

OD-2

APOT/87/2022
With
WPO/1951/2022

IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

YES BANK LIMITED AND ORS.
-VS-
MALATI SAHA AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE ANANYA BANDYOPADHYAY

Date :May 26, 2022.

(Vacation Bench)

Appearance:

Mr. Lakshmi Kumar Gupta, Sr. Adv.
Mr. Debdatta Sen, Adv.
Mr. Avishek Guha, Adv.
Ms. Akansha Chopra, Adv.
.for the appellants

Mr. R. Chatterjee, Adv.
Mr. D. R. Mukherjee, Adv.
Mr. N. R. Banerjee, Adv.
Mr. Arijit Dey, Adv.
..for the respondent no.1

Mr. Dwaipayan Basu Mallick, Adv.
Mr. Arkaprava Sen, Adv.
..for the respondent no.5

The Court : This appeal is directed against an order dated April 27, 2022, whereby WPO/1951/2022 was disposed of by a learned Single Judge by directing the Rabindra Sarobar Police Station to register FIR, inter alia, under Sections 409, 420, 468 and 471 read with Section 120B of the Indian Penal Code against the accused persons and commence investigation as

expeditiously as possible. It was further directed that the investigation should be completed within a period of two months from the date of registration of the FIR.

The appellant nos.2, 3 and 4 are officers of the appellant no.1 Bank. Mr. Gupta, learned Senior Counsel appearing for the appellants, argued that the learned Single Judge ought not to have directed registration of FIR. The Hon'ble Supreme Court in the case of *Sakiri Vasu vs. State of Uttar Pradesh* reported in (2008) 2 SCC 409 has clearly laid down that it is not within the domain of the Writ Court to direct registration of FIR. Appropriate machinery has been provided in the Code of Criminal Procedure for such purpose. The order of the learned Single Judge is without jurisdiction.

Mr. Chatterjee, learned counsel appearing for the writ petitioner/respondent no.1, takes a point of demurrer. He says that this intra-court appeal is not maintainable in view of Clause 15 of the Letters Patent as interpreted by the Hon'ble Supreme Court in the case of *Ram Kishan Fauji* reported in (2017) 5 SCC 533.

Having heard learned counsel for the parties on the point of demurrer, we are inclined to agree with Mr. Chatterjee, learned counsel for the writ petitioner. As we understand, the Hon'ble Supreme Court has laid down in the case of *Ram Kishan Fauji* that where the order in question causes initiation of a criminal proceeding which may result in punishment of the accused person by way of imprisonment or fine, or if by reason of such order, a criminal proceeding stands terminated, then such an order would be considered to have been passed by the Court in exercise of criminal

jurisdiction. In such a case, Clause 15 of the Letters Patent would clearly bar an intra-court appeal.

In the present case, the order under appeal directed the Police to register FIR and complete the investigation within a specified time period. The order is the reason for initiation of a criminal proceeding. As such, we are of the view that the order was passed in exercise of criminal jurisdiction and, therefore, this intra-court appeal is barred by the provisions of Clause 15 of the Letters Patent.

Solely on the above ground and without going into the merits of the case, this appeal is, therefore, dismissed.

(ARIJIT BANERJEE, J.)

(ANANYA BANDYOPADHYAY, J.)

bp.