

CRR 1811 of 2019

Manuja Bibi

Vs.

Central Bureau of Investigation, SC-II, New Delhi & ors.

With

CRR 2941 of 2019

Kingsuk Biswas & Anr.

Vs.

State of West Bengal  
(Via video conference)

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.  
Mr. Rabi Shankar Chattopadhyay  
Mr. Uday Shankar Chattopadhyay  
Mr. Suman Maji  
Mr. Suman Sankar Chatterjee  
Mr. Pranay Basak .....for the Petitioner in  
CRR 1811 of 2019

Mr. Ankit Agarwala  
Mr. Alotriya Mukherjee  
Mr. Robin Basu .. for the O.P. Nos. 3 & 4

Mr. Shekhar Kumar Basu, Sr. Adv.  
Mr. Anirban Dutta  
Mr. Sayantan Sinha  
Mr. Aditya Roy ...for the petitioner  
in CRR 2941 of 2019  
and O.P.Nos. 5 & 6 in  
CRR 1811 of 2019

Mr. Ayan Bhattacharjee  
Mr. Sharequl Haque  
Mr. Aditya Ratan Tiwary  
Mr. Amitabrata Hait  
Mr. Suman Majumder ...for the O.P. Nos. 2,7 & 8 in  
CRR 1811 of 2019

Ms. Rajashree Venket Kundalia ...for the CBI

The investigation of this case was taken over by the CBI pursuant to a direction passed by a Division Bench of this Hon'ble Court. The concerned officer, after completion of investigation,

submitted a charge-sheet under Section 34 read with Sections 304A, 324, 342 and 218 of the Indian Penal Code.

The purpose of the Division Bench for sending and entrusting investigation to the CBI was with the purpose and object of having a fair and impartial investigation and to gain confidence of the public at large, so that police authorities if they exceed their authority within the campus of the police station they would be punished and penalised for the alleged offence which they have committed.

The revisional jurisdiction has been invoked in this particular case with two purposes, firstly, by the complainant according to whom, the charges which have been framed by the learned trial Court are contrary to the materials on record. Secondly, two of the accused persons who have been charge-sheeted, has challenged the continuance of the proceedings as sanction, was not applied before the appropriate authority and the learned Magistrate took cognizance of the offence in ignorance of the same. More particularly, the act were done in discharge of their official duty and they were entitled to protection under Section 197 of the Code of Criminal Procedure.

This court is anxious regarding the report under Section 173 of the Code of Criminal Procedure which was filed before the learned Trial Court. Certain part of the opinion of the Investigating Officer is set out as follows:-

“The shirt buttons of Kazi Nasiruddin were open and it appeared from CCTV images that he had been beaten brutally. In the CCTV footages the deceased was seen feeling uneasy and was checking the blood from his ear and cheeks.

.....

“There are a number of injuries on the person of deceased as appearing in the CCTV footage and Post Mortem Report. However, SI Ashim Mondal, prepared false inquest report showing no injury on the body of deceased Kazi Nasiruddin with the objective to save his colleagues from prosecution.”

.....

“On 19.1.2013 Dr. S.S. Paul and Dr. Amit Das conducted the postmortem proceedings as per the orders of DM Hooghly. The postmortem proceedings were also photographed and videographed. The autopsy doctors observed following injuries on the dead body of the deceased Kazi Nasiruddin-

- i) ½” x 1” bruise at right zygoma
  - ii) ½” x ½” bruise at right angle of mouth
  - iii) Star shaped abrasion ½” above left eye lid
  - iv) ½” bruise below left eye lid
  - v) Irregular abrasion 2” x 3” below right Scapula down to back of trunk.”
- .....

“Investigation has revealed that the deceased was brought to the PS because he had dared to challenge another police officer and had entered into an altercation with him. The accused police officials in furtherance of common intention, objectively caused hurt to the deceased. The deceased was shown to have been arrested u/s. 42 Cr. P.C. and Sec. 290 IPC which is contrary to evidence.”

.....

“Investigation has, therefore, revealed that ASI Sanat Kumar Karmakar (A-1) and OC Barun Ghosh (A-2) have committed offences punishable U/S 34, r/w 304(A), 324, 342 and 218 IPC Const. Amit Dey (A-3), Const. Somnath Chatterjee (A-4), ASI Kingshuk Biswas (A-6) and ASI Pravat Chatterjee (A-7) have committed offences punishable U/s 34, r/w 304(A), 324 & 342 IPC and SI Ashim Mondal (A-5) has committed offence U/s. 218 IPC.”

The aforesaid observations by the Investigating officer are self-contradictory and the sections under which prosecution has prayed for framing of charges, in a case of custodial death has primarily diluted the offences for which it should have been recommended by the Investigating Officer.

Under such circumstances, this court feels that the inherent powers of this Court should be exercised and an enquiry be conducted by the DIG, in charge of Special Crime Branch, CBI, New Delhi regarding the materials collected by the Investigating agency in this case, the opinion expressed by the Investigating Officer and the section for which the Investigating officer has prayed for prosecution.

Let the report be submitted before this Court on the next date so fixed.

Let this matter appear on 30<sup>th</sup> March, 2022 under the heading “for Orders”.

Learned advocate appearing for the CBI is directed to communicate this order to the DIG, in charge of Special Crime Branch, CBI, New Delhi.

The learned Registrar General, High Court, Calcutta would also communicate by way of mail/fax to the office of the DIG, in charge of Special Crime Branch, CBI, New Delhi.

All parties are to act on the server copy of this order, duly downloaded from the official website of this Court.

**(Tirthankar Ghosh, J.)**