

28.07.2025
Item No.40
pa

WPA(P) No. 220 of 2025

Indrajit Halder
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Biswaroop Bhattacharya,
Mr. Abhijit Sarkar
...for the Petitioner

Mr. Kishore Datta(Ld. AG)
Mr. Rahul Kumar Singh
...for the State

Mr. Srijan Nayak
Ms. Poushali banerjee
...for the KMC

Heard Mr. Bhattacharya, Learned Counsel
appearing on behalf of the petitioner as well as Mr.
Kishore Datta, Learned Advocate General appearing on
behalf of the State Respondents and Mr. Srijan Nayak,
for the KMC.

The instant public interest litigation has been
filed by the petitioner praying inter alia for the following
relief(s):-

**“a) A writ of or in the nature of Mandamus do
issue directing the Respondent Nos. 1 to 3 to
immediately remove the said post from
Twitter;**

**b) A writ of or in the nature of Mandamus do
issue directing the Respondent Nos. 1 to 3
treat this petition as a complaint and
immediately register a First Information**

Report (FIR) against the respondent No. 4 under Section 196 of the Bharatiya Nyaya Sanhita, 2023 and any other applicable provision of law;

c) 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 veracity of the post made by the respondent No.4 in Twitter and file a report before this Hon'ble Court;

d) A writ of or in the nature of Mandamus do issue directing the Respondent No. 5 to carry out an investigation with regard to the veracity of the post made by the respondent No.4 in Twitter and file a report before this Hon'ble Court;

e) A writ of or in the nature of Mandamus do issue forming guidelines and/or strictures with regard to fake and or reckless posts made by political leaders;

f) Rule NISI in terms of prayers above;

g) an order be passed restraining the respondent NO. 4 from publishing or sharing any post in any social/electronic/print media or from making any speech or statement 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."

Apropos the facts of the case precisely is with regard to the sensational post made by the respondent No. 4 on Twitter instigating and inciting huge communal discord, disharmony and violence being in contravention to Section 196 of the Bharatiya Nyaya Sanhita, 2023 (BNS) attracting to be a cognizable offence. It is submitted by the Learned Counsel for the petitioners that the respondent No. 4 being a political leader of a high stature has impacted several citizens of the State by exercising the influencing power to escalate the number of followers to 9700. It is further submitted that the petitioner has been able to ascertain subsequently from the said post that the same has been followed and reacted by 1,08,000 numbers of viewers which is evident from the posts annexed to the Writ Petition as Annexure 'P2'.

The main bone of contention of the writ petitioner is for taking cognizance of the same made by the Police Authorities for taking necessary action by registering First Information Report (FIR) against the respondent

No. 4 and to take necessary steps in accordance with law for removing the post made on Twitter.

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 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)

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.**

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.

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)

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.

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.)