

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

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**Present :  
The Hon'ble Justice Aniruddha Roy**

**WPA 1981 OF 2024**

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Sanghamitra Sen

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Amales Ray  
Mr. Deborshi Dhar  
Mr. Nigam Mittal.

For the Respondents : Ms. Bedashruti Bose  
Mr. Sumit Kumar.

Heard on : 13.9.2024

Judgment on : 13.9.2024

**Aniruddha Roy, J. :**

**Facts :**

1. Learned State counsel today files a report dated **September 11, 2024** issued under the seal and signature of the **Commissioner of Police, Siliguri Police Commissionerate**, the same is taken on record.
2. This writ petition has been filed praying for the following reliefs :

- “(a) A writ and/or writs, order or orders, direction or directions in the nature of certiorari commanding the respondents and each of them to transmit and certify the records of the case so that the conscionable justice may be done by quashing Siliguri Police Station Case No.806 of 2024 dated 03.09.2024 under Sections 384/506 of Indian Penal Code;
- (b) A writ and/or writs, order or orders, direction or directions in the nature of mandamus directing the respondents and each of them to forbear from giving effect to and/or further effect to, rescind, recall, set aside and quash Siliguri Police Station Case No.806 of 2024 dated 03.09.2024 under Sections 384/506 of the Indian Penal Code;
- (c) Rule NISI in terms of prayer (a) and (b) as above;
- (d) An order of injunction till disposal of Rule restraining the respondents and each of them from giving effect to and/or further effect to Siliguri Police Station Case No.806 of 2024 dated 03.09.2024 under Sections 384/506 of Indian Penal Code;
- (e) Alternatively an order of injunction till disposal of Rule restraining the respondents and each of them from taking any coercive step against the petitioner till disposal of Rule;
- (f) Ad interim order in terms of prayers (d) and (e) as above;
- (g) Costs and incidental to this petition;
- (h) Such other order or further order or orders as to Your Lordships may deem fit and proper.”

3. The principal challenge of the petitioner is that the **First Information Report (FIR), Annexure-P5 at page 32** to the writ petition was registered by the jurisdictional police station on **September 3, 2024**, *inter alia*, under **Sections 384/506** of the **Indian Penal Code, 1860** (for short the **IPC**) with the connected **Police Station Case No.806 of 2024** should be quashed.

**Submissions :**

4. Mr. Amales Ray, learned counsel appearing for the petitioner submits that, the **Bharatiya Nagarik Suraksha Sanhita, 2023** (for short **Bharatiya Nagarik Suraksha Sanhita**) has come into force and

effect upon due notification on and from **July 1, 2024**. Referring to **Section 531** being the **Repeal and savings** provisions from the said **Bharatiya Nagarik Suraksha Sanhita** he submits that, with the promulgation and operation of the said **Bharatiya Nagarik Suraksha Sanhita** the **Criminal Procedure Code, 1973** (for short **Cr.PC**) stood repealed. Therefore, the instant **FIR** since been registered on **September 3, 2024** which is after **July 01, 2024**, such FIR cannot stand in law and is without of any effect and the same with the connected Police Case is liable to be quashed through this writ petition. He submits that, there was no inquiry or investigation pending prior to **July 1, 2024** and the inquiry and investigation have commenced on and from the date when the said **FIR** was registered on **September 3, 2024**.

5. Referring to **Section 2(l)** from the said **Bharatiya Nagarik Suraksha Sanhita** learned counsel for the petitioner submits that, the expression “**investigation**” includes all the proceedings under the said **Bharatiya Nagarik Suraksha Sanhita** for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Relying upon this definition of the expression “**investigation**” Mr. Ray submits that, the investigation commenced in the instant case with the registration of the **FIR** which was subsequent to the said **Bharatiya Nagarik Suraksha Sanhita** came into force and hence, the **FIR** is liable to be quashed in

view of the provisions laid down under **Section 531** of the **Bharatiya Nagarik Suraksha Sanhita**.

6. In support of this contention he has relied upon the provisions laid down under **Sections 2(h), 154 and 156** from the **Cr.PC**. The language of which are in sync with the analogous provisions laid down under the said **Bharatiya Nagarik Suraksha Sanhita**.

7. He further relies upon the provisions laid down under **Section 173** of the said **Bharatiya Nagarik Suraksha Sanhita** to show that, it is the statutory obligation of the police authority to register **FIR** if a complaint is lodged before the jurisdictional police station either orally or by electronic communication.

8. While invoking the high prerogative writ jurisdiction of this Court, learned counsel for the petitioner submits that where allegation made in the **FIR** or the complaint even if they are taken at their face value and in their entirety do not *prima facie* constitute any offence or make out a case against the accused, such an **FIR** can be quashed by this Court, *inter alia*, in exercise of its power under Article 226 of the Constitution of India. In support, he has relied upon a judgment of the Hon'ble Supreme Court **In the matter of : State of Haryana & Ors. -vs.- Bhajanlal & Ors.**, reported at **1992 Supp. (1) SCC 335**.

9. He then refers to the complaint lodged by the private respondent no.5 (for short the complainant) dated **March 23, 2024** at **page 33** to

the writ petition and submits on the face of it, it would appear there was no ingredient of any offence within the meaning of **Sections 384/506** of the **IPC**. The **FIR** lodged on the basis thereof should be quashed with connected Police Case.

10. To substantiate his argument on this plea, Mr. Ray relied upon a decision of the Hon'ble Supreme Court ***In the matter of R.S. Nayak – vs.- A. R. Antulay & Anr.,*** reported at **(1986)2 SCC 716**.

11. Referring to an **FIR dated March 17, 2024 at** page 25 to the writ petition, learned counsel for the petitioner submits that the petitioner has already brought a charge for **Rape** against the complainant, private respondent no.5 and the trial is in the process. The private respondent no.5 has also been enlarged on bail. Therefore, as a counter blast, the complainant lodged the complaint on March 23, 2024 on the basis whereof the subject FIR was registered.

12. Learned counsel for the petitioner then submits that, while ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed seven days. The fact of delay and the causes of which must be reflected in the **General Diary** entry. Relying upon this proposition Mr. Ray submits till date no inquiry has been held by the jurisdictional police authority before registering the **FIR** and without any inquiry, since the **FIR** has been registered, it is not tenable in law. In

support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of : Lalita Kumari -vs.- Government of Uttar Pradesh & Ors.***, reported at ***(2014)2 SCC 1***.

13. In the light of the above submissions Mr. Ray has prayed for the reliefs claimed in the writ petition.

14. Ms. Bedashruti Bose, learned counsel along with Mr. Sumit Kumar, learned counsel appearing for the State respondents on the basis of the report submitted in Court today, as referred to above, enclosing the report of the ***Inspector-in-Charge, Siliguri Police Station dated September 10, 2024*** submits that the inquiry and investigation are already in progress and the jurisdictional police station has already registered ***P.S. Case No.806 of 2024*** dated ***September 3, 2024*** under ***Sections 384/506*** of the ***IPC***. The report further shows that, after investigation notice has been issued under ***Section 94*** of the ***Bharatiya Nagarik Suraksha Sanhita***.

15. Learned counsel for the State then refers to the statements pleaded in the writ petition at ***paragraphs 9(a) and 9(b)*** and submits that, the petitioner has admitted that, a complaint said to have been lodged by the complainant on ***March 23, 2024***. Therefore, the inquiry or investigation has commenced with the lodging of the said complaint by the jurisdictional police authority much prior to ***July 1, 2024*** when the ***Bharatiya Nagarik Suraksha Sanhita*** came into force and

accordingly, the proceedings for inquiry and investigation have commenced, *inter alia*, on the charges under **Sections 384/506** of the **IPC**. Therefore, by virtue of operation of **Section 531** of the **Bharatiya Nagarik Suraksha Sanhita**, it squarely saves the subject **FIR**. In support learned State counsel has relied upon the following decisions :

- i) A Division Bench decision of the **Hon'ble Allahabad High Court In the matter of : Deepu & 4 Ors. -vs.- State of UP & 3 Ors.**, dated **August 6, 2024** rendered in **Criminal Misc. Writ Petition No. 12287 of 2024**;
- ii) A decision of a coordinate Bench of the **High Court of Judicature For Rajasthan at Jodhpur, In the matter of: Krishan Joshi -vs.- State of Rajasthan & Ors.** dated **July 9, 2024** rendered in **S.B. Criminal Misc.(Pet.) No.4285 of 2024**.

16. Learned counsel for the State further submits that the writ petition is premature. The investigation is going on and charge-sheet has not yet been submitted. Since the inquiry and investigation have commenced prior to **July 1, 2024**, this writ petition is not maintainable.

17. The State respondents further argue that, the **Repeal and saving** clause shall have to be read in the light of the provisions laid down under **Section 6 of the General Clauses Act, 1987** read with Section 4 of the said **Bharatiya Nagarika Suraksha Sanhita**. The **Repeal** provision under **Section 531** also protects the subject **FIR**, as the

complaint was lodged prior to July 1, 2024 on the basis whereof the FIR was lodged.

18. It is further submitted on behalf of the State that the issues involved and the charges mentioned in the FIR on the basis of the complaint lodged by the complainant, unless tried in accordance with law in a properly constituted criminal trial, it is incorrect to contend that, on the face of the complaint it would appear that the ingredient of extortion or criminal intimidation is not apparent. Therefore, this writ petition is not maintainable and a criminal trial is essentially required.

**Decision :**

19. After considering the rival contentions of the parties and upon perusal of the materials on record and on a plain reading of **Section 531** of the **Bharatiya Nagarika Suraksha Sanhita**, it appears to this Court that the **Cr.P.C, 1973** stands repealed with the promulgation and effect of the said **Bharatiya Nagarika Suraksha Sanhita** but the Saving provision saves, *inter alia*, if an inquiry or investigation is pending immediately before the date on which **Bharatiya Nagarika Suraksha Sanhita** came into force. On a reading and interpretation of **Section 2(1)** of the **Bharatiya Nagarika Suraksha Sanhita**, it appears to this Court that, the expression **“investigation” includes** all the proceedings under this **Bharatiya Nagarika Suraksha Sanhita** for collection of evidence conducted by a **police officer**. **Section 2(k)** defines **“inquiry”**,

which means every inquiry, other than a trial, conducted under this ***Bharatiya Nagarika Suraksha Sanhita*** by a Magistrate or Court.

20. In the instant case, the complaint was lodged by the complainant on ***March 23, 2024*** and the petitioner also has admitted the same in **paragraphs 9(a) and 9(b) in the writ petition**. Section 2(h) of Cr. PC also defines the expression ***“investigation”*** which ***includes*** all the proceedings under the Cr. P.C. for collection of evidence conducted by a ***Police Officer***. Unless a complaint is brought before the police authority, there is no scope for causing any ***investigation*** by the police authority. The moment a complaint is lodged by the complainant before the police authority, only then the statutory obligation of the police authority commences to cause the necessary ***investigation*** and to register an FIR. Therefore, unless the complaint is received by the police authority, there is no scope for the police authority to proceed for an investigation or to register an FIR.

21. In the facts of the instant case, admittedly, the complaint was lodged by the complainant on ***March 23, 2024***, which is much prior to the said ***Bharatiya Nagarika Suraksha Sanhita*** came into force on ***July 1, 2024***.

22. In view of the above factual scenario, this Court is of the firm view that an ***investigation*** was pending before the police authority within the meaning and scope of the relevant statute ***prior to July 1, 2024*** when the ***Bharatiya Nagarika Suraksha Sanhita*** came into force and,

therefore, the FIR registered on **September 3, 2024** and the connected **Police Case** are **saved** under the saving provision laid down under **Section 531** of the **Bharatiya Nagarika Suraksha Sanhita**.

23. Insofar as the other contentions of the learned counsel for the petitioner are concerned, this Court is of the view that on a plain reading of the complaint lodged by the complainant, it cannot be said that the element of extortion or the criminal intimidation under **Sections 384 and 506 of the IPC** are ex facie absent on the face of the complaint.

24. In the matter of **A. R. Antulay and Anr. (Supra)**, the Hon'ble Supreme Court had laid down the essential criterion for extortion. After a detailed criminal trial being held in that case and upon prior evidence being laid, the prosecution falls short of the requirement of law in regard to the alleged offence of extortion. Therefore, to come to a conclusive finding whether there has been any extortion or not, in the facts of this case and on the basis of the complaint lodged by the complainant, a properly constituted criminal trial is required to be gone into. Hence, the ratio laid down in the matter of **A.R. Antulay and Anr. (Supra)** shall not apply in the facts of this case.

25. In the matter of **Bhajan Lal and Ors. (supra)**, the Hon'ble Supreme Court had formulated certain illustrations wherein the power under Article 226 of the Constitution of India could be exercised to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court had also observed that 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.

26. In the facts of this case, this Court is of the firm view that to arrive at a clear finding whether there has been an extortion or not, can only be done after complete criminal trial being held on the basis of the complaint lodged by the complainant. Therefore, this Court is of the firm view that the power of this Court in its high prerogative writ jurisdiction should not be exercised, in the facts of this case. Hence, the ratio laid down in the matter of ***Bhajan Lal and Ors. (Supra)*** has no application in the facts of this case.

27. In the matter of ***Lalita Kumari (Supra)***, the Hon'ble Supreme Court had observed that a preliminary inquiry should be made time bound and if any delay is there, the same must be reflected in the general diary entry. In the instant case, the complaint was lodged on ***March 23, 2024*** and the FIR was registered on ***September 23, 2024***. The police authority is also proceeding with the investigation and the charge-sheet is awaited to be submitted. Therefore, the ratio laid down in the matter of ***Lalita Kumari (Supra)*** has no application in the facts of this case.

28. The submissions as advanced on behalf of the petitioner that since the petitioner has lodged an FIR against the complainant on the

allegation of **Rape**, the respondent no.5, being the complainant, as a counter blast lodged the complaint and on the basis thereof, the **FIR** was registered under **Section 384/506 of the Indian Penal Code** has no limb to stand in the eye of law. The allegation of rape, as alleged by the petitioner against the complainant, shall culminate into its own criminal trial which will be an independent criminal trial from the allegation made by the complainant against the petitioner. Therefore, even if both the trial proceed parallely, they will proceed independent to each other and separately without having any nexus between the two because, the law provides for different provisions for those alleged offences and counter offences.

29. The grounds for quashing an **FIR under Article 226 of the Constitution of India** are very limited. Only in an exceptional case, such power can be exercised. The principal grounds on which an FIR can be quashed in exercise of power under **Article 226 of the Constitution of India**, *inter alia*, includes lack of territorial jurisdiction in registering an FIR, lack of cognizance, absence of prima facie case, mala fide or ulterior motive, improper investigation, violation of fundamental rights, absence of any necessary ingredients while registering the FIR and if the FIR is otherwise vexatious and oppressive. Quashing an FIR in exercise of power under Article 226 of the Constitution of India is an extraordinary remedy and the High Court exercises discretion only in an exceptional circumstance depending upon

the facts and circumstance of each case. The facts in the instant case are not such that, this Court in exercise of its high prerogative writ jurisdiction shall quash the subject **FIR** and the connected Police Case.

30. In view of the foregoing reasons and discussions, this Court is of the considered view that, this writ petition is totally devoid of any merit and is liable to be **dismissed** *in limine*.

31. Since no affidavits have been called for, the allegations made in the petition are deemed not to have been admitted by the respondents.

32. It is made clear that this Court has not gone into the merits of the allegations and counter allegations of the writ petitioner and the complainant being the private respondent no.5 in any manner. If any criminal trial is held on the basis of the allegations made by the petitioner or on the basis of the allegations made by the private respondent no.5, the jurisdictional criminal Court shall proceed with the trial independently, in accordance with law and without being influenced by any observations made herein. Any observation made herein shall have no effect or binding effect on such criminal trials.

33. Resultantly, this writ petition **WPA 1981 of 2024** stands **dismissed**, without any order as to costs.

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

**(Aniruddha Roy, J.)**