

03.02.2022
Court No.13
Item No.11
AP

WPA 1839 of 2022

**Sri Anubrata Mondal
Vs.
Union of India and Ors.**

(Through Video Conference)

Mr. Sandipan Ganguly, Senior Advocate
Mr. Sanjib Kumar Dan
Mr. Rajarshi Basu
Ms. M. Mukherjee

... For the Petitioner.

Mr. S.V. Raju, Additional Solicitor General
Mr. Y.J. Dastoor, Additional Solicitor General
Mr. Phiroze Edulji
Mr. Samrat Goswami

... For the CBI.

The writ petition has been filed challenging a notice under Section 160 of the Cr.P.C. in connection with an FIR No.RC0562021S0018. The petitioner is not accused. The notice required him to be present today at 11 am at NIT Guest House, Durgapur, West Bengal, The petitioner in reply to the notice contended that he was suffering from diverse ailments and it would be a health hazard for him to travel a distance of 58 Kms, from Bolpur to Durgapur in this pandemic.

Mr. Sandipan Ganguly Ld. Senior Advocate, submits that Section 160 of the Cr.P.C. authorizes only a police officer within whose jurisdiction the notice resides to summons. The Notice to appear at Durgapur is outside the Bolpur, under which PS the

petitioner resides. The CBI should in deference to the spirit of 160 of the Cr.P.C. should conduct investigation at Bolpur.

Counsel of the petition next submits that his client is suspicious of the motives of the CBI and places paragraph 9 at page 5 of the writ petition which is set out hereinbelow :-

“9. That the Petitioner states that the impugned Notice dated 31.01.2022 has been issued without providing any detail of the particular of the Case in connection with which the Investigating Agency propose to put certain question to the Petitioner save and except the case No. RC0562021S0018 registered in CBI, SCB, Kolkata which clearly indicate the malafide intention of the Respondent No.4 to create incriminating circumstances and initiate coercive measure against the Petitioner.

Across the bar, Mr. Sandipan Ganguly, learned Senior Counsel appearing for the petitioner submits that his client is willing to attend the investigation even at Durgapur. However, in view of the apprehension expressed in on affidavit as above he has sought protection of the Court from coercive measures.

The prayer of the petitioner is aggressively opposed by Mr. S.V. Raju, learned Additional Solicitor General. It is contended that the petition

should not be entertained inter alia, for contradiction, approbation and reprobation.

Firstly that in the writ petitioner who has averred that that he could not travel from Bolpur to Durgapur for diverse ailments now appears to be willing to so travel, if he protected against arrest. The reference to physical ailments is therefore a mere ruse to protection against arrest. The writ petition, according to Mr. Raju, should therefore not be entertained.

It is next argued that the prayer made in the writ petition is akin to a prayer under Section 438 of the Cr.P.C. The petitioner could easily have applied for anticipatory bail. Not having done so, the prayers in the writ petition should not be entertained for the principles of alternative remedy. Learned Additional Solicitor General relied upon the decisions of the Supreme Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi)** reported in **(2020) 5 SCC 1**. On the question of alternative remedy, Mr. Raju also relied upon decisions of a Co-ordinate Bench of this Court in the cases of **Rakesh Singh @ Rakesh Kumar Singh Vs. State of West Bengal and Ors.** being judgment dated February 23, 2021 in WPA 5448 of 2021 and in the case of **Sagar Paik and Anr. Vs. Union of India and Ors.** dated March 3, 2021 being WPA 6441 of 2021.

Referring to the decision ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors.*** reported in ***(2021) SCC OnLine SC 315***, it is submitted that the Supreme Court has deprecated the practice of High Courts casually ordering against the coercive measures.

Replying to the arguments under Section 160 of the Cr.P.C., Mr. Raju submitted that the CBI is guided by the CBI Manual in conduct of Investigations. Sections 2 (s), 154 and 156 of the Cr.P.C., have no manner of application to the proceedings instituted by the CBI. The CBI is also not bound by the mandate and rigours of Section 160 as the jurisdiction of its Officer at Kolkata extends all over the State of West Bengal. The petitioner can therefore be summoned to any part of the State by the CBI.

Reference in this regard is made to a decision Co-ordinate bench of this Court dated November 12, 2013 in ***CRR 1882 of 2013 (Binod Kumar Kabra Vs. State of West Bengal and Ors.)*** and the case of ***Central Bureau of Investigation Vs. Pranab Kumar Mukherjee*** reported in ***(2016) SCC OnLine Cal 2783***.

It is lastly submitted that the petitioner's prayer has become infructuous by reason of the fact that the notice under Section 160 of the Cr.P.C. called upon the petitioner to be present at Durgapur

at 11 a.m. today. It is now 12.20 in the afternoon. The impugned notice has become infructuous. The writ petition should therefore be dismissed.

I have carefully heard the arguments advanced by the parties and have considered the decisions and the provisions of law.

It is now well-settled that alternative remedy is not a bar to the exercise of the jurisdiction under Article 226 of the Constitution of India. Such Jurisdiction can be exercised, if there is violation of natural justice or an action completely without jurisdiction. The remedy before a writ court cannot be ousted especially in a case where rights under Article 21 of the Constitution are at stake and prayers and pleadings have made a case of such invasion. This court recently in order dated 6th September, 2021 in the case of **S. Adhikari Vs. State of West Bengal & Ors.** being **W.P. 11803 of 2021**, has held as follows:-

It is clear and evident from the above that a conjoint reading of the dicta of the Supreme Court in Arnab Goswami (Supra) and Kapil Agarwal (supra) would clarify that the dicta of Pepsi Food decision (supra) must be understood in the light of the above two decisions. A summary of the dicta appears to be as follows :-

- a) The jurisdiction of the High Court under Article 226 and 227 of the Constitution of India is a part of the basic structure doctrine and cannot be taken away by any subordinate legislation.
- b) Section 482 of the Cr.P.C. confers the power on the High Court to quash the proceedings initiated in abuse of law. Remedies in the nature of Sections 438 and 439, Cr.P.C. are also available to a person to seek liberty against likely or actual deprivation thereof. However, the power of the High Court under Articles 226

and 227 cannot under any circumstances be abridged by any provision of the Cr.P.C.

c) The jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India is not circumscribed by any alternative and efficacious remedy under the provisions of the Cr.P.C.

d) A proceeding for quashing of abusive proceedings and for liberty from incarceration and custody is maintainable under Article 226 of the Constitution of India notwithstanding the provisions of the Cr.P.C. like Sections 482, 437, 438 and 439.

e) The maintainability of such petition should not be confused with entertainability. It is however a different question as to whether the writ petition will be entertained and/or maintainable in the given facts and circumstances.

In the backdrop of the above this Court is of the view that the prayers of the petitioner can be entertained in the facts of the instant case.

It is equally well-settled that each case must be looked at in its own facts and circumstances and ratio cannot understood de hors the facts of the fact. Reference in this regard is made to the decision of the Supreme Court in the case of ***Arasmeta Captive Power Co. Pvt. Ltd. Vs. Lafarge Cement India Pvt. Ltd.*** reported in **(2013) 15 414**, particularly Paragraph 32,33 and 34 thereof. Hence the decision of the Coordinate Bench in the cases of **Rakesh Singh (supra)**, **Sagar Paik (supra)** may not be applicable in the instant case.

The facts and circumstances of the instant case and the pleadings establish that the petitioner seriously apprehends infringement of his rights under Article 21 of the Constitution of India. Given

the gravity of the allegations made, this Court is of the view that protection under Article 21 of the Constitution of India, is the least, that even an accused in the worst of offences, can in country, avail. Liberty is the Rule and Custody in only an exception. The petitioner in any event is not the principal accused in the FIR. The CBI has not been able to indicate why custodial interrogation is needed.

This Court is unable to accept the submission of Mr. Raju, Ld. ASG, that Section 160 of Cr.P.C. applicable to the investigation of the CBI.

This Court is of the prima facie view that the interpretation of the powers of the CBI in the Binod Kumar Kabra (supra) and Pranab Kumar Mukherjee (Supra) that Section 2(s), 154 and 156 of the Cr.P.C. may not apply to proceedings of the CBI, must be restricted to registration of an FIR. This Court is of the view that given the object and purpose of the Section 160 of the Cr.P.C. it must apply even to the investigations of the CBI. The fact that the CBI acts under its own manual and under the provisions of the Delhi Special Police Establishment Act 1946 will not deprive a citizen of this Country, much less a person who not even the principal accused of the fairness and due process of law, which have been mandated and engraved into Section 160 of the

Cr.P.C. The plain language and text of Section 160 clearly warrants protections to a notice from being removed and compelled to travel far away outside the ordinary place of residence at the whim and caprice of the Investigator.

This Court is inclined to accept the interpretation of Section 160 of the Cr.P.C. as rendered by a Single Bench of the Guwahati High Court, in the case of ***Pusma Investment Pvt. Ltd. Vs. State of Meghalaya*** reported in ***(2010) 1 Gauhati Law Reports 74***, although the investigation thereunder, was being conducted by the CID of the said State.

In the ***Neeharika (supra)*** judgment cited by the CBI the Hon'ble Supreme Court was looking at the case where the High Court had not given any reason whatsoever while ordering 'no coercive measures' and that too while disposing a petition article 226 of the Constitution read with Section 482 of the Cr.P.C. The said decision cannot be applied here.

It is made absolutely clear that the above are only prima facie views for the purpose of consideration of the prayer for interim relief.

The last argument of the CBI that the notice has itself become infructuous by reason of the lapse of 11 a.m. deadline is self defeating. This Court is of

the view that the notice under Section 160 of the Cr.P.C. still at large and has not been withdrawn. The CBI, if it so chooses should be entitled to fix any other time for conducting investigation and interrogating the petitioner subject inter alia to Section 160 of the Cr.P.C.

In the event of any such fresh notice, the petitioner shall appear and cooperate in such investigation. However, no coercive measures shall be taken by the CBI against the petitioner without the leave of this Court.

On the prayer made by Mr. Raju, learned Additional Solicitor General, 4 weeks time is granted to file affidavit-in-opposition instead of 3 weeks. Reply thereto may be filed within a week thereof.

Liberty to mention for hearing after completion of pleadings.

(Rajasekhar Mantha, J.)