

AD-05
Ct No.09
23.09.2022
TN

WPA No. 20970 of 2022

Chanchal Nandi
Vs.
State of West Bengal and others

Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee,
Ms. Aishwarya Bazaz

.... for the petitioner

Mr. Amitesh Banerjee,
Mr. Suddhadev Adak

.... for the State

The present challenge has been preferred against a First Information Report (FIR) registered on September 02, 2022, *inter alia*, against the present writ petitioner for alleged offences committed purportedly from the years 2017 to 2020.

It is contended by learned counsel for the petitioner that the present FIR is the culmination of a chain of events. Previously, in a patently vindictive manner, several other FIRs were registered against the present Leader of the Opposition, West Bengal and his several associates.

The first, arising out of a complaint lodged in the Maniktalla Police Station, ultimately culminated in the Supreme Court of India affirming an order of this court, passed by a Division Bench in appeal against

the order of a learned Single Judge, whereby the appeal had been dismissed on the ground of demurrer. The learned Single Judge had, *inter alia*, directed that although FIRs may be registered, no coercive action should be taken by the Investigating Agencies against the writ petitioner therein, who was one of the accused. The Supreme Court directed the matter to be decided by the learned Single Judge.

In a second such instance, another case was lodged, this time against the Leader of the Opposition himself, in which the accused has obtained bail in the meantime.

A third case was lodged against another associate of the Leader of the Opposition, namely, one Rakhal Bera, in the Contai Police Station, in the said matter as well, the learned Single Judge was pleased to pass an interim order whereby the Investigating Agencies were restrained from arresting the said writ petitioner/accused on the basis of any FIRs registered against him, although there was no restraint to registration of such FIRs.

Thereafter, the present FIR was registered against the writ petitioner Chanchal Nandi on September 02, 2022, *inter alia*, on allegations under Sections 406, 420, 506, 120B and 34 of the Indian Penal Code. The same was the result of a purported

complaint annexed at page-216 of the present writ petition. It is submitted that it will be evident from the attending circumstances and the content of the complaint that the allegations are patently vindictive, in a bid to frame the associates of the present Leader of the Opposition.

For example, learned counsel submits, in the present case, although an FIR was registered, no notice has been issued till date under Section 41A of the Criminal Procedure Code (CrPC), although the law mandates that such notice has to be issued within fifteen days from such registration.

That apart, it is too much of a coincidence, it is submitted, that the close associates of the Leader of the Opposition are being framed one by one in criminal cases, that too, after a delay of about two years from the alleged commission of offence. In the present case, for example, it is contended that the alleged offence was said to have been committed vaguely from 2017 to 2020, without mentioning any specific date. It is more surprising that the complaint was lodged and the FIR registered in the month of September, 2022, that is, at least two years after the alleged commission of the offence, without there being any explanation whatsoever for the delay committed in making such complaint or registering such FIR.

Learned counsel places reliance on the judgment of *Lalita Kumari vs. Govt. of U.P. and Ors.*, reported in (2014) 2 SCC 1, in particular, paragraph no.120.6 thereof to indicate that the Supreme Court clearly specified that preliminary enquiry is to be conducted in case of registration of FIRs before arresting the accused person named in the FIR. Several instances were also given by the Supreme Court. Out of those, sub-clause (d), enumerated corruption cases and sub-clause (e) of paragraph no.120.6 dealt with cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months delay in reporting the matter without satisfactorily explaining the reasons for delay. In such cases, it was observed, preliminary investigation has to be conducted after the registration of the FIR before arresting a particular person.

It is submitted that although the present writ petitioner has not yet been arrested, but the non-issuance of the notice under Section 41A of the CrPC and the nature of the allegations made, as well as the delay committed in registering the FIR, *ipso facto* indicate the patent *mala fides* and vindictiveness behind the complaint. Hence, it is submitted that the complaint and the FIR being patently *mala fide* and

malicious in nature, the FIR may be quashed by this court.

Learned Senior Counsel appearing for the State submits that *Lalita Kumari* (supra) does not hold what the petitioner is trying to impress upon this court. By placing specific reliance on paragraph no.119 of *Lalita Kumari*'s judgment, it is submitted that the Supreme Court specifically stipulated that 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 such registration, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc.

These are the issues, the Supreme Court went on to hold, 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.

The remedy of the accused lies after investigation, since, if the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

It is further submitted that, in the present case, there are several accused persons and there is nothing

to connect the Leader of the Opposition with the present complaint. Even on the question of credibility of the allegation, it is submitted that there is nothing palpably incredible or vindictive in the complaint as such.

Hence, it is submitted that since the petitioner has not been arrested till date, the said fact, *per se*, indicates that no vindictiveness prompted the filing of the complaint.

Thus, it is submitted, the writ petition be dismissed.

Upon considering the submissions of learned counsel, the explanation and interpretation of *Lalita Kumari's* judgment, as advanced by the State, appears to be more acceptable.

It has been clearly stipulated by the Supreme Court in paragraph no.119 of the same that even if a cognizable offence is merely disclosed in the information, which is the genesis of the FIR, there is no other option before the Investigating Agency but to register an FIR.

Whatever is stipulated in paragraph no.120 (and its sub-paragraphs) of the judgment, the same only qualifies such proposition as indicated immediately hereinabove.

The scope of preliminary enquiry was discussed in such context and it was observed by the Supreme Court that in certain cases as indicated therein, a preliminary enquiry “may” be conducted. The said expression further goes on to show that it was not held by the Supreme Court as a blanket proposition in *Lalita Kumari* (supra) that in every case, even when the complaint does not disclose a cognizable offence, investigation shall have to be mandatorily undertaken.

As such, the ratio of *Lalita Kumari* (supra) does not help the petitioner’s contention even if the petitioner was ultimately successful in proving that the complaint-in-question was vindictive and the FIR registered against the petitioner was a result of such malicious or vile attempt.

Insofar as the allegations of vindictiveness are concerned, this court is conscious of the fact that the petitioner always has the remedy of anticipatory bail to be invoked by the petitioner, in the event such circumstances, which justify the grant of anticipatory bail, are made out by the petitioner. Any observation made by this writ court, without having the power to go into or assess on merits the evidence or materials on record on the said allegation of vindictiveness, might affect the fate of the petitioner in other criminal proceedings.

In the present case, the appropriate remedy available to the petitioner is not an application under Article 226 of the Constitution to quash the FIR, particularly, since more than one cognizable offence is disclosed from the information which gave rise to the FIR and the FIR itself.

Hence, WPA No. 20970 of 2022 is disposed of without interfering with the FIR at this stage in any manner whatsoever but granting the petitioner liberty to approach the competent court having jurisdiction with an application for anticipatory bail. If such an application is moved, nothing in this order shall influence the contentions of the petitioner or the State in any manner in such proceeding or in any other future proceeding insofar as the merits of the allegations against the petitioner are concerned.

The petitioner is further granted liberty to take appropriate steps before the competent forum on the allegation of the petitioner that Section 41A notice has not been issued in the present case in due time.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)