

Item No.134
02.12.2024
Court. No. 1
GB

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

MAT 94 of 2024
With
CAN 1 of 2024

Sanghamitra Sen
VS
The State of West Bengal & Ors.

*Mr. Amales Roy, sr. Adv.,
Mr. Deborshi Dhar,
Mr. Nigam Mittal*

...for the Appellant.

*Ms. Bedashruti Bose,
Mr. Sumit Kumar*

...for the Respondents.

1. This is an intra court appeal.
2. Mr. Roy, learned senior advocate appears on behalf of the appellant. An order passed by a learned Single Judge is under challenge. The learned Judge dismissed WPA No.1981 of 2024 on the ground that under the facts and circumstances of the case, a high prerogative writ could not be issued by quashing the FIR. Learned court was of the view that as a prior complaint was filed sometime in March, the investigation was considered to be ongoing, even if, the FIR was officially registered in September, that is, after the promulgation of the Bharatiya Nyaya Sanhita, 2023.
3. According to Mr. Roy, the definition of inquiry and investigation, etc., would not cover any preliminary enquiry, the police may have initiated on the basis of the initial complaint. The investigation starts only when an FIR is registered. Inquiry is either by a Magistrate or by

court. Thus, investigation of the offences by mentioning the sections under the repealed act (Indian Penal Code) vitiated the entire investigation and the FIR. This was a fit case for being quashed by a writ court on the ground of inherent lack of jurisdiction of police to register an FIR under the repealed Act. The observations of the learned Judge with regard to the prior investigation being saved under Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023 was erroneous and liable to be set aside by this Court.

4. Further submission of Mr. Roy is that, the FIR does not disclose an offence. Reliance has been placed on the decision of ***State of Haryana and Others versus Bhajanlal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***. Further reliance has been placed on the decision of ***R.S. Nayak versus A.R. Antulay and Another*** reported in ***(1986) 2 Supreme Court Cases 716***. Mr. Roy relies on A.R. Antulay (supra) to explain the definition of extortion. According to Mr. Roy, unless an injury is caused to a person and the person is forced to deliver any property or valuable security under fear of such injury, the offence of extortion could not be established. Relying on Bhajanlal (supra), Mr. Roy submits that the writ court has an extraordinary power under Article 226 of the Constitution of India to interfere with and to quash such an investigation on the ground of erroneous application of law, and when the offence was not disclosed in the FIR.
5. Ms. Bose, learned advocate for the State submits that investigation is complete and charge-sheet has been probably filed in court. The report filed by the State is

taken on record. Ms. Bose relies on the decision of ***Neeharika Infrastrucure Private Limited versus State of Maharashtra and Others*** reported in **(2021) 19 Supreme Court Cases 401** and submits that the petitioner has other remedies available under the criminal law to pray for quashment of the proceeding. Strict parameters are to be applied by the Court while considering a prayer for quashment of an investigation or any criminal proceeding. She further submits that if offences have been committed prior to promulgation of the new law, the repealed law would be applicable. She relies on some notifications. According to learned advocate, as the offence was committed prior to July 1, 2024, the investigation was done by incorporating the relevant provisions of the Indian Penal Code. She relies on Section 358 of the B.N.S.

6. Heard the parties. An FIR cannot be read as a Statute and must be read as a whole. The police has completed the investigation. At this stage, it cannot be said that the FIR, prima facie, does not disclose an offence and the writ court should have quashed the entire proceeding as also the charge-sheet. The petitioner has other remedies under the criminal law and he may avail of such remedies. With regard to the contention that the investigation proceeded under a Statute which was no longer applicable also, the petitioner has other remedies before the appropriate court. Thus, we leave it open to the petitioner to approach the appropriate forum or fora in accordance with law.
7. With regard to the observations of the learned Single Judge as regards the saving clause and the investigation being saved under Section 531 of the B.N.S.S.,etc., we

direct that the said observation shall not prejudice any of the steps that the petitioner may take before the appropriate fora for redressal of his grievances. The order of the learned trial court is modified to that extent that those observations shall be restricted to the adjudication of the writ petition.

8. Accordingly, the appeal being MAT 94 of 2024 is disposed of, with the connected application.

(Shampa Sarkar, J.)

(Partha Sarathi Chatterjee, J.)