

Court No. 8
04.08.2025
Item No.44
PA (Chamber)

WPA (P) No. 517 of 2022

**Merjul Hoque Mondal
VS
The State of West Bengal & Ors.**

1. None appears for the parties.
2. The instant public interest litigation has been filed by the petitioner praying inter alia for the following relief(s):-

“(a) Leave to move this application jointly for the interest of public;

(b) A writ of or in the nature of Mandamus do issue commanding the respondents to show cause as to why the respondent police authorities shall not be directed to take expeditious and adequate steps towards initiate fair investigation process of the petitioner’s case and arrest the respondent nos. 11 and 12 as per the FIR No. 537 of 2022 dated 30.08.2022 under section 379/411/506/34 of the Indian Penal Code;

(c) A writ of or in the nature of Mandamus do issue commanding the respondents to act as per the mass petition dated 02.09.2022 submitted by the petitioners and other persons

of the locality along with the written complaint dated 02.09.2022 made by the petitioner;

(d) A writ of or in the nature of Certiorari do issue directing the respondent authority to transmit all relevant records lying at the office of the respondent authority pertaining to the instant case and certify the same so that conscionable justice may be administered and thereupon quash the same;

(e) Rule NISI in terms of prayers (a) to (d) above;

(f) An interim order do issue thereby directing the respondent authorities to take expeditious and adequate steps towards initiate fair investigation process of the petitioner's case and arrest the respondent nos. 11 and 12 as per the FIR No. 537 of 2022 dated 30.08.2022 under section 379/411/506/34 of the Indian Penal Code;

(g) Costs and incidental charges to this application;

(h) Such further order or orders and/or direction or directions be passed as Your Lordship may deem fit and proper."

3. Upon perusing and considering the materials on records it transpires that the instant PIL filed by the petitioner pertains to in action of

the police authorities by not taking cognizance of the FIR registered dated 30.08.2022 against erring Respondent No.11 and 12 for delving into illegal activities and theft/misappropriation of ration cards and goods within the village of Kusbaria under Domkol Police Station. The petitioners have already submitted a mass petition dated 02.09.2022 before the State authorities to arrest the accused persons being the Respondent No. 11 and 12 with regard for unequal distribution of ration goods which remained unconsidered by the authority concerned.

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

5. The main bone of contention of the writ petitioner is taking necessary action by registering First Information Report (FIR) against the private respondent No. 11 and 12 and to take necessary steps in accordance with law for arresting the culprits in respect of unequal distribution of ration goods and cards in the village of Kusbaria.

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 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 this 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.)