

HIGH COURT OF CALCUTTA**Bench - Hon'ble Justice Jay Sengupta****Date of Decision: 2nd May 2024**

Constitutional Writ Jurisdiction

Appellate Side

WPA 12022 of 2024

Rajkumar Chowdhury ...PETITIONER**VERSUS****The State of West Bengal & Ors. ...RESPONDENTS****Legislation:**

Indian Penal Code, 1860 – Sections 307, 326, 164, 161, 201

Subject: Application for the transfer of investigation in a criminal case concerning severe head injuries inflicted with a baseball bat, initially under-investigated by local police.

Headnotes:

Criminal Procedure – Transfer of Investigation – Allegations of improper handling of a severe assault case – Petitioner's son was attacked and sustained severe head injuries; initial charges under Section 307 IPC only; no charges under Section 326 IPC for grievous hurt by dangerous weapons – Justice Sengupta ordered the transfer of the case to the Anti Rowdy Section of Kolkata Police for proper investigation – Highlights police negligence in recording victim's statement and seizing crucial evidence, leading to the decision for a more capable investigation body – Case transfer aims at thorough and unbiased investigation [Paras 1-15].

Evidence Handling and Police Conduct – Criticism of police action – No initial statement under Section 164 of the Code from the victim or the witness who

transported him to the hospital – Victim’s blood-stained clothing discarded from a vehicle, not seized for evidence – Court questions why no action was taken against those who disposed of evidence under Section 201 IPC – Indicates systemic lapses and possible influence, necessitating transfer to ensure fair proceedings [Paras 8-14].

Decision: Transfer of Investigation Ordered – Due to serious procedural flaws and inadequate initial investigation, the investigation is transferred to the Anti Rowdy Section, Kolkata Police, to be monitored by the Joint Commissioner of Police (Crime) – Directed for expeditious and lawful conclusion [Para 15].

Referred Cases:

No cases cited.

Representing Advocates:

For the petitioner: Mr. Moyukh Mukherjee, Mr. Koustav Lal Mukherjee, Mr. Sayantan Sinha, Ms. Sagarika Banerjee

For the State: Mr. Amitesh Banerjee, Ld. Sr. St. Counsel, Mr. Tarak Karan

For respondent nos. 7 to 8: Mr. Bitak Banerjee, Mr. Subhrajyoti Ghosh

Jay Sengupta, J:

This is an application for transfer of investigation in a criminal case. Report filed by the State is also taken on record. Learned counsel appearing on behalf of the petitioner submits as follows. The private respondents had mercilessly hit the petitioner’s son with a baseball bat on his head. He had to receive treatment in a hospital for about seventeen days. The victim suffered fracture injuries on his head. In spite of this, the case was registered only under Section 307 of the Penal Code. No charge under Section 326 of the Penal Code was imputed. No statement of the victim was recorded under Section 164 of the Code. Even the person who had taken the victim to the hospital from the place of occurrence was not examined. The blood stained apparel was also not seized.

Learned senior standing counsel representing the State denies any allegation of police inaction and submits as follows. The victim was not in a position to give a statement initially. However, now a statement of the victim under Section 161 of the code has already been recorded. Today is the date fixed for recording of statement under Section 164 of the Code of the person who had taken the petitioner to the hospital. Wearing apparel of the victim was thrown away from a running car by the common friends of the victim and the accused.

At this stage, learned counsel appearing on behalf of the petitioner denies that any statement of the victim has been recorded by the police, even under Section 161 of the Code.

There are serious flaws in the manner in which the investigation has been carried out thus far. As, the son of the petitioner had suffered fracture injuries on his head, inflicted by dangerous means, Section 326 of the Penal Code should have been imputed in the first place. One wonders whether absence of such charges would have had any impact at the time of grant of bail.

It is surprising that no statement of the victim has yet been recorded under Section 164 of the Code.

It also appears that the statement of the person who had taken the victim to the hospital is now being recorded under Section 164 of the Code, after filing of the writ petition.

Moreover, is not enough to say that the blood stain wearing apparel was thrown out of a moving car. If this was subsequently learnt by the Investigating Officer, then why did he not haul up the persons responsible under Section 201 of the Indian Penal Code?

The inept manner in which the investigation has been conducted thus far makes it abundantly clear that same has to be transferred to the another agency.

Let the investigation of the case be forthwith transferred to the Anti Rowdy Section, Kolkata Police, Lalbazar and be carried out by the Officer-inCharge of the said Section. The investigation shall be monitored by the Joint Commissioner of Police (Crime).

The investigation shall be concluded expeditiously and in accordance with law. With these observations, the writ petition is disposed of.

Parties shall act on a server copy downloaded from the official website of this Court.

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