

[2023 LiveLaw \(SC\) 636](#)

IN THE SUPREME COURT OF INDIA
D.Y. CHANDRACHUD; CJI., J.B. PARDIWALA; J., MANOJ MISRA; J.
Special Leave to Appeal (Crl.) No.8889/2023; 04-08-2023
SUVENDU ADHIKARI *versus* THE STATE OF WEST BENGAL THROUGH CHIEF SECRETARY & ORS.

Registration of FIR - The Supreme Court set aside the Order of the High Court which had allowed the registration of FIR against MLA for allegedly making provocative remarks during the Panchayat elections - Requested the Chief Justice of the High Court to take fresh decisions after granting him an opportunity of hearing.

(Arising out of impugned final judgment and order dated 20-07-2023 in WPA(P) No.372/2023 passed by the High Court at Calcutta)

For Petitioner(s) Mr. P.S. Patwalia, Sr. Adv. Mr. Atmaram N.S. Nadkarni, Sr. Adv. Ms. Bansuri Swaraj, Adv. Mr. Siddhesh Shirish Kotwal, AOR Mr. Rajdeep Mazumder, Adv. Ms. Ana Upadhyay, Adv. Ms. Manya Hasija, Adv. Ms. Mahamaya Chatterjee, Adv. Mr. Tejasvi Gupta, Adv. Mr. Salvador Santosh Rebello, Adv. Mr. Aarzo Anjea, Adv. Mr. Siddhant Gupta, Adv. Mr. Abhishek Tiwari, Adv. Ms. Manisha Gupta, Adv. Ms. Deepti Arya, Adv. Mr. Rahul Sharma, Adv.

For Respondent(s) Mr. Jaideep Gupta, Sr. Adv. Mr. Soumya Dutta, AORMs. Astha Sharma, Adv. Mr. Srisatya Mohanty, Adv. Mr. Shreyas Awasthi, Adv.

ORDER

1 WPA (P) No 372 of 2023 under Article 226 of the Constitution has been instituted by the fourth respondent before the High Court at Calcutta seeking the following reliefs:

“...a writ or ... in the nature of Mandamus directing the respondent no.2. and/or their men, agents and/or their servants to treat the instant Public Interest Litigation as a complaint and register an F.I.R against the respondent no.3 for commission of criminal offences under Sections 109/120B/153/ 153A/171F/171G/353/505(1)/505(2) of the Indian Penal Code, 1860.”

2 The petition pertained to the roster of the Bench presided over by the Chief Justice of the High Court. The Court of the Chief Justice was not available for judicial work on 19 July 2023. The petition was mentioned before another Division Bench of the High Court and was directed to be listed at 2.00 pm on 19 July 2023 as a new motion in the supplementary list. On 19 July 2023, the Division Bench directed that “this public interest litigation” be listed before the “appropriate Bench” on 20 July 2023.

3 On 20 July 2023, the petition was listed before the Division Bench presided over by the Chief Justice at serial number 13 in the daily cause list. Since the Bench presided over by the Chief Justice was unavailable for judicial work, the petition was notified for being heard by another Division Bench in the following terms:

“In addition to Their Lordship’s list and determination, shall take up the urgent matters from the list and determination of The Hon’ble Division Bench consisting of the Hon’ble Chief Justice T.S. Sivagnanam and Hon’ble Justice Hiranmay Bhattacharyya.”

4 On 20 July 2023, the Division Bench issued an **interim order** in terms of prayer clause ‘b’, (which is in the final relief sought in the petition) subject to the following directions:

“(a) The writ petition is to be treated as a complaint to the police authority.

(b) The state police authority shall exercise their powers in accordance with law and carefully examine whether the acts narrated therein disclose any offence under Section 153A of the Indian Penal Code.

- (c) If they are so satisfied they will register the first information report under Section 154 of the Criminal Procedure Code.
- (d) Thereafter they will be at liberty to proceed to investigate the case under Sections 156 and 157 of the Criminal Procedure Code only if they are satisfied that there is credible or reasonable information to suspect the commission of the said offence.
- (e) The first information reports so registered, if any, along with his views and result of investigation, if any, shall be embodied in a report to be prepared by the Director General of Police and to be furnished before this court on the returnable date of this application.
- (f) Arrest of the respondent no.3 or any other coercive action against him can only be made in terms of the report only if leave is granted by this court.”

5 We have heard Mr P S Patwalia, senior counsel appearing on behalf of the petitioner and Mr Jaideep Gupta, senior counsel for the fourth respondent. Ms Astha Sharma, counsel appeared for the State of West Bengal.

6 The petitioner has a grievance in regard to the manner in which the petition was taken up on 20 July 2023. At this stage, it is not necessary for this Court to express any view on the submission. The interim order dated 20 July 2023 has been passed without the petitioner, who is impleaded as the third respondent to the petition, being furnished with an opportunity to file a counter affidavit controverting the contents of the petition or its maintainability.

7 At this stage, it would be material to note that a Single Judge of the High Court while entertaining a writ petition under Article 226 of the Constitution instituted by the petitioner initially passed an interim order on 6 September 2021, in CRR No 1352 of 2021. The operative portion of the order reads as follows:

“There shall be stay of proceedings in respect of the Contai Police Station Case No.248 of 2021 dated July 7, 2021 and the Nandigram Police Station Case No.110 of 2021 dated March 18, 2021. The investigation into the other two Police Station cases i.e. Manicktala Police Station Case No.28 of 2021 dated February 27, 2021 and Tamluk Police Station Case No.595 of 2021 dated July 19, 2021, the investigation may go on but no coercive action shall be taken against the petitioner. The petitioner shall cooperate in the investigations.

Panskura Police Station Case No.375 of 2021 and 376 of 2021 shall also remain stayed.”

8 Subsequently, on 8 December 2022, the following order was passed in WPA No 25522 of 2022 by the Single Judge:

“In these circumstances, this Court is of the view that each and every FIRs referred to in the writ petition shall remain stayed. The State police shall not register any more FIRs against the petitioner, without the leave of this Court. The other prayers for transfer of investigation etc. shall be considered after affidavits are received from the respondents.”

9 The order of the Single Judge dated 8 December 2022 was questioned before this Court in SLP (Cri) Diary No 40675 of 2022. On 15 December 2022, this Court granted permission to the State of West Bengal, which had moved the Special Leave Petition, to withdraw it so as to move the Chief Justice of the High Court to assign a Single Judge for hearing the proceedings in which the interim orders were passed.

10 This Court has thereafter passed consequential orders on 2 January 2022 in SLP (Cri) Diary No 40752 of 2022, on 28 April 2023 in SLP (Cri) No 1553 of 2023 and on 15 May 2023 in Writ Petition (Cri) No 521 of 2022.

11 The petitions in which a blanket interim stay has been granted by the Single Judge are being heard and are listed on 16 August 2023 at 2 pm. In the meantime, in the petition

which was purportedly filed in the public interest by the fourth respondent, the impugned order was passed by the Division Bench on 20 July 2023.

12 The Division Bench, *prima facie*, observed that the two orders of the Single Judge which were operative, effectively preclude the police from registering a complaint or first information report against the petitioner herein. It was in this backdrop that the Division Bench has passed an order calling upon the State police authorities to examine whether an FIR should be registered on the basis of the averments contained in the petition under Article 226 and if so, to proceed thereafter in accordance with law. However, the petitioner in these proceedings has been protected from arrest pending the submission of the report to be placed before the Division Bench by the Director General of Police.

13 Counsel appearing on behalf of the State of West Bengal has stated that in pursuance of the order of the Division Bench, a first information report has been registered and a report would be submitted to the High Court as directed.

14 In our view, it would have been appropriate for the High Court to grant to the petitioner an opportunity to file a counter affidavit to the writ petition before issuing interim directions of the nature which effectively grant the relief which has been sought in the petition itself. At the same time, bearing in mind the pendency of proceedings before the High Court, we do not express any opinion on merits.

15 In this backdrop, we pass the following order:

- (i) We request the learned Chief Justice of the High Court at Calcutta to hear the writ petition, WPA (P) No 372 of 2023 afresh, and to facilitate this, the order dated 20 July 2023 shall stand set aside;
- (ii) The first court of the High Court shall be at liberty to pass all appropriate orders in the pending petition after hearing the objections, if any, of the Special Leave Petitioner, both to the maintainability of the petition and on merits; and
- (iii) The High Court while hearing the WPA No 372 of 2023 shall not be trammled by the orders dated 6 September 2021 and 8 December 2022 passed by the Single Judge and shall determine what, if any, relief should be granted in regard to the prayers in the writ petition.

16 The Special Leave Petition shall accordingly stand disposed of.

17 Pending applications, if any, stand disposed of.