

AD-13 & 14
Ct No.01
Jalpaiguri
20.09.2023
B.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

MAT 164 of 2023
IA NO:CAN 1 of 2023

STATE OF WEST BENGAL AND ORS
VS
PROSUN GHOSH AND ORS

MAT 165 of 2023
IA NO:CAN 1 of 2023,
CAN 2 of 2023

PAPPU KUMAR SINGH
VS
PROSUN GHOSH AND ORS.

Mr. Joyjit Choudhury,
Ms. Bedashruti Bose

...for the Appellant/Petitioner

Mr. Sanjay Mazoomdar,

...for the respondent no.1

Mr. Swarup Paul,

...for the private respondent

1. In connection with MAT 165 of 2023, in view of the appellants being the aggrieved party, leave is granted to prefer the appeal. Accordingly, CAN 2 of 2023 is allowed.
2. Learned counsel for the appellants contends that the learned Trial Judge prejudged the issues at the inception of the writ petition, without giving any

liberty to the respondents in the writ petition, who are the present appellants, to furnish their version before the writ court, by making caustic observations against the appellants.

3. Learned counsel for the respondent submits that the allegations made against the present appellants were justified in so far as there was no proper investigation in respect of the complaint of the writ petitioner (respondent in this appeal).
4. It is further submitted by the respondent that a Special Investigation Team (SIT) has already been constituted subsequent to the order, which is now in charge of the investigation. It is apprehended by the respondent that any interference with the impugned orders may affect such investigation.
5. Upon perusing the impugned orders dated August 25, 2023, we find that the learned Single Judge proceeded on the assumption that the Investigating Officer and the Officer-in-Charge of the Pani Tanki Town Outpost, Siliguri Police Station, have not taken any steps in respect of the FIR for more than six months. However, the court went on further to observe that the Investigating Officer and the Officer-in-Charge of the said outpost is “wholly incompetent to hold the position in which they are now working

and disciplinary proceeding is required to be initiated against them” as to why no steps have been taken for the last six months in respect of the FIR. It was further observed that the said persons should be “removed immediately to some other posts where they can act but not as police officers”.

6. In our opinion, such observations by the learned Trial Judge in the impugned orders were hasty and taken prematurely without giving any opportunity of defence to the present appellants who were respondent in the writ petition. Hence, on such score alone, the said orders are required to be set aside.
7. Since we have heard both sides on the merits of the matter, we are disposing of the appeals along with connected applications to cut short the matter for all concerned.
8. Accordingly, MAT 164 of 2023 and MAT 165 of 2023 are allowed, thereby setting aside the impugned orders dated August 25, 2023 and remanding the matter to the learned Single Judge having determination to rehear the writ petition on its merits by granting adequate opportunity to the respondents therein to file their affidavit-in-opposition and further to the writ petitioner to file his reply thereto.

9. It is made clear that the merits of the allegations and counter allegations in the writ petition have not been gone into by this court and it will be open to the writ court to decide the same on merits.
10. We further make it clear that nothing in this order shall influence the ongoing investigation on the allegations of the writ petitioner by the SIT duly constituted in law. Such investigation, it is expected, shall take its own course and be concluded as expeditiously as possible.
11. The present appellants are hereby restored to their original post by virtue of this order of course, subject to the final outcome of the writ petition. However, it is made clear that the present appellants shall not have any role to play whatsoever in the ongoing investigation referred to above.
12. The connected applications, bearing CAN 1 of 2023 in both the appeals are, accordingly, disposed of as well.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)