

28th January,
2021
(a.k.)
07

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

W.P.A. 33 of 2021

Malati Roy
Vs.
State of West Bengal and others

Mr. Mahesh Jethmalani, Sr. Adv.,
Mr. Rajdeep Majumder,
Mr. Billadal Bhattacharjee,
Mr. Gunjan Mangta,
Mr. Avrojoyoti Das,
Mr. Moyukh Mukherjee,
Mr. Abhijit Raha,
Mr. Subham Gupta,
Mr. Gobinda Saha,
Ms. Arushi Rathore

... for the petitioner.

Mr. Kishore Dutta, Id. A.G.,
Mr. Sirsanya Bndyopadhya,
Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh

... for the State.

Mr. Sudipto Mazumdar,
Mrs. Swarnali Ghosh (Sengupta)

... for the C.B.I.

The petitioner is the widow of one Ulen Roy, who participated in a Yuva Morcha in Siliguri on 7th December, 2020 and was killed in an incident of firing during the procession. Ulen Roy was taken to Maharaja Agrasen Hospital and was declared dead. The dead body of Ulen Roy was thereafter taken to

Uttarbanga Medical Hospital for conducting a post-mortem.

The respondents are the State of West Bengal, and the police authorities including the A.D.G., Criminal Investigation Department and officers of New Jalpaiguri Police Station. The Central Bureau of Investigation (in short 'CBI') has been made a party to this writ petition.

The petitioner prays that the complaint lodged by the petitioner on 9th December, 2020 be handed over to the Central Bureau of Investigation.

Mr. Mahesh Jethmalani, learned Counsel appearing for the petitioner, seeks to fortify the prayer in the writ petition by drawing the attention of the court to various facts which, according to counsel, imply State interference and warrants immediate transfer of the ongoing investigation to the CBI. Counsel places relevant documents to urge that there were unusual happenings subsequent to the death of Ulen Roy on 7th December, 2020, resulting in a combination of circumstances which point to overreach by the police authorities. The combination of facts, as put forth by counsel on behalf of the petitioner, is as follows:

- i) The post-mortem of Ulen Roy was done in unseemly haste and in the dead of night. For this, counsel relies on a communication dated

8th December, 2020 from the office of the Siliguri Police Commissionerate to the Officer-in-Charge of the Jalpaiguri Police Station, which notes that after being informed of Ulen Roy's death, caused by an "alleged incident of roadside violence", the body of Ulen Roy was brought to the hospital on 7th December, 2020 itself at 14.15 hrs. The deceased, who died at the age of 44 years, was kept in a stretcher and black wounds were found on the upper portion of the stomach and chest of the deceased. The inquest was done in the presence the relatives of the deceased.

- ii) On completion of the inquest, the body of Ulen Roy was sent to the Head of the Department, Forensic Medicine and Toxicology, North Bengal Medical College, for post-mortem. The relatives of the deceased requested for immediate post-mortem so that they could complete the final rituals at night.
- iii) The autopsy surgeon of the Department of Forensic Science and Medicine, North Bengal Medical College, gave consent for conducting post-mortem at night under videography on the prayer of the Assistant Commissioner of Police, Special Branch, Siliguri Police Commissionerate.

- iv) The post-mortem of the deceased was conducted at 21.30 hrs. under videography by a Medical Board comprising three doctors.
- v) The Post-Mortem Report was received on 8th December, 2020 at 02.45 hrs. where the Medical Board who opined that the cause of death was due to effect of “shot-gun injuries and ante mortem in nature”. On these facts, the writer of the letter requested for an investigation.
- vi) A request for a second post-mortem made by the sister of the deceased, one Santibala Roy, was made to the learned Chief Judicial Magistrate, Jalpaiguri, on 8th December, 2020.
- vii) The request/application for a second post-mortem of the deceased in the presence of three doctors was allowed by an order of the C.J.M., Jalpaiguri, dated 8th December, 2020.
- viii) The police authorities filed for recalling of the said order on the very next date i.e. 9th December, 2020 and an order was passed by the C.J.M., Jalpaiguri, on 10th December, 2020 fixing the matter for further hearing in the presence of the parties.
- ix) On 9th December, 2020, a communication was sent by Dr. Vivek Kumar, Head of the Department, Department of Forensic Medicine,

North Bengal Medical College, to the officer-in-charge, New Jalpaiguri Police Station, refusing the direction for a second post-mortem since there are no available facilities in the Forensic Medicine Department for a further post-mortem examination. Dr. Kumar reiterated that the post-mortem examination was conducted under videography on 7th December, 2020 at 21.30 hrs. and was handed over to the concerned police on the same night.

x) The police authorities thereafter filed a criminal revision application against the order passed by the C.J.M., Jalpaiguri, dated 8th December, 2020 which was admitted on 10th December, 2020 and was finally allowed by setting aside the order dated 8th December, 2020 on 11th December, 2020. Hence, the order for a second post-mortem passed by the C.J.M., Jalpaiguri, was set aside.

xi) The petitioner filed a complaint on 9th December, 2020 to the Officer-in-Charge, New Jalpaiguri, which categorically states that the police are responsible for the death of the petitioner's husband, Ulen Roy.

According to counsel, the above facts would show a zealous attempt on the part of the

State authorities to cover up the cause of death of Ulen Roy and a real possibility that the State would interfere in the course of investigation. Counsel submits that since Ulen Roy was a supporter of a political party which is opposed to the ruling party of the State, there is every likelihood that the State Government would use its machinery to influence the investigation. Counsel prays that the investigation be handed over to an independent agency, namely, the C.B.I.

Counsel relies on *Mithilesh Kumar Singh vs. State of Rajasthan & Ors.* reported in (2015) 9 SCC 795; *R.S. Sodhi vs. State of U.P. & Ors.* reported in 1994 Supp 1 SCC 143, as instances where a C.B.I. enquiry was directed in circumstances which were far less unusual than the present case. Counsel relies on *V. Eswaran vs. Government of Tamil Nadu, Rep. by its Principal Secretary to Government, Health and Family Welfare Department* reported in 2019 SCC OnLine Mad 23101 to urge that post-mortems are only to be conducted during the day time since artificial light can interfere with the examination.

Mr. Kishore Dutta, learned Advocate General appearing for the State, disputes the

factual justification for transferring the case to the C.B.I. The Advocate General argues that the only document on record linking the death of Ulen Roy to an act of the Police is the complaint made by the petitioner to the Officer-in-Charge on 9th December, 2020, wherein the petitioner has stated that the police is responsible for her husband's death. It is submitted that the post-mortem was conducted in the presence of the relatives of the deceased on the very day Ulen Roy died and was videographed by the Medical Board comprising of three expert medical practitioners. It is submitted that the State respondents were compelled to challenge the order of the C.J.M., Jalpaiguri allowing the prayer for a second post-mortem, since the said order of the C.J.M. was bereft of reasons.

In this context, learned Advocate General places the order dated 11th December, 2020 passed in the Criminal Revision which notes that the C.J.M. failed to give any reasons for allowing the prayer for a second post-mortem and that the order was passed without hearing the State. It is further submitted that the prayer for a second post-mortem was withdrawn by the petitioner on 15th December, 2020 before the body of Ulen Roy was returned to the petitioner

on 16th December, 2020. The Advocate General relies on *Romila Thapar and Ors. vs. Union of India and Ors.* reported in (2018) 10 SCC 753 and in *Bimal Gurung vs. Union of India and Ors.* reported in (2018) 15 SCC 480 for the proposition that even though a superior court has the power to transfer a case to the C.B.I., such power should be used sparingly and in exceptional circumstances. It is submitted that the factual premise of the present writ petition does not constitute such circumstances as to transfer the investigation to the CBI. The Advocate General submits that the case was transferred to the Criminal Investigation Department on 10th December, 2020.

From the submissions made on behalf of the parties, certain facts are required to be seen through the lens of the alleged questionable overreach by the State, warranting transfer of the investigation to the CBI. This is clearly a dispute between two opposing political parties and assumes significance in the present political climate in the State. The petitioner is the widow of Ulen Roy who was a supporter of a party opposed to the Ruling Party of the State. The political colour which has been imparted on the dispute must however, be relegated to the

background and the facts must be assessed in a neutral, dispassionate light.

The facts involve an unfortunate incident of a young political worker who was killed in the course of a political rally in Siliguri as a result of injuries caused by firing. The petitioner presumes that the police were responsible for the death of her husband Ulen Roy. This presumption was underpinned by the unseemly haste with which the post-mortem was conducted at 21.30 hrs. on 7th December, 2020 followed by the apparent desperation displayed by the local police to subvert a second post-mortem. Other allegations levelled against the police include handing over the body of Ulen Roy to the petitioner nine days after the death and the connivance of the three doctors of the Medical Board in refusing to conduct a second post-mortem.

The question remains whether the facts qualify for the benchmark of exceptional circumstances in the form of blatant State interference so as to warrant divesting the Criminal Investigation Department of an ongoing investigation and transferring the same to the CBI.

The only piece of document which alleges a link between the death of Ulen Roy and the police is the hand written complaint of the petitioner. There is no other document on record which raises a suspicion that the police was indeed behind the death or actively participated in covering up the cause of death or caused the suppression of evidence. The writ petition does not name any particular police officer responsible for interfering with the course of the investigation or influencing its outcome. Numerous allegations have been made in the writ petition which remain unsubstantiated when linked with the available documents on record. The allegations of an unholy nexus between the different arms of the State machinery would have gained credibility had the petitioner named or even referred to high officials of the Police or the State administration and held them accountable for certain acts.

Although even a single loss of human life through unnatural causes deserves factual scrutiny, each case must be judged on its individual facts. Appointing an independent agency rests on the notion that the measures taken to unravel the truth are not enough. The

facts must point to blatant omissions and unmistakable lacunae in the fact finding exercise so that the court would have no other alternative but to transfer the investigation to an independent agency. The apprehension of interference in the investigation by the State machineries or by parties who are interested in the outcome of the investigation must be clearly borne out from records. Vague and unsubstantiated allegations are simply not enough. The aforesaid position was reiterated in *Romila Thapar* (supra), by the majority view of the Supreme Court which held that vague and unsubstantiated assertions are not sufficient for establishing mala fide exercise of power by the investigating officer. In *Bimal Gurung*, the Supreme Court referred to the Constitution Bench decision of *State of West Bengal –VS– Committee for Protection of Democratic Rights reported in (2010) 3 SCC 571* and held that although courts have the power and jurisdiction to direct transfer of an investigation to the CBI, such power must be exercised with great caution and in exceptional situations. The decisions cited on behalf of the petitioner were on the admitted facts of the local police being involved in the crime. *R.S. Sodhi* involved

the killing of ten persons in encounters between the Punjab militants and the local police at Pilibhit in September 1991. The Supreme Court was of the view that since the local police were involved in the encounters, there was a need for an independent investigation to be conducted on the killings. *Mithilesh Kumar Singh* involved the death of a young college student in suspicious circumstances and the college failed to lodge a complaint and no dying declaration was recorded by the Police and the administration. It was on these facts that the Supreme Court felt that the investigation must be conducted in a dispassionate way to uncover the truth by an outside agency like the CBI. The dissenting view in this judgment was against transfer of the case to the CBI. *V. Eswaran* cautioned that post-mortems must be conducted only during the day time. Notably, there is no prayer in the writ petition for a second post-mortem since Ulen Roy was cremated sometime in December, 2020. The prayer is for transfer of the case to the CBI.

A court is empowered to transfer an investigation to another agency provided the court finds that high officials of State

authorities are involved or the accusation is against top officials of the investigating agency thereby allowing them to influence the investigation or where the investigation is *prima facie* found to be tainted (refer *K.V. Rajendran vs. Superintendent of Police: (2013) 12 SCC 480*). In *Committee for Protection of Democratic Rights*, the Constitution Bench of the Supreme Court cautioned that an order for transfer of investigation is not to be passed for the asking or on some vague allegations against the local police.

The duty of a court is to ensure that investigation is fair, transparent, prompt and free from extraneous influences. The investigation must provide credibility and instill confidence in the public that truth will be unearthed free from extraneous influences.

The investigation in the death of Ulen Roy has been given to the Criminal Investigation Department on 10th December, 2020. There is no allegation, at least in these proceedings, that the C.I.D. has caused any gross departure from accepted practices to take place or that there are glaring irregularities in the investigation. This Court is of the view that since the Criminal Investigation Department is already in charge of

the investigation, specific instances of bias or *mala fide* exercise of power must be brought to divest the CID of its present responsibility and transfer the investigation to another agency. However, an investigation must be prompt to be effective. The family members of the victim must feel reassured that the investigation will not take an inordinately long time. This court, therefore, deems it fit to pass certain directions on the Criminal Investigation Department;

- i) The investigation must be conducted in a time-bound manner, taking into account all relevant evidence, including the Case Diary of the local police authorities, pointing to the cause of death of Ulen Roy.
- ii) The Criminal Investigation Department will complete the investigation within four weeks from the date and not later than 5th March, 2021.
- iii) The Criminal Investigation Department will file a Report of the progress made in the investigation by 22nd February, 2021 before this Court. The Report will indicate the action taken by the Criminal Investigation Department on a day-to-day basis.

- iv) The investigation will be conducted by the Additional Director General, Criminal Investigation Department having his Office at Bhabani Bhawan, Alipore, Kolkata. The A.D.G., Criminal Investigation Department will assess the evidentiary value of the opinion of the Medical Board pertaining to the cause of death.

The State respondents will file their affidavit-in-opposition in the meantime bringing all relevant facts on record within a period of two weeks from date. Reply, if any, to be filed within ten days thereafter.

It is made clear that if the Report of the Criminal Investigation Department is found to be insufficient or corroborative of the apprehensions raised in the writ petition, the petitioner will be at liberty to seek appropriate directions from the court.

The writ petition will be listed in the last week of February, 2021.

(Moushumi Bhattacharya, J.)