

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Acting Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

WPA (P) 638 of 2022

Sakil Ansari & Ors.
VS
The State of West Bengal & Ors.

For the Petitioners: Mr. Wasim Reza, Adv.

For the State: Mr. Tarak Karan, Adv.

Hearing concluded on: 05.01.2026

Judgment on: 05.01.2026

PARTHA SARATHI SEN, J. : –

1. By filing the instant writ petition, which is in the nature of a public interest litigation, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondent authorities, more specifically against the respondent no. 4 authority commanding him to cause investigation in respect of the written complaint dated 04.11.2022, as

submitted by the writ petitioner no. 1, a copy of which has been annexed at pages-17 to 19 of the instant writ petition.

2. At the time of hearing, Mr. Wasim Reza, learned advocate appearing on behalf of the writ petitioners submits before this Court that on perusal of the copy of the said written complaint dated 04.11.2022, it would reveal that under cover of the said written complaint, the writ petitioner no. 1 alleged illegal selling of NDPS materials at Bankra New Mondal Para, Howrah by the accused persons. It is further submitted that despite submission of the said written complaint dated 04.11.2022, no action has been taken by the respondent no. 4 authority by initiating a P.S. case.
3. It is further submitted that in the reply to the report, as submitted on behalf of the respondent/State, it has been specifically averred by the writ petitioners that even after receipt of the said written complaint dated 04.11.2022, the respondent no. 4 authority made no endeavour to examine any witness as per the provisions of the BNSS and further even on this date, the illegal selling of NDPS materials are going on at the place, as mentioned in the written complaint.
4. It is thus, submitted on behalf of the writ petitioners that this is a fit case for granting reliefs to the writ petitioners in terms of the prayers made in the instant writ petition.
5. *Per Contra*, Mr. Karan, learned advocate appearing on behalf of the respondent/State and its instrumentalities submits before this Court that from the report, as submitted by the respondent no. 4 authority, it would

reveal that the said written complaint found to be unsustainable in view of the fact that the said written complaint was filed against the alleged accused persons on account of some personal grudge.

6. It is further submitted by Mr. Karan that on perusal of the said report of the respondent no. 4 authority, it would reveal further that several P.S. cases have been initiated against the writ petitioners in the meantime.
7. On careful perusal of the entire materials, as placed before us and after hearing the learned advocates for the contending parties, we find that the main grievance of the present writ petitioners in this writ petition is against the respondent no. 4 authority for not taking any cognizance and/or for not taking any action in view of the written complaint dated 04.11.2022 as lodged by the writ petitioner no. 1.
8. In view of the settled position of law in the case of ***Sudhir Bhaskar Rao Tambe vs. Hemant Yashwant Dhage & Ors.*** reported in ***(2016) 6 SCC 277***, the Hon'ble Supreme Court had clearly expressed the view that in the event 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 the 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.
9. The same view was taken by the Hon'ble Supreme Court in the case of ***Lalita Kumari vs. Government of U.P. & Ors.*** reported in ***(2014) 2 SCC 1***

as well as in the case of ***Aleque Padamsee & Ors. vs. Union of India & Ors.*** reported in ***(2007) 6 SCC 171***.

10. We also noticed that presently the BNSS also contains a similar provision [Section 175 (3)], which is equivalent to the provision of section 156(3) of the Code of Criminal Procedure, which stood repealed as of now.
11. In our recent judgments, we have consistently taken the view as expressed by the Hon'ble Supreme Court in the case of ***Sudhir Bhaskar Rao Tambe (supra)*** and have come to a finding that in the event a person has a grievance that his FIR has not been registered and/or even after registering the same, the investigation has not been conducted properly, the appropriate court to which approach is to be made is the jurisdictional Magistrate Court but not the High Court in its plenary jurisdiction under Article 226 of the Constitution of India.
12. In view of the discussions made hereinabove, we are of the view that the instant writ petition is not at all maintainable.
13. Accordingly, WPA (P) 638 of 2022 is dismissed.
14. Interim order, if there be any, stands hereby vacated.
15. Before parting with, it is made clear that while disposing of the instant writ petition, we have not gone into the merits of the written complaint dated 04.11.2022, as lodged by the writ petitioner no. 1 and as such, the writ petitioner no. 1 has every liberty to approach the appropriate forum for ventilating his grievance for non-registration of his FIR on basis of the

written complaint dated 04.11.2022, as submitted with the respondent no. 4 authority.

I agree.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)

AR(Court)- PG