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4.10.2021
S.D.

WPA 7996 of 2021

**Alak Mandal
Vs.
The Hon'ble High Court, Calcutta & Ors.**

Mr. Kaustav Chandra Das
.....for the petitioner.
Mr. Joydip Kar, Sr.Adv.,
Mr. Siddhartha Banerjee
...For the High Court Administration.

Mr. Phiroze Edulji
Mr. Debraj Sahu
..For the Union of India.

Mr. Mukul Lahiri
Mr. Anirban Pramanik
Mr. Sabyasachi Bhattacharyya
....for the Respondent No. 7.

Ms. Jayeeta Sinha
Mr. Ranjit Rajak
....For the State.

Vokatnama filed this day by Mr. Siddhartha Banerjee,
Advocate be accepted.

I have heard Mr. Kaustav Chandra Das, learned
Advocate for the petitioner, Mr. Joydip Kar, being assisted by
Mr. Siddhartha Banerjee, learned Advocate for the High Court
Administration. I have also heard Mr. Mukul Lahiri, learned

counsel for the respondent no. 7 and Ms. Jayeeta Sinha, learned Advocate for the State.

The writ petitioner is an advocate practising in Midnapore District Court in Civil and Criminal side for more than 50 years and he points out that there are two *sue motu* contempt proceedings pending against him and others before this Hon'ble High Court, Calcutta regarding agitation of learned counsel of Paschim Midnapore Court against opening of some revisional courts at Kharagpur, Paschim Midnapore. The writ application arises out an action taken on behalf of the High Court Administration in the matter of complaint lodged by the petitioner in the month of July 2020 against illegal acts and manipulation of the case record in respect of the Judicial Misc. Case No. 13 of 2009 against the respondent no. 7.

The ground taken in this writ application is that the Hon'ble High Court has ignored the heinous offence allegedly committed by Ms. Ananya Banerjee, the respondent no. 7 while she was the District Judge, Paschim Midnapore tarnishing the sanctity of the record and majesty of the Court in breach of the trust and faith of the people at large. It is alleged that the said judicial officer tampered with the case record particularly the Order No. 56. It is complained that the Hon'ble Court has given indulgence to such a judicial officer

illegally and arbitrarily. That apart, whatever action has been taken is behind the back of the petitioner without giving the petitioner any opportunity of being heard. It is pointed out that the action on the part of the respondent no. 7 cannot be permitted to be allowed and the sanction ought to have been accorded by the Hon'ble High Court to the petitioner to take appropriate action against respondent no. 7 to prosecute her for committing illegal act while discharging her judicial function as the District Judge.

On behalf of the High Court Administration, Mr. Joydip Kar, learned Advocate firstly takes me to the prayer made by the petitioner to contend that the writ application is not maintainable in law.

The prayers as made in the writ application are quoted below:-

- a) A writ in the nature of mandamus by directing the Hon'ble Court by withholding all judicial and administrative work in the state of West Bengal from respondent no.7 in course of the determination of the complaint (Annexure P1).
- b) A writ in the nature of the mandamus by directing the Hon'ble High Court, Calcutta to take appropriate proceeding both departmental and penal action

under sections 466, 204 of the Indian Penal Code and section 66 of the Information Technology Act, 2000 against the respondent no.7.

- c) Alternatively, a writ in the nature of mandamus by granting sanction/leave under section 3(2) of the Judges (Protection) Act, 1985 to the petitioner to lodge written complaint in terms of section 154 of the Criminal Procedure Code to the local police authority having jurisdiction for prosecuting the respondent no.7 under sections 204 and 466 of the Indian Penal Code read with section 66 of the Information Technology act, 2000.
- d) A writ in the nature of certiorari by directing the respondent nos. 5 to produce the physical record of J. Misc. Case no. 13 of 2009 (C.I.S. Registration No.98 of 2017, CNR No. WBWM01-004666-2017) and short hand dictation note book of concerned stenographer before this Hon'ble Court for conscionable justice.
- e) A writ in the nature of certiorari by directing the respondent nos. 6 to produce the electronic record of J. Misc. Case no. 13 of 2009 (C.I.S. Registration No.98 of 2017, CNR No. WBWM01-004666-2017) from CIS data base including computer machine identification

from which both orders were typed and entire uploading history and from which machine data were uploaded in the respect of the above case before this Hon'ble Court for administering conscionable justice.

- f) Rule NISI in respect of prayer (a) to (f) above.
- g) Interim order in terms of prayers (a) above for fair investigation, and or, proceedings.
- h) Any other relief or reliefs which may seem fit and proper.

Then Mr. Kar brings my attention to the provision of Section 3(2) of the Judges (Protection) Act, 1985 which provides thus:-

“(2) Nothing in sub-sec. (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.”

It is pointed out that the respondent no. 7, District Judge, Paschim Midnapore was transferred on 19.2.2020 and the complaint was filed on 22.7.2020 after demitting the office of the District Judge out of grudge or otherwise. The said

complaint was addressed to Hon'ble the Chief Justice, High Court.

By an earlier order dated 27.9.2021, this Court directed the High Court Administration to place in sealed cover the complaints against the respondent no. 7 together with the final decision taken on such complaint.

The sealed cover is opened in open Court. It transpires from the report and the decision taken on the complaint dated 22.9.2020 by the Hon'ble the Chief Justice that the complaint supported by an affidavit lodged against the respondent no. 7 by the present petitioner for seeking sanction in terms of Section 3(2) of the Judges (Protection) Act, 1985 for initiating criminal proceeding, investigation for committing offence under Section 466/204 of the IPC read with Section 66 of Information Technology Act, 2000 was dealt with. It appears that the representation was made with reference to certain proceeding noted in paragraphs 2 to 12 of the complaint which are materials on record placed with the representation to demonstrate that the person who has made the representation was aware of those matters apparently at every point of time, at least from 5.4.2018 or even before. However, the allegations have been levelled only on 22.7.2020 much after the recommendation of the name of the respondent no. 7 on

22.1.2020 for being appointed as Judge of the High Court at Calcutta. The protection available to a Judge under Section 3(1) of the Judges (Protection) Act, 1985 in respect of the action taken by discharging official and judicial function and such provision under that Act is absolute. So a private person is not authorized under Section 3(1) to initiate action against a Judge by instituting civil or criminal proceeding in relation to any action taken in discharging judicial duty. As such the request made on behalf of the petitioner for sanction under Section 3(2) of the said Act for leave to prosecute the respondent no. 7 for the alleged offence of tampering order and for investigation was misplaced and was not available to the petitioner as the petitioner has no *locus standi* in law to make such an application. Notwithstanding the provision of sub-Section (2) of Section 3 is not a statutory directive or command to initiate any action. It controls the protective covenant in Section 3(1) in such a way that it gets precluded from being available as a protection if and when any action that would fall within Section 3(2) of the Act is taken. Since respondent no. 7 being a judicial officer is covered by the order of recommendation made by the Hon'ble the Chief Justice of Calcutta High Court for being appointed as a Judge of High Court at Calcutta, the Hon'ble the Chief Justice in His

administrative side was obliged as Chief Justice to assesses the allegations made against her and other judicial officers who were covered by the recommendation for their elevation as High Court Judges. This is the observation of the Hon'ble the Chief Justice while sitting in administrative side that there is a general tendency of hounding judicial officers upon their tending to achieve higher milestones in the career progression. Accordingly, the complaint was looked into and the allegations made therein in the backdrop of fundamental question whether the allegations need to be considered at all to uphold the majesty of the Court and the Justice Delivery System. It is particularly, when protection because protection is available under Section 3 of the 1985 Act. Thus, bearing in mind the provision of Section 3 of the said Act the Hon'ble Chief Justice specifically observed that the petitioner is not the party to the litigant that he could be aggrieved of the decision or the procedure or the process of the Court in a particular case because any party who has got grievance or aggrieved of any order passed by judicial authority has efficacious remedy available under the scheme of Article 227 of Constitution of India in the judicial side. Accordingly, it was found that there was no tangible foundation from the inescapable conclusion that Judicial Officers need to be proceeded against in any

mode. Thus, the representation of Mr. Alak Mandal, the petitioner herein was rejected by the concluding note of the Hon'ble Chief Justice on 22.9.2020 after due consideration of the representation for the complaint made by the petitioner.

There is a separate note of the Hon'ble Chief Justice marking the matter to be placed before the Administrative Committee but bestowing upon a deeper consideration to the contents of the representation made, the Hon'ble the Chief Justice to took up the matter separately on the basis of a representation made by some person to the Registrar (Vigilance) of the High Court, Calcutta. There is no principle on which such a representation could be looked into as the Registrar (Vigilance) is not authorized to take any action as sought for in the representation. All this apart the representation made by Alak Mandal has been separately considered. Therefore, in this regard, the Registrar Vigilance should have vigil to the complaint received at his end to firstly take into consideration as to whether the complaint is at all supported by an affidavit and if there is any material required to be investigated and then to place the same before the Hon'ble Chief Justice for preliminary inquiry and not otherwise, because it is a growing tendency to make allegations against a Judicial Officers even on anonymous letter/complaint. In this

regard Hon'ble supreme Court had directed that any anonymous letter against a judicial officer or against any complaint not being supplemented by an affidavit should not be looked into and be dumped into a waste paper basket.

In support of the contention made on behalf of the High Court Administration, the prayer made by the petitioner being a practicing advocate, the District Judge, Midnapore has no personal cause in the matter and the prayer made for initiating departmental proceeding alternatively for the sanction or the leave to prosecute the respondent no. 7 under the provision of Section 3(2) of the Act, 1985 is also not available to him. In paragraph 14 of the writ application, the petitioner has alleged that there has been inaction on the part of the High Court.

This Court has observed in the foregoing paragraph that the representation or the complaint made on behalf of the petitioner was duly attended to and with the reasoned observation, the same has been closed and rather rejected. If this proceeding is allowed to go on, it will undoubtedly affect the entire judiciary and all the judicial officers will become insecure in discharge of their judicial functions independently.

Mr. Kar, learned Advocate for the High Court Administration refers to a decision in the case of *Anwar Hossain vs. Ajoy Kumar Mukherjee & Ors.*, reported in AIR 1965

SC 1651 and to its observation in paragraph 8 to submit that 'the statute being the Judges Protection Act, 1985 is clearly intended to grant protection to judicial officers against suits in respect of acts done or ordered to be done by them in discharging of their duties as such officers. The statute, it must be noticed, protects a judicial officer only when he is acting in his judicial capacity and not in any other capacity. But within the limits of its operation it grants large protection to Judges and Magistrates acting in the discharge of their judicial duties. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was erroneously, irregularly or even illegally, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered is not within the limits of his jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act.'

Ms. Jayeeta Sinha, learned Advocate appearing on behalf of the respondent nos. 4 and 5 has submitted parawise comment of the District Judge, Paschim Midnapore which

reflects that concerned Dealing Assistant of the record namely, Sri Raj Kumar Chakraborty of J. Misc. Case No. 13 of 2009 has died and it has been reported that the Erstwhile District Judge was not aware about the order or any tampering of the said order-sheet No. 57 dated 23.3.2018 and had put her signature on the same as and when it was placed before her. The learned District Judge had no idea of any tampering of the said order-sheet.

It is further submitted that subsequently the Erstwhile District Judge, Paschim Medinipur had called for a report on 12.02.2020 from the Dealing assistant on the basis of direction of the Hon'ble Court vide Memo No. 694/R(Ins-I) dated 7.2.2020 and received by this office vide no. 453/XIII-2 dated 12.2.2020 but before the report could be submitted to her by the concerned Dealing Assistant, the District Judge was transferred on 19.2.2020 and the said Dealing Assistant subsequently expired on 9.12.2020.

Reliance is also placed to a decision in the case of N.V. Shamsunder, Civil Judge, (Sr. Dn.) vs. Savitabai wd/o Sambhirmal Singhvi and Ors., reported in 2006(5) Mh.L.J. 639. to the observation made in paragraph 7 which is reproduced herein for profitable consideration.

“7. From the bare perusal of the section 1 of The 1850 Act, it is clear that the Judicial Officer acting judicially is protected in respect of any act done or ordered to be done by him in the discharge of his judicial duty provided he in good faith believed himself to have jurisdiction to do order the act complained of. Insofar as section 3 of The 1985 Act which provides additional protection to Judges clearly stipulates that no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. Thus, section 3 gives completed immunity to a Judge or Ex-Judge in respect of any act, thing or word committed, done or spoken by him when or in the course of, acting or purporting to act in the discharge of his official or judicial duty of function. Section 4 of the said Act also provides that provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force providing for protection of Judges. The conjoint reading of sections 3 and 4 makes it clear that the protection given to a Judge or Ex-Judge for any act, thing or word committed, done or spoken by him while discharging official or judicial functions is absolute. Under section 1 of The 1850 Act the protection from being sued in civil suit is available to a Judge or Magistrate for any act done or ordered to be done by him in the discharge of his judicial duty provided he in good faith believed himself to have jurisdiction to do or order the act complained of. As such the protection available to a Judge under the 1850 Act is in respect of any action taken in good faith whereas the protection available under the 1985 Act is absolute and is even available not only to a sitting Judge but also to an ex-Judge in respect of the actions taken or words spoken by him while discharging his official or judicial function. The reason behind giving absolute protection by The 1985 Act is quite obvious. If such an absolute protection is not given, the Judge or Ex-Judge runs the risk of facing civil action at the instance of the disgruntled litigants who may have been aggrieved by adverse orders passed against them. If such an absolute protection is not given, a Judge or an Ex-Judge is likely to face frivolous suits at the instance of the litigants who

are aggrieved by adverse orders passed by the Judge or Ex-Judge. Therefore, in order to give absolute protection to the Judge not only during his tenure but even thereafter, the Legislature thought it fit to enact The Judges (Protection) Act, 1985. A bare reading of Sections 3 and 4 of the said Act makes the intention of the legislature to give complete protection to a Judge sitting or retired clear.”

Thus, the conjoint reading of the provision under Section 3 and 4 of the Act and findings and decision taken by the High Court Administration in its Administrative Side clearly depicts that judicial officer has an absolute protection in the matter of discharging of their judicial function while sitting in the Judicial Chair. I am of the considered view that if the petitioner or even a litigant is aggrieved of an order passed in the judicial side, he has higher forum to move in revision or in appeal. Therefore, the petitioner’s cause of action in the Writ Jurisdiction of this Hon’ble Court is not tenable in law.

In the context of the discussion above, the Writ Application being W.P.A. 7996 of 2021 is dismissed with exemplary costs of Rs.50,000/- on the writ petitioner which must be deposited with the Member Secretary of High Court Legal Services Committee and the fund so deposited be earmarked for utilization of the money for the destitute children.

The report in the Administrative Side placed this day in the sealed cover be resealed and be sent down to the Registrar Administration (LOM) for keeping the same under safe custody of the Hon'ble the Chief Justice.

All parties are directed to act on the server copy downloaded from the Official Website.

(Shivakant Prasad, J.)