

Constitutional Writ

Present: The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on: March 16, 2010.

W.P. No.9025 (W) of 2007

Ashoke Kumar Bose & Anr.

v.

State of West Bengal & Ors.

POINTS:

Status Report---Death of the son of the Petitioner ----A student of Engineering College -----
Investigation taken up by the CID-----Non communication of the fate of the investigation to the
Petitioner -----Claim of damages -----Final report submitted by the State-----Writ Court, if can
interfere---Constitutional Writ, Article 226

FACTS:

One Soumik Bose, son of the petitioners, was doing the Electrical Engineering course at Shibpur Bengal Engineering and Science University. On August 9, 2006, he was admitted to hospital with severe injuries. He died on August 12, 2006. On August 18, 2006, the State Government asked its Criminal Investigation Department to take up the case and investigation. Alleging that the Police did not care to inform them about the fate of the investigation and claiming that the University was liable to pay damages, the petitioners brought this petitioner. The petitioners have claimed damages of Rs.1 crore against the University.

The State has filed an Affidavit dated March 7, 2008, stating that after completing investigation the Criminal Investigation Department submitted a final report dated July 6, 2007.

HELD:

The State, has produced a status report dated March 16, 2010 signed by D.D.I., Howrah, D.D., Criminal Investigation Department, West Bengal. It has been stated in the report that the criminal case is pending before the Chief Judicial Magistrate, Howrah. The Court does not see any reason why in exercise of power under Article 226 it should examine the Report. The Report is to be examined for deciding whether it is to be accepted. The decision cannot be taken by the High Court in exercise of power under Article 226. It is to be taken by the Magistrate competent for the purpose.

PARAS---3&4.

Whether the final report should be accepted or an order should be made directing further investigation, or cognizance of the offences should be taken on the basis of complaint and other materials – is to be decided by the Magistrate.

PARA---5.

The petitioners have also claimed damages against the University. In the opinion of the Court it will not be appropriate for the High Court to exercise power under Article 226 for examining whether the University is guilty of negligence and the petitioners are entitled to damages. The petitioners should be relegated to the Civil Court for the purpose.

PARA---6

Advocates, for the state
Mr. Abhra Mukherjee.
Ms Abha Roy
Mr. Biswarup Bhattacharjee and Mr. Arjun Roy Mukherjee
Mr. Nisith Nandan Adhikary, Senior Advocate and Additional Advocate General,

Advocates for the University
Mr Subrata Mukherjee
Ms Basabi RoyChowdhury.

The Court:

1.The petitioners in this art.226 petition dated May 2, 2007 are seeking the following final reliefs:

“(a) Declare the actions of the respondents as impugned herein as thoroughly illegal, arbitrary and without jurisdiction;

(b) Issue a Writ in the nature of Mandamus commanding the respondent CID authorities to forthwith and/or immediately furnish to the petitioners the outcome of the investigation conducted by them as regards to the petitioners the outcome of the investigation conducted by them as regards the cause of the petitioners’ sons death and to act in accordance with law by acting in the manner stated hereinabove;

(c) Issue a Writ in the nature Mandamus commanding the respondent University to forthwith and/or immediately undertake the investigation to nab the culprits who killed the petitioners’ only son and to act in accordance with law by acting in the manner stated hereinabove;”

2.One Soumik Bose, son of the petitioners, was doing the electrical engineering course at Shibpur Bengal Engineering and Science University. On August 9, 2006 he was admitted to hospital with severe injuries. He died on August 12, 2006. On August 18, 2006 the state government asked its criminal investigation department to take up the case and investigation. Alleging that the police did not care to inform them about the fate of the investigation and claiming that the university was liable to pay damages, the petitioners brought this petitioner.

3.The state has filed an affidavit dated March 7, 2008 stating that after completing investigation the criminal investigation department submitted a final report dated July 6, 2007. Mr Adhikary,

counsel for the state, has produced a status report dated March 16, 2010 signed by D.D.I., Howrah, D.D., C.I.D., West Bengal. It has been stated in the report that the criminal case is pending before the Chief Judicial Magistrate, Howrah, and that a notice dated December 7, 2009 was issued to the complainant informing him the next date of the case fixed for May 21, 2010.

4. Mr Bhattacharjee, counsel for the petitioners, submits that in view of the allegations made in the petition it will be appropriate for this court to examine the investigation report submitted by the criminal investigation department to the chief judicial magistrate. I do not see any reason why in exercise of power under art.226 I should examine the report. The report is to be examined for deciding whether it is to be accepted. The decision cannot be taken by the high court in exercise of power under art.226. It is to be taken by the magistrate competent for the purpose.

5. If the magistrate is of the view that the report is not to be accepted, then the magistrate is empowered to make appropriate order. The de facto complainant is entitled to participate in the proceedings before the magistrate, and he can file a Naraji petition if there are reasons for filing such a petition. He is also free to approach the magistrate with his complaint according to law. Whether the final report should be accepted or an order should be made directing further investigation, or cognizance of the offences should be taken on the basis of complaint and other materials – is to be decided by the magistrate.

6. The petitioners have also claimed damages against the university. Mr Bhattacharjee has submitted that with its affidavit the university has not produced any material in proof of its claim that it is not guilty of any negligence. The petitioners are claiming Rs.1 crore. I have been invited to decide the question of damages on the basis of the allegations made in the petitioner. In my opinion, it will not be appropriate for the high court to exercise power under art.226 for examining whether the university is guilty of negligence and the petitioners are entitled to damages. In my opinion, the petitioners should be relegated to the civil court for the purpose.

7. For these reasons, I dispose of the petition ordering as follows. The petitioners are at liberty to contest the proceedings pending before the Chief Judicial Magistrate, Howrah, file Naraji petition or a petition of complaint and bring suit before the civil court seeking damages against the university. Needless to say that the civil and criminal courts shall examine the petitioners' claims, merits of which have not been examined by this court, according to law. No costs.
Certified xerox.

(Jayanta Kumar Biswas, J