

02.02.2024
Item No.06 &07
Court No.11
Avijit Mitra

MAT 252 of 2024
with
IA No. CAN 1 of 2024
with
IA No. CAN 2 of 2024
Monizur Rahaman Mondal Rahaman & Ors
- Versus -
Dr. Syed Imtiaz Ahmed & ors.
with
MAT 253 of 2024
with
IA No. CAN 1 of 2024
with
IA No. CAN 2 of 2024
Monizur Rahaman Mondal Rahaman & Ors
- Versus -
Ratnadip Mishra & ors.

Mr. Sabyasachi Banerjee,
Mr. Vivekananda Bose,
Mr. Avik Ghatak,
Mr. Subrata Sardar,
Mr. Abhinav Rakshit,
Mr. Ritwick Mondal

...for the appellants

Mr. Supriyo Chattopadhyay, Ld. AGP,
Ms. Iti Dutta

...for the State respondents
in MAT 253 of 2024

Mr. Supriyo Chattopadhyay,
Mr. Moniruzzaman,
Mr. Manas Kumar Sadhu

...for the State respondents
in MAT 252 of 2024

Ms. Koyeli Bhattacharjee

....for the W.B.B.S.E.

Mr. Suman Dey

...for the applicants in CAN 1 of 2022
in WPA 22133 of 2023

Mr. S.A. Ahmed

....for the respondent nos.1 and 34.

Records reveal that the orders dated 29th January,
2024 and 30th January, 2024 were passed in two writ
petitions being WPA 22153/2023 & WPA 28983 of 2023.

The first writ petition was preferred by the Headmaster of Balarampur M.N. Vidyamandir (H.S.), Narendrapur (hereinafter referred to the said school) and the second writ petition was preferred by the teachers of the said school and the same were heard analogously.

The applications for leave to appeal in connection with the appeals being MAT 252 of 2024 and MAT 253 of 2024 are taken up for analogous hearing.

Mr. Banerjee, learned advocate appearing for the applicants submits that the applicant no. 1 is a member of the managing committee of the said school and the applicant nos. 2 and 3 are the members of the Bonhooghly Gram Panchyat. They were not impleaded in the writ petitions and accordingly they did not get any opportunity of hearing prior to issuance of the orders passed in the writ petitions and in their absence the learned Single Judge directed the police authorities ‘to ensure arrest of the other accused persons’. Such direction thus suffers from blatant violence of the principles of natural justice.

He argues that during pendency of the writ petition a complaint was lodged by a teacher on 27th January, 2024 and on the basis of the same Narandrapur Police Station Case No. 102 of 2024, dated 27th January, 2024 under Section 448/427/354 B/325/308/195 A/379/34 I.P.C. and Section 3 and 4 of the Prevention of Damage of Public Property Act, 1994 was registered. The

applicants were not in any manner involved in the alleged offences. The learned Single Judge directed the Inspector-in-Charge to arrest the accused persons which renders the remedy otherwise available to the applicants to approach the appropriate forum for obtaining suitable relief under the Code of Criminal Procedure (hereinafter referred to as CrPC) in connection with the registered case, nugatory.

He further submits that by the orders impugned the learned Single Judge encroached upon the domain of the investigation agency.

Mr. Banerjee argues that all the offences alleged in the FIR are punishable with a maximum of seven years imprisonment which confers discretion to the investigating agency to issue a notice under Section 41A of CrPC. By directing the investigating agency to specifically arrest the applicants merely because their names features in FIR takes away the statutory discretion vested with the police. In support of the arguments reliance has been placed before the judgments delivered by the Hon'ble Supreme Court in the cases of *M.C. Abraham v. State of Maharashtra*, reported in (2003) 2 *Supreme Court Cases* 649 and in *Arnesh Kumar v. State of Bihar*, reported in (2014) 8 *Supreme Court Cases* 273.

Mr. Chattopadhyay, learned Additional Government Pleader appearing for the State/Respondents denies and disputes the contention of the applicants and

submits that in respect of the offence under Section 4 of the Prevention of Damage to Public Property Act, the period of prescribed punishment may extend to 10 years with fine. In view thereof, question of issuance of Section 41A notice does not occur. Answering our query he submits that Headmaster of the said school and the three applicants herein are FIR named accused and applicant nos. 1 and 2 have already been arrested on 1st February, 2024. In the backdrop of the alarming situation prevailing in the said school the learned Single Judge passed the orders impugned and there is no infirmity in the same. The contents of the complaint reveal that the applicants were directly involved in the offences.

Mr. Dey, learned advocate for the writ petitioners in WPA 28983 of 2023 adopts the submissions of Mr. Chattopadhyay.

Ms. Koyeli Bhattacharjee, learned advocate appearing for the Board submits that in compliance with the directions issued by the learned Single Judge all the appropriate steps have been taken including appointment of the Centre Supervisor and the Madhyamick examination had already commenced today.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, amongst the offences alleged in the FIR, the offence punishable under Section 4 of the Prevention of Damage to Public Property Act, 1984

prescribes punishment which may extend to 10 years and with fine. On the basis of the materials on record, the police authorities had already arrested the applicant nos. 1 and 2 and as such it cannot be argued that there is no sufficient material to arrest the remaining accused persons.

A perusal of the orders passed by the learned Single Judge would reveal that the entire administration of the school had collapsed affecting the learning process of the students. Grave financial irregularities were also noticed. During pendency of the writ petition a very undesirable and shocking incident occurred in the said school on 27th January, 2024. On the said date, a group of persons forcibly entered the school premises and ransacked the office and assaulted the teachers and others and even outraged the modesty of a lady teaching staff. Considering such alarming situation prevailing in the said school, the learned Single Judge directed the police authorities to ensure the arrest of other accused persons.

It is well known that a decision is an authority for what is decided and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in the decision making process.

The jurisdiction under Article 226 of the Constitution of India is expansive and extraordinary and the same does not stand fettered by the rules of the

Criminal Procedure. It is the duty of the Court to ensure that rule of law prevails. Taking into consideration the alarming situation prevailing in the school and noting that the Madhyamick Examination was due to commence soon, the Court issued appropriate directions including the direction upon the police authorities to take immediate measures to arrest the other accused persons. No legal right of the applicants herein has been infringed.

For the reasons discussed, we dismiss the applications seeking leave to prefer appeals against the orders dated 29th January, 2024 and 30th January, 2024. in the writ petitions being WPA 22153/2023 & WPA 28983 of 2023 and consequently, the appeals fail and the same alongwith all applications are dismissed.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)