IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Before:

The Hon'ble Justice Anuj Singh.

W.P.A. No. 25801 of 2023

Abu Naser Gharami& 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 Park Street Police Station Case No. 78 of 2023, registered for investigation into the offences punishable under sections 145/147/149/143/341/342/353and 332 of Indian Penal Code.

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 grievance 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 the Petitioners wanted to express their grievances in front of the MLA Hostel, to protest against hunger, unemployment and illegal recruitment. However, Park Street Police Station Case No. 78 of 2023, registered for investigation into the offences punishable under sections 145/147/149/143/341/342/353and 332 of Indian Penal Code. The investigation of the case is said to be pending.

4. The complaint was lodged by Sg. G. Lama. A perusal of the complaint, which led to registration of the FIR, reveals that:

   a. On 02.08.2023, while the Legislative Assembly was in session and members were to leave the MLA Hostel at 2, Kyd Street at about 10:00 to 10:30 hours, a mass of men and women

describing themselves as SLST 2016 job seekers arrived, shouting slogans against the Government.

b. It is alleged that they blocked the main gate and wrongfully prevented members of the Legislative Assembly from leaving, so that the MLAs were confined inside the Hostel, and on being asked to refrain, they became violent and misbehaved with the police and assaulted police personnel physically, including the complainant; and that the complainant and others received injuries.

c. The above acts constituted the offense punishable under sections 145/147/149/143/341/342/353and 332 of Indian Penal Code

5. By way of the instant writ petition under Article 226 of the Constitution, the writ petitioners have sought for Writ in the nature of mandamus to strike off the name of petitioners from Park Street Police Station Case No. 78 of 2023, registered for investigation into the offences punishable under sections 145/147/149/143/341/342/353and 332 of Indian Penal Code.

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 Park Street Police Station Case No. 78 of 2023, registered for investigation into the offences punishable under sections 145/147/149/143/341/342/353and 332 of Indian Penal Code, 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 this 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 **Tukaram v. State, 2025:BHC-GOA:432-DB**, in a similar factual scenario, where the crowd of 300 people were protesting against establishing an IIT in Valpoi and were charged

under Sections 143, 145, 147, 186, 353,120-B and 149 of the IPC, the Bombay High Court at Goa, quashed the FIR, holding that the crowd was without weapons, and the allegations were not clear as to whether there was any unlawful object, and said that on reading the entirety of the FIR, no prima facie case was made out against the Petitioners.

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 Park Street Police Station Case No. 78 of 2023, registered for investigation into the offences punishable under sections 145/147/149/143/341/342/353and 332 of Indian Penal Code. 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 02.08.2023, when the Legislative Assembly was in session and the members were about to leave the MLA Hostel, a mass of men and women describing themselves as SLST 2016 job seekers arrived, shouting slogans against the Government. It is further alleged that they blocked the main gate, wrongfully preventing members of the Legislative Assembly from leaving, confining them inside the Hostel. It is further alleged that when they were asked to refrain, they became violent and misbehaved with the police and assaulted police personnel physically, injuring the complainant and others.

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. Further, to attract the penal provisions of section 145 of the Indian Penal Code, the accused must join or continue in an unlawful assembly knowing that it has been commanded to disperse in the manner prescribed by law. Furthermore, to attract the provision of section 147 IPC, it must be alleged that the unlawful assembly, or any member of it, uses force or violence, prosecution of the common object of that assembly. Moreover, section 149 of the Indian Penal Code creates rule of constructive liability, which requires the existence of an unlawful assembly, the commission of an offence by a member of that assembly in prosecution of its common object, and that the accused was a member of the assembly at the time of its commission. Thus, on perusal of the afore-mentioned provisions, it is clear that the existence of an unlawful assembly is a sine qua non.

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, 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. Since, there exists no unlawful assembly, sections 145, 147 and 149 are also not attracted.

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 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 HormusjiGharda 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 petitioners blocked the gate, but does not disclose how the MLAs were wrongfully restrained. Further, the FIR does not name any MLA who was prevented from proceeding in any direction, thus the conduct described does not attract section 341 of IPC.

26. Further, to attract the penal provision of section 342 of the Indian Penal Code, it must be alleged that there was a wrongful restraint of a person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits. It presupposes wrongful restraint, and requires an identifiable person who was confined. Since it has been analysed hereinabove that the offence of wrongful restraint is not made out. Similarly, the offence of wrongful confinement is not made out because the FIR does not disclose whether any MLA who was prevented from proceeding in any direction or in what manner or for what duration. Thus, section 342 IPC is not attracted.

27. In order to attract the penal provisions of Section 353 of the Indian Penal Code, it must be alleged that the accused has

assaulted or used criminal force on a public servant while such public servant was executing its duty, or such assault must be with intent to prevent or deter him from discharging his duty. 'Assault' isa gesture or preparation made, intending or knowing it, to be likely that it will cause a person present to apprehend that criminal force is about to be used against him. "Criminal force" under Section 350 requires the intentional use of force on a person**.** In ***B.N. John v. State of U.P., 2025 INSC 4,*** the Supreme Court has held that when no assault or criminal force is disclosed, and there is mere allegation of "disturbance" without any specific act of assault or criminal force, the same does not attract Section 353 IPC. The allegations in the FIR do not describe the act of assault, nor does it name or identify the persons who actually assaulted the complainant or any other officer. The petitioners are not specifically accused of voluntarily assaulting or using criminal force to deter the officers from discharging their duties in the FIR. Thus, section 353 is not attracted.

28. It is further necessary to examine whether the essential ingredients of section 332 IPC are attracted on the above allegations. In order to attract the penal provision of section 332 of the Indian Penal Code, it must be alleged that the accused voluntarily caused hurt to a public servant in the discharge of his

duty, or with intent to prevent or deter him from discharging his duty. "Hurt" under Section 319 IPC means bodily pain, disease or infirmity, and it is caused "voluntarily" under Section 321 IPC when the accused intends, or knows it to be likely, that he will thereby cause hurt. In the FIR, the petitioners are not specifically accused of voluntarily causing hurt to officers to deter them from discharging their duties. The Punjab & Haryana High Court, in **Bhagwant Mann V. U.T. Chandigarh, in CRM-M-15706-2023**, vide order dated 29.11.2025, observed that in case of protests, the offence of section 332 IPC would not be attracted if the petitioners are not specifically accused of voluntarily causing hurt. It was also observed that there were no allegations that petitioners were carrying sticks or stones and the nature of injuries suffered by the officials were also not very intense and were mere result of gappling and pushing. Thus, in the present case, the FIR does not specifically accuse the petitioners of voluntarily causing hurt, and that the nature of injuries to the officials were superficial in nature, the offence of section 332 IPC is not attracted.

29. 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).

30. 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.

31. In view of the foregoing, Park Street Police Station Case No. 78 of 2023 dated 2nd August, 2023, registered for investigation into the offences punishable under sections 143, 145, 147, 149, 341, 342, 353 and 332 IPC, and all consequential proceedings arising therefrom, including G.R. Case No. 875 of 2023 pending before the learned Chief Metropolitan Magistrate, Calcutta, are hereby quashed.

32. Let a copy of this judgement be communicated forthwith to the concerned criminal court and the Officer-in-Charge, Park Street Police Station.

33. WPA 25801 of 2023 is allowed. There shall be no order as to costs.

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

(Anuj Singh J.)