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06.09.2023
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Ct 14

WPA 17381 of 2023

Sahana Banu
-vs-
State of West Bengal & ors.

Mr. B. P. Dutta
Mr. D. K. Mondal
...for the petitioner
Mr. Amal Kr. Sen
Mr. Jaladhi Das
...for the State

This is an application praying for a direction upon the respondent authorities to take steps in respect of the inaction of the respondent no.9 which has caused immense suffering to the petitioner and her family members at the hand of the private respondent nos. 10 to 25, to properly investigate the complaints made by the petitioner, to quash the counter case filed against the petitioner and to provide police protection to the petitioner and her family members.

A further report filed on behalf of the State is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner filed a Public Interest Litigation before this Court being WPA (P) 682 of 2022 alleging illegal and unauthorized construction on the thika tenanted properties. In retaliation, several local miscreants and hooligans attacked her house. On 16.06.2023 at about 3.30 PM, the petitioner and her daughter were assaulted and

molested. No complaint was accepted from the petitioner. No FIR was initially accepted from the petitioner. The petitioner finally lodged an FIR on 18.06.2023 that lead to registration of Cossipore Police Station Case No. 105 dated 18.06.2023 under Sections 323, 341, 506, 509 and 114 of the Indian Penal Code. A counter FIR was lodged by the other side being Cossipore Police Station Case No. 109 dated 22.06.2023 under Sections 341, 323, 354 and 114 of the Indian Penal Code. On 22.06.2023, the private respondent again inflicted injuries on the petitioner and the family members. On 29.06.2023, a written complaint had to be sent to the respondent no.9 through speed post. An FIR was thereafter registered being Cossipore Police Station Case No. 115 dated 01.07.2023 under Sections 448, 427, 354, 380, 324, 506 and 114 of the Indian Penal Code read with Section 25 of the Arms Act. Instead of taking steps on the complaint of the present petitioner, the police went on to arrest the family members of the present petitioner in connection with the counter case without serving them a notice under Section 41A as per the judgment in Arnesh Kumar's Case, (2014) 8 SCC 273. The private respondent and the police are pressurizing the petitioner for withdrawing the Public Interest Litigation from this Court.

Learned counsel appearing on behalf of the State relies on the two reports and submits as follows. Several cases have already been lodged by either of the parties. Most of the respondents have been arrested. Investigating is going on in

full swing and the report in final form would be submitted in both the cases started by the petitioner at the earliest. Pursuant to a direction passed by this Court, the police had placed a police picket near the house of the petitioner consisting of two arm police constables. A proceeding under Section 107 of the Code has also been initiated against the private respondents.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition, the reports filed by the State and the case diary in both the cases initiated from the petitioner.

It is quite strange that instead of arresting the private respondents on the complaint lodged by the petitioner, the police authorities went on to first arrest the relatives of the petitioner in respect of the counter case.

It was only after intervention by this Court that a proceeding was drawn up by the police authorities under Section 107 of the Code of Criminal Procedure.

Repeated instances of purported attacks on the petitioner and her family members did not evoke sufficient response from the police. It was only after intervention by this Court that security could be provided them.

If the private respondents inflict injuries on the petitioner or even threaten them to withdraw the Public Interest Litigation pending before this Court, it would amount to an attack on the administration of justice. It is the duty of the police authorities to prevent such situations.

In the facts and circumstances of the case, this Court is of the view that a further investigation of all the three cases should be handed over to the CID.

Accordingly, the present Investigating Officers shall not further investigate and shall immediately hand over the case records to the concerned officers of the CID.

Let the DIG, CID appoint a competent officer of the CID to investigate the three cases as referred to above.

Let the police picket continue, but with two police personnel out of whom one must be an arm police constable till submission of reports in final form in all the three cases referred to above.

The petitioner's prayer for quashing of the counter case has not been gone into at this stage. She shall be at liberty to make such prayer at an appropriate stage.

With these observations, the writ petition is disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)