

Court No. 8
07.08.2025
Item No.21
PA (Chamber)

WPA (P) No. 640 of 2023

Bidhan Chandra Kundu
VS
Union of India & Ors.

Mr. Dilip Kumar Samanta
Mr. Anindya Sundar Das
Mr. Biswapriya Samanta
Mr. Suhotro Palit
Mr. Akash Kumar Chakraborty

...for the Petitioner

Mr. Soumitra Bandopadhyay, Sr. Govt. Adv.
Mr. Subhasis Bandopadhyay

...for the Municipality Respondent No. 5

Mr. Supratim Dhar, Sr. Adv.
Ms. Tanwishree Mukherjee

...for the Respondent No. 6

Mr. Ayanabha Raha,

...for the Respondent No.1, Union of India

1. Heard the learned counsel appearing for the petitioners and the respective parties.

2. The instant Public Interest Litigation has been filed by the petitioner praying inter alia for the following relief(s):-

“a) A Writ in the nature of Mandamus commanding the respondents to consider and decide the complaint of the petitioner dated 22.11.2023 (Annexure

P/1 to the Writ Petition) for making investigation and/or enquiry against the respondent no. 6 and his family members forthwith;

b) A Writ in the nature of Certiorari directing the respondents to transmit and produce the relevant records of the case including the complaint of the petitioner dated 22.11.2023 (Annexure P/1 to the Writ Petition) before this Hon'ble Court so that conscionable justice may be done to the society at large;

c) Rule Nisi in terms of prayers (a) and (b) above;

d) Interim order directing the respondents to consider and decide the complaint of the petitioner dated 22.11.2023 (Annexure P/1 to the Writ Petition) for making investigation and/or enquiry against the respondent no.6 and his family members forthwith;

e) Ad-interim order in terms of prayer (d) above;

f) Costs of and incidental to this Writ Petition."

3. Apropos the facts of the case is that the petitioners lodged a complaint dated 22.11.2023

against the private respondent being the respondent no. 6 herein with regard to the acquisition of unaccounted wealth by exploiting his own position as elected as the member of the of Legislative Assembly.

4. The main grievance of the petitioner is that despite such complaint lodged before the Respondent No. 3. No such enquiry and/or investigation has been conducted in accordance with law against the respondent No. 6 or his family members.

5. 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)

6. 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.**

7. 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.

8. 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)

9. 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.

10. 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.)