

SL 2
ss 07.08.2020

W.P. 5786 (W) of 2020
With
CAN 3780 of 2020

Sk. Mofijul Islam & Anr.
Vs.
State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Sabyasachi Chatterjee, Adv.

... .. for the petitioners

Mr. Sayan Sinha, Adv.
Mr. Raja Saha, Adv.
Mr. B. Chowdhury, Adv.

... .. for the State

Learned senior counsel appearing for the petitioners submits that the impugned FIR is a product of police persecution. Series of false criminal cases were registered against the relations of the petitioners who are the owners of an online news portal uploading news items relating to current affairs in the State of West Bengal in particular.

Being vexed by the disclosure of non-comfortable news items in the portal, false criminal cases were registered against its owners. Last of such case has been registered in the midnight between 28/29th June, 2020 alleging extortion in the month of March, 2020. No explanation for delay in registration of FIR in respect of the incident which was occurred three months ago is forthcoming from the materials on record.

Soon thereafter, the accused persons who are the relations of the petitioners were arrested and remanded to protracted detention. Some allegations

have also been levelled against the judicial authority that they mechanically remanded the petitioners in custody without examining the veracity of the allegations.

Petitioners being the next kin of the accused persons have approached this Court for various reliefs including quashing of Arambagh P.S. Case No. 239 of 2020 dated 29.06.2020, as aforesaid.

Learned counsel for the State submits, the complaint disclosed cognizable offences. Accordingly, FIR was registered and arrests were effected in the interest of investigation.

I have gone through the averments in the petition. It is relevant to note that there is inordinate delay in lodging the first information report reasons whereof are singularly absent in the said report.

Under these circumstances, I am of the prima facie view that it was advisable on behalf of the investigating agency to initiate preliminary enquiry before registration of FIR as envisaged in *Lalita Kumari Vs. State of West Bengal, (2014) 2 SCC 1* at paragraph 120.6(e) thereof which is as follows:-

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

.....

(e) Cases where there is abnormal delay/latches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.”

Without taking recourse to such prudent measure, it appears the police authorities registered the FIR in post-haste and immediately arrested the accused persons.

In a series of pronouncements the Apex Court has repeatedly cautioned investigating agencies from undertaking unnecessary and arbitrary arrests resulting in uncalled for deprivation of personal liberty at the undertrial stage. [see **Joginder Kumar vs. State of U.P., (1994) 4 SCC 240**, **D.K. Basu vs. State of West Bengal, (1997) 1 SCC 416** and **Rini Johar vs. State of M.P., (2016) 11 SCC 703**].

Strict scrutiny of statutory safeguards relating to powers of arrest and investigation are all the more necessary when it is alleged that State power has been unleashed to silence the voice of dissent.

No explanation is forthcoming regarding the hasty registration of a belated FIR without preliminary enquiry and the immediate arrest of the accused persons.

Under such circumstances, I admit this petition and direct the Director General of Police, West Bengal to make an enquiry into the facts leading to the registration of the delayed FIR without enquiry and the immediate and allegedly unnecessary arrest of the accused persons.

Report shall, *inter alia*, advert to the following issues:-

- (a) why preliminary enquiry was not initiated in this case in view of the observations in Paragraph 120.6(e) of **Lalita Kumari (supra)**;
- (b) whether facts and circumstances of the case warranted immediate arrest of the accused persons in the light of the law declared **Joginder Kumar (supra)**, **D.K. Basu (supra)** and **Rini Johar (supra)**.

(c) Whether the police officers were actuated with malice and/or ulterior motive in the present case, as alleged.

Report shall be filed on the next date of hearing. Investigation in the matter shall continue under the supervision of a superior officer nominated by D.G. of Police. However, no police report shall be filed without the leave of the Court.

Let this matter appear after three months.

The application being CAN 3780 of 2020 is disposed of.

(Joymalya Bagchi, J.)