

(2011) 02 CAL CK 0065

Calcutta High Court

Case No: Writ Petition 1170 (W) , 1172 (W) and 1181 (W) of 2011

In Re: Bar Association High Court
at Kolkata and Another

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 18, 2011

Citation: (2011) 1 CALLT 518 : (2011) 4 CHN 736

Hon'ble Judges: J.N. Patel, C.J; Ashim Kumar Roy, J

Bench: Division Bench

Advocate: Sukhendu Sekhar Roy, Somenath Bose, Ashok Banerjee, Uttam Mazumder, Shakeel Md. Akhtar, Jaydip Banerjee, Arijit Ganguly, Swagata Dutta, Arindam Sen, Sanjoy Bardhan, Anirnesha Bhattacharjee, Mousumi Biswas, Gargi Roy Biswas and Hiranlal Majumder, in W.P. 1170 W/11, Kalyan Bandyopadhyay, Pratik Prakash Banerjee, Anisur Mondal, Rajdeep Majumdar, Sumon Sengupta and Subabrata Datta, in W.P. 1172 W/11 and Asish Das, in W.P. 1181 W/11, for the Appellant; Balai Chandra Ray, Ld. Advocate Gen., Pratik Dhar and Ritwik Pattanayak and Farook M. Razack, A.S.G., Bhaskar Prasad Vaisya, G.S. Makker and Monoj Malhotra, for the Respondent

Final Decision: Allowed

Judgement

1. Heard the learned Counsel for the Petitioner, learned Additional Solicitor General and learned Advocate General.
2. The Supplementary affidavit tendered today be taken on record.
3. Pursuant to our direction, learned Advocate General has placed before us the case diary of the investigation concerned with Lalgah Police Station Case No. 4 of 2011 dated 7th January, 2011.
4. We have gone through the two progress reports tendered by the State Government in the matter of investigation carried out by the State CID and have perused the case diary.

5. We find that in course of investigation the police has been able to arrest the suspects, namely Subhendu Mondal and Naba Gopal Sanki at the very first instance of the incident dated 7th January, 2011 at 20-15 hours after the first information report came to be registered in the case. Subsequently on 14th February, 2011 they have been able to arrest two more suspects who are named in the first information report, namely Abani Bhusan Singh and Aswini Chalak.

6. After going through the progress reports and the case diary, we find that though the investigating agency is well aware of the fact" that armed cadres were placed in camps at Netai village in the house of Rathin Dandapat and also in a camp at Birkar village in the house of Indrajit Das, at the time the villagers have assembled in front of the house of Rathin Dandapat and protested from serving the members of the armed cadres housed in the camp and refused to depute certain persons of the village by way of recruitment for joining the armed cadre and for their training and considering the situation armed cadres from Birkar camp were summoned to assist the armed cadres at Netai camp and it is at this stage some members of the armed cadres at Netai went to the roof top and started firing at the villagers which resulted in killing of 9 persons and causing injuries to several other villagers.

7. The investigation also discloses that Abani Bhusan Singh, a member of the local committee, was instrumental in organizing the camp at Netai, where 20 persons armed with weapons were camping on the first floor of the house. It has also come on record that these two armed camps i.e. one at Netai and the other at Birkar were organized by the members of the local committee of C.P.I. (M.) Party of which one of the accused Jaydev Giri is the Secretary.

8. The investigating agency even after arrest of Abani Bhusan Singh and Aswini Chalak have failed to collect information about the particulars of the members of the local committee of C.P.I. (M) Party and the persons who were the members of the armed cadre. Though immediately after the arrest of Subhendu Mondal and Naba Gopal Sanki on 7th January, 2011 itself, they came to know about the team leader of armed cadre of Netai Camp i.e. Netai De. The investigating agency has not taken any follow up steps to cause his arrest.

9. We are very much concerned about the fact that after the arrest of Abani Bhusan Singh, who was the member of the local committee of the C.P.I.(M) Party and Aswini Chalak on 14th February, 2011, till today the investigating team has not been able to make any progress in the matter of identifying all the suspects except those whose names figured in the first information report which was lodged on the date of the incident i.e. on 7th January, 2011.

10. We find that the police custody remand of Abani Bhusan Singh and Aswini Chalak is for a period often days, out of which four days have already gone with no progress in the investigation. As regards the identification of all the suspects are concerned, though the period of more than a month have passed, the investigating

team has not been able to get any breakthrough in the matter.

11. In spite of the fact that in course of interrogation, the investigating agency could very easily come to know many things including the identity of the outsiders who were in the camp with arms and ammunition and opened fire aiming the villagers on the day of incident and also at whose instance those persons came to Netai village and were staying in the camp.

12. They could have also gathered information as regards the source of arms and ammunition which were made available to the armed cadres at the camp and also the whereabouts of all the suspects who are involved in the case. Even after the arrest of Abani Bhusan Singh and Aswini Chalak, during their interrogation, they have not been able to bring on record the crucial information necessary for the purpose of investigation.

13. We find that though the investigating agency has recorded statements of several witnesses and carried out other, peripheral investigation including requisition of experts and collection of samples from the place of occurrence. They have not been able to gather any information to identify the suspects who, according to the investigating agency belonged to or have an allegiance to C.P.I. (M) Party.

14. In our view there is sufficient materials on record to show that the local committee of the C.P.I. (M) Party was involved in the incident. The information relating to the members of the local committee and their political bosses is very much available even to the local police and, therefore, there was no reason as to why the investigating agency which consists of trained police personnel having rich experience and out of them two police officers have already served in the Central Bureau of Investigation as well as were part of the National Investigating Agency. But they could not get any breakthrough in the case.

15. Therefore, we have no hesitation to come to a conclusion that the State CID will not be able to work in an effective way beyond this point as one cannot ignore the fact that presently the State Government or the Ruling Party consists of the members of the Communist Party (Marxist).

16. We fail to understand as to why the investigating agency has not been able to lay their hands at the basics of the investigation, namely, the suspects who belonged to the cadre of C.P.I. (M) Party. This itself is sufficient to lead us to a conclusion that the State CID may not be able to discharge its functions fairly and impartially.

17. Learned Advocate General informed us that the State CID be given further time to carry out the investigation and they will show the results. We do not think that any further time can be wasted by allowing the CID to carry out the investigation in the case for the reason that the police custody of Abani Bhusan Singh who is the member of the local committee of the Communist Party (Marxist), would be over within a short time and for the present he is one of the prime suspects arrested in

the case and if his custodial interrogation does not take place, whatever information can be made available from his interrogation would be lost for ever.

18. The learned Advocate General apprised us of the fact that the investigating agency have 90 days to investigate the matter and that interrogation could also be carried out while the suspects/accused are in judicial custody. If that is so, the very object and purpose of custodial interrogation will be meaningless.

19. Therefore, for the aforesaid reasons, we direct the State Government to forthwith hand over further investigation of the case to the Central Bureau of Investigation and we further direct the State CID to extend all co-operation to the Central Bureau of Investigation in carrying out further investigation.

20. In view of this order, the State CID will not carry out any further investigation in the matter from the time the same is handed over to the Central Bureau of Investigation.

21. By handing over the investigation to the Central Bureau of Investigation, we mean not only handing over the case papers but also the accused and suspects who are arrested in the matter and in their custody.

22. We expect the Central Bureau of Investigation to take over the investigation as soon as the State CID hands over the investigation to the Central Bureau of Investigation.

23. Learned Additional Solicitor General who represents the Central Bureau of Investigation states that they will immediately take charge of the accused persons who are in custody of the State CID and take necessary steps to take over the investigation.

24. We are adjourning the matter for a period of fifteen days to enable the Central Bureau of Investigation to take over the case and submit a progress report in the matter.

25. At this stage the learned Advocate General submits that this Court may grant stay to the effect and operation of the order for a period of 15 days. We are not inclined to stay our order as at this time the whole Investigation is at crucial stage, particularly as the prime suspects are in police custody and the outer limit for police custody is 15 days, out of which 4 to 5 days are already lost without any fruitful purpose. Hence the prayer is rejected.

26. Let the case diary be returned to the learned Advocate General.

27. Let the report be again kept in a sealed cover to be kept in the custody of Registrar General and let the same be produce on the next date of hearing.

28. Let the matter appear in the list on 4th March, 2011.

Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Counsel for the parties on usual undertaking.