
(2019) 11 CAL CK 0079

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 11322 (W) Of 2019

Fakarul Islam And Others

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 25-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161

Citation : (2019) 11 CAL CK 0079

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Susanta Kumar Pal, Tapas Ballav Mandal, Syed Nurul Arefin, Partha Chakraborty, Chayan Debnath

Judgement

Sabyasachi Bhattacharyya, J

A supplementary affidavit, as well as an affidavit-of-service, filed today be kept on record. Affidavit-in-opposition filed by the respondent no. 5 also be taken on record.

The petitioners complain that, despite a specific order of the Magistrate dated October 15, 2019 passed in G. R. 714 of 2019 regarding re-investigation being conducted by the police, no such re-investigation has at all been conducted.

Learned counsel appearing for the police authorities submits a report, apparently given by the Officer-in-Charge of Haroa Police Station, Basirhat PD, who is the investigating officer, which has only paid lip-service to the direction of the Magistrate.

The report appears to be a farce, since it only records what was done mostly prior to the order of re-investigation and records only one paragraph regarding what has been done after the direction for re-investigation, which only shows that two witnesses were examined and their statements were recorded under Section 161 of the Code of Criminal Procedure. It was further recorded that, for reasons best known to the Officer-in-Charge, no force could be applied against

the complainant by the alleged persons. The Officer-in-Charge of the Haroa Police Station was sufficiently condescending thereafter to advice that it is a case of civil nature and so after completion of investigation he consulted with his superiors and as per their direction submitted FRMF in this case vide Haroa PS FRMF No. 433 of 2019 dated October 31, 2019.

Although such advice on the part of the Officer-in-Charge-in-question, to the court, as regards the matter being civil in nature, is welcome, but such advice has to be taken with a pinch of salt in the teeth of the direction of the Magistrate.

It is apparent that the Officer-in-Charge, Haroa Police Station has not complied with the Magistrate's order of re-investigation at all and has made a show of such re-investigation.

It is also questionable as to what prompted the Officer-in-Charge to consult with his superiors and to take their direction for submitting the FRMF when the Officer-in-Charge, and not his superiors, was in charge of the investigation.

Of course, it will be open to this Court, upon hearing the Officer-in-Charge, to see as to who are his superiors who gave the advice to the Officer-in-Charge and filing the FRMF about "investigation" on the flimsy ground recorded by the said Officer-in-Charge.

However, first this Court is interested to hear the version of the Officer-in-Charge of the Haroa Police Station, Basirhat PD, who shall accordingly appear in person tomorrow in this court at 10.30 a.m. when the matter will next be taken up.

As an aside, it is also recorded that the respondent no. 5 sought to make out a case that the writ petition is not maintainable and the petitioner has suppressed several facts, including that the matter is one of civil nature. The surprising similarity between the said objection of the accused and that of the police raises questions in the mind of this court, which probably the Officer-in-Charge of the Haroa Police Station will be able to clear up tomorrow.

As regards the other allegation, since the respondent no. 5 is on bail after being arrested on the charge, this Court finds no necessity or urgency to hear the version of the respondent no. 5 at the present juncture.

Let the matter come up tomorrow, as directed above, at 10.30 a.m. when the Officer-in-Charge of the Haroa Police Station, shall be personally present to explain the matter to this Court.