

**IN THE HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri**

APPELLATE SIDE

MAT 97 OF 2024

With

CAN 1 of 2024

The State of West Bengal & Anr.

VS

Sri Mrinal Paul @ Mona Paul & Ors.

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Biswaroop Chowdhury**

For the Appellants

Mr. Joyjit choudhury, Ld. Addl. AG.,
Mr. Nabankur Pal, Adv.,
Ms. Bedashruti Basu, Adv.

For the Respondent

Dr. Pabitra Paul Choudhury, Adv.,
Mr. Deborshi Dhar, Adv.,
Mr. Debangshu Modak, Adv.,
Mr. Saptarshi Banik, Adv.

CAV on

14.11.2024

Judgment on

06.01.2025

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated September 30, 2024, passed by a learned Judge of this Court in WPA No. 1944 of 2024, being a writ petition filed by the private respondent no. 1 herein. The writ petition is still pending.

2. The relevant facts of the case are that a criminal proceeding being Bhakti Nagar Police Station Case no. 450/2022 dated 04/05/2022 under Sections 447, 506, 420, 465, 467, 468, 471, 188 and 120B of Indian Penal Code corresponding to GR Case No. 2454 of 2022 was initiated against the private respondent/writ petitioner before the Chief Judicial Magistrate, Jalpaiguri.

3. The private respondent herein filed a writ petition being WPA No. 1018 of 2022 praying for quashing of the said criminal proceeding. He argued that the criminal proceeding was motivated and was initiated only to harass him. He also submitted that there were deliberate arbitrary acts of police atrocity inflicted on him by illegally detaining him on the basis of an FIR registered over the same facts on the basis of which an earlier criminal case is already pending. Apart from praying for quashing the proceedings, the writ petitioner prayed for monetary compensation.

4. By a judgment and order dated February 8, 2023, a learned Judge of this Court partly allowed the writ petition by quashing Bhaktinagar PS Case No. 450 of 2022. However, in so far as the claim for monetary compensation was concerned, it was held that “as the respondents acted in good faith believing themselves that they are bound by law to register a case where cognizable offence was disclosed, the petitioner is not entitled to get any monetary compensation.”

5. Being aggrieved, the writ petitioner carried the said judgment and order in appeal by filing MAT 26 of 2023. A Coordinate Bench disposed of the appeal and the connected application by a judgment and order dated August 19, 2024, the relevant portion whereof reads as follows:-

“9. It is clear and explicit from the above, that the investigating officer had not applied his mind and flagrantly violated the dicta of the Supreme Court in the case of Lalita Kumari (supra) and in the case of Arnesh Kumar (supra).

10. There is admittedly no notice under Section 41A of the Cr. PC. No preliminary enquiry was held when admittedly the complaint had substantial aspect of the civil disputes.

11. The order of the CJM, Jalpaiguri is equally shocking. The CJM, Jalpaiguri ought to have known more than the investigating officer of the requirement of compliance under section 41A of the Cr. PC.

12. The CJM, Jalpaiguri was duly apprised of the pendency of the civil suit between the parties and the earlier complaint, FIR and charge sheet of the year 2014. Notwithstanding the above, the CJM, Jalpaiguri chose to order the “police remand” of the petitioner for seven days.

13. This Court is of the view that there is gross dereliction of the duty on the part of the investigating officer and the CJM, Jalpaiguri has failed to comply with the mandatory provisions of law.

14. The detention of the petitioner for two days in custody and release *suo motu* by the CJM, Jalpaiguri two days thereafter has clearly violated the basic dignity and rights of the petitioner

under Article 21 of the Constitution of India. This is clear case of police atrocity. The gross illegality of the order of the CJM, Jalpaiguri is clear and explicit.

15. The concerned IC Bhaktinagar PS and the CJM concerned deliberately and willfully and for collateral purposes have violated the law. The role of the private respondent in this regard cannot be ruled out.

16. The learned Single Judge has rightly quashed the said FIR No.450 of 2022. What is, however, necessary for the purpose of the instant appeal and the object and purpose beyond the dicta of the Supreme Court in the case of Arnesh Kumar (supra) and Rini Johar (Supra) is to ensure the public at large are protected from being harassed and the authority of the police is not abused.

17. Despite repeated safeguards and guidelines issued by the Hon'ble Supreme Court in the case of D.K. Basu Vs State of West Bengal reported in (1997) 1 SCC 416 such improprieties on the part of the police, most likely at the instance of vested interests appear to continue unabated.

18. In terms of para 11.8 of the Arnesh Kumar Decision (Supra) this Court directs the District Judge, Jalpaiguri to forthwith enquire into the conduct of the CJM, Jalpaiguri, who passed the order of remand dated 05th May, 2022 in GR Case No.2454 of

2022. Major Penalty and Disciplinary Action shall be initiated against him. The concerned magistrate shall participate in the enquiry irrespective of where he is posted now.

19. In so far as the investigating officer of the said case, i.e. Bhaktinagar Police Station FIR No.450 of 2022 dated 4th May, 2022, in terms of Para 11.7 of the said Arnesh Kumar (Supra) decision the Commissioner of Police, Siliguri shall forthwith initiate Major Penalty, disciplinary proceedings and departmental proceedings after making a preliminary enquiry against one ASI, Asit Saha and the concerned Inspector-in-Charge.

20. Let a copy of this order be served by the Registry as well as the petitioner on the District Judge, Jalpaiguri and the Commissioner of Police, Siliguri.

21. In so far as the subsequent FIRs registered against the petitioner are concerned, any grievances there against may be agitated in independent proceedings.”

6. In the present round of litigation, the writ petitioner approached the learned Single Judge for quashing 7 criminal cases initiated against him. The particulars of the said criminal proceedings would appear from prayer ‘a’ of the writ petition which reads as follows:-

“(a) A writ and/or order or orders in the nature of Mandamus directing the respondents and each of them to forbear from

giving effect to and/or further effect to and/or rescind, recall, set aside and quash the criminal proceeding being Bhaktinagar Police State Case nos. i) Bhaktinagar PS case No. 451/2022 dated 04.05.2022 under Section 385 of the Indian Penal Code, (ii) Bhaktinagar Police Station Case No. 452/2022 dated 05.05.2022, under Sections 447/420/465/467/468/471/506/120B of IPC, (iii) Bhaktinagar PS case no. 455/2022 dated 05.05.2022, under Sections 447/420/465/467/468/471/506/120B IPC, (iv) Bhaktinagar PS case no. 456/2022 dated 06.05.2022, under section 420/408/471/120B of the IPC, v) Bhaktinagar PS case no. 459/2022 dated 07.05.2022, under Sections 420/468/471/188/120B of IPC, vi) Bhaktinagar PS Case No. 499/2022 dated 15.05.2022, under Sections 447/420/468/471/120B of the IPC, and vii) Bhaktinagar PS case no. 517/2022 dated 18.05.2022, under section 447/468/469/471/120B of the IPC, pending before the Chief Judicial Magistrate, Jalpaiguri.”

7. The learned Single Judge while passing the order impugned in this appeal noted the order dated August 19, 2024, passed by the Division Bench in MAT 26 of 2023, the material portion whereof has been reproduced above. The learned Judge also noted the submission made on behalf of the State respondents that an application seeking review and recall of the Division Bench order dated August 19, 2024, is pending consideration before the

said Bench. It was further submitted on behalf of the State that in view of the pendency of such application, further steps may not be taken in terms of the direction contained in the order dated August 19, 2024. Having noted the aforesaid, the learned Judge observed and directed as follows:-

“7. The Court fails to appreciate such submission made by the learned Advocate appearing for the State. As long as the order passed by the Court is not recalled/modified/reviewed by the competent Court, the authority cannot take the plea of pendency of an application for review/recall and delay compliance of the direction passed by the Court.

8. Be that as it may, let report by the Commissioner of Police, Siliguri Police Commissionerate be filed before this Court disclosing compliance of the direction passed by the Hon’ble Division Bench with advance copy to the learned advocate appearing for the petitioner.

9. Let a report also be placed before this Court by the District Judge, Jalpaiguri disclosing compliance of the order passed by the Hon’ble Division Bench. The Registrar of the Circuit Bench, Jalpaiguri is directed to communicate this order to the District Judge, Jalpaiguri for necessary compliance.

10. No further steps shall be taken against the petitioner without the leave of the Court.

11. List the matter in the next available Circuit for hearing.”

8. Being aggrieved, the State has come up by way of this appeal.

9. Mr. Choudhury, learned Additional Advocate General (AAG) advanced a very short argument. He said that the direction of the Division Bench of which compliance report has been sought for by the learned Single Judge in the present proceeding, from the Commissioner of Police, Siliguri Police Commissionerate, was issued in an appeal arising out of a writ petition in which only Bhaktinagar Police Station Case No. 450/2022 dated 04/05/2022 was in issue. That police case is not a subject matter of the present writ proceeding. Hence, the learned Single Judge erred in directing, in effect, implementation or execution of an order passed in a different proceeding. The impugned order, at least in so far as the same called for a report from the Commissioner of Police, Siliguri Police Commissionerate disclosing compliance of the direction passed by the Division Bench in the earlier writ proceeding, is beyond the scope of the present writ proceeding. The learned Single Judge acted without jurisdiction in directing implementation of an order passed in connection with another writ petition, the subject matter of which is wholly different from the subject matter of the present writ petition. The order impugned is also beyond the prayers made in the present writ petition. Hence, the appeal should be allowed or the impugned direction in the learned Single Judge's order should be stayed pending disposal of the appeal.

10. Dr. Pabitra Paul Choudhury, learned Advocate representing the respondent no. 1 made elaborate submission on the factual background giving rise to the earlier writ petition and the present writ petition. He

argued that the two writ petitions are inextricably connected. The learned Single Judge committed no error in directing implementation of the order of the Division Bench passed in the appeal carried by the present respondent no. 1 to the Division Bench against the order of the learned Single Judge disposing of the earlier writ petition.

11. According to us it is not necessary to record such submission in details. The summary of such submission on the factual score is police atrocity allegedly perpetrated on the present respondent no. 1 at the behest of the private respondent in the earlier writ petition (WPA no. 1018 of 2022), viz, Shri Shekhar Sharma. Learned Advocate made elaborate submission on how the respondent no. 1 herein was illegally taken into custody without any arrest memo and how the search and seizure process was vitiated by blatant illegalities. Apart from the above, learned Counsel argued that without effecting service of notice on all the respondents and filing affidavit of service, the appeal cannot be heard on.

We do not find much merit in this contention. If the other respondents who are all official respondents, are not served with notice of this appeal, grievance can be made by them. The private respondent no. 1 herein should not be and cannot be legitimately aggrieved by non-service of such notice on the official respondents nor can he have any objection to the appeal being heard in the absence of the official respondents.

In any event, by this judgment and order we are deciding the stay application and not the appeal.

12. The other argument advanced by learned Advocate for the respondent no. 1 is that if the order impugned or portion thereof by which the appellants are aggrieved, is stayed, the same will amount to granting final relief at the ad-interim stage. This is contrary to settled law of the land. In this connection reliance was placed by learned Counsel on a decision of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh v. Ram Sukhi Devi reported at (2005) 9 SCC 733.***

13. We have given our anxious consideration to the rival contentions of the parties.

14. Learned AAG representing the appellants is correct in saying that Bhaktinagar Police Station Case No. 450/2022 dated 04/05/2022 is not the subject matter of the present writ petition. It was the earlier writ petition by filing which the present respondent no. 1 sought quashing of Bhakti Nagar Police Station Case No. 450/2022.

15. In the present writ petition certain other police cases have been challenged and quashing thereof has been prayed for. Bhakti Nagar Police Station Case No. 450/2022 is not a subject matter of the present writ petition.

18. The Division Bench order dated August 19, 2024, was passed in an appeal arising out of the earlier writ petition of which the subject matter was Case No. 450/2022. Hence paragraph 8 of the judgment and order impugned in this appeal, whereby the learned Judge in effect directed implementation of the Division Bench order dated August 19, 2024, is clearly beyond the scope of the present writ petition. There is no prayer also

in the present writ petition for implementation or execution of the order dated August 19, 2024, passed by a Division Bench in connection with the earlier writ petition. It is settled law that a Court cannot pass an order which is beyond the scope of the pleadings filed and prayers made before it. Although in certain circumstances, the writ court may issue directions for implementation / execution of an earlier order of the writ court passed in a different writ proceeding, the same can be done only when such a relief has been asked for by the writ petitioner in the second writ petition.

16. If an order is passed by a Court which is beyond the pleadings or prayers made before it, the same may also amount to violation of the principles of natural justice, since, the defendants / respondents in the proceedings would not have had an opportunity of resisting such an order.

17. We are therefore of the view that the order impugned in this appeal cannot be sustained and the operation of the order should be stayed pending disposal of the appeal. However, we confine this stay order only to paragraph 8 of the impugned judgment and order since the appellants are only aggrieved by that portion of the order. This stay order shall not affect the other portions of the order of the learned single Judge.

18. As regards the contention of the respondent no. 1 that final relief cannot be granted at an ad interim stage, we are not granting the final relief at the ad interim or interim stage. We are not, by this judgment and order, setting aside the portion of the order by which the appellants are aggrieved. Since we are of the prima facie view that the portion of the order with which the appellants are dis-satisfied is legally not tenable, we have merely stayed the

operation of the same pending disposal of the appeal. In other words, the portion of the impugned order indicated above shall remain in abeyance till the appeal is decided.

19. In so far as the Hon'ble Supreme Court's decision cited on behalf of the respondent no. 1 is concerned, in that case, the final relief sought for in the writ petition had been granted as an interim measure. A mandatory direction was issued by the learned Single judge for granting appointment to the writ petitioner during the pendency of the writ petition ignoring a relevant Government order which stood in the way of such appointment. The Division Bench without going into the merits, disposed of the appeal on humanitarian ground. The Hon'ble Supreme Court held that the approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. In that background, the Supreme Court also held that whether the writ petitioner was entitled to the relief claimed in the writ petition was to be adjudicated at the time of final disposal of the writ petition.

20. With respect, the ratio of the aforesaid decisions, while binding on us, has no manner of application to the facts of the present case. We reiterate that being satisfied that the appellants have made out a prima facie case for stay of operation of the concerned portion of the impugned judgment and order, we have put that portion of the order in temporary abeyance. It is not that the said portion ceases to exist. It will be only in animated suspension till disposal of the appeal.

21. We are not for a moment suggesting that the order passed by the earlier Division Bench should not be implemented or the directions contained therein should not be carried out. Every order of a competent Court of law must be obeyed by the parties to the concerned litigation in which such order is passed, unless the order is interfered with by the higher forum. However, there are procedures prescribed by the law for implementation or execution of an order of a Court. This judgment and order will not stand in the way of the respondent no. 1 herein initiating appropriate proceeding before the appropriate forum for implementation of the earlier order of the Division Bench of this Court, naturally subject to such order being recalled by the concerned Division Bench in exercise of review jurisdiction or interfered with by the Hon'ble Supreme Court.

22. The stay application is accordingly disposed of. There will be no order as to costs.

23. Let requisite number of papers books be filed by the appellants within 12 weeks from date. Let notice be issued to the respondents who have not yet been served. The parties will be at liberty to mention the appeal for hearing before the appropriate Bench after paper books are filed.

24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

I agree.

(Biswaroop Chowdhury, J.)