

(2015) 07 TP CK 0006

Tripura High Court

Case No: WP (Crl) 09 of 2015

Court on its own motion

APPELLANT

Vs

Kamalendu Bikash Das and
Others

RESPONDENT

Date of Decision: July 2, 2015

Hon'ble Judges: Deepak Gupta, C.J; Utpalendu Bikas Saha, J

Bench: Division Bench

Advocate: B.C. Das, Advocate General and T.D. Majumdar, Govt. Advocate, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Deepak Gupta, C.J.

1. Crl.A(J)4 of 2012 and Crl.A(J)5 of 2012 were disposed of by a common judgment delivered by this Court on 17.4.2015.

2. This Court had observed that on 23.01.2006 the victim along with her husband had lodged one written complaint with Sub-Divisional Police Officer(SDPO), Longtharai Valley Sub-Division, Manughat, Dhalai, Tripura. However, on the basis of this complaint no FIR was lodged even though the complaint clearly disclosed the commission of a cognizable offence. We had, therefore, sent a copy of the judgment to the Director General of Police(DGP) to take appropriate action in the matter. Relevant portion of the judgment reads as follows:

"13. At this stage it would be pertinent to mention that in the complaint filed initially on 23.01.2006 the phone number of accused Asit Das was given. PW.7, who initially investigated the matter, seized the torn wearing apparels of the informant and a piece of paper containing the mobile number 9436135745. This number is of accused Asit Das. It may not have been proved that this number was written by S.I., Asit Das but it is clear that this phone number is his. How the victim knew the number of Asit Das because it is no body's case that the victim and Asit Das were

known to each other prior to the occurrence. At this stage it would also be pertinent to mention that the investigation has proved on record two GD entry reports one in GD entry No. 990 made by Asit Das on 21.01.2006 wherein it was mentioned that Asit Das went on foot patrolling duty at 10.30 p.m. along with Constable Swapan Paul and SPO Amit Dey and another in GD entry No. 993 dated 22.01.2006 at 2.30 a.m. when they returned back. Therefore, it stands fully proved that S.I., Asit Das accompanied by the other two accused Swapan Paul and Amit Dey had gone on patrolling duty and returned early the next morning."

3. A very long inquiry report has been filed but the inquiry report deals mainly with the merits of the case but does not deal with the issue which we had raised as to why FIR was not registered and investigation not started on 23.01.2006 itself. It may be true as found by the Director General of Police that the SDPO Sri Kamalendu Bikash Das had referred the matter to the Superintendent of Police(SP) Sri Arindam Nath who was then the SP, Dhalai. It may also be true that the offending officers were ordered to be suspended by the Superintendent of Police. That, however, does not answer our question as to why the FIR was not lodged on 23.01.2006.

4. It is now well settled law that when an FIR discloses a cognizable offence the police officer cannot refuse to register an FIR. It is his duty not only to register the FIR but also to provide a copy of the FIR to the complainant. We are pained to observe that the inquiry does not say a word as to why Sri Kamalendu Bikash Das did not lodge an FIR. We have carefully gone through "para xii" of the report submitted and no reason has been given as to why the FIR was not lodged. We are, therefore, not accepting the report submitted by the Director General of Police and we think, it now falls upon this Court to conduct a proper inquiry into the matter and find out whether Sri Kamalendu Bikash Das and other police officials were trying to protect their brother officers by delaying the investigation of the matter.

5. Notices were issued to Sri Kamalendu Bikash Das as well as Sri Arindam Nath asking them to reply why the FIR was not recorded on receipt of the complaint dated 23.01.2006.

6. The explanation given by Sri Kamalendu Bikash Das is that on 23.01.2006 when he reached his office-cum-residence some persons handed over a complaint to him. According to him, he verified from the O/C of the police station concerned whether such a complaint has been received by him. According to Sri Kamalendu Bikash Das, the officer concerned confirmed that such complaint had been received by him. Therefore, according to Sri Kamalendu Bikash Das, he considered that the O/C would record the FIR, in accordance with law. He also forwarded the complaint to the Superintendent of Police, Dhalai District.

7. The affidavit of Sri Arindam Nath, the then Superintendent of Police, is that he received the copy of the complaint forwarded to him by the Sub-Divisional Police Officer and this was placed before him on 24.01.2006 and on the same date he

issued a formal suspension order against the erring officials.

8. As far as Sri Arindam Nath is concerned, keeping in view the action taken by him, the notice against him is discharged.

9. As far as Sri Kamalendu Bikash Das is concerned, being the SDPO it was his duty to ensure that the FIR should have been recorded.

10. However, since long time has elapsed and Sri Kamalendu Bikash Das has expressed his unqualified apology in the matter, we do not want to pursue the matter, and therefore, the notice against him is also discharged. However, he is asked to be careful in future.

11. Accordingly, the matter is disposed of.