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WPA 6599 of 2021
(Via Video Conference)

Sima Sen (Das)
Vs.
The State of West Bengal and Ors.

Mr. Gobindra Chandra Baidya
Mr. Gobindra Baidya
..for the petitioner

Mr. Lalit Mohan Mahato
Mr. Sudip Sarkar
..for the State

Mr. Manabendra Thakur
Mr. Partha Sarathi Das
..for the Private Respondents

The affidavit of service filed in court is kept on record.

Mr. Lalit Mohan Mahato with Mr. Sudip Sarkar, Advocates represent the State.

Mr. Manabendra Thakur with Mr. Partha Sarathi Das, Advocates represent all the private respondents.

The grievance of the writ petitioner in this writ petition was that the writ petitioner while in the family way at an advanced stage, was tortured by her family members who are the private respondents impleaded herein. As a result of such torture, she suffered miscarriage at an advanced stage. The writ petitioner lodged a complaint before the local police station on July 1, 2020. Yet, the police authority did not take

appropriate steps and there is a severe inaction on the part of the police authority. Hence, this writ petition.

Mr. Lalit Mohan Mahato, learned Advocate representing the State drew attention of this court at page 31 of the writ petition, which is the first information report (for short, FIR). It was submitted that, the said FIR was drawn and the same was registered on July 1, 2020. The State claims that notice under Section 91 of the Criminal Procedure Code, 1973 (for short, Cr.P.C.) was also served upon the writ petitioner. However, the writ petitioner denies the same. The State submits that, statement of the relevant persons had already been recorded under Section 161 of Cr.P.C. Charge-sheet prepared and submitted on July 31, 2020.

In course of the hearing, Mr. Mahato, submitted a report prepared by one Sukhamay Chakraborty, I/C Narendrapur, Baruipur Police District, dated March 11, 2021 and the same is kept on record.

From the said report it appears that, the charges mentioned in the FIR is under Section 498A of the Indian Penal Code (for short, IPC) has already been well established against the accused. The said report specifically states, inter alia, that investigation regarding alleged miscarriage due to assault by husband of the writ petitioner and other in-laws are

kept open. It also records that, further investigation is being conducted as per the provision of Section 173(8) of the Cr.P.C. and supplementary charge-sheet will be submitted, if any concrete evidence regarding miscarriage or other allegations can be collected in near future.

After hearing the submissions made on behalf of the parties and on perusal of material before this court, this court is of the considered view that the allegations made by the writ petitioner against the private respondents are deserved to be tried in a properly instituted criminal proceeding by the concerned jurisdictional court and the prosecution has already taken steps in this regard. The reliefs as claimed in the writ petition, if are, entertained the same would amount to usurpation of the jurisdiction of the jurisdictional criminal court, which is not permitted in law. The high prerogative writ jurisdiction in the facts of this case cannot be exercised when the prosecution has already taken steps in compliance of the relevant provisions of the criminal law.

In view of the above discussions and the reasons stated, this court does not find any merit in this writ petition and, accordingly, the present writ petition being WPA 6599 of 2021 stands dismissed.

However, it is made clear that this order will have

no effect in the adjudication of the criminal proceeding, if there will be any, in the facts and circumstances as pleaded in the writ petition.

There shall, however, be no order as to costs.

(Aniruddha Roy, J.)

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