

Form J(1)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 1018 of 2022

**Mrinal Paul @ Mona Paul
Vs.
The State of West Bengal and Ors.**

**For the Petitioner : Mr. Amales Ray, Adv.,
Dr. Pabitra Pal Chowdhury, Adv.,
Mr. Deborshi Dhar, Adv.**

**For the State : Mr. Subir Kr. Saha, A.G.P.,
Mr. Momenur Rahman, Adv.,**

For the Respondent : Sabir Ahmed, Adv.

Heard & Judgment On : 8th February, 2023.

Bibek Chaudhuri, J.

The petitioner is aggrieved against deliberate arbitrary act of police atrocities inflicted upon him by his illegal detention by the police attached to Bhaktinagar P.S on the basis of the second FIR over the selfsame facts on the basis of which a criminal case is already pending before the court of the learned Magistrate and secondly subsequent detention in a bailable offence under Section 385 of the IPC.

It is the case of the petitioner that one Shekhar Sharma, respondent No.8 herein lodged a written complaint before the Officer-in-

Charge of Bhaktinagar P.S on or about 11th November, 2014 on the basis of which Bhaktinagar P.S Case No.1544 of 2014 dated 11th November, 2014 under Sections 420/468/471/384/447/34 of the IPC was registered. The said case gave rise to GR Case No.5397 of 2014 and presently pending before the learned Chief Judicial Magistrate, Jalpaiguri. In the said case, the petitioner is released on bail. On completion of investigation police submitted charge-sheet against the petitioner and other accused persons on 25th June, 2016 before the court of the learned Chief Judicial Magistrate. It is submitted by the petitioner that the allegation made against him in the said complaint is purely civil in nature and over the selfsame dispute the respondent No.8 instituted Title Suit No.19 of 2015 before the learned Civil Judge (Junior Division), Jalpaiguri and the said suit also pending.

It is the case of the petitioner that on 4th May, 2022 at about 11.30 am one police personnel asked the petitioner to meet the Inspector-in-Charge of Bhaktinagar P.S, the respondent No.5. The petitioner conducted the Inspector-in-Charge of Bhaktinagar P.S over telephone and the Inspector-in-Charge directed him to come at once to the P.S then he was taken to the P.S by a police van at about 11.30 am. When he reached Bhaktinagar P.S, the petitioner was confined in the police station lockup without assigning any reason. The authorized representative and Advocate of the petitioner rushed to the police station by about 4 pm on 4th May, 2022 and wanted to know the reason as to

why the petitioner was unauthorisedly detained by the police. Subsequently, on 5th May, 2022, the learned Advocate for the petitioner came to know that the petitioner has been arrested in connection with Bhaktinagar P.S Case No.450 of 2022 dated 4th May, 2022 under Sections 447/506/420/465/467/468/471/188/120B of the IPC registered on the basis of a written complaint filed by the respondent No.8.

It is submitted by the petitioner that the written complaint filed by the respondent No.8 on 4th May, 2022 is replication of the previous written complaint submitted by selfsame respondent No.8 in the year 2014 on the basis of which Bhaktinagar P.S Case No.1544 of 2014 dated 11th November, 2014 is pending before the learned Chief Judicial Magistrate, Jalpaiguri. In paragraph 8(a) of the writ petition the petitioner has stated in tabular form the contents of the two complaints filed by respondent No.8 and it is not in dispute that the complaint filed in the year 2014 and on 4th May, 2022 are absolutely same and identical containing same state of facts.

Mr. Amales Ray, learned Advocate for the petitioner submits that Rule 256 of the Police Regulations of Bengal, 1943 and Court Practice (P.R.B) imposes an obligation upon the Investigating Officer to consult registers which are likely to assist him in his investigation, particularly the Village Crime Note Book, before proceeding to investigate. Rule 257 states that an Officer-in-Charge of a police station may refrain from

investigating a case in which there appears to be insufficient ground for investigation. Rule 260 mandates the Investigating Officer not to harass unnecessarily any members of the public in the name of investigation. Rule 263 read with Section 172 of the Code of Criminal Procedure mandates maintenance of case diary by the Investigating Officer.

Referring to the above provisions, it is submitted by Mr. Ray that the Investigating Officer arrested the petitioner as per the Arrest Memo at 17.05 pm on 4th May, 2022 and the factum of arrest was diarized at about 8 pm, though Bhaktinagar P.S is situated at a distance of about 3/4 km from the place where the petitioner was arrested. Mr. Ray also refers to the formal FIR in connection with Bhaktinagar P.S Case No.450 of 2022 wherein the date of occurrence was stated as “since 2014”. When a complaint is lodged in respect of an incident that allegedly took place in the year 2014, it was the duty of the police officer to cause preliminary inquiry and preliminary inquiry in view of the guideline made by the Hon’ble Supreme Court in **Lalita Kumari’s case**. Police did not make any preliminary inquiry to ascertain the truthfulness of the allegation made out in the written complaint. Even before arrest the petitioner was not served with a notice under Section 41A of the Code of Criminal Procedure. According to him registration of FIR against the petitioner on the basis of the written complaint submitted by the respondent No.8 on 4th May, 2022 is violative of Article 20(2) of the Constitution of India and Section 300 of the Code of Criminal Procedure.

It is submitted by Mr. Ray that under the facts and circumstances stated above, Bhaktinagar P.S Case No.450 of 2022 is liable to be quashed and the respondents are liable to pay monetary compensation in favour of the petitioner for being subjected to police atrocity. In support of his contention, Mr. Ray refers to a decision of Hon'ble Supreme Court in the case of **T.T Antony vs. State of Kerala & Ors, (2001) 6 SCC 181**. It is held in the above stated report in paragraph 25, "where the police transgresses its statutory power of investigation the High Court under Section 482 Cr.P.C or Articles 226/227 of the Constitution and this Court in an appropriate case can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice". It is further held by the Apex Court that sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offence, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C.

It is further refers to the report of the Apex Court in **Prem Chand Singh vs. State of Uttar Pradesh & Anr., (2020) 3 SCC 54** where it is held that successive FIRs on identical facts and circumstances can be entertained. On the same point Mr. Ray also refers to the decision in **Joginder Kumar vs. State of U.P & Anr., (1994) 4 SCC 260**.

Referring to the case of **Bhim Singh, MLA vs. State of J & K & Ors.** reported in **(1985) 4 SCC 677** it is submitted by Mr. Ray that when a person is arrested and imprisoned with mischievous or malicious intent and that is constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. Mr. Ray also refers to the report in the case of **S.Nambi Narayanan vs. Siby Mathews & Ors.** reported in **(2018) 10 SCC 804**, wherein the Hon'ble Supreme Court directed the State of Kerala to pay a sum of Rs.50 lakhs towards compensation to the appellant who were subjected to police atrocity.

Mr. Ghosh, learned Advocate for the State respondents frankly admits that the respondent No.8 filed written complaint on 4th May, 2022 replicating his earlier complaint dated 11th November, 2014. However, it is further submits by Mr. Ghosh with reference to a report submits on behalf of the respondents through the learned Government Pleader with the entire fact was not known to the respondent Nos.5 and 6 and the respondent No.8 misrepresented and suppressed the material fact to them. As a result, on receipt of the complaint of the respondent No.8, the respondent No.5 registered Bhaktinagar P.S Case No.450 of 2022. It is further urged by the learned Government Pleader that the petitioner was produced on 5th May, 2022 before the learned Chief

Judicial Magistrate, Jalpaiguri. The learned Advocate for the petitioner while praying for bail did not mention that on the identical fact another case has been registered in the year 2014 and the said case is pending for trial. The said fact was brought to the notice of the learned Chief Judicial Magistrate at Jalpaiguri by the learned Advocate for the petitioner. Immediately the learned Chief Judicial Magistrate directed the Investigating Officer to release the accused and on receipt of the order of the learned Chief Judicial Magistrate, the Inspector-in-Charge of Bhaktinagar P.S released the accused. It is submitted by the learned Advocate for the State that there is no animus of the police officers against the petitioner. He was not illegally detained in police custody. He was detained in police custody on the basis of the order passed by the learned Chief Judicial Magistrate, Jalpaiguri.

Learned Government Pleader further submits that the petitioner is a known land grabber of the locality. Three are in all eight cases pending against the petitioner. All such cases except one under Section 385 of the IPC contain allegations of creation of forge document in respect of deed of conveyance and illegally transferred all lands of others. Since the respondent No.5 received the complaint of same nature for which the petitioner is facing trial in other cases, he registered Bhaktinagar P.S Case No.450 of 2022 on *bona fide* mistake. There is no reason of atrocity by the police against the petitioner.

Mr. Sabir Ahmed, learned Advocate for the respondent No.5 and 6 submits that the respondent No.5 had no knowledge about pendency of the case instituted in the year 2014 on the basis of police report. Since the written complaint dated 4th May, 2022 discloses a cognizable offence the respondent No.5 is bound to register a specific case against the petitioner. The act of registration of specific case against the respondent No.5 was done by mistake of fact and such act done by respondent No.5 and 6 falls under general exceptions in view of the provisions of Section 76 and 79 of the IPC. It is further submitted by the learned Advocate for the respondent No.5 and 6 that the respondent No.8 made false information against the petitioner therefore he may be held liable for prosecution under Section 182 and 211 of the IPC. Under the facts and circumstances of the case the police officers cannot be held to be liable for alleged police atrocity inflicted upon the petitioner

Having heard the learned Advocates for the parties and on careful perusal of the entire materials on record, this Court is of the view that Rule 256 of PRB stipulates that the Investigating Officer shall consult all registers which are likely to assist him in his investigation.

Investigation commences on receipt of information of commission of cognizable offence. On 4th May, 2022 the Inspector-in-Charge of Bhaktinagar P.S receipt a written complaint disclosing cognizable offence against the petitioner. So, the I.C Bhaktinagar P.S registered a case against the petitioner and directed A.S.I Asit Saha to investigate

into the case reference to registers mentioned in Rule 256 of the PRB does not speak about consultation of previous police record to see whether on identical incident a person is facing trial or not. I have carefully perused the copy of G.D entry No.199 dated 4th May, 2022 which was recorded at 8 pm. The G.D entry was recorded after arrest of accused and institution of Bhaktinagar P.S Case No.450 of 2022. It is needless to say that after arrest the petitioner was brought to the police station and the case was registered. Formal FIR was filled in and thereafter GD entry was made. During the entire process time lapse of three hours after arrest of the petitioner cannot be considered as delay.

Petitioner was detained in the custody for two days on the basis of the order of the learned Chief Judicial Magistrate, Jalpaiguri if the petitioner was detained in custody without any order of the learned Magistrate, there would have been a case of police atrocity. In the instant case the respondent No.5 and 6 acted by reason of a mistake of fact in good faith they are bound by law to register FIR in the written complaint discloses cognizable offence. Therefore, the respondent No.5 and 6 are entitled to get the benefit of Section 76 and 79 of the IPC.

At the same time, I am not unmindful to note that the writ court has ample power to quash the criminal proceeding against the petitioner being Bhaktinagar P.S Case No.450 of 2022 dated 4th May, 2022 as on the identical fact, the petitioner is facing trial in a previously instituted case in the year 2014.

As the respondents acted in good faith believing themselves that they are bound by law to register a case where cognizable offence was disclosed, the petitioner is not entitled to get any monetary compensation.

In view of the above discussion, the instant writ petition is partly allowed.

Bhaktinagar P.S Case No.450 of 2022 dated 4th May, 2022 is quashed.

(Bibek Chaudhuri, J.)