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15.5.2024
Ct. No. 14
SB

W.P.A. 8867 of 2024
With
WPA 10839 of 2024

Amit Malviya
Vs.
The State of West Bengal & Ors.

Mr. Sourav Chatterjee
Mr. Satadru Lahiri
Ms. Kanchan Jaju ... for the petitioner

Mr. Amal Kumar Sen, Ld. A.G.P.
Mr. Suman Sengupta
Mr. Jaladhi Das ... for the State

Re: WPA 8867 of 2024

The prime grievance of the petitioner in this writ application was that the F.I.R. lodged against him was not uploaded in the official website of the police authorities. This was in violation of the direction of the Hon'ble Supreme Court in Youth Bar Association of India vs. Union of India & Anr. reported at (2016)9 SCC 473.

On 22.3.2024 this Court passed a direction upon the State to comply with the directions of the Hon'ble Apex Court in the said judgement and upload the F.I.R. forthwith. After that the F.I.R. was uploaded in the official website of the police.

The other grievance of the petitioner was that notices under Section 41A of the Code of Criminal Procedure were given to the petitioner, but they were reaching the petitioner after the date on which he was supposed to respond. Accordingly, liberty was granted to the Investigating Agency to interrogate the petitioner through video conference after giving a forty eight hours' prior notice by email.

It is submitted by the petitioner that the investigating agency has in fact, examined the petitioner once through video conference.

As the prime grievance in this writ petition has already been redressed, the same is disposed of without any further order.

Re: W.P.A. 10839 of 2024

Supplementary affidavit and a compilation of decisions filed on behalf of the petitioner are taken on record.

Affidavit of service filed earlier indicates service upon the private respondent. However, the private respondent is not represented.

Learned counsel appearing on behalf of the petitioner submits as follows. An F.I.R. lodged against the petitioner makes out no prima facie case. It only refers to a tweet made by the petitioner who is an important functionary of the ruling political party in the country and opposition political party of the State. The statements made were based on facts and were only made to make people aware. These were in exercise of the petitioner's freedom of speech. The Supplementary Affidavit contains reportings by regular media about destruction of Swarasati Idols in the State of West Bengal that was reported in the twit. In any event, the expressions used do not have any element that could even remotely incite communal hatred or any kind of violence. The F.I.R. has been lodged maliciously

and due to political vendetta. Learned counsel for the petitioner relies on a compilation of decisions.

Learned senior standing counsel denies the allegations made in the writ petition and the supplementary affidavit and submits as follows. A prima facie case is clearly made out against the petitioner as would be evident from the plain reading of the F.I.R. Not only are the statements false, but they also have the capacity of inciting communal disharmony. Media reports cannot be the basis of such serious expression of thoughts. Incidentally, there is no ban on performing Swarasati Puja in schools in West Bengal unlike what has been alleged in the tweet.

The fact that Swarasati idols were vandalized at some places have been reported in the media, as mentioned in the supplementary affidavit.

However, it is to be decided whether stating such facts and claiming that Swarasati Puja was stopped in schools in Bengal or that the Bengali Hindus continued to bear the grant of communal politics of the leader in question are at all capable of promoting enmity or hatred between the two communities.

Let Opposition, if any, be filed within fortnight from date. Reply thereto, if any, be filed within one week thereafter.

List this matter under the heading 'Specially Fixed Matter' on **19.6.2024 at 2.30 P.M.**

The State shall produce the case diary on the next date of hearing.

Learned counsel representing the State is requested to intimate the de facto complainant / respondent no. 4 about the

next date of hearing through Investigating Officer of this case within a week from date. A Report to that effect shall be filed on the next date of hearing.

The Investigating Agency shall not take any coercive steps against the petitioner. If any, examination of the petitioner is to be done, let the same be done as had been directed earlier thorough video conference after giving a prior notice of forty-eight hours.

The Investigating Agency shall not file a report in final form without the leave of this Court.

The petitioner shall be at liberty to pray for stay of investigation after production of the case diary.

Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)