IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Before:

The Hon'ble Justice Anuj Singh.

W.P.A. No. 25799 of 2023

Mithun Biswas

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 Writ petitioners claim to be eligible candidates for recruitment to teaching posts and state that they participated in a demonstration against alleged irregularities in recruitment by the School Service Commission.

2. By this writ petition under Article 226 of the Constitution, the Writ Petitioners, assail Maidan Police Station Case No. 86 of 2021 dated 20.10.2021, registered under Sections 188/ 283 and 34 of the Indian Penal Code, 1860 read with Section 51(b) of the Disaster Management Act, 2005, and the consequential G.R. Case No. 1120 of 2021 pending before the learned Metropolitan Magistrate, 7th Court, Calcutta. The petitioners seek a writ of certiorari directing the respondents to strike them off the records of Maidan P.S. Case No. 86 of 2021.

3. The writ petitioners contend that the prosecution is *mala fide*, actuated by an ulterior motive to brand genuine candidates with a criminal record, and violative of Articles 14, 15, 16, 19(1)(a),(b) and (g), 20 and 21 of the Constitution.

4. The written complaint dated 20.10.2021 was lodged at Maidan Police Station by Sub-Inspector Debabrata Saha of Maidan Police Station. On the same day, it was registered as Maidan P.S. Case No. 86/2021. The complainant alleges that at about 1:40 p.m. on 20.10.2021, while on his round, he found two sit-in-demonstration programmes of SSC SLST-2016 candidates going on at Gandhi Statue beside Mayo Road, one of which was under the leadership of the petitioner. It is alleged that at about 2:00 p.m., some 25 to 26 demonstrators under the leadership of the petitioner arranged a Lakshmi Puja in the course of the sit-in-demonstration programme, occupying and blocking the footpath of Mayo Road beside Gandhi Statue till about 4:50 p.m., causing obstruction to pedestrians, in

violation of the conditions imposed by this Court and the Covid19 pandemic protocols, then in force. The complaint names the petitioner, Mithun Biswas, and 25/26 other persons as being among the protesters**.**

5. Upon completion of investigation, Charge-Sheet No. 85 of 2021 dated 30.12.2021 was submitted under Sections 188/283/34 of IPC read with Section 51(b) of the Disaster Management Act, 2005 against the petitioner alone, the other demonstrators having remained unidentified.

6. Both the parties have submitted that upon submission of the charge sheet in the instant case, the learned magistrate has taken cognizance of the offences.

7. At the outset, this Court called upon the parties to address the Court on the issue as to whether this Court, under Article 226 of the Constitution, can quash the proceedings arising out of Maidan Police Station Case No. 86 of 2021 dated 20.10.2021, registered under Sections 188/ 283 and 34 of the Indian Penal Code, 1860 read with Section 51(b) of the Disaster Management Act, 2005, which has culminated in a Charge Sheet, most significantly, where the learned Magistrate has proceeded to take cognizance of the offences.

8. Learned advocate for the petitioner, however, argued that there is no bar on the powers of this Court in quashing the proceedings, notwithstanding the fact that the charge sheet had been submitted

and cognizance of the offences has been taken by the learned Magistrate.

9. Learned Advocate representing the State has, however, opposed the petition by submitting that the Charge sheet has several allegations which, if taken at their face value, constitute an offence. As such, the only remedy available to the petitioner is to face trial.

10. The question, therefore, which falls for consideration of this Court is whether the present writ Petition is maintainable under Article 226 of the Constitution in light of the fact that the charge sheet has been submitted and cognizance of the offences has been taken by the learned Magistrate.

11. In **Neeta Singh v. State of U.P., (2026) 6 SCC 817**, a writ petition under Article 226 challenging an FIR had been dismissed because the charge-sheet was filed and cognizance taken during its pendency. Upholding that course, the Supreme Court held that once the competent criminal court takes cognizance, the High Court is disabled from proceeding with the writ petition, "owing to a judicial order having intervened". The following passage of the judgment is of significance and reproduced hereunder.

> ***"3.*** *We have no doubt in our mind about the contours of jurisdiction of a High Court when a challenge is presented asserting that the impugned FIR ought to be quashed on the settled parameters. However, sight cannot be lost of the settled legal position that it is entirely within the discretion of a High Court whether to interfere or not when other remedies are*

available. If during the pendency of a writ petition under Article 226 of the Constitution before a High Court where an FIR is challenged the investigation is completed and charge-sheet filed, in pursuance whereof the competent criminal court takes cognizance of the offence, the court would be disabled in proceeding with the writ petition owing to a judicial order having intervened.

4. *We can profitably refer to the decision of the Bench of three Judges of this Court made on a reference in Radhey Shyam v. Chhabi Nath [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] . While disapproving the view expressed in Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , it was held that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226 [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423, para 29] ."*

12. Further, the Supreme Court in **Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423**, has held that judicial orders are not amenable to writ jurisdiction under Article 226. A judicial order cannot be said to breach a fundamental, constitutional or statutory right so as to attract a writ of certiorari. The law provides its own fora for redressal. The following passage of the judgment is of significance and reproduced hereunder.

"18 While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that the challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 or 32.

25. …All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England and applicable to India and a writ of

certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts…"

13. *Neeta Singh* (supra) further rejected the argument that the High Court should simply treat such a writ petition as one under Article 227 or Section 482 Cr.P.C. Relying on **State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1,** which approved the Division Bench decision of this Court in **Sohan Lal Baid v. State of West Bengal**, **AIR 1990 Cal 168**, it held that nomenclature read with substance does matter. A Judge assigned petitions under Article 226, cannot treat a petition as one under Article 227 and decide it unless the Chief Justice has also assigned that jurisdiction to him. The following passage of the judgment is of significance and reproduced hereunder.

"17. In view of the decision in Prakash Chand [State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1], we hold that nomenclature of a petition read with the substance thereof does matter. Much depends on what the subject-matter of the petition is and who is entrusted to hear and decide it. A Judge of a High Court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice cannot, if he (the Judge) finds that the petition filed under Article 226 should have ideally been filed under Article 227, treat the petition as one under Article 227 and proceed to hear and decide it, unless the Chief Justice has also assigned to such Judge petitions under Article 227 of the Constitution for hearing and decision. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227 for being placed before the learned Judge having assignment. This is mandatory and, therefore, one finds the caution sounded by this Court in the opening sentence of para 26 of Pepsi Foods [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to be of extreme significance."

14. In **Pradnya Pranjal Kulkarni v. State of Maharashtra, (2026) 6 SCC 813**, the Supreme Court clarified the distinction between a petition invoking Article 226 alone and one also invoking the inherent jurisdiction of the High Court. It held that, until cognizance is taken, an FIR or charge-sheet may be quashed under Article 226. Once an order taking cognizance intervenes, the power under Article 226 is unavailable, although the inherent power under Section 528 BNSS remains available, subject to the requisite pleadings and a case being made out for interference. Since the petition before the Bombay High Court also invoked Section 528 BNSS and the concerned Bench had the necessary assignment, the Supreme Court set aside the order disposing of that petition and remanded the matter for fresh consideration.

15. Further, the Supreme Court in **Rajendra Bihari Lal v. State of U.P., 2025 INSC 1249,** has put the matter beyond doubt. While recognising in paragraphs 85 to 87 of the said report that the filing of a charge-sheet does not by itself denude the High Court of its inherent power to quash the proceedings, the Court drew the jurisdictional line at cognizance in paragraph 88 holding that an accused may approach the High Court under Article 226 for quashing the FIR and charge-sheet till cognizance is taken. But once cognizance is taken, the remedy is under Section 528 BNSS.

16. Tested against these principles, the petition cannot be entertained in the aforesaid facts of the case.

17. The petitioners' contentions that the protest was peaceful, that the allegations disclose no offence and that the prosecution is mala fide go to the merits of the prosecution case. This Court expresses no opinion on any of them. They remain open to be urged in the appropriate proceeding.

18. For the reasons above, W.P.A. No. 25799 of 2023, being a petition under Article 226 directed against a criminal proceeding in which a judicial order taking cognizance had intervened before its disposal by this court, is accordingly, dismissed.

19. This order, however, shall not preclude the petitioners from challenging the charge-sheet and the order taking cognizance in G.R. Case No. 1120 of 2021 by an appropriate application under Section 482 of the Code of Criminal Procedure, 1973 or Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, as may be applicable, in accordance with law, nor shall it preclude them from seeking discharge before the learned trial court at the appropriate stage, if at all, advised.

20. Nothing in this order is an expression of opinion on the merits of the allegations or on any contention of the parties.

21. With the above directions, **W.P.A. No. 25799 of 2023** is dismissed. There shall be no order as to costs.

22. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Anuj Singh J.)