022** at the **10:30 a.m.** when further report shall be filed by the Special

Investigating Team indicating the development and the progress of the case.

The Court reposes full faith in the investigating agency and expects positive results by the next date.

The parties are directed to communicate this order to the police authorities through proper channel.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)