

10.11.2020

07.

SD.

CRR No. 1585 of 2020

Kailash Vijayvargiya & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Sekhar Basu, Sr. Adv.,

Mr. Rajdeep Majumder

Mr. Mayukh Mukherjee

Mr. Pritam Roy

Ms. Arushi Rathore

Mr. A. Singh

Ms. S. Podder

.....For the petitioners.

Mr. Rana Mukherjee

...For the State.

The petitioners had participated in a demonstration on the October 7, 2020 which the State had deemed unlawful and an FIR dated October 8, 2020 has been registered by Hastings Police Station.

Learned Senior Advocate Mr. Sekhar Basu submits that FIR has been registered in violation of and completely ignoring the law laid down by the Hon'ble Supreme Court of India in the case of *Ramlila Maidan Incident* reported in (2012) 5 SCC 1, particularly paragraph 245 thereof. The said paragraph is set out herein below:-

“Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic

country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive step should be founded on actual and prominent threat endangering public order or tranquility, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.”

Learned Additional Public Prosecutor Mr. Rana Mukherjee, however, submits that this Court should not entertain the instant revisional application since there is a Special Bench constituted for the said purpose of proceedings against Members of the Legislative Assembly and Members of Parliament. He submits that one of the petitioners is Member of Parliament. He undertakes to produce the relevant notification on the next date in support of his argument.

Mr. Basu vehemently submits that the instant proceeding is not covered under the aforesaid notification.

This Court is of the prima facie view that matters are heard by a vacation bench of the High Court based on an allocation made by the Hon’ble Chief Justice or His designate. Such allocation is made

irrespective and independent of normal and special determination allocated during regular Court function

However the State may produce the notification on the November 26, 2020.

In the meantime, however, the investigation into the FIR being Hestings Police Station FIR No. 109 dated 8/10/2020 shall remain stayed.

List the matter on November 26, 2020 before the regular bench.

(Rajasekhar Mantha, J.)