

18.10.2022
Court No.32
D/L 8
ab/ sb

CRR 3920 of 2022

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of: **ABP Network Pvt. Ltd.**

.Petitioner

Mr. Sandipan Ganguly,
Mr. Somiprioyo Chowdhury,
Mr. Auysh Jain,
Mr. M. P. Das,
Ms. Deepti Priya

... For the Petitioner

Mr. Rudradipta Nandy,
Ms. Sonali Das

... for the State

The petitioner seeks quashing of an investigation being Purba Jadavpur Police Station Case No. 71 of 2022 dated 27th September, 2022 and for stay of proceedings pending before the learned Additional Chief Judicial Magistrate, Alipore.

The police case arose out of a complaint dated 27th September, 2022 made by one Avijit Ghosh, who claims to be a supporter of the All-India Trinamool Congress (AITC) against 'ABP Ananda' and its employees. The complaint was to be treated as a First Information Report for commission of offences punishable under sections of The Indian Penal Code, 1860.

The petitioner, through its learned counsel, assails the investigation on the statutory premise which is briefly stated below for understanding the comparative strength of the submissions made on behalf of the petitioner and the learned Additional Public Prosecutor.

The substance of the complaint deals with two broadcasts made by ABP Ananda, a Bengali television channel which primarily airs news and news-related content. The first telecast is of a speech of a political leader of the former ruling party of the State and the second is of an interview of a learned sitting Judge of this Court. The complaint attacks both these telecasts on being politically provocative with the potential of sullyng the image of the present ruling party of the State. The petitioner and its employees have been accused of spinning a false narrative for lowering the reputation of the AITC and creating a sense of alarm in the minds of the viewers.

The sections of the Indian Penal Code mentioned in the complaint are also required to be briefly dealt with which are as follows:

- Section 153: Wantonly giving provocation with intent to cause riot.
- Section 153A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony.
- Section 153: Imputations, assertions prejudicial to national integration.
- Section 500: Punishment for defamation.

- Section 505(1)(b): Statements conducing to public mischief with intent to cause or which is likely to cause, fear or alarm to the public.
- Section 120B: Punishment of criminal conspiracy.

The complaint, on a careful consideration, consists of the factual aspect of a public speech made by a political leader of the former ruling party of the State and the interview given by a learned sitting Judge of this Court. The remaining part of the complaint is a series of assumptions on the possible consequences of the aforesaid telecasts. The possible disruption of public tranquility, incitement of hatred, disruption of peace and harmony in the State and creating a sense of false alarm in the minds of the people are mere speculations of the effect of the programmes telecast and do not even disclose a link, however tenuous, between the alleged offence and the apprehended public reaction. The complaint further fails to disclose a rational basis for arriving at these presumptions by way of past incidents caused by the telecast of similar content or any indication of an imminent threat of breach of public order.

The view of the Court is bolstered by the statutory framework relating to initiation of investigation by the police authority. The relevant sections are as follows:

Section 154 of The Code of Criminal Procedure, 1973 relates to information given to the police in relation to commission of a cognizable offence which information shall be reduced to writing and read over to the informant and the substance thereto

would be entered into a book to be kept by the concerned officer. Section 156 empowers an Officer-in-Charge of a police station to investigate any cognizable offence which the jurisdictional Court is empowered to enquire into even without the order of a Magistrate. Section 157 sets out the procedure for investigation where the concerned police officer is empowered to investigate and send a report to a Magistrate if the officer has reason to suspect, on the information received, that an offence has been committed which the Officer can investigate under Section 156.

It is evident from the above provisions that commission of a cognizable offence is the starting-point for the law to be set in motion for initiation of investigation. The police must also have reason to suspect commission of an offence which the concerned officer is empowered to enquire into under Section 156. In other words, not only should the ingredients of the (cognizable) offence be made out in the complaint, the concerned police officer must also satisfy the requirement of “reason to suspect” under Section 157 before initiating investigation into the facts and circumstances of the case.

The sections under which the complaint has been filed makes it clear that as on the date of registering the complaint, i.e. 27th September, 2022 and until 5th October, 2022 when the authorities issued a notice under Section 91 of the CrPC to the petitioner, the statutory requirements, as stated above, were not satisfied. The complaint merely records telecast of two programmes on ABP Ananda. The bulk of the complaint is a series of apprehensions on the possible

response of and effect on the viewing public following the telecast of the stated content. The complaint does not disclose the factum of the actual commission of the specific offences mentioned in the complaint. Further, the projected outcome of the content telecast is curiously restricted to the festive season.

An investigation cannot be initiated on the basis of conjectures and assumptions. It is also well-settled that a First Information Report is not a substantive piece of evidence and can only be used for corroborating or contradicting the maker of the complaint at an appropriate stage in the investigation. The fact that the authorities have initiated an investigation against a news media channel on the basis of a complaint with definite political leanings is significant since it touches upon the constitutional guarantees of freedom of speech and expression and protection in respect of conviction for offences under Articles 19 and 20 respectively.

The objection taken on behalf of the State is considered. The objection, in essence, is the apparent innocuous nature of the investigation coupled with the undertaking that the investigation shall not reach finality without the leave of the Court. This objection is however not acceptable since a complaint or an investigation pursuant thereto must have statutory force and cannot be permitted solely for the asking or merely for the reason that the investigation has commenced.

For the reasons as stated above, this court of the view, prima facie, that the complaint and the investigation impugned in the present application lacks the essential factual and statutory basis.

There shall accordingly be a stay of the investigation in connection with the P.S. Case No. 71/2022 and the proceedings initiated pursuant to the P.S. Case until the matter is heard out by the Regular Bench. List this matter on 7th November, 2022. Parties shall be at liberty of seeking appropriate relief before that date if considered necessary.

(Moushumi Bhattacharya, J.)