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1.09.2021
S.D.

W.P. No. 6881 of 2021

**Momenul Haque Sarkar
Vs.
The State of West Bengal & Ors.**

Mr. Kalyan Kumar Chakraborty
Mr. Ashok Halder

...For the petitioner.

Mrs. Chama Mukherjee
Ms. Paromita Pal

...For the State.

A chronological event leading to the instant writ application is that on 26.8.2020, the marriage of the petitioner was solemnized with Mousumi Khatoon, daughter of Maijuddin Sarkar and there was a commitment to meet the claim of huge amount of money by the wife but as the relationship became souring, the wife of the petitioner claimed the amount against the divorce although the petitioner was very much eager to continue with the marital relation with his wife.

On 21.2.2021 at about 7.20 p.m., the private respondents forcibly entered into the rented house of the petitioner at Buniadpur and looted Rs.5 lakh cash, snatched gold ornaments and other valuable goods and also kidnapped the petitioner and the petitioner was beaten up by the private respondents on illegal

demand of Rs.10 lakh in cash and for that the petitioner was inflicted injury by knife. It is also in the complaint that the private respondents were attempting to commit murder of the petitioner and the family members of the petitioner. The petitioner was injured and for that he was admitted in a village hospital and disclosed all the facts to the District Magistrate. It is pointed out that the petitioner is a teacher in a Madrasha.

On 28.2.2021, the private respondents attacked the petitioner with deadly weapon in his house and tried to kidnap the old aged parents of the petitioner, but they could not do any mischief as being opposed by the local people. So, the petitioner complained to the Officer-in-Charge, Kumarganj Police Station and to the State Authorities on 28.2.2021 and 1.3.2021, but no step has been taken as yet against the private respondents. Accordingly, the allegation made against the police for inaction and that police authority has acted illegally by not taking into the matter which has violated the fundamental right of the petitioner as guaranteed under Article 14, 16, 19(i)(g) and 21 of the Constitution of India and also violated the Police Act, 1861 and Police Regulations, Bengal, 1943. Accordingly, the petitioner has sought for direction upon the respondent police authorities, particularly the respondent nos. 4, 5 and 6 being the Superintendent of Police, Dakshin Dinajpur, the Inspector-in-

Charge, Kumarganj Police Station and the Inspector-in-Charge, Gangarampur Police Station to act in accordance with law on the complaint dated 28.2.2021.

It is submitted that there has been police inaction and for that a reference has been made in the case of **Lalita Kumari vs. Government of Uttar Pradesh & Ors.** reported in (2014) 2 SCC 1 to submit that the writ application is maintainable for the inaction on the part of the police authorities for not undertaking an investigation into the matter based on the complaint.

In rebuttal, Ms. Chama Mukherjee, learned counsel for the State submits a report of the IC, Bhashibari Police Station, Dakshin Dinajpur dated 7.3.2021 and submits the actual facts which happened in the locality.

The report reflects that the petitioner was married to the daughter of Maijuddin Sarkar at Dakshin Dinajpur and on 26.2.2021, the police station had received a complaint of the petitioner through registered post against his in-laws and others. But he did not turn up in the PS. On receipt of the petition, the same was registered in Part-IV, SI No. 29/21 dated 26.2.2021 and was endorsed to Sub-Inspector Sital Prasad Jha of Banshihari Police Station to verify the veracity of the complaint. Submitting the same, the State respondent contended that there has been no inaction on the part of the police authorities as on the basis of

petition received by the police station, the action was taken as per law and as per the Police Regulation.

It is also pointed out that during enquiry, the said Sub-Inspector called the petitioner for his examination, but he did not turn up and on 28.2.2021, Sub-Inspector Sital Prasad Jha of Banshihari Police Station went to rented house of the petitioner and learnt from the local witnesses that there is enmity between the petitioner and the opposite party members over their families dispute since long. On 21.2.2021 evening, the opposite party members came there to settle up the matter amicably and then a quarrel picked up between them and opposite party members threatened the petitioner with dire consequences and left the place. A tension was there but the allegation of theft is not true. So, the Sub-Inspector recorded in the G.D. the fact and submitted Non FIR PR vide Banshihari PS NON FIR POR No 110/21 dated 28.2.2021 under Section 107 of the Cr.P.C. against the opposite party members which is reflected from the report of prosecution in which no FIR is found.

Learned counsel for the petitioner submits that there is no justification for prosecution under Section 107 of the Cr.P.C. as the complaint of the petitioner discloses cognizable offence in respect of theft of Rs.5 lakh and with regard to holding out threat with dire consequences which are cognizable in nature. It is also

evident from the report that there has been long pending enmity between them over the family dispute and the wife of the petitioner has already registered a specific case vide Banshihari Police Station Case No. 38 of 2021 dated 12.3.2021 under Section 498A/34 IPC read with Section 3/4 of Dowry Prohibition Act against the writ petitioner and other and the investigation is in progress. In this regard, learned counsel for the petitioner invited my attention to the injury report at page 14 to submit that on 22.2.2021, the petitioner was treated by Rashidpur B.P.H.C., Dakshin Dinajpur in the Emergency and the Emergency ticket annexed as 'P 3' reflects the injury inflicted on the petitioner. So, it is understood that due to the inimical relationship between the families, the injury may have been inflicted on the petitioner and the report ought to have been considered instead of submitting of PR under Section 197 of the Cr.P.C.

Be that as it may, this Court is also of the view that the result of the PR is on the basis of the incident, which was prior in time than the complaint filed by wife under Section 498A/34 IPC. Therefore it can also not be said that in order to counter the case filed by the wife, the petitioner has come up before this Court in this writ jurisdiction for the direction on account of inaction on the part of the police authorities. In this context, my attention is invited to the observations made in paragraph 119 of the decision

in the case of **Lalita Kumari vs. Government of Uttar Pradesh & Ors.** reported in **(2014) 2 SCC 1** wherein it has been observed as follows:-

“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

It is thus pointed out that the registration of FIR is mandatory under Section 154 of the Code if the information discloses cognizable offence and no preliminary enquiry is permissible in such a situation.

Having regard to the observations so made and in consideration of the basic complaint raised in regard to the cognizable offence of theft of Rs.5 lakh from the house of the

petitioner and the injury inflicted on the petitioner, *prima facie*, held that there appears cognizable offence and it was desired on the part of the police authorities to have started a specific case on the basis of the complaint. Therefore, the police authorities ought to have taken consideration of the fact although there does not appear to be any police inaction. But this fact can also not be lost sight of that the petitioner by filing the complaint has not cooperated with the Investigating Officer and never responded to the Investigating Officer who wanted to examine him.

Therefore, the petitioner is also directed to cooperate with the investigation.

With the above observations, this writ application being W.P.A. 6881 of 2021 is disposed of, however, without costs.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Shivakant Prasad, J.)