
(2019) 08 CAL CK 0273

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 26321 (W) Of 2018

Gafur Ali & Anr

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 164

Citation : (2019) 08 CAL CK 0273

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Shamim Ahammed, Uday Shankar Chattopadhyay, Suman Shankar Chattapadhyay, Dona Ghosh, Amitesh Banerjee, Suddhadev Adak

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

The writ petition is taken up for final hearing.

The petitioners complain that, the police are guilty of conducting perfunctory investigation with regard to the death of the son of the second petitioner.

Learned senior Advocate appearing for the petitioner submits that, apprehending violence in the then forthcoming elections of the office bearers to the panchayat, some persons approached this Hon'ble Court by way of W.P. No.14690(W) of 2018 (Julfikar Molla & Ors. Versus The State of West Bengal & Ors.) when the Court by an order dated August 28, 2018 directed the police to keep a strict vigil and to ensure peace and tranquility is maintained during the office bearers' election on August 29, 2018. He submits that, on the night of August 28, 2018, there was widespread use of fire arms and crude bombs resulting in the death of four persons. One of the persons who died is the son of the second petitioner. He draws attention of the Court to a purported First Information Report claimed to be bearing the left thumb impression of one Gafur Ali. He submits that, such

Gafur Ali subsequently approached the Court of the learned Additional Chief Judicial Magistrate and affirmed an affidavit stating that, he did not make such complaint to the police and that, the left thumb impression appearing on such document was not his. He draws attention to the averments made in paragraph 9 onwards of the writ petition. He submits that, one of the police officers in the rank of the officer-in-charge of a police station was involved in a criminal conspiracy with individuals belonging to a particular political party. This conspiracy resulted in the incident on the faithful night. He submits that, due to the involvement of such police officer, the police are not conducting the investigation in a free and impartial manner. He submits that, the investigating authority be altered for the ends of justice and to instill the confidence of the petitioner in the criminal justice system.

Learned Senior Advocate appearing for the State, on the basis of instructions, submits that, the police officer spoken of in the writ petition is being proceeded against departmentally. He submits that, the police will explore the angle disclosed for the first time in the statement made by one of the petitioners under Section 164 of the Code of Criminal Procedure. He contends that, there is no need for change of the investigating authority. He points out that, neither Gafur Ali, nor any of the petitioners ever complained to the police or any other authority that, the police lodged a false complaint bearing left thumb impression of Gafur Ali. He submits that, the statement under Section 164 of the Code of Criminal Procedure made by the second petitioner very lately also does not disclose such a stand. The police received as many as 18 complaints with regard to the incident. Police are investigating thereon.

Some of the elected members of a Panchayat approached the writ Court by way of WP No.14690(W) of 2018 apprehending violence during the selection of the prodhan. There was a writ petition of similar nature being WP No.14687(W) of 2018 (Najimauddin Mandal & Ors. Versus The State of West Bengal & Ors.). Both the writ petitions were disposed of by the order dated August 28, 2018. Both the orders record the submissions on behalf of the State that, the local police station is prepared to meet all eventualities. The Court thereafter goes on to dispose of the writ petition with a direction upon the Officer-in-Charge of the local police station to keep a strict vigil and to ensure that, peace and tranquility is maintained during the officer bearers' elections which was scheduled to be held on August 29, 2018. The officer-in-charge of local police station was also directed that, no physical harm is caused to the petitioners and other participants in the said meeting. The incident happened on August 28, 2018 resulting in death of four persons. The police claim to be activated by a writing which purported to bear the left thumb impression of Gafur Ali, in respect of the death of the son of the second petitioner. The complaint itself, as well as the left thumb impression of Gafur Ali is being contested by the petitioners. The petitioners rely upon an affidavit affirmed by Gafur Ali before the learned Additional Chief Judicial Magistrate, Barasat stating that, Gafur Ali did not make such police complaint and did not affix the left thumb impression on such complaint.

The records made available to Court demonstrate that, the second petitioner approached the jurisdictional Magistrate under Section 156(3) of the Code of Criminal Procedure to direct the police to register a complaint on the death of the son of the second petitioner. The records produced before the Court does not disclose that, the police registered any suo motu FIR with regard to the incident.

As noted above, there were four deaths. Police apparently are proceeding on the complaints received. One of the complaints on the basis of which the police are proceeding is the complaint of Gafur Ali which is being disputed.

There is an allegation of involvement of an officer of the police of the rank of the officer-in-charge. State is proceeding against such person departmentally. The investigation so far does not disclose that, the police have taken any measure to find out the veracity of the left thumb impression of Gafur Ali appended to the complaint claimed to be of Gafur Ali.

Death of the son of the second petitioner is involved. The petitioners apparently are not having confidence in the present investigation due to their perception of the involvement of a police officer of a rank of the officer-in-charge of a police station. The present investigation is conducted at the rank of the Sub-Inspector of Police. There is some justification in the petition carrying the impression that a Sub-Inspector of Police will not be able to conduct a free and fair investigation given the allegation of the involvement of an officer superior in rank to him.

In the facts of the present case, in my view, interest of justice would be subserved by transferring the investigation to a Special Investigation Team. Let such Special Investigation Team consist of three members. Such Special Investigation Team be headed by the Superintendent of Police of the District having jurisdiction over the subject police station. Such Superintendent of Police is at liberty to appoint two other officers of his choice not below the rank of Deputy Superintendent of Police to the Special Investigation Team. It is clarified that, in the event, the Superintendent of Police is changed by transfer or otherwise, then the new incumbent at such post will be the head of the Special Investigation Team. The new incumbent will be at liberty to appoint two other officers to continue with the two Officers already appointed under him or to engage any other new personnel of the specified rank. In the event, there is a change of any of the two persons chosen by the Superintendent of Police or any of them is transferred, then, the Superintendent of Police is at liberty to engage new person of the same rank under him as the outgoing person.

It is expected that, the Special Investigation Team will explore the angle that appears in the Statement under Section 164 of the Code of Criminal Procedure by the second petitioner. They will also look into the veracity of the complaint of the petitioners that, the FIR does not bear the left thumb impression of the Gafur Ali.

The police will submit their report before the jurisdictional Court as expeditiously as possible on conclusion of the investigation.

WP No.26321(W) of 2018 is disposed of.

No order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.