

Court No. 12
12.11.2020
(Item No. 1)
(SB)

W.P.A. 5327 of 2020
(Old No. W.P. 5327 (W) of 2020)

Court in It's Own Motion

**In Re : Contagion of Covid-19 Virus in
Children Protection Homes.**

(Through Video Conference)

Mr. Sayan Sinha

...For the State

A sordid event happened in the late evening of 29.10.2020 when a minor boy who was apprehended by a police officer allegedly committed suicide within the police station. The *suo moto* cognizance was taken up by us and the direction was passed upon the Superintendent of Police, Birbhum and the West Bengal Commission of Protection of Child Rights to file the affidavits disclosing the state of affairs actually happened on the said day. Both the authorities have filed separate affidavits which are taken on record.

The affidavit filed by the Superintendent of Police, Birbhum would reveal that on the basis of the complaint lodged on 20.10.2020 by one Ajmira Sultana alleging the theft of 17 bhoris of gold ornaments and cash of Rs.1,50,000/-, the case was initiated and the minor boy was apprehended from his residence in presence of his parents at about 3.25 PM and taken into the police station. Indubitably, boy was a minor and has to be dealt with strictly on the peripheral of the Juvenile

Justice (Care and Protection of Children) Act. The said Act mandates the establishment of the child friendly corner in the every police station to deal with the cases relating to the minors and a special juvenile police units are to be established in every police station and / or designated child welfare police. An impression was created through out that so far as the State of West Bengal is concerned, every police station has a child friendly corner and a dedicated officer under the Juvenile Justice (Care and Protection of Children) Act has been appointed which however is belied by the affidavits filed by the Superintendent of Police, Birbhum. One S.I. Dhrubajyoti Datta was designated as Juvenile Officer who has reportedly apprehended the minor boy from his residence. The report raises an alarming issue when the Superintendent of Police, Birbhum candidly admits the shabby condition of the child friendly corner at Mallarpur P.S. Undoubtedly the boy died by hanging himself from the shower pipe of the toilet with the help of wire used for audio system. According to Superintendent of Police, Birbhum a microphone set kept at the room earmarked for the child friendly corner of the police station, which was used for daily announcement for awareness campaigning for Covid-19 in that unsuitable so-called child friendly corner and the boy might have used the same. It is unfortunate that the boy could get an access

to a wire of the audio system with any intention to commit suicide. This creates a serious doubt in our mind. The suspicion gets further strengthened when the boy was unattended although he was required to be attended by a child welfare police officer. If we assume that what is stated to be correct then it is a serious lapse and a culpable negligence. The deployment of a civic volunteer who does not have any knowledge and sensitivity to accompany a CCL further responsibility in the police affairs except to assist and lacks empathy and scant regard of the authorities to respect the statute. It is alarming that none of the police officers who are required and expected to accompany any CCL was not present. The Duty officer and Investigating officer have been closed to line OR at Suri Police Lines and departmental proceedings have been ordered against them whereas S.I. and O.C. Mallarpur Police Station have been simply show-caused. It is a responsibility of the O.C. of the concerned police station not only to maintain the peace in the locality but also to monitor that the infrastructural lapses within the police station is also taken care off and immediate actions are taken to remove any deficiency.

The learned counsel appearing on behalf of the State informed us that the Closed Circuit TV Camera which was installed at the so-called child friendly corner was inoperative since 19.10.2020. However, there is no

reflection of such lapses in the affidavit of the Superintendent of Police, Birbhum although the letter of Additional Superintendent of Police, H.Q. Birbhum in his communications dated November 2, 2020 addressed to S.P. has *inter alia* relied to such lapses. If the minor child had allegedly committed any offence cognizable under the Indian Penal Code he needs to be treated as child in conflict with law under the Juvenile Justice (Care and Protection of Children) Act and to be produced before the Juvenile Justice Board without any loss of time. There has been a complete misconception or if we are not wrong lack of sensitivity and knowledge of the juvenile justice system of the said designated police officer that the CCL is required to be produced before the CWC (Child Welfare Committee) instead of Juvenile Justice Board. This is evident from the report of S.I. Dhrubajyoti Datta. There is no plausible and proper explanation offered for the detention of the child at the police station far more than six hours and due to non functional CCTV the real state of affairs at the child friendly police corner is unknown and kept under the carpet. The Child Rights Commission has indicated the lapses on the part of the police administration which appears to us is to be too generalized and no specific steps appears to have been taken against the law enforcing agencies.

It is submitted that the Additional Chief Judicial Magistrate, was approached an inquiry has been directed to be conducted by the Judicial Magistrate which according to the State is under progress. However, the learned counsel could not apprise us as to the extent of progress made in this regard and we, therefore, direct the Judicial Magistrate, 1st Court, Rampurhat, Birbhum to submit the report in a sealed cover disclosing the progress and the findings made in this regard on the next date of hearing.

The police administration and all concerned are directed to co-operate with the investigation undertaken by the said Judicial Officer and shall also make them personally available as and when called for by the judicial officer. Whatever be the stand of the officials, a boy has lost his life which cannot be retrieved and / or resurrected. The child has to be dealt with empathy and sympathy and the compassion is the hallmark of the juvenile system. There is lack of sensitivity in the police administration in dealing with the juvenile as manifestly seen in the instant case. It is high time where officials of the police administration should be sensitized to deal with the minor child in conflict with law.

The custodial death is one of the worst crime in a civilized society governed by the rule of law. The incident shocked the conscience of every responsible citizens more particularly the irresponsible behaviour

and lack of sensitivity of the police officers who have the solemn responsibility to protect the rights of a citizen more particularly the right recognized and guaranteed for the minors in conflict with law.

The death in the police custody poses a serious threat to a orderly civilized society and the courts of the country must rise and stand with the individual against the violation of the right guaranteed under the constitution. The unnatural custodial death flouts the basic right of a citizen guaranteed under the statute and is an affront to the human dignity. It is an ardent duty of the court to deal with such cases in a realistic manner and with sensitivity in order to uphold the confidence of a common citizen reposed upon the judiciary. It will be a sad day for the judiciary if such unnatural custodial death are unnoticed and the perpetrator are not dealt with the iron hands(C State of M.P. -Vs - Sham Shunder Trivedi reported in 1995 (4) SCC 262).

The Superintendent of Police is directed to ensure that the child friendly corner at every police station within his jurisdiction are restored or set up within fortnight from date and all facilities and arrangements including deployment of SJPU's are regularised and maintained. It is again unfortunate that there is no female police officer kept in the juvenile protection unit or child friendly corner and the entire so-called child

friendly corner is taken care of by a civic volunteer who do not have any role nor owe any allegiance to the provisions of Juvenile Justice (Care and Protection of Children) Act.

It is hereby ordered, that civil volunteers should not be permitted either to be deployed in child friendly corner, nor part of Juvenile Justice (Care and Protection of Children) Act and it shall be manned by a regular SJPU as designated child welfare police officer who can be held responsible for their lapses or negligence in discharging their duties.

The aforesaid observations have become necessary for the simple reason that Superintendent of Police, Birbhum has been indicated in the affidavit that the said civic volunteer has been demobilized as no further action can be taken against him. On the basis of the affidavit filed before us by the Superintendent of Police, Birbhum a prima facie culpable negligence if not anything further is clearly attributable to the cause of death of the child.

In the affidavit filed by the Superintendent of Police it is recorded that serious lapses have been detected of a civic volunteer as well as police officers and proceedings have been initiated against the police officers. The Superintendent of Police, Birbhum in his affidavit shall also indicate the progress made in the proceeding initiated against police officers namely,

Moloy Kumar Pal, Swapan Mal, Dhrubajyoti Datta and Brikodar Sanyal.

The Home Secretary, Government of West Bengal is directed to submit an affidavit disclosing the status of CCTVs in all police stations including child friendly corner as also whether all the police stations have child friendly police corner with proper infrastructure and SJPU's and / or designated child welfare police officer on or before 25th November 2011.

Let the matter be listed on **25.11.2020**.

(Harish Tandon, J.)

(Soumen Sen, J.)