

01.09.2025
SL No.50
Mujahid

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

CRR 51 of 2025

**Dr. Vidyawati Agarwal
Vs.
The State of West Bengal & Anr.**

Mr. Sandip Mandal,
Mr. Amit Saha

...for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Abhijit Sarkar

...for the State

1. Learned counsel for the State has filed memo of evidence, let it be taken on record. Learned counsel for the State has also placed on record the case diary.

2. Learned counsel for the State has fairly submitted that no sanction under Section 196 was taken. The present FIR in G.R. Case No.2366 of 2024 was lodged under Sections 153A/295A/505(2) of the IPC. Section 196 of Cr.P.C. reads as under:-

“196.Prosecution for offences against the State and for criminal conspiracy to commit such offence. – (1) No Court shall take cognizance of –

- (a) Any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or
- (b) A criminal conspiracy to commit such offence, or
- (c) Any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the

previous sanction of the Central Government or of the State Government.

[1A. No Court shall take cognizance of—
a. any offence punishable under section 153B or Sub-Section (2) or Sub-Section (3) of section 505 of the Indian Penal Code (45 of 1860), or
b. a criminal conspiracy to commit such offence,
Except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding;

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under Sub-Section (1) or Sub-Section (1A) and the District Magistrate may, before according sanction under Sub-Section (1A) and the State Government or the District Magistrate may, before giving consent under Sub-Section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in Sub-Section (3) of section 155.”

3. Bare perusal of Section 196 makes it clear that the court is debarred from taking cognizance of an offence punishable under Section 153A, IPC. In **Promod vs. State of Maharashtra**,

2024 SCC OnLine Bom 2359, it was, inter alia, held as under:-

“The Hon’ble Supreme Court in the decision of Swaraj Thackeray v. State of Jharkhand, 2008 Cri LJ 3780 (Jhar), has taken a view that there is a complete bar for taking cognizance of offence punishable under Sections 153A, 153B and 295A of the IPC, if there is no prior sanction as envisaged under Section 196 of the CrPC. Here it is not clarified by both sides as to whether the learned Magistrate has taken a cognizance without considering the point of sanction. The, such

trial that will be conducted thereafter, would be void and it is not a curable defect, this so held in *H.N. Rishbud v. State of Delhi*, (1954) 2 SCC 934 : AIR 1955 SC 196.”

4. In view of the submission of learned counsel for the State no sanction as required under Section 196 Cr.P.C. has been taken.

5. Learned counsel for the petitioner submits that the cognizance was taken by the learned Magistrate even without the sanction. Hence cognizance so taken is void and law. Hence the proceeding in G.R. Case No.2366 of 2024 corresponding to Cyber Crime Police Station Case No.69/2024 stands quashed.

6. Accordingly, the petition is allowed.

7. All parties shall act on the basis of server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)