

December 3, 2025
Sl. No.9
Court No.1
s.biswas

FMA 1437 of 2025
CAN 1 of 2025

Banka Shah
vs.
State of West Bengal and others

Mr. Abhimanyu Banerjee
Mr. Alope Chatterjee
Mr. Muhammad Obaid

... for the appellants

Ms. Jayeeta Sinha
Mr. Debangshu Dinda

... for the State

Mr. Anirban Das

... for the respondent no.7

Per, Sujoy Paul, A.C.J.

1. Mr. Abhimanyu Banerjee, learned counsel for the appellants, Ms. Jayeeta Sinha, learned counsel for the State and Mr. Anirban Das, learned counsel for the respondent no.7 are heard on admission.
2. This intra-court appeal assails the order dated 09.07.2025 (Annexure P-12). Prayer of the appellant/writ petitioner before the learned Single Judge was to issue a mandamus to act on his representation. On specific query from the Bench, learned counsel for the appellant informed that the relevant representation is dated 28.03.2025 (Annexure P-7), wherein it is prayed that his compliant be reduced in writing in the shape of an FIR. He submits that this prayer may be considered and any observation made by learned Single Judge in the impugned order dated

09.07.2025 may not be treated to be a finding on the merits of the matter.

3. Learned counsel for the State has no objection.
4. Learned counsel for the private respondent no.7 submits that the findings of learned Single Judge are indeed justifiable.
5. We have heard the parties at length.
6. Principle prayer as advanced by learned counsel for the appellant is for reducing his complaint as and FIR.
7. This is trite that the writ of mandamus cannot be issued for registration of FIR. This court recently in WPA(P) 517 of 2022 considered the relevant judgment of Supreme Court and Division Bench of Madhya Pradesh High Court. The relevant portion reads thus:

*“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 4 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 matter. 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 5 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."

(Emphasis Supplied)

8. In that view of the matter, no relief was due to the petitioner before the learned Single Judge. The petitioner can avail remedy available to him under the criminal law for this purpose. With this liberty, the intra-court appeal is disposed of. However, in the interest of justice, it is observed that any observation/finding given by learned Single Judge in order dated 09.07.2025 shall not be treated to be a finding based on any adjudication.

(Sujoy Paul, A.C.J.)

(Partha Sarathi Sen, J.)