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01.02.2024
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 182 of 2024

**Mr. Mahesh Gupta
-versus
The Superintendent of Police,
Birla House & Ors.**

**Mr. Pratap Khati,
Ms. Sharon C. Lepcha.
...For the Petitioner.**

**Mr. Hirak Barman,
Ms. Rima Sarkar.
...For the State.**

The petitioner is aggrieved by the act of the police in not receiving complaint from him.

It has been submitted that the complaint lodged by the private respondent no.4 has been accepted and is being investigated but the police is deliberately not accepting the complaint of the petitioner.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court on 8th August, 2023 in Criminal Appeal No. 2341 of 2023 arising out of S.L.P. (Criminal) No. 12459 of 2022 in the matter of **Mahmood Ali & Ors. -vs- State of U.P. & Ors.** and submits that a litigant can approach the Court under Article 226 of the Constitution of India if there is an abuse of the process of law. Paragraph 12 of the said judgment has been relied upon.

The petitioner also relies upon the judgment dated 1st March, 2021 passed by the Hon'ble Supreme

Court in Criminal Appeal No. 142 of 2021 in the matter of **Kapil Agarwal & Ors. -vs- Sanjay Sharma & Ors.** In support of the submission that the writ petition will be maintainable in case there is an abuse of the process of law.

I have perused both the aforesaid decisions relied upon by the petitioner. In both the aforesaid matters the Court was considering the power under Article 226 of the Constitution of India for quashing FIR and to exercise power under Section 482 of the Code of Criminal Procedure. The same is not the case here.

In view of the above, the ratio laid down in the aforesaid two judgments does not help the petitioner in any manner whatsoever.

The Court is of the opinion that in the facts and circumstances of the present case the petitioner can avail remedy to approach the competent forum for relief. The petitioner ought not to approach this Court under Article 226 of the Constitution of India.

The writ petition fails and is hereby dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)