

(2019) 07 CAL CK 0023

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 4485 (W) Of 2019, Civil Application (CAN) No. 4169 Of 2019

Kajal Roy

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144, 156(3)
Indian Penal Code, 1860 — Section 34, 302, 506
Code Of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2019) 07 CAL CK 0023

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Prosenjit Mukherjee, Achintya Banerjee, Suddhadev Adak

Judgement

Debangsu Basak, J

Applicant is a co-accused in a criminal case. Applicant seeks to be added as a party respondent in a writ petition which alleges perfunctory

investigation by the Police in relation to a police case where the applicant is one of the accused.

Learned Advocate appearing for the applicant submits that, the applicant along with others are co-sharers in respect of several plots lying and situate

at Mouza Junsura J.L. No. 122, District Bankura. The applicant filed a suit for declaration of title and permanent injunction. Such suit was decreed ex

parte. An application for setting aside the ex parte decree was filed which is pending. Thereafter one of the co-sharers to the property filed an

application under Section 144 of the Criminal Procedure Code. The applicant approached the writ court by W.P. No. 25047 (W) of 2015 complaining

of Police inaction. Such writ petition was disposed of by an Order dated January

11, 2016 by directing the Police authorities to render assistance to protect the right, title and interest of the applicant as declared by the Civil Court. A review petition was filed. The review petition was dismissed. A second writ petition was filed by the applicant along with other co-sharers being W.P. No. 16680 (W) of 2018. During the pendency of such writ petition, an application under Section 156(3) of the Criminal Procedure Code was filed on December 12, 2018 alleging that, on November 20, 2018, the applicant along with ten others committed theft of the crop lying and situate at the plots described in the schedule to such application. On the basis of such proceedings, Sonamukhi Police Station Case No. 188/2018 was started. On December 20, 2018 when the application under Section 156(3) of the Criminal Procedure Code was filed, nothing was alleged with regard to the death of the deceased.

Subsequently on December 21, 2018 the writ petitioner submitted a complaint under Section 156(3) of the Criminal Procedure Code alleging that on October 29, 2018 the applicant and other persons with co-sharers of the property murdered the deceased. The applicant and other co-accused persons applied for anticipatory bail which was allowed on February 8, 2019. The writ petitioner deliberately did not make the applicant as a party respondent in the present writ petition although the applicant came to learn that there are allegations against the applicant in the writ petition. The applicant is a necessary and proper party in the writ petition. The writ petition seeks investigation to the death of the deceased through the Criminal Investigation Department (C.I.D). The applicant therefore should be added as a party respondent and allowed to contest the same.

The application for addition of party is opposed on behalf of the writ petitioner. Learned Advocate appearing for the writ petitioner submits that, the applicant is an accused in a criminal case. The applicant cannot have any say in the investigation or the Investigating Authority investigating the criminal complaint. Therefore, the applicant cannot be added as party respondent in the writ petition. In support of his contentions, learned Advocate appearing for the writ petitioner, relies upon 2011 Volume 5 Supreme Court Cases page 79 (Narmada Bai v. State of Gujarat & Ors.) and 2018 Volume 7 Supreme Court Cases page 365 (E. Sivakumar v. Union of India & Ors.). He submits that, the application should be dismissed.

The application is for the purpose of adding the applicant as a respondent in a writ petition which is pending. The writ petitioner in the writ petition seeks investigation with regard to the death of the deceased through the C.I.D. Petitioner complains of perfunctory investigation with regard to the death of the deceased. It is alleged in the writ petition that, the death occurred on October 28, 2018. Complaint to the Sub-Divisional Officer on November 3, 2018 did not evoke any response. Petitioner filed a complaint case before the learned Additional Chief Judicial Magistrate at Bishnupur, Bankura under Section 156(3) of the Criminal Procedure Code. The learned Magistrate directed the complaint to be treated as a First Information Report (F.I.R). Police thereafter registered Sonamukhi Police Case No. 166/18 dated December 24, 2018 under Section 302/506/34 of the Indian Penal Code. Prior to that, the Police Station was proceeding under Sonamukhi Police Station Unnatural Death Case No. 34 of 2018 dated October 30, 2018 with regard to the death of the deceased. Writ petitioner refers to the incidents before the date of death and contends that, various persons including the applicant were involved in the murder. Writ petitioner refers to the post mortem report and makes various allegations with regard thereto in the writ petition. Writ petitioner alleges in the writ petition that, no investigation took place. According to the writ petitioner, Police did not make any effort to interrogate the first accused. Police allowed the accused to obtain anticipatory bail. Writ petitioner alleges in paragraph 13 of the writ petition that, the post mortem was conducted in a lackadaisical manner and to satisfy the Police authorities as also the persons named in the complaint. There is every possibility that, such post mortem report was prepared at the behest of the accused. Writ petitioner also alleges that, the Investigating Agency is in collusion and in league with the persons named in the complaint and that, the Police are acting at the behest of local influential persons who have their blessings on the accused including the applicant. Consequently the investigation done so far is not fair requiring an independent investigation into the death. Petitioner goes on to make allegations with regard to the possession of the land in question. Narmada Bai (supra) concerns a fake encounter. Supreme Court notices various authorities on the issue of power of Constitutional Court to direct

investigation by an independent agency. It notes that, fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest and that, even if the investigation is closed, then too, a writ court can direct an investigation by a different agency. In the facts of that case, it directs the Central Bureau of Investigation (CBI) to take up the investigation. Narmada Bai (supra) cannot be considered to be an authority for the proposition that, an accused in a criminal case, cannot be a respondent in a writ petition alleging perfunctory investigation with regard to such Police complaint particularly when, there are allegations levelled against the accused in the writ petition.

E. Sivakumar (supra) decides a special leave petition taking exception to a judgment and order of the High Court directing transfer of the investigation of a criminal case to the Central Bureau of Investigation. The petitioner before the Supreme Court contended that, since the petitioner was named as an accused in the FIR, he was not given an opportunity of hearing and that, he was not made a party to the litigation where the impugned Order was passed and therefore, the resultant judgment and order should be set aside on such ground alone. Negating such contention, the Supreme Court held that, the accused has no right to be heard at the stage of investigation. It also held that, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter was not heard, was of no avail. That by itself did not render the impugned judgment and order a nullity.

The applicant before me is an accused in a criminal case. The applicant is enlarged on anticipatory bail. An accused has no right to be heard at the stage of investigation. The present writ petition relates to alleged perfunctory investigation made by the Investigating Agency with regard to a criminal complaint. The writ petitioner made diverse allegations against the accused in the writ petition. Although, the entirety of the provisions of the Code of Civil Procedure, 1908 does not apply to a writ proceeding, the principles of Code of Civil Procedure, 1908 are attracted. A person can come to the Writ Court and seek addition as a party in a pending writ petition where such person can substantiate that, he is a necessary or a proper party or he is both. If such person satisfies that, he is a necessary or a proper party or both, then, he is entitled to be added as a party to the writ petition and be heard therein. The fact that, the writ petition relates to Police inaction or perfunctory investigation with regard to a Police complaint, does not alter the

basic fact that, it is a writ petition where, principles of Code of Civil Procedure, 1908 stands attracted. As noted above, the writ petition is replete with

allegations against the applicant. The applicant therefore is entitled to contest those allegations. It can contest such allegations validly if it is a party in

such writ petition. Therefore, even if the applicant is not treated as a necessary party, the applicant must be treated to be a proper party in the writ

petition by virtue of the allegations made against the applicant, in the writ petition. By a person being a necessary party in a proceeding, it is

understood that, the presence of such party is indispensable to the proceeding and that, no effective order can be passed in absence of a necessary

party. A proper party is understood to be one in whose absence an effective order can be passed.

A precedent is an authority for the proposition it decides. E. Sivakumar (supra) should not be read to lay down that, the principles of the Code of Civil

Procedure, 1908 are not attracted to a writ petition and that, where an applicant who is an accused in a Police case, satisfies the test of addition

parties, such an applicant need not be added as a party to a writ petition which alleges perfunctory investigation with regard to a Police complaint on

the ground that, an accused has no say in the investigation. It lays down that, a writ petition alleging Police inaction or perfunctory investigation with

regard to a Police case can be validly disposed of in absence of the accused being arrayed as respondents therein. Disposal of such a writ petition on

merits will not be vitiated merely due to the absence of the accused in the writ petition. It is one thing to say that a writ petition can be validly disposed

of in absence of all the accused in the concerned criminal case and another to deny audience to the accused who seeks to be added as a party

respondent to contest the allegations levelled against him in the writ petition. The writ petitioner as a dominus litis can choose the person against whom

he wishes to litigate. This right of the writ petitioner is however subject to the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908.

In such circumstances, the application being C.A.N. 4169 of 2019 is allowed. The applicant is added as a respondent in the writ petition. Learned

Advocate-on-Record for the writ petitioner is granted liberty to amend the cause title of the writ petition accordingly. The writ petitioner will serve a

copy of the amended writ petition upon the respondents including the added respondents and file an affidavit of service to such effect on the next date

of hearing. List W.P. 4485 (W) of 2019 in the monthly list of August 2019 under the heading "Motion".

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