

Court No. 8
05.08.2025
Item No.1
PA (Chamber)

WPA (P) No. 361 of 2022

Nazia Elahi Khan
VS
STATE OF WEST BENGAL AND ORS.

Mr. Nilotpall Chatterjee
Mr. Suddhadev Adak

...for the State

1. None appears for the petitioner.
2. Heard Mr. Nilotpall Chatterjee, Learned Junior Govt. Advocate on behalf of the State.
3. The instant public interest litigation has been filed by the petitioner praying inter alia for the following relief(s):-

“a) A writ and/or in the nature of mandamus directing the respondent numbers 2 and 3 to take legal steps against the respondent number 4 in the same way as a Police Official has been entrusted to take as per the provisions of the Code of Criminal Procedure, 1973 even by apprehending him through arrest if the occasion so arises, without any partiality towards him on the count that he is a Member of the Ruling Party in the State of West Bengal and also a Member of the Legislative Assembly;

b) A writ and/or in the nature of Certiorari upon the respondents to produce before this Hon'ble Court of records relating to and arising out of the present case and upon perusal of such record conscionable justice may be done to the petitioner by issuing an appropriate order or orders;

c) Rule NISI in terms of prayer (a) and (b) above and to make the Rule absolute if the respondents failed to show sufficient cause or return;

d) Such other or further order or orders as Your Lordships may deem fit and proper;"

4. Upon perusing and considering the records it transpires that the instant PIL pertains to immediate legal action against respondent No.4 being an accused of comparing Chief Minister of West Bengal with Allah in a public meeting held on 2.07.2022.

5. A representation dated 2.08.2022 was made before the respondent No.2 and 3 respectively but till date no action and/or steps have been initiated as per the provision of law.

6. The petitioner is absent, thus it shows that she must have lost her interest in the instant case.

7. The main bone of contention of the writ petitioner is taking necessary action by registering First Information Report (FIR) against the respondent No. 4 and to take necessary steps in accordance with law by the Respondent Nos. 2 & 3 in respect of comparing the Chief Minister of West Bengal with Allah.

8. 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 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)

9. 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.**

10. 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.

- 11.** 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)

- 12.** 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.

13. 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.)