

22 18.10.2023

Ct-08

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MAT 1902 of 2023
with
I.A No. CAN 1 of 2023
CAN 2 of 2023

Kuntal Ghosh
Vs.
Soumen Nandy & Ors.

Mr. Jishnu Saha, Sr. Adv
Mr. Aniruddha Chatterjee
Mr. Ayan Poddar
Mr. Soham Dutta
Mr. Arif Hossain
... For the Appellant

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Payel Shome
Ms. Sampriti Saha
Mr. Avijit kar
Ms. Mohana Das
... For the Respondent no. 1/
Writ Petitioner

Mr. Dhiraj Kumar Trivedi, Ld. DSGI
Mr. Samrat Goswai
... For the E.D

Mr. Billwadal Bhattacharyya, Ld. DSGI
Mr. Avijit Majumdar
... For the C.B.I

Mr. Saikat Banerjee
Mr. Ratul Biswas
Mr. Kaushik Chowdhury
... For the Board

1. The applicant is aggrieved by the order dated 14th September, 2023 by which the direction passed by the learned Judge, CBI Court no. 1, (In-Charge) dated 21st August, 2023 and 1st September, 2023 regarding filing a report from the Joint Director, CBI and Joint CP (Crime), Detective Department, Lalbazar is

directed to be kept in abeyance until further order of this Court. This order appears to be prima facie in conflict with the order passed by the Hon'ble Supreme Court on 4th August, 2023 by which the petitioner was given liberty to pursue the complaint before the Special Court. Admittedly, the complaint was lodged by the applicant. However, the CBI has questioned the manner of forwarding the complaint to the learned Special Court in Chamber. Irrespective of the fact that the complainant has been filed in the chamber of the learned Special Judge, we feel that it would be for the Special CBI Judge to decide whether the said complaint should be accepted in accordance with law and proceed with it without interfering with the Court-monitored investigation.

2. The appellant has alleged custodial torture. He has lodged a complaint.

3. Mr. Billwadal Bhattacharyya, learned DSGI, has submitted that the CBI has filed an application being CAN 7 of 2023 for quashing and setting aside the orders dated 21st August, 2023 and 1st September, 2023. However, having regard to the fact that Justice Sinha is monitoring the investigation and an application

has been filed by CBI it would not be proper for us at this stage to express any opinion. It cannot be doubted that by the reason of the impugned order, the remedy to pursue the complaint lodged by the appellant has been affected and hence we allow the application for leave to prefer an appeal being CAN 1 of 2023 in spite of objection being raised by the CBI.

4. Mr. Bhattacharyya has submitted that in view of the investigation being monitored by the writ Court it is open for the CBI to file an application questioning the complaint in the pending proceeding without filing any separate application under Section 482 of the Code of Criminal Procedure as the power of the writ Court is not curtailed by reason of existence of a remedy available under Section 482 Cr.P.C. We are not expressing any opinion at this stage since the said issue is not the subject matter of the impugned order.

5. In view of the pendency of the matter it is left open to the learned Single Judge to take final decision on all the issues keeping in mind the order passed by the Hon'ble Supreme Court where liberty was given to the petitioner, namely, the applicant here to pursue his complaint before the Special Court.

6. We also permit the applicant to raise all points before the learned Single Judge including the jurisdiction of the learned Single Judge to decide the complaint and the order by which the applicant has been restrained from pursuing the complaint.

7. We make it clear that we have not gone into the merits of the contention raised by Mr. Saha in view of the pendency of the matter before the learned Single Judge. We have been informed that the matter is fixed on 30th November, 2023. Moreover, appropriate notice has already been served upon the applicant.

8. In view of the aforesaid, the appeal and the application being MAT 1902 of 2023 and CAN 2 of 2023 stand disposed of

9. However, there shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar,J.)

(Soumen Sen, J.)

