

23 14.10.2024
Sc Ct. no.7

WPA 25279 OF 2024

Dharmveer Singh & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Anjan Bhattacharya, Adv.
Ms. Anita Shaw.

.... For the Petitioners

Mr. K. J. Yusuf, Adv.
Ms. Ashmita Chakraborty, Adv.

....For the State

1. By filing the instant writ petition the writ petitioners have prayed for quashing of the FIRs in connection with Nabadwip Police Station Case No.537 dated 13.8.2024 under Sections 406/467/468/470/471/506/34 of the Indian Penal Code as well as Nabadwip Police Station Case No.312 dated 18.5.2024 under Sections 448/506/34 of the Indian Penal Code.
2. In course of hearing learned advocate for the writ petitioners submits before this Court that though there is a provision in the Code of Criminal Procedure for quashing of a criminal proceeding a writ Court has equal power to pass an order for quashing of the criminal proceeding by directing the investigating officers not to take any coercive steps against the writ petitioners.

3. It is submitted on behalf of the writ petitioners that as against the present writ petitioners eight criminal cases have been started in Nabadwip Police Station in which the writ petitioners had obtained a favourable order in six cases.
4. In course of hearing learned advocate for the writ petitioners places his reliance upon the order dated 04.10.2024 as passed in WPA 21356 of 2024 with WPA 21358 of 2024. It is submitted on behalf of the writ petitioners that from the two FIRs as lodged in the Nabadwip Police Station Case No. 537 of 2024 and Nabadwip Police Station Case No.312 of 2024 no *prima facie* case has been made out for taking cognizance by the jurisdictional Magistrate and thus this writ Court has every power to grant appropriate relief as prayed for.
5. Learned advocate appearing on behalf of the writ petitioners also places his reliance upon the order dated 19.9.2024 as passed by a coordinate Bench in WPA 23716 of 2024.
6. It is thus submitted that keeping in mind the parity an appropriate order may be passed staying all further proceedings of the aforesaid two Nabadwip Police Station cases with a further prayer directing the Investigating Officer not to take any coercive steps against the writ petitioners in connection with

the aforementioned two Nabadwip Police Station cases.

7. *Per contra*, learned advocate for the State contends before this Court that when there is a specific provision for quashing of an FIR the writ petitioners ought to have approached the appropriate Court for his appropriate relief for quashing of the criminal proceeding in connection with the aforementioned two cases. In course of hearing learned advocate for the State has handed over the C.Ds. of the aforementioned two cases.

8. This Court has occasion to go through the materials as available in the said two Case Diaries. This Court finds *prima facie* materials as against the writ petitioners which disclose cognizable offence justifying an investigation by the police officers under Section 156(1) of the Criminal Procedure Code. In this regard, this Court intends to place reliance upon a reported decision in the matter of *Chilakamarthi Venkateshwarlu –vs. State of Andhra Pradesh & Anr.* reported in (2020) 17 SCC 590 wherein the Hon'ble apex Court has set out the guidelines for exercising power for quashing a criminal proceeding and the same is set forth here.

“18. The power under Section 482 CrPC should not be exercised to stifle legitimate prosecution. At the same time, if the basic ingredients of the offence alleged are

altogether absent, the criminal proceedings may be quashed under Section 482 CrPC.

19. It is well settled that where the allegations set out in the complaint or the charge sheet do not constitute any offence, it is open to the High Court, exercising its inherent jurisdiction under Section 482 of the Code, to quash the order passed by the Magistrate taking cognizance of the offence. Reference may be made to M.A.A. Annamalai v. State of Karnataka [M.A.A. Annamalai –v- State of Karnataka, (2010) 8 SCC 524: (2010) 3 SCC (Cri) 950], Sharda Prasad Sinha –v- State of Bihar [Sharda Prasad Sinha –v- State of Bihar, (1977) 1 SCC 505: 1977 SCC (Cri) 132] and Nagawwa –v- V.S. Konjalgi [Nagawwa –v- V.S. Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507]. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. Reference may be made to Dharampal –v- Ramshri [Dharampal –v- Ramshri, (1993) 1 SCC 435: 1993 SCC (Cri) 333].

20. In rejecting the application, the High Court relied upon the judgment of this Court in State of Haryana –v- Bhajan Lal [State of Haryana –v- Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426] where this Court laid down the following guidelines for exercise of power under Section 482: (SCC pp. 378-79, para 102) “(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with a ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. On conjoint perusal of the materials as placed before this Court and after giving due consideration of the submissions of the learned advocates for the contending parties it appears to this Court that from the Case Diary of Nabadwip Police Station Case No. 537 of 2024 as well as from the Case Diary of Nabadwip Police Station Case No. 312 of 2024 this Court finds sufficient *prima facie* incriminating materials as against the present writ petitioners to proceed with the investigation.

10. As discussed supra, a High Court must be very slow in passing an order of quashing when in course of investigation as well as from the contents

of the FIRs *prima facie* materials have been found for proceeding with the investigation unless materials have been placed before this Court that no ingredients of offence is at all made out either in the FIRs or in course of investigation. The Hon'ble Apex Court on a number of occasions reminded the High Court that quashing of an FIR is permitted only in extreme rare cases.

11. On perusal of the entire materials as placed before this Court including the Case Diaries of the aforementioned two cases this Court is of considered view that the present two cases are not the extremely rare cases for invoking the Court's plenary power or the inherent power for quashing the FIRs as prayed for.

12. In considered view of this Court, the present writ petitioners are totally unsuccessful in making out a case for getting a protection with the help of Article 21 of the Constitution of India. The instant writ petition is thus devoid of any merit and is, thus, dismissed.

13. However, there shall be no order as to costs.

14. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Partha Sarathi Sen, J.)