

20 19.03.2024
NB Ct. 14

WPA 2588 of 2024

Aswini Mahato & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Rajdeep Majumder,
Mr. Pritam Roy,
Mr. Soewel Bhattacharjee,
Ms. Triparna Dey.
...for the petitioners.

Mr. Amitesh Banerjee Id.SSC.,
Ms. Ipsita Banerjee,
Mr. Debangshu Dinda.
...for the State.

This is an application praying for quashing of a proceeding being Jhargram Police Station Case No.211 of 2023 dated 12.08.2023 under Sections 143, 341, 323, 325, 307, 427, 120B and 34 of the Penal Code, Section 3 of The Prevention of Damage To Public Property Act and Section 8B of the National Highway Act, for setting aside notices issued under Section 160 of the Code in respect of the case and to treat the complaint lodged by one Labangalata Mahata with the Jhargram Police Station on 12.08.2023 as an FIR.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are members of a tribal community. On 12.08.2023, they were marching on the National Highway and were intending to cross Bolibashi Toll Plaza. At that point, the staff of the toll plaza who were members of the INTTUC provoked them and engaged in an altercation. During such altercation, some of the petitioners were assaulted and

abused. In spite of making complaint before the police, no FIR was lodged on their behalf. On the contrary, a false FIR being Jhargram Police Station Case No.211 dated 12.08.2023 was registered against the petitioners. Subsequently, notices were given to some of the petitioners under Section 160 of the Code of Criminal Procedure although referring the addressee as accused. This is not permissible in law. No prima facie case is made out as would be evident from a plain reading of the First Information Report.

Learned senior standing counsel appearing on behalf of the State relies on the report and the case diary submits as follows. On the alleged date of occurrence two cases were started, one at the instance of one Khagen Mahata being Jhargram Police Station Case No.211 of 2023 and the other at the behest of NHAI authorities being Jhargram Police Station Case No.210 of 2023. The case started by the informant, Khagen Mahata has already ended in charge sheet. The other case started at the behest of NHAI authorities is still being investigated. If any notice has been issued erroneously under Section 160 of the Code instead of Section 41A of the Code of Criminal Procedure in respect of PS Case No.210 after naming the addressee as an accused in the FIR, the error would be corrected. After a thorough investigation, a charge sheet has been submitted in the FIR No.211 of 2023. Reliance is also placed on two video clippings of the incident, which is a part of the case diary. Even on the complaint lodged by the said Labangalata Mahata, a specific FIR being Jhargram Police

Station Case No.80 dated 17th March, 2024 has been registered. The same is being investigated.

It appears that over the same incident two cases having similar allegations have been registered being FIR Nos.210 of 2023 and 211 of 2023. In the event the allegations are found to be similar, the Investigating authorities shall take appropriate steps in terms of the ratio laid down in the case of ***Amitbhai Anilchandra Shah vs. CBI & Anr.***, (2013) 6 SCC 348.

So far as the FIR No.211 of 2023 is concerned, the allegations pertain to disputed questions of fact. There are video clippings in support of the prosecution, which have to be tested at the appropriate stage. In any event, a charge sheet has already been submitted. Therefore, this Court would not deal with the question of quashing of the proceeding at this stage.

The petitioners shall be at liberty to challenge the proceeding at an appropriate stage.

It further appears that the police authorities have started an FIR on the complaint of the said Labangalata Mahata, albeit after the writ petition was filed.

Let the investigation of the case be concluded expeditiously and in accordance with law and under the supervision of Superintendent of Police, Jhargram Police District.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)