

OD-01

ORDER SHEET
WPO/586/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ABHIJIT HAZRA
-VS-
STATE OF WEST BENGAL AND ORS

BEFORE:
HON'BLE JUSTICE RAJASEKHAR MANTHA
DATE: 16TH MARCH 2023.

APPEARANCE:

Mr. B. Bhattacharyya, Adv.; Mr. D. Basu Mallick, Adv.; Mr. A. Sen, Adv.; Mr. R.K. Singh, Adv.; Ms. S. Chakraborty, Adv., for petitioner.
Mr. A. Banerjee, Sr. Adv.; Ms. I. Banerjee, Adv., for the State of W.B.
Mr. R. Dutta, Adv.; Mr. D. Jain, Adv., for the respondents nos.7 and 8.
Mr. P.P. Dasgupta, Adv.; Mr. K. Chatterjee, Adv.; Mr. S. Mitra, Adv.; Mr. S. Mal, Adv., for the respondent no.9.

THE COURT: The trigger for the instant proceeding initiated under Article 226 of the Constitution of India is the alleged verbal communication made by the Investigating Officer to the petitioner's lawyers. The lawyers visited the I.O. since the petitioner was unwell and was not able to respond to a second notice under section 41A of the CrPC.

The genesis of this petition is a proceeding under section 156(3) of the CrPC which, according to Mr. Bhattacharyya, did not disclose basic ingredients of any criminality. An FIR under New

Market Police Station Case No.109/2020, dated 01.04.2020, under sections 120B/420/406/403/409 of the IPC, was registered thereafter on the directions of the Magistrate. The petitioner is a named accused in the FIR.

The petitioner claims that he was to execute the contract under a tender issued by the Asansol Municipal Corporation. The awardee of the contract was the respondent no.9 through its representative i.e. the respondent no.11. The sub-contractor was respondent no.7. The other private respondents were involved in financing the execution of the contract.

Disputes and differences arose with regard to the execution. The persons to execute the contract, namely the awardee, the financier and the executor, developed bad blood. Claims and counter-claims allegations and counter allegations ensued.

The petitioner was issued a notice under section 41A of the CrPC on October 11, 2022, which he claims to have responded. Counsel for the State, however, denies the same.

One of the accused, namely the respondent no.11, Arpan Chakraborty, obtained anticipatory bail. When the 10th Respondent (another accused) applied and obtained anticipatory bail on January 17, 2023, the Sessions Court is stated to have observed that the writ petitioner was the person who may have been actually liable.

A second lot of notices under section 41A of the CrPC came to be issued on February 6, 2023 and February 19, 2023. The writ petitioner sought time from the Investigating Officer. The instant writ petition against coercive measures and/or arrest is filed on March 13, 2023.

Mr. Bhattacharyya, learned counsel for the writ petitioner, has painstakingly argued at length to indicate that the second notice under section 41A, in the present facts, could not have been issued since the writ petitioner had satisfied the Investigating Officer in response to the first one in the year 2020 itself. It is next argued that the application under section 156(3) of the I.P.C. is extremely vague and makes only

bald allegations. It is lastly argued that the Investigating Officer had become suddenly active in 2023 based only on the observations of the Sessions Judge in the order passed on an application under section 438 of the CrPC, dated January 17, 2023.

It is now well settled proposition that an FIR is not an encyclopaedia. Criminality in respect of matters that have civil and commercial favours may take time for investigation. Multiple accused in an FIR arising out of commercial transactions may sometime collude, compromise and/or approbate and/or reprobate.

The Investigating Officer has definitely committed some delay in completing the investigation into the FIR. That by itself, however, cannot be a ground for interference under Article 226 of the Constitution of India in respect of new evidence that comes before an Investigating Officer even through observations made in proceedings under section 438 of the CrPC.

In the facts and circumstances of the case, since the petitioner has effective alternative remedy, both pre and post arrest, this Court is not inclined to entertain an application for reliefs against the police under Article 226 of the Constitution of India.

It is made clear that the observations made hereinabove are tentative. Any other proceeding that the writ petitioner may institute in accordance with law shall be dealt with by such forum uninfluenced by any observation made above.

Since the respondents have not been called upon to use affidavits, allegations, if any, contained in the writ petition are deemed not to have been admitted by them.

The writ petition is, therefore, disposed of without any order as to costs.

(RAJASEKHAR MANTHA, J)

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