

19.10.2023

SM

Ct 14

In re: CAN 2 of 2023

In

WPA 25522 of 2023

Suwendu Adhikari

-vs-

The State of West Bengal & ors.

Mr. Paramjit Singh Patwallia

Mr. Rajdeep Majumder

Mr. Sourav Chatterjee

Mr. Moyukh Mukherjee

Ms. Basuri Swaraj

Mr. Harshika Verma

Ms. Aishwarya Bazaz

...for the petitioner

Mr. Kalyan Bandopadhyay

Mr. Anirban Ray

Mr. Rudradipta Nandy

Mr. Soumen Mahanty

Mr. Piyush Kumar Roy

Ms. Amrita Panja Moulick

Mr. Arka Kumar Nag

Mr. Debanshu Dinda

...for the State

Mr. Ashok Kumar Chakrabarti

Mr. Arun Kumar Maiti (Mohanty)

Mr. Sukanta Chakraborti

Ms. Oishani Mukherjee

...for the CBI

Mr. Manas Kumar Das

.....for the opposite party no. 2

Mr. Sabya Sachi Banerjee

Mr. Soham Dutta

Mr. Agnish Basu

.....for the respondent no. 21

This is an application for modification and/or vacating of the

interim order dated 08.12.2022 whereby this Court was pleased to direct that the police shall not register any more FIR against the writ petitioner without the leave of the Court and for allowing the applicant/respondent no. 8 to lodge a First Information Report against the writ petitioner for the offences committed as enumerated in the application.

Learned senior counsel appearing on behalf of the respondent no. 8/applicant submitted as follows. By an order dated 08.12.2022 passed by a Co-ordinate Bench of this Court in WPA 25522 of 2022 this Court passed an interim order directing the State Police not to register any more FIR against the petitioner without the leave of this Court. The Hon'ble Supreme Court in connection with a public interest litigation directed this matter to be disposed of expeditiously. Sometime later the Hon'ble Chief Justice assigned the matter for hearing before this Bench. In the meantime in a public interest litigation filed by a third party being WPA No. 372 of 2023, a Division Bench of this Court set aside this order, directed an FIR to be registered against the petitioner over some other allegations, but placed certain conditions in the event any coercive measures were to be undertaken against him. The petitioner challenged this order before the Hon'ble Supreme Court. By an order dated 04.08.2023 passed in SLP (Crl) No. 8889 of 2023, the Hon'ble Supreme Court set aside the impugned order, remanded back the matter and directed the First Court in Kolkata to hear out the matter afresh. Thereafter, the said public interest litigation seeking to register FIR on some prior incidents became pending before the Court. The said application has nothing to do with the instant writ petition based on subsequent facts. Therefore, this Bench has all the power to consider the prayer made in the instant application. So far as the merits of the case for registration of an FIR against the petitioner

regarding the incidents of 17.08.2023 are concerned, the complaint makes out prima facie cognizable offences. This is supported by a video recording of the sequence of events that was placed before this Court in a pen drive. The actions of the petitioner clearly amounts to insulting and deterring a public servant by use of force. The use of slang language as contained in the video and the transcript is condemnable and also amounts to serious offences under Sections 186, 353, 503 and 504 of the Penal Code. Therefore, this Court ought to grant leave to the respondent no. 8 to lodge an FIR against the petitioner.

Learned senior counsel representing the petitioner submits as follows. The order dated 08.12.2022 came up for consideration before the Hon'ble Supreme Court and was not interfered with. If not the public interest litigation being WPA No. 372 of 2023, at least the order dated 20.07.2023 passed in it by a Division Bench by this Court, although subsequently set aside, significantly enhanced the ambit of the writ petition. Incidentally the order, after being set aside, was not remanded to this Bench, but to the Division Bench presided over by the Chief Justice of this Court. The Supreme Court wanted this matter to be decided by the First Court. In view of the same, such application for modification of the earlier interim order and/or leave to file an FIR should not be entertained by this Bench. In the alternative and on merits, no case is made out for registration of an FIR as would appear from the complaint and the video footage. Grave and sudden provocation was given to the petitioner which prompted him to react spontaneously. The use of certain slang language, if at all the same could be proved, did not amount to a cognizable offence. There was no deterring of a public servant. In fact, the petitioner was at the receiving end. The video clipping relied upon is incomplete and is of

private origin.

It is germane to mention that although the issue of the purported video clipping being of private origin has been taken up after filing of the pen drive on 17.10.2023, a transcript of the alleged conversation had been there in the application.

At the very outset, it is clarified that this Court cannot sit in appeal over the order dated 08.12.2022 passed in WPA 25522 of 2022. One of the issues in this application is whether such order needs to be modified or not. Quite significantly, these orders came up for consideration before the Hon'ble Supreme Court and were not interfered with.

To place the issue in perspective, the petitioner filed the main writ petitions contending that only after he shifted his political allegiance from the ruling party of the State to the ruling party at the Centre, a barrage of false FIRs were initiated against him. About 26 FIRs were filed in a span of about two years till filing of the writ petitions, while only one CBI case had remained pending for the whole decade before when the petitioner was with the present ruling dispensation of the State, whether as a Minister or otherwise.

First, the said order dated 08.12.2022 provided for filing of an FIR, albeit after obtaining leave of this Court. So, there is no absolute bar in lodging an FIR. Secondly, no such leave had to be sought for till the date of this application, which basically pertains to a spat with a police officer. Thirdly, the issue of such protection is intrinsically related to questions of quashing of and/or transfer of investigation of the pending cases. Finally, the hearing of the main matters has made substantial progress. In view of these, this Court does not find any need to modify the interim order at this stage.

Now, I proceed to consider the question of whether leave should be granted to lodge an FIR over the incidents of 17.08.2023.

It appears that the public interest litigation being WP 372 of 2023 relates to a prayer for registration of an FIR over a spate of allegations against the petitioner about incidents that had taken place earlier. It is not as if the petitioner had challenged the aforesaid interim order. After setting aside the order dated 20.07.2023 passed by the Division Bench therein, the Hon'ble Supreme Court remanded it back to a Division Bench for fresh consideration. Even if the Division Bench lays down any principle contrary to what this Court might decide, the view of the larger Bench will hold good. The pendency of such application, therefore, does not put a bar on deciding this application for leave to file an FIR over some other and subsequent facts. In fact, the Hon'ble Apex Court had earlier directed expeditious disposal of applications for variation of the interim order.

In the present case, there was a direction passed for a speedy disposal of the matter. After the petitions were released by a Co-ordinate Bench (Rajasekhar Mantha, J) the same was assigned to this Bench. The main matter was heard on several occasions and the hearing is continuing.

Now, on the merits of the present application, it has to be seen whether a prima facie case is made out from the letter of complaint and the video footage so as to grant leave to file an FIR under Sections 341, 353, 504 and 506 of the Penal Code, as contended in the letter of complaint or under Sections 186, 353, 503 and 504 of the Penal Code as mentioned in the writ petition.

First, the only cognizable offences sought to be charged are Sections 341 and 353 of the Penal Code. Rest are non-cognizable offences on which no FIR can be registered in the absence of a cognizable charge.

What appears from the complaint and the video is that an altercation purportedly ensued between the police and the petitioners after a protest over an issue. In the midst of this, the petitioner was found having a spat with a police officer, allegedly calling him a stooge of the establishment and even using intemperate language.

It is made clear that even under grave provocation, utterance of slang language in public, is an act done in poor taste and is not expected of a political leader of some stature or, for that matter, any public figure.

At the same time, a mere usage of slang language even in public discourse would not amount to a cognizable offence, except if the same amounts to obscenity in terms of Section 294 of the Penal Code or is similarly proscribed under a special law, which is not the case here.

The purported acts of the petitioner on the particular date *prima facie* did not amount to assault or use of criminal force to deter a public servant from discharging his duty. Therefore, Section 353 of the Penal Code is *prima facie* not attracted.

From a plain reading of the letter of complaint and perusal of the video clipping, no case of wrongful restraint is made out either. From the video clipping it appears that the petitioner was moving away while having such conversation.

If such incidents are construed as amounting to offences under Section 341 or 353 of the Penal Code, then it will sound a death knell for a citizen's right to protest. For instance, a partisan police officer can then simply broach a conversation with the protesters, lead them to an altercation and then, arrest them. The framers of our Constitution would have shuddered in fear to think about such interpretation.

As has been stated earlier, in absence of either Section 341 or

Section 353 of the Penal Code, no FIR can be lodged on allegations under Sections 186, 503, 504 and 506 of the Penal Code as the latter are non-cognizable offences. Section 503, by the way, only defines an offence and is not a penal provision.

It is actually doubtful whether even the non-cognizable cases would be made out on the instant facts.

Therefore, at least on the present facts and upon considering the allegations made in the letter of complaint and the purported video footage, it does not appear that a cognizable offence is prima facie made out against the petitioner.

Therefore, the prayer for leave to file an FIR is rejected.

Accordingly, CAN 2 of 2023 is disposed of.

However, there shall be no order as to costs.

In Re: WPA 11803 of 2021
CAN 1 of 2022
CAN 2 of 2022
With
WPA 25522 of 2023
With
CRR 2703 of 2022

Heard learned senior counsel appearing on behalf of the State in the main matter.

It is clarified that in the cases where proceedings were not stayed, the protection in question was granted to the petitioner and he was asked to co-operate with investigation, a reasonable notice seeking examination of the petitioner that too by offering a choice of date and time for the same, would not amount to coercive action. As directed earlier, the petitioner shall co-operate with the investigation of these cases.

List this matter for under the same heading on 17th, November,

2023.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)