

21<sup>st</sup> January,  
2021  
(SKB)  
03

**Calcutta High Court  
In the Circuit Bench at Jalpaiguri**

**W.P.A. 201 of 2019**

Jyotsna Roy  
Vs.  
State of West Bengal and Others

Mr. Arjun Chowdhury  
... for the petitioner.

Mr. Subir Kumar Saha, A.G.P.,  
Mr. Bikramaditya Ghosh  
... for the State.

Mr. Samir Pal  
... for the Railway Authorities.

This writ petition has been filed by the wife of one Mr. Rabindra Nath Roy, who was in service under the capacity of Sub-Inspector of the G.D. Cell of Sashastra Seema Bal (Intelligence Bureau) at Panitanki, Nepal Border. The dead body of the said Rabindra Nath Roy was found beside a railway track between Naxalbari Station and Batasi Hault Station with several injury marks all over the body. Rabindra Nath Roy died at the age of 52 years.

The material respondents are the police authorities, Siliguri and Jalpaiguri as well as the Inspector-in-Charge of Siliguri, Darjeeling.

The petitioner initially prayed for a direction on some of the respondents to consider the representation of the petitioner dated 7<sup>th</sup> May, 2019 and for appropriate directions on the respondents to

ensure justice by punishing the culprits, responsible for the death of the petitioner's husband.

This writ petition has been pending for some time and several orders have been passed by the learned Judges sitting in Circuit for directions on the police to complete the investigation into the death of Rabindra Nath Roy, the petitioner's husband.

On 9<sup>th</sup> September, 2019, this Court expressed its views for the delay in conducting the investigation and directed that the railway authorities should pay the costs imposed by an order of a learned Single Judge of 20<sup>th</sup> August, 2019, before the returnable date. On the returnable date i.e. 11<sup>th</sup> September, 2019, the respondent no.7 being the Inspector-in-Charge, Siliguri Town, was directed to complete the investigation within four weeks from date and a report of completion with particulars of the specific facts to be filed on 5<sup>th</sup> November, 2019 before the next Circuit Bench. On 15<sup>th</sup> November, 2019, an order was passed by a learned Judge noting that the death of Rabindra Nath Roy at the age of 52 years and while in service was not a fact to be taken lightly, by reason of which, a verifiable independent report of an expert should be collected in the course of the investigation. On 15<sup>th</sup> November, 2019, an order passed by a learned Single Judge noted that a final report of the investigation has been submitted by the investigating officer and the petitioner was given liberty to move an application under The Code of Criminal Procedure,

1973 before the A.C.J.M., Siliguri. An order was passed on 21<sup>st</sup> January, 2020 thereafter directing the Assistant Commissioner, Siliguri Commissionerate to file his affidavit within a specified timeframe and the railway authorities to file an application for expunging their names from the array of parties in the writ petition.

When this matter is taken up today by this Bench, the status of the proceedings at present is the following: The final investigation report has been filed by the investigating officer, the petitioner has filed an application before the A.C.J.M., Siliguri under Section 173 of The Code of Criminal Procedure and the parties herein have filed their respective affidavits in the writ petition.

The petitioner now seeks an order for re-investigation or fresh investigation by an independent agency, preferably Central Bureau of Investigation, on the ground that the investigation has not been conducted in a satisfactory manner.

The question before this Court is whether the facts in the present proceeding warrant an order for fresh investigation by another agency on the contention of the petitioner that the cause of the death of the petitioner's husband should be ascertained and the culprits then should be brought to book if the cause of death is found to be unnatural. The investigation has been conducted by respondent no.7 being the Inspector-in-Charge, Siliguri, Joint

G.R.P.S., Siliguri, and a final report has been filed sometime in September, 2019.

The submission made on behalf of the parties centers on the statements made in the affidavit-in-opposition filed on behalf of the respondent nos.1,3,4,5,7 & 9 being the State of West Bengal, The Commissioner of Police, Siliguri Police Commissionerate, the Deputy Superintendent of Police, Siliguri, the Additional Superintendent of Police, Siliguri Town, The Additional Superintendent of Police, Siliguri, the Inspector-in-Charge, Siliguri and the Inspector-in-Charge, Crime Investigation Department, Siliguri.

The question whether the investigation has been carried out in an appropriate manner requires to be determined from the statements made in the affidavit-in-opposition of the respondents who are material to the investigation. For a better understanding of the position, the averments made in the affidavit-in-opposition of the concerned respondents are required to be briefly summarized and are:

Statements in support of the concerned police authorities who have conducted the investigation.

(The numbers refer to the paragraphs in the affidavit-in-opposition of the respondents):

5. Statements of a few witnesses in the locality was to the effect that they have seen a train accident on 17<sup>th</sup> April, 2018 (being the day when the dead body

of Rabindra Nath Roy was found) and that further the Loco Pilot of Radhika Passenger Train had made a statement that he had found a person moving near the railway line on the same date in an “imbalance condition” and later came to know that the said person was dashed by the train and succumbed to his injuries.

7. It appears from the case diary that the complaint of the daughter of the deceased, Priyanka Roy, for adding Section 302 of the Indian Penal Code was acceded to but no fact transpired from the complaint of the daughter of the deceased that there was reasonable basis to suspect any person for the murder of Rabindra Nath Roy. The statement of the daughter under Section 161 of the Cr.P.C. also did not reveal any particular person who could be suspected of the murder of Rabindra Nath Roy. The statement of the petitioner also did not throw any light regarding the murder of her husband.

13. Constable Karun Singha was interrogated thoroughly and the statement of the said constable corroborated some parts of the statement of the petitioner when the petitioner was examined on 28<sup>th</sup> August, 2018 by the Sub-Inspector, Ranjan Kr. Shil.

14. The Statements of the family members of the deceased did not reveal any suspicious circumstances for the motive of murder of Rabindra Nath Roy. The post-mortem report as well as the forensic laboratory report indicated that the deceased had consumed

alcohol before his death. Investigation also revealed that Rabindra Nath Roy had not been seen after 12 noon on 17<sup>th</sup> April, 2018 and that the theory of the last seen was hence eliminated.

The statements in the affidavit which support that the investigation was incomplete and unsatisfactory:

6. It appears from the case diary that constable Karun Singha did not find the deceased after 12 noon on 17<sup>th</sup> April, 2018 and the case diary does not reveal that the deceased was seen with Vivek Sharma on that date at any point of time.

- The case diary does not disclose any fact with regard to who the deceased met after 12 noon on 17<sup>th</sup> April, 2018 till his dead body was found near the railway track.
- The case diary also did not disclose any fact as to why the scooter of the deceased was kept in North Bengal University campus and by whom.
- No attempt was made by any of the investigating officers for bringing the photographs of the deceased to the witnesses of the North Bengal University Campus for identification of the person who kept the scooter at the university campus.

7. From the point of view of the investigation, none of the three investigating officers thought it prudent to collect evidence of the whereabouts of the

constable Karun Singha on 17<sup>th</sup> April, 2018 after 12 noon.

- The investigating officers did not carefully examine the call details of constable Karun Singha from the Call Details Records.
- The investigating officers also did not carefully examine the call records of the deceased Rabindra Nath Roy.

8. Although, A.S.I. Narayan Saiba of Siliguri (T) GRPS lodged the F.I.R. after completion of Inquest Report, no photograph of the spot where the dead body of Rabindra Nath Roy was found was taken.

- No attempt was made for collection of evidence for analysis of forensic examination from the spot where the dead body of the deceased was found.
- The Radhikapur DMU Passenger Train/passengers have not been examined by any forensic experts.
- No seizures were made from the spot where the dead body of the deceased was found.

10. No attempt was made on behalf of the investigating officers to get the movement list of the trains from the appropriate authority. The case diary does not mention this aspect of the matter at all.

11. The case diary did not disclose the steps taken by the investigating officers for redressal of the grievances raised by the petitioner in the application filed before the A.C.J.M., Siliguri.

- The investigation of the case was done by “expert agencies” and exclusively guided by the superiors of the Government Railway Police Authorities and has no bearing with any other concerned authorities.

12. None of the three investigating officers collected the copy of the Register Book indicating the duty register on 17<sup>th</sup> April, 2018 from the office of the S.S.B. and no evidence was collected with regard to the deceased leaving his office alongwith constable Karun Singha.

14. The case was started under Section 304/34 of the I.P.C. from the very beginning and hence eliminating the possibility of accidental death although the dead body was found near the railway track.

- Neither the first investigating officer, S.I. Ranjan Kr. Shil, nor the enquiry officer of the case was able to collect any evidence regarding the homicidal death of the deceased.
- Evidence in the form of eye witnesses were leading towards the accidental death of Rabindra Nath Roy.
- The concerned doctors of the Forensic Science Laboratory or North Bengal Medical College did not give any specific information regarding the nature of the death from the post-mortem report.

- The investigating officer is not an expert for determining the nature of the injuries inflicted upon the dead body of the deceased or the cause of the said injuries. The opinion of the autopsy surgeon based on the post-mortem report guided the investigating officers.
- One Bhim Bahadur Sonar, Kalipada Roy were security staff of North Bengal University Campus Quarter No. 183 and 120/12 respectively and were witnesses of the seizure of the seized scooter of Rabindra Nath Roy. None of the above two security staff were examined.
- If examined, the said Bhim Bahadur Sonar and Kalipada Roy could have drawn some light on the investigation of the case.

16. Elaborate and meticulous investigation with the help of forensic experts has not been done in this case, however, there is no evidence that the investigating officers were reluctant to investigate the case or that investigation was done in a casual manner.

- The statements in the affidavit-in-opposition on behalf of the concerned respondents are crucial in deciding the investigation and the final report thereof could be seen as a satisfactory closure to the process.

The above statements have emanated from the very officers/authorities who have been involved in the investigation and the court is of the view that

these statements can be taken as the correct view of the investigation which has so far been done in relation to the death of Rabindra Nath Roy.

The statements further assume significance in the light of the concerns raised by the petitioner. The petitioner suspects that her husband Rabindra Nath Roy was murdered for being in possession of certain information. The petitioner also suspects that constable Karun Singha may have information as to the cause of death. The duty of the investigating officers hence was to come to specific findings with regard to the questions raised.

The first impression of this court is that there are several loopholes in the manner of collecting vital evidence in the case. For dislodging the presumption of homicidal death, it was imperative that evidence is collected for establishing that death occurred as a result of an accident. Since the body of Rabindra Nath Roy was found near a railway track on 17<sup>th</sup> April, 2018, the second presumption is that death was caused as a result of an accident/collision with a train. None of these presumptions have reached a conclusion either in support of an unnatural death or death by accident. Without repeating the specific statements in the affidavit of the concerned respondents, the position which emerges is that there are wide gaps in the evidence on the following crucial aspects, which are:-

- (i) The whereabouts of Rabindra Nath Roy after 12 noon on 17<sup>th</sup> April, 2018 and the persons who accompanied Rabindra Nath Roy after he left office on that date.
- (ii) Evidence of duty hours of personnel of the S.S.B.
- (iii) Collecting evidence from the spot where the body of the deceased was found on 17<sup>th</sup> April, 2018.
- (iv) Ascertaining the timings of the passenger trains on 17<sup>th</sup> April, 2018 for determining whether any accident could have taken place on that date.
- (v) Lack of specific eye witness accounts/statements of witnesses from the locality to establish whether the death was a result of a train accident.
- (vi) No attempt made to collect evidence on the fact of the scooter of the deceased being found in the North Bengal University Campus. No evidence collected by way of witness statements from the security personnel or other probable witnesses who could have shed light on the circumstances in which the scooter of the deceased was recovered from the campus.
- (vii) Most significantly, no forensic or medical evidence was taken for ascertaining the cause of death; whether accidental or homicidal.

The above points assume importance since the petitioner and her daughter, Priyanka Roy-who happens to be a lawyer in Jalpaiguri- have consistently raised concerns for the past 3 years that their husband and father, respectively, has been murdered and that the persons entrusted with the job of investigating into the crime have failed to do justice to the responsibility given to them. The orders mentioned above would make it clear that the petitioner has been seeking justice from 2018 onwards but without much being done in that regard. There is another issue which needs to be mentioned.

Rabindra Nath Roy at the time of his death was engaged with the Intelligence unit of the S.S.B. and was posted near the Nepal Border. The affidavit-in-reply encloses a document written by the deceased to the 41 Battalion, S.S.B., Ranidanga on 5<sup>th</sup> February, 2018 naming certain persons who were involved in the narcotics business. The petitioner has raised a concern of the deceased being eliminated as he was in possession of sensitive information. The investigation carried out does not allude to this aspect of the matter at all. Even if the letter written by the deceased on 5<sup>th</sup> February, 2018 is found to be irrelevant for the purposes of establishing the cause of death, the investigating agency/officers should have come to a specific finding with regard to this fact.

In this context, the contention on behalf of the respondents is also required to be stated.

According to the respondent, the petitioner has already applied before the A.C.J.M., Siliguri under Section 173 of the Cr.P.C. and all the grievances of the petitioner can be addressed by that court. According to the respondents, the hand-written note of the deceased dated 5<sup>th</sup> February, 2018 was with the petitioner for the last three years and cannot be a factor for ordering a fresh investigation. Section 173 of the Cr.P.C. deals with Report of police officer on completion of investigation and sub-section 8 provides that nothing in the section shall preclude further investigation in respect of an offence after a report has been forwarded to the Magistrate. This court is of the view that Section 173(8) cannot prevent a Writ Court from passing further directions if the court deems it appropriate to do so in fit circumstances. Section 173(8) is premised on the action of the Officer-in-Charge of the concerned police station on obtaining further evidence after a final report of the investigation has been made. The scope of the provision is limited in operation and is dependent on the Officer chancing upon a piece of evidence after completion of investigation.

In the present case, the objections raised by the petitioner have been corroborated in clear terms by the respondents themselves and this Court is, therefore, not required to go any further.

In *Vinay Tyagi vs. Irshad Ali @ Deepak & Ors.* reported in (2013) 5 SCC 762, the Supreme Court,

speaking through Justice Swatanter Kumar, held that it is a well settled canon of criminal jurisprudence that superior courts have the jurisdiction under Article 226 of the Constitution of India to direct further investigation. The Court explained that 'fresh', 'de novo' and 're-investigation' are synonymous expressions and the superior courts are also vested with the power of transferring investigation from one agency to another provided the ends of justice demand such an action. The Supreme Court reiterated that in appropriate cases, it is open to the court to hand over the investigation to a specialized agency.

*Vinay Tyagi* was referred to in a recent decision of the Supreme Court in *Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal* in Criminal Appeal Nos. 872-873 of 2020 which concerned an unnatural death of a married lady who was also a practicing doctor and was pressurized for dowry and severely assaulted before her death. Relying upon *Pooja Pal vs. Union of India* (2016) 3 SCC 135 and *Dharam Pal vs. State of Haryana* (2016) 4 SCC 160, the Supreme Court reiterated that constitutional courts can direct further investigation by some other investigating agency for the purpose of a fair trial. On examining the facts, the Supreme Court directed the CBI to conduct a further investigation of the case.

A fair trial wholly depends on the quality of investigation. If there are several loopholes in the

investigation or an absence of collection or preservation of crucial evidence, the investigation becomes superficial and perfunctory. Fair trial is a *sine qua non* for instilling faith in the public that the truth behind a crime will be revealed through an impartial investigation. An investigation has to be fair, untainted and independent. Any investigation which *ex facie* raises a suspicion of not having been conducted with due diligence or dedication, taking all relevant and crucial evidence into account, must be revisited. The role of a court is to ensure that the investigating agencies have attended to the concerns raised and have considered the material facts and evidence for answering the issues raised. The Court, for less a Writ Court, is not equipped by way of expertise to take on the task of monitoring an investigation. That must be left to specialized agencies. The right to an unbiased and complete investigation is as much that of an accused as of the victim and the victim's family. The fairness of a truth-finding mission is the substratum of a civilized society.

The law as pronounced by the Supreme Court requires giving of reasons before ordering a re-investigation or a fresh investigation in a matter. This Court is of the view that the above factors, compounded with the statements made by the answering respondents themselves, raises an undeniable case for appointing an independent

agency for carrying out a fresh investigation into the death of Rabindranath Roy. The nature of the duties of Rabindranath Roy at the time of his death as well as his posting near the Nepal border may point to something more than meets the eye, namely, an ordinary accidental death. Since the document produced by the petitioner points to an “intelligence” angle in connection with the Narcotics trade, this court is of the view that the investigation should be transferred to the Central Bureau of Investigation to be conducted afresh. The Central Bureau of Investigation is directed to start the investigation not later than four weeks from communication of this order and complete the investigation within a reasonable period of time but preferably within ten weeks from the date on which the investigation is started. The petitioner has already suffered a protracted investigation in the hands of the answering respondents. If required, the Central Bureau of Investigation (CBI) may take the assistance of the Narcotics Control Bureau (NCB).

WPA 201 of 2021 is disposed of in terms of the above.

It should be mentioned that two applications filed by the Railway authorities for recalling an order passed by a Learned Single Judge dated 29<sup>th</sup> August, 2019 and for expunging the names of the railway authorities/RPF have been kept in the next available

circuit bench when the Learned Judge who passed the orders will be sitting.

Later it is mentioned by counsel appearing for the petitioner that the names of a few of the appearing counsel have been missed out in the order dated 20<sup>th</sup> January, 2021. Let the names of counsel be incorporated in the said order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on the usual undertaking.

**(Moushumi Bhattacharya, J.)**