

25.8.2022
S1.No.170
sn

WPA 15184 of 2022

**Kasturi Ghosh
Vs.
The State of West Bengal & Ors.**

Mr. Allen Felix
..for the petitioner

Mr. Tapan Kr. Mukherjee
Ms. Saheli Mukherjee
..for the State

Mr. Uday Sankar Chattopadhyay
Mr. Sankar Maji
..for the pvt.respdts.

The petitioner is allegedly a professor in the University Institute of Technology under Budwan University.

It is the contention of the petitioner that as per Section 17A of Prevention of Corruption Act, 1988 no police officer can either cause an enquiry or investigate into any offence allegedly committed by a public servant under the said Act. It is alleged that the offence was relatable to the petitioners function as a professor. It is alleged that a public servant who was acting in discharge of his official duties, could not be made an accused without a sanction from the appropriate authority.

The petitioner submits that a professor of the university is a public servant.

A case was registered against the petitioner and some others vide Burdwan Police Station Case

No. 701 of 2022 dated July 1, 2022 under Sections 341/323/325/427/504/34 of the Indian Penal Code. The petitioner prays that the police authorities should be prevented from proceeding with the investigation and the investigation should be quashed.

Learned advocate submits that the incident happened over a dispute with regard to admission of students in the university and as such, the petitioner was discharging his official duty.

Learned advocate for the de-facto complainant relies on the complaint. He submits that the complaint lodged before the police authorities stated that some of the employees of the institution raised objection with regard to the exemptions granted by the principal of the institute to some students. The petitioner and some other teachers were involved in such process. Other students protested. The employees objected on their behalf. Altercation took place and there was scuffling and a fight broke out. Some injuries were suffered by the complainants. On the basis of such complaint, an FIR had been registered. The investigation is in progress.

The contents of the FIR does not disclose that the Prevention of Corruption Act, 1988 has been incorporated and as such this Court is of the view that at this stage, the question of quashing the FIR

does not arise. No court has taken cognizance as yet. Thus, the question of sanction does not arise.

Mr. Mukherjee, learned Additional Government Pleader files a report. It is submitted that the investigation is in progress. The FIR named persons have been issued notice under Section 41A of the Code of Criminal Procedure. There are no allegations of harassment against the police authorities. The question of sanction does not arise as the sections incorporated are entirely outside the purview of Prevention of Corruption Act, 1988. The occurrence took place over fighting and scuffling. Some injury was suffered by some of the parties who are involved in the fighting and the same are subject matters of an investigation.

The petitioner is always at liberty to raise such questions which have been raised in the writ petition before the appropriate forum, at the appropriate stage. The question of quashing the investigation in judicial review, under Article 226 of the Constitution of India, does not arise. The parameters laid down in the matter of ***State of Haryana Vs. Bhanjanlal, reported in AIR 1992 SC 604***, have not been satisfied. The investigation is at a very early stage.

The writ petition is disposed of.

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

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)