

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**FMA 1022 of 2022
IA NO: CAN/1/2022**

Sk. Hafijul Islam

vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Sayan Chattopadhyay, Advocate
Mr. Hasanuz Zaman Molla, Advocate

For the State : Sk. Md. Galib, Advocate
Mr. Subhra Nag, Advocate

Heard on : 07.01.2025

Judgment on : 07.01.2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated June 6, 2022 passed in WPA No. 1496 of 2022.

2. By the impugned order, the learned Single Judge did not find any neglect on the part of the investigating authority and consequently dismissed the writ petition.

3. Learned advocate appearing for the writ petitioner/appellant submits that, the son of the writ petitioner was murdered. He draws the attention of the Court to the facts and circumstances of the incident of murder. He submits that, the son of the writ petitioner was undergoing internship under MBBS degree. Son of the writ petitioner was found dead in hostel of the Medical College where he was doing the internship.

4. Learned advocate appearing for the writ petitioner/appellant submits that on the police complaint being lodged, initially police submitted a report as to mistake of fact. Writ petitioner filed an application taking exception to such report of the police authorities. Jurisdictional Court directed reinvestigation.

5. Learned advocate appearing for the writ petitioner submits that, the facts and circumstances of the present case, requires a special investigating team to be constituted to look into the facts and circumstances leading up to the murder of the son of the writ petitioner. In such circumstances, he submits that, although the Jurisdictional Court directed reinvestigation, the same will not produce any fruitful result inasmuch as, the same investigating agency will be making the investigating done so far as the first report. Therefore, according to him, it is imperative that a special investigating team is constituted.

6. Learned advocate appearing for the State submits that, all possible steps with regard to investigation were taken. With the transfer of

the first investigating officer, the second investigating officer took over charge. He refers to the opinions obtained from the forensic experts with regard to the unfortunate death of the son of the writ petitioner. He submits that, experts are of the unanimous opinion that, the victim fell from a height and succumbed to his injuries suffered from such fall. In this regard, he draws the attention of the Court to both the Post Mortem Report as also to the opinion of the forensic experts obtained from time to time by both the investigating officers. He submits that one mobile phone with two sims were seized. A tab was also seized.

7. The writ petitioner was one of the seizure witnesses with regard to both the mobile phone and the tab. He points out that, the service provider of both the sims were requested to furnish the Call Details Recording. One of the service providers provided the same while the other is yet to provide the same. He submits that, the last caller who spoke with the victim on the fateful day recorded a statement under Section 164 of the Criminal Procedure Code. He refers to the Case Diary.

8. Writ petitioner is the father of the victim. Victim was undergoing internship in the MBBS course while the unfortunate death occurred at the hostel of the Medical College where the victim was undergoing his internship.

9. With the discovery of the dead body, Post Mortem was undertaken. Forensic experts were also called upon to look into the incident of death.

10. Materials in the case diary suggest that, the victim succumbed to his injuries that he sustained from the fall at the hostel where he was undergoing his internship.

11. Writ petitioner is not satisfied with the investigations undertaken by the police. Police initially submitted a mistake as to fact report with regard to the police case with the Jurisdictional Court. On an application taking exception to such report, Jurisdictional Court directed reinvestigation.

12. Jurisdictional Court does not possess jurisdiction to substitute the investigating agency. Such powers can be exercised by a constitutional Court.

13. Power to substitute investigating agency by the Jurisdictional Court should be exercised sparingly and if the facts and circumstances of a given case warrants it to be done.

14. Learned Single Judge did not find any fault with the investigations being carried out by the present Investigating Authority.

15. Investigation proceedings undertaken by the police is at the Sub-Inspector level.

16. There is a scope for better investigation as to the cause of death of the victim. Instead of leaving the investigation at the Sub-Inspector level, we deem it appropriate to constitute a Special Investigation Team headed by a police officer of the rank of Superintendent of Police and consisting of any other police personnel of the choice of the person heading investigation team.

17. Police Station is Burdwan. The officer higher than the Jurisdictional Superintendent of Police of the concerned police station will constitute a Special Investigating Team as directed by this order within seven days from the date of communication of this order to him.

18. Appellant is at liberty to communicate this order to the appropriate authority for compliance.

19. Learned advocate for the State is also requested to communicate this order to the appropriate authority for compliance.

20. **F.M.A. 1022 of 2022** and the connected application are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

21. I agree.

(Md. Shabbar Rashidi, J.)