

Court No. 8
08.08.2025
Item No.29
PA (Chamber)

WPA (P) No. 4 of 2023

Anikul Hoque
VS
The Union of India & Ors.

Mr. Manojit Bhattacharyya
Mr. Diptoraj Chakroborty
...for the Petitioner

Mr. Jahar Lal De, AGP
Mr. Rudranil De

...for the State

Mr. Rivu Dutta
...for Union of India

1. Heard the learned counsel appearing for the petitioners and the respective parties.
2. The instant Public Interest Litigation has been filed by the petitioner praying inter alia for the following relief(s):-

“a) A writ of in the nature of Certiorari directing the public respondents each one of them, their men, agents and assigns especially the Block Development Authority, The SDO authority and The District Magistrate Authority to transmit this Hon’ble Court all the records of the case so that conscionable justice may be arrived at by perusing the same;

b) A writ of or in the nature of Mandamus directing the public respondents each one of them, their men, agents and assigns especially the respondent Panchayet Pradhan to immediately withdraw herself from their respective posts immediately;

c) A writ of or in the nature of Mandamus restraining the Panchayet Authority and the Block Development Authority from their respective post and designation so that no further financial irregularities take place.

d) A writ of or in the nature of Mandamus directing the public respondents, each one of them, their men, agents and assigns to cause a detailed investigation and/or audit whatsoever by any eligible independent neutral investigating agency into the matter, preferably the Central Bureau of Investigation (CBI) and to file a report immediately.

e) A writ of or in the nature of Mandamus directing the public respondents, each one of them, their men, agents and assigns to cause a detailed investigation and/or audit whatsoever

by any eligible independent and neutral investigating agency into the matter, especially about the source of income and other assesses, whatsoever of the respondent Gram Panchayat Pradhan and her companions and their family members and near ones, preferably the Enforcement Directorate (ED) and/or Income Tax (IT) Department and to file a report immediately.

f) Any other appropriate writ or writs, order or orders and/or direction or directions;

g) Rule NISI in terms of prayers (a), (b), (c), (d), (e), (f), (g) and (h) above;

h) Interim order imposing a stay on the activities of the respondent BDO, Gram Panchayat Pradhan and his companions in their official capacity.

i) Interim order directing the respondents CBI, ED and CAG to cause preliminary enquiry in the matter and file a report of the same before the Hon'ble Court.

j) Ad-interim order in terms of prayers (h) and (i) above;

k) Costs of and incidental to this applications;

l) Pass such further order or orders, direction or directions as your Lordship deem fit and proper.”

3. The main grievance in the instant writ petition is for conducting a detailed enquiry/investigation with regard to the financial irregularities and misappropriation of public funds against the Respondent No. 11, 12 & 13.

4. It is pertinent to mention that the petitioner in the instant case is the present incumbent in the post of Pradhan in place and stead of Respondent No. 11. The issue involved herein thereby renders in fructuous but liberty is granted to the petitioner to take recourse to law before appropriate forum as provided under the statute.

5. The issue in cases where investigation is prayed for is no longer *res integra*.

6. The question cropped up before a Division Bench of the Hon'ble Supreme Court in the case of **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage & Ors. Reported at (2016) 6 SCC 277** as to whether the remedy under Article 226 of the Constitution of India can be availed of if there exists inaction of Police in registering the FIR in relation to a cognizable

offence. The Apex Court drawn the curtains on the said aspects in following words:

“2. This Court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an appointment under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the mater. We have said this in Sakiri Vasu case because what we have found in this country is that the High courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.”(emphasis supplied)

7. Thereafter, a Division Bench of Madhya Pradesh High Court again dealt with this aspect

by considering the Constitutional Bench judgment of Hon'ble Supreme Court in the case of:

- **Lalita Kumari v. Government of U.P. reported at (2014) 2 SCC 1 and in**
- **Aleque Padamsee v. Union of India reported at (2007) 6 SCC 171**
- **Sakiri Vasu v. State of U.P. reported at (2008) 2 SCC 409.**

8. It is also held by the Hon'ble Apex Court in the case of **Pravasi Bhalai Sangathan Versus Union of India and Others reported in (2014) 11 Supreme Court Cases 477** observing that statutory provisions and particularly panel law provide sufficient remedy to curb the menace of "hate speeches" in the form of posts in twitter. Thus, person aggrieved must resort to the remedy provided under a particular statute.

9. After considering the above judgments, speaking for the Bench, Hemant Gupta, J. (as His Lordship then was) opined as follows:-

“The Constitution Bench in Lalita Kumari (supra) was considering the question as to whether registration of an FIR is mandatory, in case it discloses a cognizable offence. If the information does not disclose a cognizable offence, it mandates to conduct a preliminary enquiry. But, there is no mandate in the aforesaid judgment that his

Court under Article 226 of the Constitution of India should issue a direction for registration of an FIR. Such a question has been specifically answered in Alege Padamsee (supra), Sakiri Vasu (supra) and Sudhir Bhaskar Rao Tambe (supra).” (Emphasis Supplied)

10. In view of the authoritative pronouncement of the Hon’ble Supreme Court and the Division Bench of the Madhya Pradesh High Court on the above aspect, no writ of mandamus/direction can be issued for lodging of FIR. The petitioner has an efficacious remedy under the criminal law. Hence the PIL cannot be entertained.

11. However, liberty is reserved to the petitioner to avail remedy under the criminal law. It is made clear that this Court has not expressed any opinion on the merits of the case.

(SUJOY PAUL, J)

(SMITA DAS DE, J.)