

Suddhashil Ghosh vs State Of West Bengal & Ors on 7 October, 2024

Author: Rajarshi Bharadwaj

Bench: Rajarshi Bharadwaj

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&
02
SS

07.10.2024

WPA 23820 of 2024

Suddhashil Ghosh
Vs.
State of West Bengal & Ors.

With
WPA 24043 of 2024

Suddhashil Ghosh
Vs.
State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Sabyasachi Chatterjee
Mr. Pintu Karar
Mr. Sayan Banerjee
Mr. Badrul Karim
Mr. Krison Sk.

... .. for the petitioner

Mr. Amitesh Banerjee, SSC
Mr. Dipanjan Datta
Mr. Sayan Datta

...for the State in WPA 23820 of 2024

Mr. Amitesh Banerjee, SSC
Mr. Wasim Ahmed
Mr. Harun Al-Rashid

...for the State in WPA 24043 of 2024

1. The present order arises out of two connected writ petitions, being WPA 23820 of 2024 and WPA 24043 of

2024, both filed by the petitioner, Mr. Suddhashil Ghosh, a journalist by profession and the proprietor of a YouTube channel named 'Priya Bandhu Media'. Both the writ petitions address grievances involving false allegations against the petitioner, police harassment and actions aimed at restricting the petitioner's journalistic freedom and registering false First Information Reports

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(FIRs). Given the interconnected facts and issues in both matters, this Court proceeds to dispose of both writ petitions through this common order.

2. In WPA 23820 of 2024, the petitioner on 15th September 2024, was at his residence when, at around 10:30 AM, a large contingent of police officers arrived at his doorstep. The officers demanded that the petitioner open the door, claiming they had a search warrant issued by the Learned Additional Chief Judicial Magistrate (ACJM), Kalna, Purba Bardhaman. This search warrant was in connection with GR Case No. 2372 of 2024, which arose out of Kalna Police Station Case No. 1084 of 2024, dated 11th September 2024, registered under Sections 352/353(2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

3. The petitioner asserts that the search warrant was issued without following the due legal process and norms as mandated by the Bharatiya Nagarik Suraksha Sanhita

(BNSS), 2023. The order was passed on 14th September 2024 by the Learned ACJM, Kalna. The petitioner contends that the procedural safeguards enshrined in the law were not adhered to while issuing the warrant, making the raid legally questionable.

4. When the police arrived, they forcibly broke the lock of the petitioner's door before he could respond. Left with no other choice, the petitioner opened the door, after which the police personnel entered the premises and

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conducted a thorough search. The raid continued until late in the night. During the search, several valuable items were seized, including laptops and mobile phones. It is noteworthy that some of the confiscated items, such as laptops and mobile phones, belonged not only to the petitioner but also to his wife and their 8-year-old son. Despite the seizure, no copy of the seizure list was provided to the petitioner, as required by law.

5. Learned Counsel for the petitioner further states that during the search, the police pressured his wife into signing the seizure list, which was prepared by the police authorities. The entire operation was carried out in the presence of multiple police officers, as well as videographers who recorded parts of the raid. However, the petitioner claims that key moments, particularly

when his wife was coerced into signing the list, were deliberately left unrecorded by the videographers.

6. The police also seized the CCTV cameras covering the inside of the petitioner's home. The petitioner expresses concern that the footage could be misused, as the device contained personal recordings of his wife, raising serious privacy issues. The petitioner apprehends that the footage might be tampered with or used inappropriately, which could cause further harm to his family.

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7. The petitioner submits that the actions against him stem from a defamation allegation, which, according to settled principles of law, cannot be registered at a police station. Defamation is a civil issue, and the complainant should have filed a case before a competent court of law, not a police station. The petitioner maintains that he has not made any defamatory statement against anyone residing within the jurisdiction of Kalna Police Station and is, therefore, unsure why such accusations have been made. It has been further submitted that the petitioner is associated with Priya Bandhu Media, which operates a freelance reporting channel on YouTube. The FIR registered against him is allegedly for his work as a freelance journalist.

8. The petitioner submits that on 25th September 2024, the I.C. of Narendrapur Police Station further visited his doorstep and conveyed a notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 in connection with GR Case No. 2372 of 2024, arising out of Kalna Police Station Case No. 1084 of 2024, dated 11th September 2024, under Sections 352/353(2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, with additional charges under Section 15 of the POCSO Act, 2012, read with Section 67B of the Information Technology Act, 2000. The petitioner was directed to appear before the concerned police authority within two days from the receipt of the notice.

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9. The petitioner contends that the additional charges and sections cited do not fall under the purview of the written complaint. The petitioner challenges the entire proceeding and questions the locus standi of the complainant to file this case against him, as the same is barred under Section 215 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Despite this, the petitioner alleges that the police authority is harassing him with an ulterior motive, without considering the factual aspects.

10. In WPA 24043 of 2024, the petitioner was further

implicated in two separate police cases being the Cyber Crime Police Station, Diamond Harbour PS Case No. 26 of 2024 dated 12th September 2024, under Section 196 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 read with Section 67 of the Information Technology Act, 2000, and another case registered as Kakdwip Police Station Case No. 218 of 2024 dated 11th September 2024 under Sections 352/353(2) and 61(2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The petitioner asserts that the nature of the offenses was not disclosed, and the same came to his attention only when a notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 was served upon him on 18th September 2024.

11. The petitioner further submits that multiple complaints have been lodged against him, likely based on

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the same cause of action, which cannot be legally sustained. Despite being aware of the factual matrix and the duplicity of the complaints, the police authorities, with deliberate intent, neglected these issues and have treated all the FIRs as valid only to harass the petitioner. The petitioner asserts that this conduct is indicative of mala fide intent on the part of the police.

12. In both writ petitions, the petitioner prays for the quashing of the FIRs on the grounds that the allegations therein are baseless, mala fide, and constitute an abuse of process, therefore, violating his constitutional rights under Articles 19(1)(a) and 21 of the Constitution of India.

13. Mr. Banerjee, Learned Senior Standing Counsel appearing in WPA 23820 of 2024 and WPA 24043 of 2024 for the State respectfully submits that the complaint was not lodged by the person against whom the alleged defamatory comments were made, lacks legal merit. Under Section 173 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, any individual, irrespective of their relationship to the offense, has the right to report a cognizable offense to the police, whether orally or through electronic communication. The provision mandates that upon receiving such information, the officer in charge is required to document it accurately, read it back to the informant, and ensure it is signed by the informant. Consequently, any individual may lawfully serve as an

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informant, and the police are obligated to evaluate whether the complaint falls under a cognizable offense. Therefore, the procedures in the present case have been duly adhered to in compliance with the statutory

provisions of the Bharatiya Nagarik Suraksha Sanhita
(BNSS), 2023 as stated hereunder:

"173. (1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed may be given orally or by electronic communication and if given to an officer in charge of a police station, --

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it...."

14. It is further submitted that the search and seizure conducted at the petitioner's residence were executed in accordance with legal protocol. The seizure of all electronic devices was imperative for the investigation to trace the IP address from which the objectionable content was uploaded onto the petitioner's YouTube channel, 'Priya Bandhu Media.' The actions taken were necessary to substantiate the charges against the petitioner.

15. Following the seizure, all electronic devices were transferred to the Forensic Department of the Criminal

Investigation Department (CID) for a comprehensive

forensic examination. The forensic team was tasked with generating an image report of the seized devices to gather evidence, including the origin of the uploaded content. Post-analysis, additional charge being Section 15 under the Protection of Children from Sexual Offences (POCSO) Act was added to the FIR based on the findings. The State, therefore, submits that the actions taken were in strict compliance with procedural norms, and the petitioner's objections are without merit

16. Heard the Learned Counsels for the parties at length.

17. On perusal of the documents brought before this Court and considering the submission made on behalf of the parties, this Court reviewed the FIRs filed against the petitioner, Mr. Suddhashil Ghosh, and found that they were based on speculative and tenuous grounds. The Court observes that the State respondents have failed to

provide any credible or substantive basis for the allegations, which appeared to be aimed at suppressing the petitioner's journalistic freedom. As such, the FIRs are deemed an abuse of the legal process. In granting interim relief, this Court underscored that actions by the State motivated by mala fide intent to stifle free speech and press freedom cannot be upheld. This Court emphasized that the allegations were not supported by any credible evidence and were intended to harass the petitioner and obstruct his journalistic activities.

18. As held by the Hon'ble High Court of Calcutta in *Sanmay Banerjee v. State of West Bengal* and others reported in 2019 SCC Online Cal 3941 that:

"11. Learned senior counsel for the petitioner cites a judgment reported at (2017) 11 SCC 731 [*Common Cause v. Union of India*], which, in turn, relied on *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335]. In the said judgments, the

circumstances and principles regarding quashing of FIRs were discussed. Based on the said judgments, learned senior counsel submits that where the allegations made in the FIR or the complaint, even if 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, the FIR can be quashed.

12. The same principle applied to allegations in the FIR and other materials accompanying the FIR if those did not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the CrPC, except under an order of a Magistrate within the purview of Section 155(2) of the CrPC.

13. 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 or where the allegations in the FIR 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 CrPC.

14. The same principles for quashing of FIR also applies to situations where the allegations made in the FIR were 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. Where a criminal proceeding is manifestly attended with mala fides 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, the FIR ought to be quashed."

19. It has been held by the Hon'ble Justice Amrita Sinha in Suddhashil Ghosh v. State of West Bengal in W.P.A 2076 of 2024 that:

"13. The dignity and majesty of the judiciary is such that it cannot be tarnished by any stray comment or some petty act of an individual person....

...14. The Court is not at all convinced that there is any likelihood to cause fear or alarm to the public or to any section of the public to commit an offence against the State or against the public tranquillity by the act of the petitioner. The right to free speech ought not to be curtailed by putting threat on individuals to initiate criminal proceeding.

17. If the police are permitted to take steps in response to such complaints, then innumerable complaints may be filed at various police stations throughout the State and the country and it will be practically impossible for the police to handle such issue.

19. The Court is not inclined to permit the police to proceed any further with the FIR that had been registered in response to the complaint."

20. Pursuant to the aforementioned findings on the basis of similar complaints, this Court deems it appropriate to issue an interim stay on the FIRs registered on 11th September 2024 and 12th September 2024. This decision is taken after a thorough consideration of the facts and legal arguments presented, which align with the legal principles and precedents established by the Hon'ble Justice Amrita Sinha in a similar matter. This Court concurs with the position that the allegations within the FIRs do not establish a sufficient basis for a criminal proceeding, and any action taken based on such unsubstantiated complaints would not only undermine the petitioner's fundamental right to free speech but also burden the judicial and law enforcement system with meritless cases. Consequently, the interim stay aims to prevent the continuation of proceedings that appear to be initiated without proper cause.

21. As prayed for, by the State respondent authorities, leave is granted to the State to file affidavit-in-opposition within five (05) weeks, reply, if any, be filed within one (01) week thereafter.

22. Let this matter appear in the list under the heading "Adjourned Motiono-I" on 28th November, 2024.

23. All parties shall act on the server copy of this order duly obtained from the official website of this Court.

(Rajarshi Bharadwaj, J.)