

(2014) 05 CAL CK 0020

In the Calcutta High Court

Case No : A.S.T. 164 of 2014 and A.S.T.A. 122 of 2014

State of West Bengal and Others

APPELLANT

Vs

Nepal Krishna Roy and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(2), 227, 228, 239

Penal Code, 1860 (IPC) — Section 117, 189, 302, 307, 326

Citation : (2014) 3 CALLT 67 : (2015) 5 CHN 596

Hon'ble Judges : Arun Mishra, C.J.; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Ashok Kumar Banerjee, Mr. Kalyan Bandyopadhyay, Mr. Pranab Kumar Dutta, Mr. Manjit Singh, Mr. Joytosh Majumdar, Mr. Abhrotoosh Majumdar, Mr. Prasun Dutta, Mr. Bikash Kumar Mukherjee, Mr. Ansar Ali Mondal, Mr. Tapan Kumar Adhikari, Mr. Amal Sen and Mr. Supratim Chatterjee, Advocate for the Appellant; Tapas Ghosh, Mr. Tanmoy Chowdhury for the Respondent Nos. 1 to 3, Mr. Arunava Ghosh, Mr. Partha Pratim Roy and Mr. Sirsendu Sinha Roy for the added Respondents, Advocate for the Respondent

Judgement

Arun Mishra, C.J.—With the consent of the learned Counsel appearing for the parties, we add Smt. Saraswati Ghosh, being the widow of the deceased, Sagar Chandra Ghosh, as party respondent in the appeal since she is an added party respondent in the writ petition.

2. The learned advocate-on-record of the appellants is directed to add the name of Smt. Saraswati Ghosh as party respondent in the cause title of the memo of appeal as well as in the stay application in course of the day.

3. The legality of the interlocutory order dated 10.4.2014 passed by the Single Bench in W.P. 33223 (W) of 2013 has been questioned in the intra court appeal.

4. The writ petition has been filed by the respondent Nos. 1, 2 and 3 herein before the Single Bench in which prayer has been made to hand over Panrui

Police Station Case No. 79 of 2013 dated 22.7.2013 registered under Sections 448/326/307/34 of the Indian Penal Code and added Section 302 of the Indian Penal Code read with Sections 25/27 of the Arms Act to the Criminal Investigation Department, West Bengal, in short C.I.D. for further and proper investigation. Prayer has also been made to direct the respondent authorities to consider the representation dated 21.10.2013 in accordance with law. Further prayer has been made to transmit and produce the entire record before this Court. Rule Nisi has also been prayed in terms of the main prayers.

5. It is averred in the writ petition that the petitioners had good relation with late Sagar Ghosh, a retired employee of Bandhnab Gram High School, aged about 70 years, who was suffering from various ailments and was not associated with any political activity. He was murdered by some miscreants while he was sleeping in his own room for unknown reasons. It is alleged that he was murdered by some followers of a particular political party. The petitioners, respondent Nos. 1, 2 and 3 herein, were arrested for alleged commission of murder. The widow of the deceased Smt. Saraswati Ghosh was picked up by the police and her signatures were obtained on some blank papers. The aforesaid case has been registered by the police on the basis of the written complaint lodged by Smt. Saraswati Ghosh, the widow of the deceased Sagar Chandra Ghosh. The averments with respect to the contents of complaints have also been made. Sajal Roy, Bhagirath Ghosh and Priya Ranjan Ghosh could be identified as miscreants. It is submitted that much prior to the occurrence of the incident, First Information Report was registered by the concerned police station and the police was protecting the actual culprits by using some blank papers on which signatures of the widow of the deceased were obtained. The bail application of the petitioners had been rejected by the Chief Judicial Magistrate as investigation was at the initial stage. The other facts with respect to the filing of the bail application in this Court have also been mentioned. Subsequently, bail application has been allowed by this Court. It was submitted by the accused/petitioners that they have been falsely implicated in the case as they are not connected in any way with the said case. The complaint of the widow has to be looked into. The higher police authorities were sitting tight over the issue and case has not been referred to the Criminal Investigation Department for the reasons best known to them. These are the averments with which the writ petition has been filed before this Court.

6. It appears that the Single Bench has passed various orders from time to time. Special Investigation Team has been constituted it also appears that as per earlier order passed by the Single Bench dated 2.4.2014, the two private news channels, ABP Ananda and 24 Ghanta, have supplied video footage of the speech of Anubrata Mondal dated 17.7.2013 referred to by Smt. Sibani Ghosh, one of the two eye witnesses in her statement recorded u/s 161 of the Code of Criminal Procedure. The video footages were played in the open Court. The contents of the speech of Anubrata Mondal has been noted by the Single Bench in its order. The Court has observed that the speech given by the said political leader was provocative and inciting. Thereafter, the Single Bench passed an order on

10.4.2014 with respect to said Shri Anubrata Mondal who had given a speech on 17.7.2013 during a public meeting. The Single Bench has observed that such speech had stirred the civil administration of the District so much so that on the basis of a letter of the District Magistrate, Birbhum dated 22.7.2013, a Sub Inspector of Police attached to Panrui Police Station had submitted a prayer before the learned Chief Judicial Magistrate, Suri for granting permission to investigate the matter with a view to submit prosecution under Sections 189/505(1)(b) of the Indian Penal Code. The learned Magistrate upon consideration of the prayer had directed registration of a case under Sections 436/117/332/353/189/505(1)(b) of the Indian Police Code. The Panrui Police Station has registered the case being Panrui Police Station Case No. 80/13 dated 26.7.2013. It has been observed that no positive development has taken place and arrest of the accused, has not been secured. The learned Counsel for the petitioners has submitted that the other accused persons have been arrested. The said observation has been made with respect to non-arrest of Anubrata Mondal. It has also been observed by the Single Bench that police has a discretion to arrest or not to arrest in terms of the provisions contained in Section 41 of the Code of Criminal Procedure. The discretion not to arrest has been exercised for quite some time and at the same time, the Single Bench has made following observations:

I can take judicial note of the fact, bearing in mind recent development, that the accused Anubrata Maondal is having the blessing of the Hon''ble Chief Minister of the State and it can reasonably inferred that the D.G.P. or the members of the SIT have dared not to touch the accused because of the political clout he enjoys.

7. As a sequel thereto, the personal presence of the D.G.P. had also been ordered before the Court on 11.4.2014 at 2.00 P.M.

8. The legality of the aforesaid interlocutory order passed by the Single Bench in the writ proceeding and making the aforesaid observations has been questioned in the intra court appeal.

9. The operation of the impugned order was stayed by a Division Bench of this Court on 11.4.2014 against which two SLPs were preferred, being C.R.L.M.P. Nos. 9305-9306 of 2014, against the judgment and order dated 11.4.2014 passed by this Court. The Hon''ble Apex Court has dismissed the SLPs as it was filed against an interim order. The SLPs have been dismissed and the Division Bench has been asked to hear the appeal as early as possible. Parties have been given liberty to raise all legal and factual issues before the Division Bench of this Court. Thereafter, the matter was listed on 2.5.2014 on which date the copy of the order of the Hon''ble Apex Court was not available with the learned Counsel for the parties. It has been produced today before us and we have proceeded to hear the case.

10. It is submitted by Shri Ashok Kumar Banerjee, learned Government Pleader appearing on behalf of the State of West Bengal that considering the relief which

has been prayed in the writ application, the impugned order and other orders which have been passed in course of the pendency of the writ petition are going beyond the relief prayed for. Only prayer has been made to hand over the case to the Criminal Investigation Department and to consider the representation. It is submitted at Bar that there is no allegation against Anubrata Mondal in the writ petition. It was further submitted by the learned Counsel appearing on behalf of the State that the observations and aspersions, which have been made against the Chief Minister of the State, were uncalled for. There is no material to sustain them. There is no allegation against the Chief Minister and the Chief Minister is not a party in the writ petition. There is no whisper or averment made that the Chief Minister is protecting the said Anubrata Mondal in any manner whatsoever. It was further submitted that police is properly investigating the case. As per direction given by this Court on 11.4.2014, the learned Counsel for the State has also produced before us a report of further investigation made by the Special Investigation Team which was ordered to be constituted by the Single Bench vide order 7.4.2014. The learned Counsel for the State has submitted that the impugned order is bad in law and it is not for the Court to investigate the matter or to collect the evidence. Thus, the order passed by the Single Bench in the pending proceedings are uncalled for and this Court should quash the same and direct proper investigation as per the relief prayed by the accused persons in the writ petition.

11. Shri Tapas Ghosh, learned Counsel appearing on behalf of the respondent Nos. 1, 2 and 3, who are the accused persons in the murder case (as per the initial complaint), has submitted that various orders which have been passed by the Single Bench have not been questioned except the order dated 10.4.2014. As such, Court cannot go into the legality of the said orders. All these aspects have to be considered by the Single Bench. However, at the same time, learned Counsel has submitted that since the observations, which have been made against the Chief Minister of the State, are based on newspaper reports which are not on record and there is no supporting material with regard thereto, the same may be deleted.

12. The learned Counsel has submitted that as investigation is not being done fairly, it is for the Single Bench to consider the prayer for fair and proper investigation and to supervise it and no further interference is made out in the order.

13. Shri Arunava Ghosh, learned Senior Counsel appearing on behalf of Smt. Saraswati Ghosh, widow of late Sagar Chandra Ghosh has submitted that since the Single Bench is in seisin of the matter, various questions have to be considered by the Single Bench, not by the Division Bench of this Court and the Single Bench should ensure fair and proper investigation is carried out. However, the learned Counsel on a specific query has submitted that the observations, which have been made by the Single Bench against the Chief Minister of the State, may be deleted in the facts and circumstances of the case.

14. We consider the question of making the aforesaid observations against the Chief Minister that the accused Anubrata Mondal is having blessings of the Hon''ble Chief Minister of the State and due to that D.G.P. or the members of the SIT have dared not to touch the accused because of the political clout he enjoys. For various reasons, we find that the aforesaid observation on merits is not sustainable. We are not persuaded by the submissions raised by the learned Counsel appearing for the respondents No. 1, 2 and 3 and added respondent that the aforesaid observations may be deleted and we propose to examine the sustainability of the aforesaid observations on merits.

15. Firstly, there is absolutely no allegation in the writ petition against the Chief Minister. There is no allegation that Anubrata Mondal is enjoying the blessings of the Hon''ble Chief Minister and that is why he has not been arrested. There is no material whatsoever placed on record so as to infer the aforesaid aspect and to take judicial notice of the fact.

16. It is also clear that the Chief Minister is not a party in the writ petition. As such, sweeping observations cannot be made against such a person as held by the Hon''ble Apex Court in *Om Prakash Chautala v. Kanwar Bhan & Ors.*, 2014 AIR SCW 972. The Hon''ble Apex Court has laid down thus:

19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracize perceptual subjectivity, make one''s emotions subservient to one''s reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum. A judgment may have rhetorics but the said rhetoric has to be dressed with reason and must be in accord with the legal principles. Otherwise a mere rhetoric, especially in a judgment, may likely to cause prejudice to a person and courts are not expected to give any kind of prejudicial remarks against a person, especially so, when he is not a party before it. In that context, the rhetoric becomes sans reason, and without root. It is likely to blinden the thinking process. A Judge is required to remember that humility and respect for temperance and chastity of thought are at the bedrock of apposite expression. In this regard, we may profitably refer to a passage from *Frankfurter, Felix*, in *Clark, Tom C.*, [Mr. Justice Frankfurter: "A heritage for all Who Love the Law," 51 A.B.A.J. 330, 332 (1965)]:

for the highest exercise of judicial duty is to subordinate one''s personal pulls and one''s private views to the law of which we are all guardians - those impersonal convictions that make a society a civilized community, and not the victims of personal rule.

17. In *Divine Retreat Centre Vs. State of Kerala and Others*, , the Hon''ble Supreme Court has observed that no judicial order can be passed by any Court without providing a reasonable opportunity of being heard to the persons likely to be affected by such order and particularly when such order results in drastic consequences of affecting one''s own reputation. Otherwise, the order would be

violative of principles of natural justice. The Hon''ble Apex Court has laid down thus:--

51. The order directing the investigation on the basis of such vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice. It was, however, submitted that the accused gets a right of hearing only after submission of the charge-sheet, before a charge is framed or the accused is discharged vide Sections 227 and 228 and 239 and 240 Cr.P.C. The appellant is not an accused and, therefore, it was not entitled for any notice from the High Court before passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. In our view, the impugned order of the High Court directing enquiry and investigation into allegations in respect of which not even any complaint/information has been lodged with the police is violative of principles of natural justice.

18. In *State of Bihar Vs. Lal Krishna Advani and Others*, , the Hon''ble Apex Court has observed that person whose conduct is being inquired into or who is likely to be prejudicially affected by the inquiry, notice has to be given to such person being a sine qua non of the principles of natural justice. It has been held:--

6. The High Court, while referring to a decision reported in *State of J & K v. Bakshi Gulam Mohammad* observed that when an authority takes a decision, which may have civil consequences and affects the right of a person, the principles of natural justice would at once come into play. Reputation of an individual is an important part of one's life. The High Court then quoted a passage from a decision of this Court reported in *Kiran Bedi v. Committee of Inquiry* which passage (SCC p. 515, para 25) contains the observations from an American decision in *D.F. Marion v. Minnie Davis* and reads as follows:

The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.

Some decisions, to which our attention has been drawn by Shri Harish N. Salve, learned Senior Counsel appearing for Respondent 1, may be referred: *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* wherein it was observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution. He has also referred to the International Covenant on Civil and Political Rights, 1965 (ICCPR), recognizing the right to have opinions

and the right of freedom of expression subject to the right of reputation of others. The Covenant provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) for respect of the rights or reputations of others;
 - (b) for the protection of national security or of public order (order public), or of public health or morals.

It is thus amply clear that one is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review. A reference may be made to *Peter Thomas Mahon v. Air New Zealand Ltd.*

19. In view of the aforesaid decisions, we have no iota of doubt that the observations which have been made against the Chief Minister are not based on materials placed on record and no reason for taking judicial notice of the fact is not culled out in the impugned order. No reasons whatsoever have been indicated so as to take judicial notice. The judicial notice can be taken when facts are blatant which requires no further proof. There is no material on record and as such, no judicial notice could have been taken presumably on the basis of the newspaper reports in an adversarial proceeding, as the present on, which are also admittedly not on record. There is no material placed on record against the Chief Minister so as to infer that Anubrata Mondal is having blessings of Chief Minister in any manner whatsoever for not being arrested. There is absolutely no allegation and no material in that regard, which is not disputed at the Bar. We are of the considered opinion that taking a judicial notice was uncalled for and the aforesaid observations, on merits, could not have been made against the Chief Minister.

20. It is also apparent that Court cannot swayed away by the media report which too is not on record and cannot go by the correctness of the same in an adversarial litigation. Thus, there is no material, much less cogent one so as to

make the aforesaid observations and the same are ordered to be expunged.

21. It is suffice to observe that we have not gone into the merits of the other interlocutory orders since the same have not been questioned before us. It is open to the appellants to urge all these questions before the Single Bench and the Single Bench has to take decision in accordance with law at a stage it may consider appropriate.

22. We are not inclined to go into the merits of the other observations, which have been made. Court may monitor investigation to ensure fair and impartial investigation. Moreover, it is not to the Court to play the role of the investigating agency itself, but it can make surveillance in the matter. In *Manohar Lal Sharma Vs. The Principal Secretary and Others*, it was observed:--

38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

39. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such "Court-directed" or "Court-monitored" cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression "Court-monitored" has been interchangeably used with "Court-supervised investigation". Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report u/s 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the

investigation in a free, fair and time-bound manner without any external interference.

40. The Court is of the view that a fair, proper and full investigation by CBI into every accusation by CBI in respect of allocation of coal blocks shall help in retaining public confidence in the conduct of inquiry/investigation. Moreover, the Court-monitoring in a matter of huge magnitude such as this shall help in moving the machinery of inquiry/investigation at an appropriate pace and its conclusion with utmost expedition without fear or favour.

23. We leave these aspects for consideration by the Single Bench. As the matter is pending before the Single Bench, We return the sealed envelopes containing reports of the SIT to the learned Counsel for the State to be filed in the writ proceeding before the Single Bench who shall consider the further investigation report and thereafter pass appropriate orders as it may consider fit.

24. We find that the Court has made the aforesaid observations against the Chief Minister and has opined that Anubrata Mondal has not been arrested since he is having blessings of the Chief Minister and as such, presence of the Director General of Police had been ordered on the next date.

25. In the circumstances, as the aforesaid observations are set aside by us, presence of Director General of Police is not necessary at this stage to explain the aforesaid aspect. The Single Bench is to consider firstly the further investigation report to be submitted before the Single Bench by the Special Investigation Team which report has been prepared pursuant to our direction dated 11.4.2014 and in case, after considering the report, it is found that the presence of any officer is required, it is open to the Single Bench to order the presence of any particular officer.

26. Let the writ petition be placed before the Single Bench for further consideration.

27. All other issues are left open to be considered/reconsidered, in case, prayer is made before the Single Bench in accordance with law.

28. The learned Counsel for the respondents prays liberty to file affidavit-in-opposition before the Single Bench.

29. Let prayer for filing affidavit-in-opposition be made before the Single Bench and the Single Bench is to consider the same.

30. With the aforesaid modifications and observations, the appeal and the connected application, being A.S.T.A. 122 of 2014 stand disposed of without, however, any order as to costs.

31. Urgent photostat certified copies of the order, if applied for, be given to the learned Counsel for the parties upon compliance of necessary formalities.