

**M.A.T. 1117 of 2025
With
I.A. No. CAN 2 of 2025**

**Sanjana Gupta
Versus
The State of West Bengal & Ors.**

Mr. Anirban Mitra, Adv.

.....for the appellants

Mr. Vimal Kr. Shahi, A.G.P.

Ms. Susmita Chatterjee, Adv.

...For the State-Respondent

Mr. Debasis Kar, Adv.

Mr. Arka Tilak Bhadra, Adv.

...For the Respondent No. 7 & 8

PER, PARTHA SARATHI SEN, J.:-

1. The appellant/writ petitioner, the respondent State and its instrumentalities and/or private respondents are represented by their respective Counsels.

2. We have heard the learned Advocates for the parties at length.

3. The subject matter of challenge in the instant appeal is the order dated 05.05.2025 as passed by the learned Single Bench of this Court in WPA 8817 of 2025 whereby and whereunder the said Court while disposing of the aforementioned writ petition expressed the following view :

“.....The petitioner complains that the police authorities should have in the facts and circumstances registered an FIR. Since the police have not registered any FIR, it would be the petitioner’s obligation to approach the jurisdictional Magistrate by invoking the relevant provisions of law. The learned Magistrate would also assess regarding the nature of the offence complained of as also ascertain whether any case for investigation is called for, thereafter, pass necessary directions in accordance with law.”

4. The writ petitioner felt aggrieved and thus, preferred the instant appeal.

5. At the time of hearing, Mr. Mitra, learned Advocate appearing on behalf of the appellant/ writ petitioner at the very outset draws our attention to page nos. 29 to 32 of I.A. No. CAN 2 of 2025 being a copy of the written complaint as lodged by the writ petitioner with the respondent no. 4 authority. It is argued that despite the fact that the said written complaint dated 28.01.2025 disclosed the commission of cognizable offence by the private respondents, the respondent nos. 4 and 5 authorities have failed and neglected to treat the said written complaint as an FIR and finding no other alternative the writ petitioner approached the learned Single Bench with a prayer for issuance of writ of mandamus against the respondent authorities more specifically, against the respondent no. 5 authority to lodge FIR against the private respondents in connection with the incident as occurred on

25.01.2025 and as has been reduced into writing in the written complaint dated 28.01.2025.

6. It is submitted that the learned Single Bench while disposing the said writ petition failed to visualize that under Section 175 (1) of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the BNSS in short) a police officer is empowered to investigate any cognizable case. It is submitted by Mr. Mitra that the learned Single Bench has failed to notice that the written complaint dated 28.01.2025 disclosed cognizable offence committed by the private respondents and the said Single Bench was practically persuaded with a faulty report as submitted on behalf of the State and thus, declined to grant relief to the writ petitioner causing serious miscarriage of justice.

7. Drawing attention to the report dated 01.01.2026 as submitted by the respondent no. 5 authority in this appeal, it is further submitted by Mr. Mitra that an identical report was submitted before this Court wherein no cogent reason could be assigned by the respondent No. 5 authority for not registering the FIR.

8. It is argued by Mr. Mitra that for the reasons stated hereinabove appropriate relief/reliefs may be granted to the appellant/writ petitioner by modifying the order impugned and by granting appropriate

relief/reliefs in terms of the prayers made in the writ petition before the learned Single Bench.

9. Per contra Mr. Kar learned Advocate appearing on behalf of the private respondents however contended that from the report as submitted before the learned Single Bench as well as from the report as submitted before this Court, it would reveal that there exists a long standing matrimonial discord between the writ petitioner and the private respondents. It is further argued that the learned Single Bench while passing the impugned order duly noticed that on account of such matrimonial discord several FIRs had been lodged and thus, rightly observed that the relief as sought for by the writ petitioner in the said writ petition is available before the jurisdictional Magistrate and in terms of the said provision of law rightly disposed of the said writ petition.

10. Placing his reliance upon the judgments in the case of ***Radhey Shyam & anr. Vs. Chhabi Nath & Ors.*** reported in ***[Supreme Today AI (2015 Supreme (SC) 158]*** and in the case of ***Moran M. Baselios Marthoma Mathews II & Ors. Vs. State of Kerala and Ors.*** reported in ***[Supreme Today AI (2007 Supreme (SC) 455]***, it is argued by Mr. Kar that it is the clear mandate of the Hon'ble Supreme Court that the writ of mandamus should be issued

against the State or public authorities and not for private law remedies.

11. Placing further reliance upon the judgment in the case of **Smt. Sonamani Ghosh Vs. The State of West Bengal** reported in **[Supreme Today AI (2025 Supreme (Online)(Cal) 2829)]**, it is submitted by Mr. Kar that a Single Bench of this Court expressed the view that the Writ Court does not entertain private disputes lacking public law elements especially when other legal remedies are available to the writ petitioner. It is thus submitted by Mr. Kar that the instant appeal may be dismissed.

12. Mr. Shahi, learned A.G.P. in course of his submission draws attention of this court to the report as filed today by the respondent no. 5 authority. It is submitted that from the report as filed on behalf of the respondent/ State it would reveal that the writ petitioner and/or private respondents are loggerheads on account of their matrimonial discord and on account of this, several police complaints have been lodged which were treated as FIRs in which final reports have also been submitted. It is thus submitted by Mr. Shahi that it is a fit case for dismissal of the instant appeal.

13. We have carefully perused the entire materials as placed before us. We have given due consideration to the submissions as made at the Bar.

14. On careful perusal of the copy of the writ petition as has been annexed at Page no. 17 to 27 of the interlocutory application being CAN 2 of 2025 it appears to us that the appellant/ writ petitioner approached the writ Court with a prayer for issuance of writ of mandamus against the respondent authorities more specifically against the respondent no. 5 authority to lodge FIR against the private respondents in connection with an incident as allegedly occurred on 25.01.2025 and as has been reduced into writing dated 28.01.2025 as submitted with the respondent no. 4 authority.

15. As discuss earlier, in course of his argument Mr. Mitra, learned Advocate appearing on behalf of the appellant/writ petitioner strongly contended that the said written complaint dated 28.01.2025 discloses commission of cognizable offence by the private respondents against the appellants/writ petitioner and since no FIR was registered by the respondent no. 5 authority and there was thus inaction and/or non-action on the part of the respondent nos. 4 and 5 authorities and thus the learned Single Bench was not justified to return a finding that it would be the obligation of the appellant/writ petitioner to approach the jurisdictional Magistrate by invoking the relevant provisions of law.

16. Though the question of maintainability of the writ petition before the learned Single Bench was not projected before us, however, we consider it deem and proper to look into as to whether the writ petition as filed before the learned Single Bench is at all maintainable or not.

17. On careful perusal of the copy of the instant writ petition as has been annexed with IA No. CAN 2 of 2025 it appears that before the learned Single Bench the writ petitioners had approached for issuance of appropriate writ/writs against the respondent authorities more specifically against the respondent Nos. 4 and 5 authorities, commanding them to lodge FIR on the basis of a written complaint dated 28.01.2025.

18. At this juncture, we at the very outset propose to look to the reported decision of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & Ors.** reported in **(2016) 6 SCC 277** wherein the Hon'ble Apex Court held thus:

“This Court has held in Sakiri Vasu Vs. State of UP [(2008) 2 SCC 409] 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 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) Cr.P.C..... 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.”

19. The same view was taken by Hon’ble Supreme Court in the case of ***Lalita Kumari Vs. Government of UP*** reported in ***(2014) 2 SCC 1*** and ***Aleque Padamsee Vs. Union of India*** reported in ***(2007) 6 SCC 171***.

20. Keeping in mind the proposition of law as enunciated in the aforementioned three reported decisions if we look to the prayers made in the said writ petition, we have no hesitation to hold that the writ petition is not at all maintainable since the primary grievance of the writ petitioner before the Writ Court is that her written complaint has not been treated as FIR.

21. In view of such, we hold that the writ petition before the learned Single Bench is not at all maintainable.

22. For the sake of argument, even if we hold that the writ petition is otherwise maintainable, we at the outset propose to look to Section 175 of the BNSS which is as under:

“175. Police officer's power to investigate cognizable case.-- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

Provided that considering the nature and gravity of the offence, the Superintendent of

Police may require the Deputy Superintendent of Po-lice to investigate the case.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4).....”

23. Keeping in mind the aforementioned legislative provision if we look to the factual aspects as involved in the instant appeal as well as involved in the writ petition as disposed of by the learned Single Bench, it reveals that it is the main grievance of the writ petitioner before the writ Court that despite submission of a written complaint dated 28.01.2025 against the private respondents, the respondent nos. 4 and 5 authorities were reluctant to lodge FIR against the private respondents despite disclosure of cognizable offence as committed by them.

24. It appears to us that while passing the impugned order the learned Single Bench noticed the provision of Section 175 of the BNSS and practically granted liberty to the appellant/writ petitioner to approach the jurisdictional Magistrate and the jurisdictional Magistrate was also directed to assess

the nature of the offence complained of as well as to ascertain whether any investigation is at all called for or not.

25. In our considered view, the view taken by the learned Single Bench is quite plausible one and the same is in accordance with the provisions of Section 175 of the BNSS.

26. In view of the discussion made hereinabove, we thus find no merit in the instant appeal.

27. Accordingly, the instant appeal is dismissed.

28. With the dismissal of the instant appeal, CAN 2 of 2025 is also dismissed.

29. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(SUJOY PAUL, ACJ.)

(PARTHA SARATHI SEN, J.)