

01. 22.07.2025
Court No.8
(Jayanta/
\Tanmoy)

WPA (P)/163/2025
ARUP RATAN GUPTA
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Biswaroop Bhattacharya
Mr. Abhijit Sarkar

...for the petitioner.

Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Lalit Mahato, AGP
Mr. Sirsanya Bandopadhyay, Sr. St. Counsel
Mr. Arka Kumar Nag
Mr. Debayan Sen
Mr. Prasanta Behari Mahata
Mr. Niket Ojha
Mr. Akash Dutta

...for the State.

1. Affidavit of service be taken on record.
2. Heard Mr. Bhattacharya learned Counsel appearing on behalf of the petitioner as well as Mr. Bandopadhyay, learned Senior Counsel appearing on behalf of the State respondents.
3. By admitting this Public Interest Litigation (in short 'PIL') the petitioner has prayed for following reliefs :-

“a) A writ of or in the nature of Mandamus do issue directing the Respondent Nos. 1 to 3 to immediately register a First Information Report (FIR) against the private respondent nos. 5 and 5, under Section 196 of the Bharatiya Nyaya Sanhita, 2023, and any other applicable provision of law;

b) A writ of or in the nature of Mandamus do issue directing the Respondent Nos. 1 to 3 to take immediate action to prevent any communal violence or riots that may result from the speech made by the private respondent nos. 4 and 5 and take steps to maintain public peace and tranquility;

c) A writ of or in the nature of Mandamus do issue directing the private respondent Nos. 4 and 5 to give a public apology;

d) A writ of or in the nature of Mandamus do issue directing the Respondent Nos. 1 to 3 to form a Special Investigation Team to investigate into the events complained of in the instant petition under the supervision of this Hon'ble Court and file a detailed report before this Hon'ble Court;

e) A writ of or in the nature of Mandamus do issue directing the private respondent Nos. 4 and 5 to exercise greater caution while addressing the public at large or in social/electronic/print media, keeping in mind the overarching principles of communal harmony;

f) Rule NISI in terms of prayers above;

g) An order be passed restraining the respondent nos. 4 and 5 from making any further speeches or statements that promote communal discord, violence, or enmity between different religious or political groups;

h) Pass any other order or direction that this Hon'ble Court may deem fit and proper in the interest of justice and to protect the secular fabric and public order in the State of West Bengal."

4. In a nutshell, the case of the petitioner is regarding the speeches made by the private respondent nos. 4 and 5. It is submitted that the transcript of the speech is filed along with the petition which suggests that the speech is pregnant with communal overtone and other aspects which fall within the ambit of 'cognizable

offence'. The petitioner lodged a complaint with Rabindra Sarobar Police Station on 16th April, 2025 (Annexure "P-6"). The same could not fetch any result. The Police had not take any action against the private respondents herein.

5. In a nutshell, the bone of contention of learned Counsel for the petitioner is for lodging of FIR regarding the alleged speeches made by the private respondents herein.

6. The point involved in this case is no more *res integra*. 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 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 applicaitoin 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. 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 Aleque Padamsee (supra).

Sakiri Vasu (supra) and Sudhir Bhaskar Rao Tambe (supra).” **(Emphasis supplied)**

9. In view of the authoritative pronouncement of the Hon’ble Supreme Court and the Division Bench of 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.

10. 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.

11. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Sujoy Paul, J.)

(Smita Das De, J.)