

Court No. 8
04.08.2025
Item No.58
PA (Chamber)

WPA (P) No. 557 of 2022

**Anindya Sundar Das
VS
Union of India & Ors.**

Mrs. Debjani Ray,
...for the respondent nos. 2&6

Mr. Anant Kumar Shaw,
Mr. Mainak Ganguly,
...for the respondent no. 9

Mr. Jahar Lal De
Mr. Samim-Ul-Bari
...for the State

Ms. Kausiki Bose
... for Union of India

- 1.** None appears for the petitioner.
- 2.** Heard the Ld. Counsels appearing for the respondent authorities.
- 3.** The instant public interest litigation has been filed by the petitioner praying inter alia for the following relief(s):-

“(a) Issue a Writ in the nature of Mandamus commanding the respondents, their men, agents and assigns:-

(i) To act in accordance with law;

(ii) To conduct an enquiry and investigate into the complaint of the petitioner dated 29th

September, 2022 as contained in Annexure “P-2” herein;

(iii) Take proper and appropriate steps against the respondent nos. 9 and 10 in accordance with law, if found guilty of committing the offences complained of in complaint of the petitioner dated 29th September, 2022 as contained in Annexure “P-2” herein;

b) Issue a writ in the nature of Mandamus commanding the respondents their men, agents and assigns to forthwith cancel, withdraw and forebear from giving any effect or further effect to any decision of the respondent authorities not to conduct any enquiry on the basis of the complaint of the petitioner dated 29th September, 2022 as contained in Annexure “P-2” herein;

c) Issue a writ in the nature of Mandamus commanding the respondents their men, agents and assigns to consider and take proper and necessary steps and/or initiate proceedings on the basis of the complaint of the petitioner dated 29th September, 2022 as contained in Annexure “P-2” herein;

d) Issue a Writ in the nature of Certiorari directing the respondents their men, agents

and assigns to forthwith and/or immediately certify and/or transmit before this Hon'ble Court all records and documents forming subject matter of the instant case and quash and/or set aside the decision, if any, not to initiate any enquiry on the basis of the complaint of the petitioner dated 29th September, 2022 as contained in Annexure "P-2" herein;

e) Issue a Writ in the nature of Prohibition prohibiting the respondents from any impugned decision arrived at by them not to conduct any enquiry on the basis of the complaint of the petitioner dated 29th September, 2022 as contained in Annexure "P-2" herein;

f) Rule NISI in terms of prayers (a) to (e) above and to make the Rule absolute if no cause and/or insufficient cause is shown in answer thereto;

g) Issue an interim order of injunction restraining the respondents from giving any effect and/or further effect to the impugned decision arrived at by them not to conduct any enquiry on the basis of the complaint of the petitioner dated 29th September, 2022 as contained in Annexure "P-2" herein;

h) Ad-interim order in terms of prayer (g) as above;

i) Order for cost and incidental to this application to be paid to the petitioners by the respondents;

j) Such further or other order or orders as Your Lordships may deem fit and proper.”

4. Upon perusing and considering the materials on records it transpires that the instant PIL filed by the petitioner pertains to make an enquiry and investigation into the source of the disproportionate assets of the public servants/representative owned by them.

5. The petitioners made representation before the concerned authorities for taking cognizance and/or investigate into the affairs of the disproportionate assets of income of respondent no. 9 and 10 respectively. But till date the same remains unconsidered.

6. The petitioner is absent which shows that he has lost his interest in pursuing the matter.

7. The main bone of contention of the writ petitioner is for conducting an enquiry and/or investigate into the assets owned/possessed by private respondent Nos. 9 and 10 and to take necessary steps in accordance with law.

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.)