

03-05-2023

ct no. 13

sl. 14

pk

WPA 10878 of 2023

Sri Mrinal Kanti Barman

-Versus-

State of West Bengal & Ors.

Mr. Krishnendu Bhattacharya,
Mr. Lokenath Chatterjee,
Ms. Amrita Pandey,
Mr. Priyankar Ganguly,
Mr. Ghanshyam Pandey,
Ms. Sneha Singh

...for the petitioner

Mr. Amal Kumar Sen,
Mr. Nilotpal Chatterjee,
Mr. Lal Mohan Basu

...for the State

Mr. Subir Sanyal,
Ms. Sumouli Sarkar,

...for the respondent no. 10.

Mr. Tarun Jyoti Tewari

... for the Union of India

Mr. Phiroze Edulji

... for the added respondent.

1. Affidavit of service filed in Court is taken on record.
2. The writ petitioner is aggrieved by investigation into Kaliyaganj Police Station Case No. 166 of 2023 dated 28.04.2023 under Section 302 of the IPC.
3. The facts of the case are that when a Police party came to raid the Chandgao village under the Radhikapur Gram Panchayet, Mrityunjoy Barman was shot dead.

4. The Police conducted inquest and post-mortem. The petitioner first complained to the S. P. of Uttar Dinajpur District stating that victim died as a consequence of deliberate and wilful fire by the Police and particularly one A.S.I. Moajjem Hussain.
5. According to the petitioner, the raid by the Police party was actually in retaliation and not in aid of investigation into an agitation conducted by the Rajbanshi Community before the I. C., Kaliyaganj Police Station and the S. P., Uttar Dinajpur District.
6. The petitioner seeks second port-mortem and transfer of investigation to the C.B.I.
7. Mr. Sen, learned senior counsel for the State would submit that on the basis of gravity and sensitivity of the incident, investigation has been taken over by the C.I.D., West Bengal. The C.I.D., has taken necessary and urgent steps to conduct the investigation and the same is under way.
8. The concerned ASI, namely, Moajjem Hussain was a part of the raiding Police party who were retreating after the mob of villagers attacked the Police. The said ASI was left behind after he fell down. He saw the mob approaching to lynch and he fired from his weapon to disburse the mob. One bullet hit the deceased/Mrityunjoy Barman.

9. These are the preliminary observations and investigation is still on. No second post mortem is warranted in the facts of the case at this stage.
10. One Khaleja Begam/wife of Moajjem Hussain seeks to be added as party respondent to the instant proceeding. Let a formal application be filed in this regard.
11. This Court, at this stage, is inclined to accept the submissions of the learned counsel for the petitioner that a Magisterial enquiry may have been warranted in terms of the dicta of the Supreme Court in the case of **People's Union for Civil Liberties and another Vs. State of Maharashtra and others** reported in **AIR 2015 SC (Supp) 1659**.
12. The State shall therefore cause a Magisterial enquiry which shall run parallel to the investigation by the C.I.D., West Bengal.
13. Let a progress report of the investigation of the C.I.D., West Bengal be submitted on the adjourned date.
14. The status report of the C.I.D., West Bengal dated 02.05.2023 is taken on record.
15. The National Human Rights Commission is represented. It is submitted that they have received a complaint and started enquiry. The National Human Rights Commission may also

submit a report on their enquiry on the adjourned date.

16. List the matter on 12.05.2023 for further consideration.
17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)