

20.07.2023
KC(SL 1)

WPA(P) 372 of 2023
Suman Singh
-versus-
State of West Bengal and Ors.

Mr. Saptangshu Basu, Sr. Adv.,
Mr. Sabyasachi Banerjee,
Mr. Anand Keshari,
Mr. Sarbajit Mukherjee,
Mr. Somraj Dhar.....For the petitioner.

Mr. Anirban Ray, Ld. G.P.,
Mr. Biswabrata Basu Mallick,
Ms. Mrinalini Majumder.....For the State.

Mr. Rajdeep Majumder,
Mr. Sourav Chatterjee,
Mr. Srijib Chakraborty,
Mr. Moyukh Mukherjee,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Mr. Chiranjit Pal.....For the respondent
no. 3.

Public interest and public law involved in this public interest litigation is this. The allegation of the writ petitioner is that by several acts complained of in the writ petition the respondent no. 3 has committed offence or offences inter alia under Section 153A of the Indian Penal Code. The respondent police authority is not registering any complaint or first information report against him because of the orders dated 6th September, 2021 and 8th December, 2022 passed by a learned single judge of this court in two separate writ applications. The purport of these two orders taken

together is inter alia that no first information report shall be registered against the said respondent and that no coercive steps can be taken against him.

It is an admitted position that these orders were challenged in higher forums and that till this day remain unaltered.

The question is whether these two orders which are admittedly operative prevent the police from registering a complaint or first information report against the respondent no. 3 in respect of the alleged offences complained of in this public interest litigation petition?

Article 361 of our Constitution grants immunity only to the President of India and the Governor of a State from criminal prosecution. Section 41(d) of the Specific Relief Act, 1963 says that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a criminal matter.

Now, if the interpretation of these two orders is that the respondent no. 3 has been given immunity equal to that of the President of India or the Governor of a State against criminal prosecution it would only be an absolutely erroneous interpretation of the said orders.

On our close examination of the said two orders passed by the learned single judge of this court we find that the court was concerned with certain allegedly false and malicious allegations and complaints being made

against the respondent no. 3 and first information reports being lodged against him, at the material time. The contention of the said respondent was that such complaints were made to deny him his legal rights and to harass him. Such measures were being taken by the ruling party and the government. To ensure that further first information reports were not registered against the said respondent to thwart the proceedings before the court the said orders were made restraining registration of further first information reports against him. Connected with the said order was the direction that no coercive steps were to be taken against him. This order of injunction is to be read as connected with acts, events and transactions concerning the said respondent contemporaneous to the said order or immediately subsequent thereto and connected with the subject matters of those writ applications. The said orders are not to be interpreted as preventing registration of any criminal complaint or first information report against the said respondent for any subsequent event, act, transaction or facts which are not connected with the facts in issue in the said two writ applications.

We observe and direct accordingly.

In those circumstances, we are of the view that as an interim order prayer (b) of the petition can be granted, subject to the following directions.

Prayer (b) is as follows:

“prayer (b): Issue a writ or writs of and/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.”

- (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.

We make this public interest litigation returnable on 7th August, 2023.

Stay of operation of this order is sought on behalf of the respondent no. 3.

It is considered and refused.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)