

**IN THE CIRCUIT BENCH CALCUTTA HIGH COURT
AT JALPAIGURI
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Bibhas Ranjan De

**C.R.R. 60 of 2024
Union of India & Ors.
Vs.
The State of West Bengal & Anr.**

For the Petitioners :Mr. Sudipto Kumar Majumder, Ld. D.S.G.I.,
Mr. Sudip Kumar Paul, Adv.

For the State :Mr. Nilay Chakraborty, Ld. A.P.P.
Mr. Sourav Ganguly, Adv.

Heard on :25.07.2024

Judgment on :29.07.2024

Bibhas Ranjan De, J.

1. The prayer for quashing of the proceeding in connection with Sahebganj Police Station Case no. 220 of 2023 dated 19.06.2023 under Section 186/188/353/34 of the Indian Penal Code (for short IPC) corresponding to G.R. Case No. 300/2023, is an issue of this revision application.
2. The reason of initiation of the proceeding was that the officer-in-charge attached to Sahebganj Police Station, Coochbehar along with other Officer and force were performing election duty in compliance with the order of S.D.M, Dinhata with respect to promulgation of prohibitory order under Section 144(1) & (2) of the Code of Criminal Procedure (for short Cr.P.C.), so that no one could be allowed to move around within radius of one (1) kilometer from of the BDO, Dinhata, Block II, on the eve of Panchayat Election.
3. On 17.06.2023 at about 14.15 hours said officer-in-charge noticed BSF personnel getting down from the jeep carrying arms and ammunitions near BDO Office gate to perform patrolling duty. On being asked BSF Officer namely Kaushal Rawat of 129 BN BSF started hot altercation with abusive languages with police force as well as SDPO Dinhata. In reply,

the BSF Officials disclosed that, they had come to perform duty as per direction of Commanding Officer, Sanjay Sing of 129 BN BSF. The BSF Officials ignored the order promulgated under Section 144 of the Cr.P.C.

- 4.** Which is why, the officer-in-charge of Sahebganj Police Station submitted sue motu complaint against the Commanding Officer Sanjay Singh of 129 BN BSF and other BSF personnel including Inspector Kaushal Rawat.
- 5.** Ld. D.S.G.I, Mr. Sudipto Kumar Majumder, appearing on behalf of the petitioners has drawn my attention to the written complaint and submitted that there is no dispute that on the alleged date BSF Personnel were on Patrol duty that too within the jurisdiction of border area of this country. Mr. Majumder has further submitted that it is the duty of the BSF Officials to perform their regular patrolling duty to ensure the protection of the border of this Country. In that case, according to Mr. Majumder, any order promulgated under Section 144 Cr.P.C. cannot be said to apply to BSF personnel at the time of patrolling duty.
- 6.** Mr. Majumder, in support of his contention, on the issue of border area, relied on the notification dated 11.10.2021

prescribing the border area in the States of Gujarat, Rajasthan, Punjab, West Bengal & Assam. The Central Government by the said notification extended area up to 50 kilometers in exercise of powers conferred by sub Section (1) of Section 139 of the Border Security Force Act, 1968 (for short, Act, 1968).

7. Before parting with, Mr. Majumder relied on the provision of Section 140 of the Act, 1968 and contended that before initiation of the proceeding assailed in this revisional application provision of sub Section (3) of the Section 140 was not complied with and on this sole ground, the instant proceeding is liable to be quashed.

8. Per Contra, Mr. Nilay Chakraborty, Ld. A.P.P. appearing on behalf of the State has submitted that contents of the FIR clearly disclosed a cognizable offence and therefore, this Court cannot exercise power under Section 482 of the Cr.P.C. for quashing the proceeding though Mr. Chakraborty did not deny the submission advanced by Mr. Majumder with regard to extended area prescribed by notification dated 11.01.2021 by the Central Government.

Analysis:-

- 9.** In respect to applicability of Section 144 Cr.P.C, I am not agreeable with Mr. Majumder. Orders under Section 144 Cr.P.C are meant to maintain public order and can be directed at any individual or group within the jurisdiction of Magistrate, though the order must be based on sufficient grounds and material facts and it should not be arbitrary or capricious.
- 10.** On scrutiny of the provision of Section 144 Cr.P.C, I do not find anything to exclude the BSF personnel from the clutch of the order promulgated under Section 144 of Cr.P.C, though the practical enforcement of such order against BSF personnel may be an issue in terms of jurisdiction and operational autonomy.
- 11.** In the case at hand, FIR disclosed that on the alleged date of incident, the order under Section 144 Cr.P.C was promulgated on the eve of Panchayat Election.
- 12.** To eschew the prolixity, I refrain myself from entering into the issue of applicability of order under Section 144 Cr.P.C in terms of jurisdiction and operational autonomy of the BSF Authority. Rather, I would like to discuss on the

procedural aspects before initiation of the proceedings against BSF personnel in terms of Section 140 of the Act, 1968, which runs as follows:-

“140. Protection for acts of members of the Force.-

(1) *In any suit or proceeding against any member of the Force for any act done by him in pursuance of a warrant or order of a competent authority, it shall be lawful for him to plead that such act was done by him under the authority of such warrant or order.*

(2) *Any such plea may be proved by the production of the warrant or order directing the act, and if it is so proved the member of the Force shall thereupon be discharged from liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order.*

(3) *Notwithstanding anything contained in any other law for the time being in force, any legal proceeding (whether civil or criminal) which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of any provision of this Act or the rules, shall be commenced within three months after the act complained of was committed and not otherwise and notice in writing of such proceeding and of the cause*

thereof shall be given to the defendant or his superior officer at least one month before the commencement of such proceeding.”

- 13.** FIR of the proceeding clearly shows that BSF personnel disclosed that they came to perform the duty as per order of Commanding Officer Sanjay Singh of 129 BN BSF who was also arrayed an accused in this case.
- 14.** The provision of Sub Section (1) & (2) of Section 140 of the Act, 1968 clearly mandates that act of BSF personnel in pursuance of a warrant or order of a competent authority, can take a plea that such act was done by him under the authority of the said order.
- 15.** Non-obstante clause of sub Section (3) of Section 140 clearly bars initiation of any proceeding after expiry of 3 months from the date of alleged commission of offence and also without serving one month notice in writing of such proceeding upon the Superior Officer before commencement of such proceeding. So, it is also clear that a criminal proceeding cannot be initiated against any BSF personnel prior to expiry of one month from the date of alleged commission of offence.
- 16.** In this case, FIR was lodged on 19.06.2023 for the incident alleged to have been committed on 17.06.2023

without giving any notice. Therefore, the proceeding was initiated in violation of mandates of sub Section (3) of Section 140 of the Act, 1968 which, in my humble opinion, is liable to be quashed in terms of parameter no. 6 particularly, laid down by the Hon'ble Apex Court in the celebrated judgment of **State of Haryana and others Vs. Bhajan Lal reported in AIR 1992 SC 604**. Hon'ble Apex Court laid down the following parameters in paragraph 102 as quoted below:-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 concerned Act (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 concerned Act, 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 an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. In the result, the instant proceeding in connection with Sahebganj Police Station Case no. 220 of 2023 dated 19.06.20923 corresponding to G.R. Case No. 300/2023 stands quashed in respect of petitioners.

- 18.** As a sequel, the instant revisional application, being no.CRR 60 of 2024 stands allowed.
- 19.** Case diary be returned.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]