

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side**

WPO/109/2023

**POULAMI NAG
VS
THE STATE OF WEST BENGAL AND ORS.**

Present :- The Hon'ble JUSTICE JAY SENGUPTA

For the Petitioner	:-	Mr. Jayanta Narayan Chatterjee, Adv. Mr. D. Banerjee, Adv. Mr. S. Naskar, Adv. Ms. J. Patra, Adv.
For the State	:-	Mr. A. Banerjee, Sr. Adv. Ms. I. Banerjee, Adv.
Heard on	:-	06/07/2023, 13/07/2023, 20/07/2023, 10/08/2023
Judgment on	:-	10.08.2023

Jay Sengupta, J.:-

This is an application for quashing of a proceeding in Karaya Police Station Part (II) Case No. 1 dated 29/07/2022 under Section 504 of the Penal Code.

It appears from the affidavit-of-service filed earlier that service was effected on de facto complainant/respondent No.3. Despite service, no one represents the respondent No.3.

Learned Counsel appearing on behalf of the petitioner submits as follows. The petitioner creates videos of her own individual and political

views and uploads them in the Youtube channel. She started uploading a video sometime in 2018. She also created her own Youtube channel Hotath Jodi Uthlo Kotha. It appears that she is having 642,000 subscribers and have been viewed 109,062,350 times. Her Youtube channel has also got similar popularity. However, she takes due care so that none of the videos are objectionable or unlawful. The petitioner came to know about the impugned proceeding once the local police station called up her father and asked him to meet them. It appears that one Md. Shahnawaz lodged a complaint before the police station alleging that the petitioner's channel had been showing provocative and derogatory videos and information, which could cause disharmony and breach of peace in the society. No further details were given except for a video link. However, once such video link is opened, it prompts to the main Youtube video channel, but nothing else is available even there. Since this complaint was registered as a GD entry and according to the police authorities a prima facie case was made out only under Section 504 of Penal Code which was non-cognizable, the same was accordingly forwarded to the learned Chief Judicial Magistrate, Alipore, South 24 Parganas. However, by an Order dated 29/07/2022, learned Chief Judicial Magistrate directed the police authorities to register an F.I.R. and investigate into the offence. A notice under Section 41A of the Code was first given to the present petitioner on 08/10/2022. However, provision of law was wrongly mentioned under Section 506 of Penal Code. Accordingly, a fresh notice was given on the same date mentioning under Section 504 of Penal Code. This is a violation of the principle laid down in *Satender Kumar Antil Versus Central Bureau of Investigation* reported in 2022 (10) SCC 51.

There it was held that notice of appearance in terms of Section 41A of the Code shall be served on the accused within two weeks from the date of the institution of the case unless extended by the concerned SP for reasons to be recorded. Any infraction would attract departmental proceedings and contempt of Court. No prima facie case is made out as would be evident from plain reading of First Information Report (FIR). As was held by the Hon'ble Apex Court in *Kapil Agarwal & Ors. Versus Sanjay Sharma & Ors.* reported in (2021) 2 SCR 145 that even in exercise of powers under Article 226 of Constitution of India, an F.I.R. can be quashed.

Learned Counsel appearing for the State relies on the case diary and submits as follows. A prima facie case is made out against the petitioner as would be evident from the petitioner's complaint and the statement of witnesses. However, the investigation of the case was started because there was a direction to that effect given by the concerned learned Chief Judicial Magistrate.

I have heard the submission of the learned Counsel on behalf of both the parties and have perused the writ petition, the affidavits and the case diary.

Although, an F.I.R. is not supposed to be an encyclopedia of all facts, it should at least give the basic minimum details required for making out a prima facie case. Apart from a link mentioned in the complaint, which did not lead to an objectionable video, there is hardly anything there.

Even in the statements of the complainant and the other witness, there is hardly anything except for reference to a video link. No transcript of any derogatory conversation or material is present there. Nor has the

investigation led to any such video which can attract the mischief of Section 504 of Penal Code.

From a plain reading of the F.I.R. and the materials contained in the case diary, I do not find that a prima facie case is made out against the present petitioner.

Accordingly, the impugned proceeding is quashed.

WPO No.109 of 2023 is disposed of.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(JAY SENGUPTA, J)

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