

11.03.2024

Item No.26
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 2910 of 2023

In the matter of : **Smriti Biswas** ... Petitioner.

Mr. Lakshminath Bhattacharya ... For the Petitioner.

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick ... For the State.

Learned advocate appearing for the petitioner has challenged the continuance of the proceedings arising out of Gaighata Police Station Case No. 309 of 2023 dated 28.03.2023 which was registered for investigation under Sections 188 and 186 of the Indian Penal Code. The investigating agency on conclusion of investigation, submitted charge-sheet under the same sections being Sections 188 and 186 of the Indian Penal Code.

Learned advocate appearing for the petitioner emphasises that the provisions of Sections 188 and 186 of the Indian Penal Code do come within the ambit of bar of Section 195 of the Code of Criminal Procedure and the police authorities do not have any right to register the case.

I am of the view that there is substantial force in the submission of the learned advocate appearing for the petitioner. However, Mr. Sur, learned advocate appearing for the State has produced the case diary. I have perused the initial communication made by Biswajit Das, a Sub-Inspector of Police attached to Gaighata Police Station who in his complaint, addressed to the Inspector-in-Charge, Gaighata Police Station, complained that hindrance was created to

government duty. In his statement under Section 161 of the Code of Criminal Procedure to the investigating officer, the complainant stated that the accused persons in front of the force who were present categorically created hindrance and stated that they are not going to obey the court's order and the police authorities were at liberty to do whatever they want.

So far as the background of the case is concerned, it is reflected that there was a status quo order passed by the civil court. There was an illegal construction going on. The police authorities went to the place for compliance of the civil court's order and they were obstructed from carrying out their duties. Naturally the provisions of Section 353 of the Indian Penal Code is attracted.

Taking into account the totality of the circumstances and the settled proposition of law that it is a fact which attracts the sections and the sections which are inserted by the police authorities or the investigating authorities are never a guiding factor or a mandate for a court to follow. Having considered the same, I am of the view that so far as the provisions of Sections 188 and 186 of the Indian Penal Code are concerned, the same should be quashed. However, the proceedings would continue under Section 353 of the Indian Penal Code. The learned court in seisin of the matter would accordingly deal afresh.

At the stage of Section 239 of the Code of Criminal Procedure, the petitioner would be at liberty to challenge whether the charges under Section 353 of the Indian Penal

Code do satisfy rest of the materials collected by the investigating agency. The learned Magistrate would independently consider the same without being influenced by any observations made by this Court.

With the aforesaid observations, the revisional application being CRR 2910 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

Case diary be returned to the learned advocate appearing for the State.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)