

03.12.2024
Sl. No.128
s.biswas/cp

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

MAT 101 of 2024
With
CAN 1 of 2024

*The Commissioner of Police, Siliguri,
Siliguri Police Commissionerate and another*
vs.
Suddhashil Ghosh and others

Mr. Joyjit Chowdhury, AAG
Mr. Nabankur Paul
Ms. Bedashruti Bose
... for the appellants/State
Mr. Sabyasachi Chatterjee
Mr. Pintu Karar
Ms. Rishita Chakraborty
... for the respondent No.1/writ petitioners

1. This appeal has been preferred against the judgment and order of the Hon'ble Single Judge dated October 1, 2024, by which Her Lordship was pleased to hold that the court was not inclined to permit the police to proceed with the FIRs which were registered on the complaint filed by Sandeep Chaki and Atri Sharma. Her Lordship further directed the appellants before us to file an affidavit disclosing the necessity to proceed with such complaint in a mechanical manner without proper application of mind. Her Lordship, upon considering the instructions of the police authorities was not convinced that the video uploaded by the

respondent No.1 had incited the public and caused breach of peace and tranquility.

2. Learned Additional Advocate General appearing for the respondents/appellants submits that the court could not thwart the investigation. Investigation with regard to offences under Sections 352 and 353 of the Bharatiya Nyaya Sanhita (hereinafter referred to as 'BNS') do not attract the provisions of Sections 215 and 217 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'BNSS'). Moreover, the requirement of obtaining sanction in respect of the offences under Section 353(2) and 353(3) of the BNS as per Section 217(2) of BNSS, could not be an impediment for the investigation to continue. Before the court would take cognizance, sanction would be obtained. In the event the investigation revealed commission of a cognizable offence and charge-sheet would be filed, the question of taking sanction at the relevant stage would arise. At the initial stage if the investigation is stayed the truth cannot be unearthed.
3. Relying on the decision of *Neeharika Infrastructure Private Limited vs. State of Maharashtra and others* reported in (2021) 19 SCC 410, Mr. Chowdhury argued that under

exceptional cases an FIR can be quashed. An FIR cannot be treated as an encyclopaedia and the FIRs in this case, read as a whole disclose commission of a cognizable offence. The police authorities are empowered by law to enquire into the allegation against the writ petitioner and ascertain whether offence under Sections 252, 253 and 267 of the BNS had been committed or not. The law requires an investigating authority to unearth the truth and for such reason a notice under Section 35(3) of the BNSS was issued to the writ petitioner. Such step was taken in strict compliance of the directions of the Hon'ble Supreme Court and the provisions of law. Even before the writ petitioner could respond to the notice by appearing before the police authority, the writ petition was filed and interim order of stay of the investigation was passed. Between filing of the writ petition and before the interim order of stay was passed, the intermediary i.e. Youtube was asked to furnish relevant recording/videograph which had been uploaded by the writ petitioner. However, no further steps could be taken thereafter.

4. According to Mr. Chowdhury, if the police, upon investigation, find that the allegations are

not tenable and not supported by adequate evidence, the police can close the case by filing an FRT. On the other hand, if the allegations are, prima facie, proved to be correct, a charge-sheet can be filed. At the time of filing the charge-sheet or thereafter, if no sanction is obtained, Sections 215 and 217 of the BNSS would be a bar for the court to take cognizance.

5. Mr. Chatterjee, learned advocate for the petitioners/respondents submits that FIRs read as a whole do not disclose any cognizable offence. The FIRs do not disclose that the video uploaded by the writ petitioner resulted in either any violence or unrest. Under such circumstances, the investigation will be harassing, speculative and malicious.
6. We have considered the FIRs. We find from the same that the entire allegation related to the defamatory statements made in respect of the then Chief Justice of India. The FIR was based on an apprehension that such video uploaded by the writ petitioner could incite violence. The entire issue was with regard to the protests arising out of the R.G. Kar incident. The complaint was filed by learned advocates of the Siliguri Court. In our considered view, the FIRs do not indicate that any incident of violence

had occurred on the basis of the said video and the public being agitated, enraged or infuriated on the basis of the contents thereof, had committed any act of violence or breach of peace. Not a single instance has been cited in the complaint.

7. There is no quarrel with the general proposition of law which the learned Additional Advocate General has sought to espouse. The police can conduct an enquiry and investigate on the basis of the complaint lodged under Sections 352, 353 of the B.N.S., 2023, even if the aggrieved person does not lodge a complaint. However, in the instant case, the contents of the FIRs do not lend any support to the arguments of Mr. Choudhury. In this particular case, all the allegations and the statements even if defamatory, were levelled against the then Chief Justice of India and the Hon'ble Apex Court. There is no reflection of any incident of violence or breach of peace as a consequence of the video, which prompted the complainant to lodge the complaint and further prompted the police to register the FIRs and proceed with the investigation in respect of Siliguri Police Station Case No.83 of 2024 dated September 13, 2024 and Matigara Police

Station Case No.544 of 2024. Moreover, the video relates to the R.G. Kar protests. At the moment, peace has been restored. The matter is sub judice.

8. Under such circumstances, the appeal is disposed of.
9. With such disposal, the connected application is also disposed of. As nothing remains to be decided in the writ petition, the same also stands disposed of.
10. The requirement of the respondents to file an affidavit is set aside. We do not find any reason to allow any further investigation. Siliguri P.S. Case No.83 of 2024 and Matigara P.S. Case No.544 of 2024, stand quashed.
11. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Partha Sarathi Chatterjee, J.) (Shampa Sarkar, J.)