

18.07.2022
Court No. 19
Item no.06
CP

W.P.A. No. 6106 of 2022

Akher Ali Mondal
Vs.
The State of West Bengal & ors.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Dhananjoy Banerjee

....for the petitioner.

Mr. Suman Sengupta
Mr. Saikat Chatterjee

....for the State.

Mr. Surajit Basu
Mr. Manoj Kurmi
Mr. Arnab Barman Ray

....for the respondent nos. 4,5,7 & 8.

The petitioner alleges that although the police authorities registered Titagarh Police Station Case No. 234/2022 dated March 31, 2022, under Sections 420/406/468/471/384/506/120B and 34 of the Indian Penal Code on the direction of the learned ACJM, Barrackpore in M.P. Case No. 240 of 2022, the police authorities intentionally struck out Section 409 from the petition of complaint filed before the learned Magistrate. It is urged that the complaints were against the members of the gram panchayat and the pradhan, as such, Section 409 of the Indian Penal Code was squarely applicable in this case. The

FIR must have been registered under the said section as well.

Mr. Bhattacharyya, learned senior advocate for the petitioner, places reliance on Section 199 of the West Bengal Panchayat Act, 1973, wherein the members, officers and employees of a gram panchayat have been defined as 'public servants'. Hence, it is alleged that the police authorities illegally struck out Section 409 from application filed under Section 156(3) of the Cr.P.C. when the same was transmitted by the learned jurisdictional magistrate, for necessary investigation by the police.

The police authorities submitted that when the petition of compliant was received by the police authorities, Section 409 had already been struck out. The same was forwarded along with the order of the learned ACJM, to the police station.

Mr. Basu, learned advocate appearing on behalf of the respondent nos. 4,5,7 & 8, submits that the respondent nos. 4,5,7 & 8 surrendered before the learned jurisdictional magistrate and they were released on bail. The respondent nos. 4,5,7 and 8 have produced the certified copy of the entire records of the M.P. Case, from which it appears that Section 409 had been deleted is the court's record. It appears that proceedings before the learned Magistrate continued for a while when the police authorities

prayed for transfer of the case to Mohanpur Police Station. The prayer of the police authorities was allowed by an order dated June 18, 2022 by the learned ACJM, Barrackpore and it was directed that the transfer of the investigation to the Officer-in-Charge, Mohanpur Police Station, would be just and proper. The case diary along with the order sheets were directed to be sent to the Officer-in-Charge, Mohanpur Police Station to start a case.

On receipt of the case diary and other documents, Mohanpur PS Case No. 76/22 dated June 29, 2022 was started. The issue of deletion of Section 409 was not raised by the petitioner before the learned ACJM, Barrackpore at any point of time.

However, as the investigation is in progress, it is always open for the police authorities to incorporate appropriate sections as per law, if the investigation so demands. Moreover, even if the investigation is completed without incorporation of a particular section, the petitioner can take recourse to the other provisions of the Code of Criminal Procedure before the appropriate court.

Under such circumstances, the writ petition is disposed of with a direction upon the concerned authorities to conclude the investigation in a free, fair and impartial manner.

The writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)