

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 13315 of 2018

Shipra Dey

vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Jayanta Naryan Chatterjee
Mr. Debasish Banerjee
Ms. Moumita Pandit
Ms. Jayashree Patra
Ms. Sreeparna Ghosh
Ms. Ritushree Banerjee
Ms. Dipanwita Das
.....advocates

For the State : Mr. Subhabrata Datta
Mr. Debashis Sarkar
.....advocates

Heard on : 20.12.2022

Judgment on : 24.01.2023

Hiranmay Bhattacharyya, J.:-

1. The unfortunate widow of Snehomoy Dey has approached this Court alleging custodial death of her husband and has prayed for a direction upon the respondent police authorities to register the First Information Report on the basis of the

complaint dated 27.02.2017 against the 4th respondent as well as all officers of the concerned police station and for an investigation by a competent investigating agency as well as initiation of disciplinary proceeding against the 4th respondent and for payment of adequate compensation to the petitioner.

2. The writ petitioner alleges that there was a long standing civil dispute between the family of her deceased husband and the private respondents herein. On the basis of a complaint at the instance of the private respondents, two constables from Sinthee Police Station came to the house of the petitioner on February 26, 2017 and asked the husband of the petitioner to visit the 4th respondent at the Sinthee Police Station. The writ petitioner further claims that since constables of the Sinthee Police Station threatened her husband that he would be arrested and taken into custody if he fails to visit the police station, her husband along with his brother namely Pintu Dey went to the Sinthee Police Station. When he met the 4th respondent, she used harsh words and threatened to arrest him in case he does not admit his guilt that he tried to outrage the modesty of Monika Roy i.e., the 9th respondent herein. It is further alleged that due to the continuous act of threatening and abusing, Snehomoy Dey suffered a severe cardiac attack and ultimately succumbed to such attack. Ultimately the dead body of her husband was taken to R.G.Kar Medical College

and Hospital when the attending doctor declared him as brought dead.

3. On the very next day i.e., on 27.02.2017 the petitioner accompanied by her brother in law went to Sinthee Police Station and submitted a complaint. The petitioner further claims that though Sinthee Police Station case no. 18/2017 under Section 302/120B of the Indian Penal Code dated 01.03.2017 was registered against the private respondents herein but no FIR was registered against the respondent no. 4, whose verbal abuse and threatening resulted in death of her husband.
4. The 3rd respondent i.e., the officer-in-charge of Sinthee Police Station filed an affidavit in opposition. It was specifically contended therein that the 9th respondent lodged a complaint against deceased husband of the petitioner alleging *inter alia* that he disturbed her and used filthy language on 25.02.2017 which was registered vide General Diary Entry no. 1777 dated 26.02.2017. With a view to ascertain whether there was commission of any cognizable offence pertaining to the alleged incident dated 25.02.2017, the Duty Officer informed the deceased husband of the petitioner to come to the police station. When the Duty Officer was enquiring about the said alleged incident, Snehomoy Dey suddenly fell down from the bench and considering his critical health condition, the Duty Officer accompanied by the brother of the deceased took him

to the R.G.Kar Medical College and Hospital where the attending emergency medical officer declared Snehomoy Dey as brought dead. It was further contended in the said affidavit that the writ petitioner lodged two complaints on 27.02.2017 and also wrote another letter on the same date requesting the 3rd respondent not to start the proceedings on the complaint lodged on 27.02.2017. It is the further case of 3rd respondent that the second complaint was treated as an FIR which was numbered as Sinthee Police Station case no. 18 dated 01.03.2017 under Section 120B and 302 of the India Penal Code and after completion of investigation a chargesheet against two FIR named accused namely Chanchal Dey and Monika Roy under Section 120B and 302 of IPC was submitted before the Additional Chief Judicial Magistrate (for short "ACJM"), Sealdah. On 28.03.2019 the ACJM, Sealdah after taking cognizance of the chargesheet, transferred the case to the learned Additional District and Sessions Judge, First Court at Sealdah. It is the further contention of the 3rd respondent that since the writ petitioner did not intend to take steps on the basis of the first complaint dated 27.02.2017 no FIR was registered against the 4th respondent. However, after investigating into the allegation against the 4th respondent the concerned Assistant Commissioner of Police submitted a report without recommending any disciplinary action to be initiated against the 4th respondent.

5. Mr. Chatterjee the learned advocate for the petitioner contended that the respondent police authority failed to discharge their obligation cast upon them by not registering a First Information Report (for short "FIR") on the basis of the allegation made by the petitioner against the police officers more particularly the 4th respondent vide letter dated 27.02.2017 being Annexure P3 to the writ petition. He further contended that the police authorities called Snehomoy at the police station in connection with an enquiry on the complaint made by the 9th respondent against the husband of the petitioner without following the procedures laid down under Sections 41A and 160 of the Code. He further contended that when Snehomoy Dey met the Duty Officer namely the 4th respondent at the police station, the harsh verbal abuses made by the 4th respondent which was directed against Snehomoy Dey was the cause of death of the husband of the petitioner. He thus, contended that the police authorities ought to have registered an FIR on the basis of the complaint made by the petitioner on 27.02.2017.

6. Per contra, Mr. Datta learned advocate for the State contended that the writ petitioner, by a letter dated 27.02.2017, requested the 3rd respondent not to take any steps on the basis of the complaint lodged by her against the 4th respondent. He further contended that an FIR was registered on the basis of the other complaint lodged by the writ

petitioner against the private respondents on 27.02.2017 and upon completion of investigation a chargesheet has been submitted and the learned ACJM, Sealdah after taking cognizance of the chargesheet has transferred the case to the learned Additional District and Sessions Judge, First Court at Sealdah. He contended that after registration of the said FIR a second FIR on the basis of the other complaint of the petitioner dated 27.02.2017 cannot be registered in view of the decision of the Hon'ble Supreme Court of India in the case of *Anju Chaudhary vs. State of Uttar Pradesh and Anr.* reported at (2013) 6 SCC 384. By placing reliance upon the decision of the Hon'ble Supreme Court in the case of *Lalita Kumari vs. Government of Uttar Pradesh and ors.* reported at (2014) 2 SCC 1 Mr. Datta contended that a preliminary enquiry is permissible to ascertain whether cognizable offence is disclosed or not and for such purpose the husband of the petitioner was called at the police station in connection with the complaint made by the 9th respondent. Mr. Datta further contended that in order to ascertain whether the allegation of the writ petitioner was of any substance, an enquiry was conducted by the Assistant Commissioner of Police who, after conclusion of the enquiry, submitted a report dated 08.03.2017 by observing that the allegation of the writ petitioner against the 4th respondent could not be substantiated.

7. Heard the learned advocates for the parties and perused the materials placed.
8. Monika Roy, the 9th respondent in the writ petition laid an information before the authorities of Sinthee Police Station that Snehomoy Dey disturbed her and used filthy languages to her on 25.02.2017. The said information was entered in the Daily Register of Sinthee Police Station vide G.D. Entry No. 1777 dated 26.02.2017. Snehomoy Dey was called to the Police Station on the very same day i.e., on 26.02.2017. Snehomoy Dey duly attended the Police Station accompanied by his brother Pintu Dey and in course of verbal interaction with the Duty Officer namely the respondent no. 4, Snehomoy Dey suffered a severe cardiac arrest and ultimately succumbed to the said attack. Snehomoy was taken to the R.G. Kar Medical Hospital, where the attending Doctor declared him as “brought dead”.
9. The writ petitioner who happens to be the widow of the deceased Snehomoy Dey approached this Court with two fold grievances. Firstly, that the inquiry into the allegation of the 9th respondent was in violation of the provisions of the Criminal Procedure Code (for short “the Code”) and secondly that the information laid by the writ petitioner before the authorities of the Sinthee Police Station on 27.02.2017 against the police officers of the Sinthee Police Station more particularly against the 4th respondent was not registered in

the First Information Book and also that no steps were taken though, according to the petitioners, the same disclosed cognizable offences.

10. This Court shall first proceed to consider the grievance of the petitioner that the provisions of the Code was violated while making an inquiry into the allegations of the respondent no. 9.
11. G.D. Entry no. 1777 dated 26.02.2017 specifically records that the respondent no. 9 did not intend to take any legal steps on the complaint made by her. However, it is not in dispute that Snehomoy was called to the Police Station for making an inquiry into the allegations made by her. The decision taken by the police authorities to conduct an inquiry, preliminary or otherwise, has not been recorded in the said General Diary.
12. It is well settled that conducting an investigation in accordance with the provisions of the Code is in conformity with Article 21 of the Constitution of India.
13. In the case on hand it is not in dispute that Snehomoy was called to meet the respondent no. 4 at Sinthee Police Station without serving any notice or order upon him. The writ petitioner contended that two constables of Sinthee Police Station came to the house of Snehomoy and asked him to meet the 4th respondent immediately and he was also threatened that he would be arrested if he fails to visit the Police Station within two hours. Such positive assertion of the

writ petitioner has not been controverted by Sonali Das, the respondent no. 4, who has been impleaded in her personal capacity as well.

14. The 3rd respondent, however, in her affidavit has contended that the deceased was asked to visit the police station through a local inhabitant. Even if such statement of the 3rd respondent is accepted, the same cannot be said to be procedure established by law.
15. Section 41A of the Code contemplates service of notice directing the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, to appear before the police officer.
16. Section 160 of the Code also contemplates an order in writing to be served in case the police officer requires attendance of any person before the police officer who, from the information given, or otherwise, appears to be acquainted with the facts and circumstances of the case.
17. None of the aforesaid provisions have been complied with in the instant case. Furthermore, the direction passed by the Hon'ble Supreme Court of India in *Lalita Kumari* (supra) that the decision to conduct an enquiry has to be recorded has also not been followed. The Hon'ble Supreme Court in paragraph 120.8 held thus-

“120.8 Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

18. In view of the observations made hereinbefore, this Court is of the considered view that the respondent police authority while calling the husband of the petitioner to attend the police station has acted in gross violation of the provisions of the Code and also the direction in *Lalita Kumari* (supra). This Court accordingly holds that Article 21 has been violated in the case on hand.
19. This Court shall now decide as to whether there was inaction on the part of the respondent police authorities in not registering an FIR on the complaint made by the writ petitioner against the 4th respondent and others on 27.02.2017.
20. On 27.02.2017, the writ petitioner made a written complaint to the officer-in-charge of Sinthee Police Station. The sum and substance of the said complaint is that Chanchal Dey i.e., the 5th respondent bribed Monika Roy, the 9th respondent to lodge a complaint alleging that Snehomoy Dey, since deceased has molested her. The deceased, upon being called, met the Duty

officer i.e., the 4th respondent, whose harsh verbal abuses ultimately led to suffering a severe cardiac attack resulting in the death of Snehomoy Dey. Admittedly, the said complaint was not registered as an FIR.

21. The said complaint is however appearing at page 28, annexure P-3 to the writ petition.
22. Another complaint was also made by the writ petitioner in writing on 27.02.2017 against Chanchal Dey, Rekharani Dey, Mampi, Kamal Barui and Monika Roy. This complaint was, however, registered as Sinthee Police Station Case No. 18 dated March 1, 2017 under Sections 302/120B of the Indian Penal Code.
23. Mr. Datta, learned advocate for the State sought to defend the action of the police authorities for non registration of FIR against the 4th respondent on the basis of complaint dated 27.02.2017 being annexure P-3 to the writ petition by contending that the writ petitioner by a letter dated 27.02.2017 appearing at page 33 of the affidavit-in-opposition filed by the 3rd respondent being annexure R-3/9 requested the 3rd respondent not to take any action on the complaint in question.
24. Upon reading the letter dated 27.02.2017 being Annexure R-3/9 of the affidavit of the 3rd respondent, this Court finds that by the said letter, the writ petitioner requested the 3rd

respondent to start the process with regard to the complaint against Chanchal Dey, Rekharani Dey, Mampi alias Kamal Barui and Monika Roy i.e., the private respondents after completion of her husband's rituals. In view thereof, this Court is not inclined to accept the argument of Mr. Datta that the writ petitioner did not intend to proceed against the 4th respondent on the basis of the complaint dated 27.02.2017.

25. Mr. Datta also advanced an argument on a point of law in support of non registration of FIR against the 4th respondent by contending that a second FIR on the same incident is not permissible in view of the decision of *Anju Chaudhary* (supra).

26. The Hon'ble Supreme Court of India in *Anju Chaudhary* (supra), after reiterating the settled principle that there cannot be two FIR's registered for the same offence clarified by observing that where the incident is separate; offences are similar or different or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The Hon'ble Supreme Court in paragraph 44 of the said reports held thus-

“44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity

of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.”

27. For the limited purpose of ascertaining as to whether in the two complaints both dated 27.02.2017 the offences are similar or different and also as to whether the crime alleged in the complaint in question being Annexure P-3 to the writ petition is of such magnitude that it does not fall within the scope and ambit of the FIR registered on March 01, 2017, this Court has perused the complaint dated 27.02.2017 appearing at page 31, annexure R-3/8 of the affidavit filed by the 3rd respondent.
28. In the complaint dated 27.02.2017 being annexure R-3/8, it was alleged that the private respondent no. 5 to 8 conspired with each other and had sent the 9th respondent to lodge a false complaint against Snehomoy Dey making an allegation of outraging the modesty of the respondent no. 9. It was further alleged that as anticipated by the private respondents, after coming to know about the complaint of the respondent no. 9, Snehomoy suffered a cardiac attack and ultimately died.

29. From the sum and substance of the complaint being Annexure P-3 to the writ petition as narrated hereinbefore as well as the complaint being Annexure R-3/8, this Court is of the considered view that in the complaint being Annexure P-3, the allegations are directed against the police officer whereas in the other complaint which has been registered as an FIR, the allegations are primarily directed against the private respondents. After considering the said complaints this Court finds that the offences alleged in the two complaints are different and the nature of the offences alleged in the complaint letter dated 27.02.2017 being Annexure P-3 does not fall within the scope and ambit of the FIR registered on March 01.2017. In view thereof the decision of *Anju Chaudhary* (supra) is of no assistance to the State but on the other hand it supports the case of the writ petitioner.

30. Law relating to registration of FIR is well settled. The Hon'ble Supreme Court of India in *Lalita Kumari* (supra) after considering various authorities on this issue laid down various proposition and only those that are relevant for the purpose of the case on hand are extracted hereinafter.

“120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a

cognizable offence and no preliminary inquiry is permissible in such a situation.

.....

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.”

31. After going through the complaint dated 27.02.2017 being annexure P-3 to the writ petition, this Court finds that the information disclosed in the said letter discloses commission of a cognizable offence and the police officer avoided his duty by not registering an FIR. This Court, however, leaves the matter relating to initiating an action against the erring officers for not registering an FIR to the superior authority of the police department.
32. After going through the materials on record this Court is of the view that the respondent police authorities took a dual stand while dealing with the complaint of the private respondent no. 9 on one hand and the writ petitioner on the other. Police authorities acted with great promptitude upon receiving the complaint of the 9th respondent on 26.02.2017 by asking Snehomoy Dey to visit the police station immediately i.e., within two hours even though the said respondent did not want to take any steps on such complaint. However, the police authorities sat tight over the complaint of the petitioner

wherein an allegation of cognizable offence has been made involving police officers.

33. Mr. Datta would contend that an investigation was conducted on the basis of the complaint in question and it was found that the allegation of the writ petitioner was not substantiated.

34. Mr. Datta, in course of his argument, placed in details the report of the investigation. From the investigation report dated 08.03.2017 which is annexed as Annexure R-3/14 at page 38 of the affidavit of the 3rd respondent it appears to this Court that the persons examined in course of the enquiry as well as the report of such enquiry sought to give an impression that the 4th respondent was not aware of the reason why Snehomoy Dey came to the police station and also that the purpose behind visiting the police station by him along with his associate was to ascertain whether any complaint has been lodged against them or not when the real picture is otherwise. It is evident from the entries made in the general diary as well as the statements made by the 3rd respondent in his affidavit that Snehomoy was called to the police station in connection with an enquiry into the allegation made by the 9th respondent against the deceased by the 4th respondent. Though the enquiry report dated 08.03.2017 records that the statements of the eye witnesses were taken but from the enquiry report it does not appear that the statement of Pintu Dey that is the brother of Snehomoy who accompanied him to the police

station and was all along present at the relevant point of time and was an eye witness to the incident was taken or considered. Furthermore, neither the statements of the eye witnesses nor the statement of the lady Sub-inspector being the 4th respondent herein has been produced before this Court. Moreover, it is not clear to this Court from the said enquiry report as to how the evidences collected in course of the enquiry were considered while arriving at the conclusion that the allegation of the petitioner against the 4th respondent could not be substantiated. That apart the entire enquiry was conducted behind the back of the petitioner and as such neither the said report nor the findings recorded therein are binding upon the writ petitioner.

35. The manner in which the respondent police authorities have acted in the case on hand gives an impression in the mind of this Court that the police authorities are not ready to take steps on the basis of the complaint of the writ petitioner as the allegations were directed against the police officers. It appears to this Court that the police authorities have proceeded to act in a manner so as to hide the real facts from the Court rather than to unearth the real facts.

36. In view thereof this Court is of the considered view that at this stage, no fruitful purpose will be served by directing the police authorities to register a case on the basis of the complaint of the writ petitioner and to investigate the same.

37. Section 190 of the Code empowers the Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitute such offence. Section 202 of the Code provides that a Magistrate after taking cognizance may postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding.
38. This Court, therefore, feels that the interest of justice would be subserved if the Court of a Magistrate of competent jurisdiction is directed to register a complaint under Section 200 of the Code and to proceed thereafter in accordance with law.
39. The power of the writ court to direct the Magistrate of competent jurisdiction to register a complaint and to proceed thereafter has been recognised by a Division Bench of this Court in the case of *Lakhi Chand Paswan & Anr. vs. The State of West Bengal and ors.* reported at (1998) 2 CLJ 155 wherein the Hon'ble Division Bench directed the concerned Chief Judicial Magistrate to register a complaint under Section 200 of the Code and to make an enquiry and to proceed in accordance with law.

40. This Court, at this stage, cannot decide the issue relating to payment of compensation prayed for by the writ petitioner. The writ petitioner will be at liberty to raise such issue in future before the proper forum in accordance with law, if so advised.

41. For the reasons as aforesaid the writ petition being WPA No. 13315 of 2018 is disposed of by passing the following directions:-

- (i) The writ petition as well as any other petition, documents etc. filed by the petitioner along with a copy of this judgment be forwarded by the Registry to the Court of the learned Additional Chief Judicial Magistrate, Sealdah who, upon receipt of the said materials, shall register a complaint under Section 200 of the Code on the basis of the allegations contained in the petition.
- (ii) The said Magistrate shall examine upon oath the complainant/ writ petitioner and other witnesses, if any and shall proceed in accordance with law while conducting the enquiry under Section 202 of the Code in the light of the observations made in this judgment.
- (iii) The authorities of the Sinthee Police Station are directed to preserve the CCTV footage of the incident which gave rise to this petition and shall make the same available if the same

is so required at any stage of the enquiry/ investigation/ trial as the case may be.

- (iv) The Magistrate, after examining the records and considering the materials and evidences that are on record, shall thereafter proceed strictly in accordance with law.

42. There shall be however, no order as to costs.

43. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

Later:

Date: 24.01.2023

After the judgment is delivered, learned Senior Government Advocate for the State prays for stay of operation of the order. Such prayer is considered and rejected by this Court.

(Hiranmay Bhattacharyya, J.)