IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Before:

The Hon'ble Justice Anuj Singh.

W.P.A. No. 25798 of 2023

Trina Halder& Ors.

v.

The State of West Bengal & Ors.

For the Petitioner : Mr. Arka Pratim Chowdhury
Ms. Puja Rajbhor
Mr. Swattik Batabyal
..... Advocate.

For the State : Mr. Goutam Misra
..... Advocate

Heard on : 28.09.2026

Judgement on : 09.10.2026

Anuj Singh, J:.

1. The instant writ petition has been filed by the writ petitioners inter alia, praying for expunging their names from the Bidhannagar North Police Station Case No. 169 of 2021,

registered for investigation into the offences punishable under sections 143/341/269/270 and 188 of Indian Penal Code, along with Section 51 of the Disaster Management Act, 2005.

2. The Petitioners herein are a group of persons, who at all material times, were aggrieved by the manner of recruitment by School Service Commission. The writ petitioners contend that in order to express their grievances against improper recruitment procedure adopted by the School Service Commission, the Petitioners started peaceful protest on 28.09.2021.

3. The said petitioners further contend that they wanted to express their grievances in front of Sri Bratya Basu, the Hon'ble Education Minister of Government of West Bengal, and thus went in front of his house, to protest against hunger, unemployment and illegal recruitment. However, Bidhannagar North Police Station Case No. 169 of 2021, registered for investigation into the offences punishable under sections 143/341/269/270 and 188 of Indian Penal Code, along with Section 51 of the Disaster Management Act, 2005. The investigation of the case is said to be pending.

4. The complaint was lodged by SI Suman Roy. A perusal of the complaint, which led to registration of FIR, reveals that:

   (a) On 05.08.2021, the complainant found the candidates of SLST assembled near Mayukh Bhawan, Salt Lake, heading towards Bikash Bhawan to demonstrate by raising slogans and halla to fulfil their demands.

   (b) It was stated that the same violated COVID protocols and order under Section 144 Cr.P.C. It is mentioned that they did not disperse on being asked and tried to obstruct the way of public navigation and restrained the officials from discharging their duties.

   (c) Thirteen persons, including the six petitioners were arrested and the above acts constituted the offense punishable under sections 143/341/269/270 and188 of Indian Penal Code, along with Section 51 of the Disaster Management Act, 2005.

5. By way of the instant writ petition under Article 226 of the Constitution, the writ petitioners have prayed for Writ in nature of mandamus to strike off the names of petitioner from Bidhannagar North Police Station Case No. 169 of 2021 registered for investigation into the offences punishable under sections

143/341/269/270 and 188 of Indian Penal Code, along with Section 51 of the Disaster Management Act, 2005.

6. Ld. Advocate for the Petitioners submits that the Petitioners were exercising their right to assemble peacefully and voice their grievances under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. Learned counsel for the petitioner has placed reliance upon the decision of the Madras High Court in J. Jayaraj v. The Chief Educational Officer, W.P.(MD) Nos. 13409 to 13415 of 2022, in support of the arguments that petitioners have a right to protest peacefully. It is further submitted that the police authorities were not authorised by Respondent No. 1 to take action against the Petitioners, as no notification/notice was issued in 2021 authorising such action against peaceful assembly and protest.

7. Reliance has been also placed on the Supreme Court's decision in Re: Ramlila Maidan Incident v. Home Secretary, Union of India, 2012 AIR SCW 2660, to contend that an order under Section 144 Cr.P.C. requires urgency necessitating immediate and speedy intervention and must disclose the material facts warranting such

intervention, whereas no grave or severe offence was made out from the Petitioners' protest.

8. It is further submitted that this Court, in exercise of its jurisdiction under Article 226 of the Constitution, may prevent abuse of process and quash proceedings where the allegations do not disclose a prima facie offence. The Learned counsel for the petitioner has placed reliance on State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522 and State of Haryana v. Bhajan Lal, 1992 AIR 604.

9. It is further submitted that the Petitioners have sought quashing of the investigation arising out of Bidhannagar North Police Station Case No. 169 of 2021 registered for investigation into the offences punishable under sections 143/341/269/270 and 188 of Indian Penal Code, along with Section 51 of the Disaster Management Act, 2005, as continuation thereof would amount to an abuse of process of law and cause serious prejudice to the Petitioners by saddling them with a criminal record and adversely affecting their prospects of employment.

10. Learned Advocate representing the State has opposed the instant writ petition. Ld. Advocate has argued that the petition is not maintainable and deserves to be dismissed.

11. I have heard the learned advocates representing the petitioner and the State.

12. The power of the High Court to quash an FIR may be exercised under Article 226 of the Constitution of India as well as under its inherent jurisdiction under Section 482 of Cr.P.C. In **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, which itself arose from a proceeding under Article 226, the Supreme Court, after considering R.P. Kapur v. State of Punjab, AIR 1960 SC 866, laid down in paragraph 102 the following categories of cases in which such power may be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice:

> *"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their*

entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently

improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. In **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122** (paragraphs 8 to 11), the Court reiterated that the inherent power is to be exercised ex debito

justitiae to do real and substantial justice. The Court would be justified in quashing a proceeding if its initiation or continuance amounts to an abuse of the process of the Court; and that, when a proceeding is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. At the same time, the Court cautioned that the High Court ought not to embark upon an enquiry into the reliability of the allegations, nor analyse the case in the light of probabilities to determine whether a conviction would be sustainable.

14. In **Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401**, the Supreme Court summarised the position in paragraph 33. The police have the statutory right and duty to investigate a cognizable offence and courts would not thwart any investigation into cognizable offences. It is only in cases where no cognizable offence or offence of any kind is disclosed in the FIR that the Court will not permit the investigation to go on. The Court, having regard to the parameters in R.P. Kapur and Bhajan Lal, has the jurisdiction to quash the FIR but, while examining an FIR, it has to consider

only whether the allegations disclose the commission of a cognizable offence, and not the merits of the allegations.

15. It is a well-settled principle of law that if the FIR does not disclose the commission of an offence, the Court would be justified in quashing the proceedings to prevent the abuse of process of law **(Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741)**.

16. The Hon'ble Supreme Court in **Chanchalpati Das v. State of West Bengal, 2023 INSC 554**, in paras 12, 13, observed that except for bald allegations made in the complaint, no material was produced by the complainant to substantiate the allegations and considered it rightly to quash the proceedings to prevent the abuse of process of law and to secure ends of justice.

17. Further, when it is alleged that the proceedings are vexatious or frivolous or instituted with an ulterior motive, then it is the duty of the court to look at the attending circumstances and read between the lines with due care and circumspection, and not confine itself merely to the bare words of the FIR (Mohammad Wajid v. State of UP, 2023 SCC OnLine SC 951,

paras 36-38; Mahmood Ali v. State of UP, (2023) 15 SCC 488, paras 12, 13).

18. In **Kumaresam v. The State, Crl. O.P (MD) No. 17218 of 2023**, the Petitioners were situated in a similar factual position, wherein they assembled together and protested during the COVID-19 lockdown period, and were charged with Sections 143, 341, 269 and 270 of IPC. Madras High Court, vide Order dated 26.09.2023, quashed the proceedings, holding that the FIR does not contain averments to attract the aforesaid provisions and no ingredients of any offence alleged against the Petitioners were sustained by the FIR.

19. Thus, this Court is empowered under Article 226 to quash the proceedings in cases where there are mere bald allegations, which do not disclose the commission of an offence. It is the duty of this Court to have a meaningful reading of the FIR as a whole, and the Court must be able to find who is alleged to have committed the act, what was the act, and how it satisfies each ingredient of the offence charged.

20. In light of the above settled position of law with regard to quashing of investigation of a case, it is necessary to examine the allegations which are forming the subject matter of Bidhannagar North Police Station Case No. 169 of 2021 registered for investigation into the offences punishable under sections 143/341/269/270 and 188 of Indian Penal Code, along with Section 51 of the Disaster Management Act, 2005. The allegations contained in the FIR must be examined and accepted on their face value and believed to be true. This court is not required to look into the defense of the petitioners. The limited question that may be looked into is whether the conduct attributed to the petitioners discloses the essential ingredients of the offences charged.

21. The FIR proceeds on the allegations that on 05.08.2021, the candidates of SLST assembled near Mayukh Bhawan, Salt Lake, heading towards Bikash Bhawan to demonstrate by raising slogans and halla to fulfil their demands. It was alleged that the same was in violation of COVID protocols and order under Section 144 Cr.P.C. It is further alleged that on being asked, the candidates did not disperse and tried to obstruct the way of public navigation and restrained the officials from discharging

their duties. On such allegations Sections 143, 188, 341, 269 and 270 of IPC and Section 51 of the Disaster Management Act, 2005 have been invoked.

22. In order to attract the penal provision of Section 143 of the Indian Penal Code, it must be alleged that the accused was a member of an unlawful assembly. An unlawful assembly is defined under Section 141 IPC as an assembly of five or more persons only if its common object is one of the five objects enumerated therein, namely, to overawe by criminal force, or show of criminal force, the Government or any public servant in the exercise of his lawful power, to resist the execution of any law or legal process, to commit any mischief, criminal trespass or other offence, to take or obtain possession of property by criminal force, or to compel any person by criminal force to do what he is not legally bound to do.

23. Even if the allegations in the present FIR are accepted in their entirety, they fall short of the requirements to be considered as an unlawful assembly. The FIR does not disclose the common object with which the assembly was formed, and unless the common object is one of the five objects enumerated under

section 141, it cannot be held as an unlawful assembly. In Association for Protection of Democratic Rights v. State of West Bengal, 2007 (4) CHN 842, in para 82, the Calcutta High Court observed that:-

"82. … Article 19(1)(b) of the Constitution of India confers upon all citizens of India to right to assemble peaceably. Therefore, any large assembly of demonstrator would not per se be either illegal or unconstitutional…"

Thus, mere protest and raising slogans cannot be said to be an unlawful common object under section 141. Hence, the conduct described, therefore, does not attract section 143.

24. It is a well-settled position of law that right to assemble peaceably and without arms, and to express their voice, is guaranteed by Articles 19(1)(a) and 19(1)(b), subject to reasonable restrictions. In plethora of judgements, including the decision of the Madras High Court in J. Jayaraj (supra) and the Supreme Court in **Javed Ahmad Hajam v. State of Maharashtra, (2024) 4 SCC 156**, it was held that the right to dissent, criticise and peacefully protest against the Government, in a legitimate and lawful manner is integral and essential part of democracy in view

of Articles 19(1) and 21 of the Constitution. Thus, a demonstration does not become an offence merely because it was unwelcome to those in authority.

25. In order to attract the penal provisions of Section 188 of the Indian Penal Code, it must be alleged that the accused, being in knowledge that there exists an order promulgated by a public servant which directs him to abstain from certain acts, disobeyed such promulgation, causing or tend to cause obstruction, annoyance, injury to any person lawfully employed, or danger to human life. The FIR alleges the petitioners conduct as obstruction and violation of Memo No. 743/CP/BDN/C dated 14.07.2021, promulgated under Section 144 Cr.P.C. to attract the offence under Section 188 IPC. However, it does not place the order on record and does not describe how the conduct of the petitioners caused or tend to cause obstruction any person lawfully employed or danger to human life. It is merely alleged that the petitioners did not pay heed to officer's request, causing obstruction of public navigation and restraining officers from discharging their duties, but does not describe how their conduct caused obstruction of public navigation or restrained the officers in discharging their duties. Further, in Re: Ramlila Maidan Incident (supra), the

Supreme Court held that an order under Section 144 Cr.P.C. must set out the material facts and may be used only in grave circumstances. The FIR does not describe whether the present case was a grave situation where the said order under section 144 Cr.P.C. could be applied. Thus, the essential ingredients of section 188 IPC are not satisfied.

26. In order to attract the penal provisions of Section 341 of the Indian Penal Code, it must be alleged that the accused voluntarily obstructed a person so as to prevent that person from proceeding in any direction in which he had a right to proceed. In **Keki Hormusji Gharda v. Mehervan Rustom Irani, (2009) 6 SCC 475**, the Supreme Court, held that for an offence of wrong restraint, the word “voluntary” is essential and the obstruction should be restriction on the normal movement of a person. Further, there must be an identifiable person who was so obstructed. In **Arjun v. State of Tamil Nadu, Crl. O.P.(MD) No. 21582 of 2025**, the Madras High Court observed that there was no specific allegation as to who was restrained, in what manner, and for what duration, thus offence of wrongful restraint was not attracted. The FIR merely alleges that the group "tried to obstruct the way of public navigation". It does not name any person who

was prevented from proceeding in any direction, in what manner, or for what duration, thus the conduct described does not attract Section 341.

27. It is further necessary to examine whether the essential ingredients of Sections 269 and 270 IPC is attracted. In order to attract Sections 269 and 270, the accused must do an unlawful or negligent act (Section 269), or a malignant act (Section 270), which he knows or has reason to believe is likely to spread the infection of a disease dangerous to life.

28. The allegations in the FIR do not disclose any specific act that was likely to spread infection, and nothing is alleged from which malignity as under Section 270 IPC could be inferred. The Delhi High Court, in **Anupam Shahu v. State, 2026 SCC OnLineDel 5275**, held that to attract the provisions of Section 269 and 270, it must be shown that the accused was infected or had had reason to believe that he was carrying the disease. Relevant portion of the judgement is reproduced herein under:

> "27. Section 269 IPC punishes one who "unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life". Section 270 IPC punishes the same act when done "malignantly".

> 28. Applying these provisions in the context of COVID-19, they presuppose, at the very least, an allegation that the accused was infected, knew or had reason to believe that he was so infected, and nonetheless committed an act likely to spread the infection.
> 29. The present case stands on an even weaker footing. The petitioner was never tested for COVID-19 — neither at the picket, nor at the police station, nor at any point thereafter. The prosecution does not even allege that he was infected, suspected of being infected, or symptomatic. The only act attributed to the petitioner is that he was walking alone on a public road. In the absence of any material or allegation to establish that the petitioner was carrying an infectious disease, the very foundation for involving Sections 269 and 270 IPC is absent."

In the present case as well, the FIR does not disclose whether there was any reason to believe that the petitioners were carrying any disease or were infected with COVID-19.

29. Further, in **K. Naina Mohamed v. The State, Crl. O.P. (MD) No. 13798 of 2023**, the Madras High Court, vide Order dated 26.09.2023, observed that no specific act was shown to demonstrate the possibility of spreading COVID-19 disease by the Petitioners, nor was it mentioned that the Petitioners were infected with COVID-19 disease, thus not attracting Sections 269/270.

30. To attract the penal provision of section 51 of the Disaster Management Act, 2005, it has to be alleged that the accused,

without reasonable cause, obstructed an officer or employee acting under the Act, or refuse to comply with a direction given under the Act by the Central or State Government or an authority constituted under it.

31. In this respect, the FIR alleges that the Petitioners assembled "by completely violating the rules of COVID Protocol". The FIR merely states that Order No. 753/IV-ISS/2M-22/2020 dated 29.07.2021 of the Health & Family Welfare Department was violated, but it does not disclose whether which particular protocol was violated, the manner in which it was violated, and by whom it was violated. In a plethora of cases, the High Courts have quashed the proceedings when the specific guideline of the COVID protocols, which was violated by the Petitioners were not prescribed. In decisions of the Punjab and Haryana High Court in **Pawan Giri v. State of Haryana, CRM-M-51595-2021**, and Telangana High Court in **Gurram Venkat Ramana v. State of Telangana, Crl. Petition No. 8550 of 2024**, it was observed that in the absence of the exact guideline alleged to have been violated, there can be no presumption that the act of the Petitioners was unlawful. Further, when there is no specific mention that the Petitioners obstructed any officer or refused to

comply with the directions of the Government, the offence under Section 51 of Disaster Management Act, 2005, is not attracted as has been held by this Court in **Amit Chouhan v. State of West Bengal, in C.R.R. 3023 of 2022**, vide Order dated 08.08.2024.

32. Thus, a bare reading of FIR does not disclose the ingredients of any of the offences invoked in the FIR, and no prima facie case is made out against the Petitioners. It is an unavoidable inference that the Petitioners are being punished for the protest, making it a vexatious and frivolous proceeding. Thus, the present case clearly falls within the category (1), (3) and (7) of Bhajan Lal (supra).

33. In view of the settled principle of law that when commission of any offence is not disclosed on a careful and constructive reading of the FIR as a whole, the court is empowered to quash such proceedings to prevent any further abuse of process of law and in order to meet the ends of justice.

34. In view of the foregoing, Bidhannagar North Police Station Case No. 169 of 2021 dated 5th August 2021, registered under Sections 143, 188, 341, 269 and 270 IPC and Section 51 of the

Disaster Management Act, 2005, and all consequential proceedings arising therefrom, including G.R. Case No. 901 of 2021 pending before the learned Additional Chief Judicial Magistrate, Bidhannagar, are quashed.

35. Let a copy of this judgement be communicated forthwith to the concerned criminal court and the Officer-in-Charge, Bidhannagar North Police Station.

36. W.P.A. 25798 of 2023 is allowed. There shall be no order as to costs.

37. Urgent Photostat certified copy of this judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Anuj Singh J.)