

Sk. Safikul Islam vs Union Of India & Ors on 4 October, 2024

Author: Rajarshi Bharadwaj

Bench: Rajarshi Bharadwaj

04
&
05
jks 04.10.2024

WPA 21356 of 2024

Sk. Safikul Islam
Vs.
Union of India & Ors.

With
WPA 21358 of 2024

Sk. Safikil Islam
Vs.
Union of India & Ors.

Mr. Sabyasachi Chatterjee
Mr. Pintu Karan
Mr. Akash Deep Mukherjee
Mr. Badrul Karim
Mr. Sabab Uddin Laskar
Ms. Sayani Manna

... .. for the petitioner

Mr. Suman Sengupta
Mr. Dwaipayan Basu Mallick

... ...for the State in WPA 21356 of 2024

Mr. Amitesh Banerjee, SSC
Mr. Akash Dutta

... ...for the State in WPA 21358 of 2024

1. The present order arises out of two connected writ petitions, being WPA 21365 of 2024 and WPA 21358 of 2024, both filed by the petitioner, Mr. Sk. Safikul Islam, a journalist by profession and the proprietor of a YouTube channel named Arambagh TV. Both the writ petitions

address grievances involving false allegations against the petitioner, police harassment and actions aimed at restricting the petitioner's journalistic freedom, including freezing his bank account and registering false First Information Reports (FIRs). Given the interconnected

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facts and issues in both matters, this Court proceeds to dispose of both writ petitions through this common order.

2. In WPA 21365 of 2024, the petitioner, Mr. Sk. Safikul Islam, a journalist by profession, operates a YouTube channel titled Arambagh TV, which boasts a substantial subscriber base of 12.1 lakh and has accumulated over 96 crore views since its inception on 19th August 2023. The petitioner submits that the content uploaded on his channel consists of critical analysis of contemporary news, often scrutinizing the policies and actions of the State Government and its functionaries. The petitioner contends that his journalistic work, including fair criticism of the State, has attracted unwarranted actions from the authorities.

3. Prior to establishing his YouTube channel, the petitioner was employed by Calcutta Television Network and also ran a local vernacular newspaper, Arambag Barta. He submits that his professional background evidences his longstanding commitment to investigative journalism. The petitioner approached this Hon'ble Court

following the registration of an FIR by the Cyber Crime Police Station, Hooghly Rural, under Case No. 06 of 2024, dated 15th August 2024, invoking Sections 340(2), 353(1)(b)(2), and 352 of the Bharatiya Nyaya Sanhita (BNS), 2023. The petitioner contends that no notice or intimation regarding the allegations was furnished at the time of filing the writ application. It was only subsequent to the initiation of the writ petition that the petitioner was

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able to obtain a copy of the complaint. Upon a careful perusal of the FIR, the petitioner submits that the allegations are manifestly fabricated, with no basis in fact, and are maliciously designed to stifle his journalistic expression.

4. Further, the petitioner submits that during the pendency of the writ petition, his bank account was arbitrarily frozen by the concerned police authorities without prior intimation or lawful justification. The petitioner contends that his sole source of income is derived from the YouTube channel, and the freezing of the bank account has rendered him financially incapacitated, depriving him of his livelihood. He asserts that such action is not only in contravention of procedural norms but also constitutes an infringement of his fundamental right to carry on his profession.

5. In WPA 21358 of 2024, the petitioner challenges another FIR registered at the Manicktala Police Station under Case No. 117 of 2024, dated 2nd August 2024, under Sections 196 and 353(2) of the Bharatiya Nyaya Sanhita (BNS), 2023, 2023. The petitioner submits that, similar to the previous case, no documents or particulars of the allegations were provided at the time of filing the writ application. Upon obtaining a copy of the FIR, the petitioner contends that the allegations are false, frivolous, and aimed solely at curbing his freedom of speech and expression.

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6. The petitioner submits that there is a deliberate and orchestrated attempt to malign his reputation and suppress his journalistic activities. He contends that multiple complaints have been lodged against him in various police stations across the State, creating a pattern of systematic harassment by the authorities. The petitioner further argues that the police authorities have acted beyond their jurisdiction and without due process of law, in violation of the principles of natural justice. He challenges the locus standi of the complainant, asserting that the proceedings initiated under the FIR are barred by Section 215 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Moreover, the petitioner submits that the FIR does not disclose any cognizable offense and

is thus liable to be quashed.

7. 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. The petitioner also seeks the de-freezing of his bank account, contending that the action taken by the police authorities is illegal, arbitrary, and in violation of his constitutional rights under Articles 19(1)(a) and 21 of the Constitution of India.

8. Learned Counsel appearing in WPA 21365 of 2024 for the State, represented by the Inspector-in-Charge of Cyber Crime Police Station, Hooghly Rural Police District herein the respondent no. 12, submits that the case

against the petitioner, Mr. Safikul Islam, arises from a complaint lodged on 15.08.2024 by one Subhasish Chakraborty, who alleged that the petitioner, through his YouTube channel Arambagh TV, disseminated a live video containing misleading and objectionable information about a recent incident at Radha Gobinda Kar Hospital in Kolkata. The complainant asserted that the content was false, edited, and aimed at creating public unrest.

9. Based on the said complaint, Cyber Crime Police Station, Hooghly Rural, initiated Case No. 06/2024 under Sections 340(2), 353(1)(b)(2), and 352 of the Bharatiya Nyaya Sanhita (BNS), 2023. The investigating officer seized the relevant video clipping and conducted further inquiry by issuing two notices to the petitioner on 21.08.2024 and 26.08.2024 under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, seeking his cooperation in the investigation. However, the petitioner did not comply with the notices and failed to appear before the authorities.

10. The State submits that the investigation revealed the video to be without any statutory disclaimer, which raised concerns about the petitioner's intent in broadcasting the unfounded information. As part of the investigation, the State issued a notice under Section 94 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to YouTube, requesting information related to the IP address and other details connected to the video, but no response has been received yet from YouTube.

11. The State challenges the maintainability of the writ petition, contending that the petitioner, by failing to cooperate with the investigation, has not exhausted the available remedies before

approaching the Hon'ble Court. The State further submits that the freezing of the petitioner's bank account was a lawful action after being permitted by ACJM, Hooghly and was taken in furtherance of the investigation. However, should the petitioner comply with the directions of the investigating authorities and participate in the ongoing inquiry, the State is willing to consider defreezing the petitioner's bank account, subject to legal provisions.

12. Learned counsel appearing in WPA 21358 of 2024 for the State, represented by the Officer-in-Charge of Manicktala Police Station herein respondent no.11, submits that on 02.08.2024, a large gathering of 50-60 local supporters of East Bengal Club assembled outside Manicktala Police Station in protest against defamatory and provocative comments allegedly made by the petitioner on his YouTube channel, Arambagh TV. The video in question contained remarks that were seen as defamatory to the club and its supporters, inciting public outrage. The situation was brought under control only after assurances were given that appropriate legal action would be initiated against the petitioner.

13. Subsequently, based on a written complaint submitted by one Mritunjoy Paul, the police registered Manicktala PS Case No. 117 of 2024 under Sections 196 and 353(2) of Bharatiya Nyaya Sanhita (BNS), 2023. The State proceeded with the investigation, seizing the video in question and issuing a notice under Section 94 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to YouTube for relevant data, though no response has been received thus far.

14. A notice was also served upon the petitioner under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, seeking his cooperation with the investigation. The notice was duly received by the petitioner's family members, but the petitioner failed to respond or appear before the police.

15. The State submits that the FIR was lodged based on cognizable offenses disclosed by the content of the video, and the police acted lawfully and within their jurisdiction. The State contends that the petitioner's claim of harassment is unfounded, and that the police have acted with due diligence and respect for the rule of law throughout the investigation.

16. Both the Cyber Crime Police Station, Hooghly Rural Police District and the Manicktala Police Station submit that their actions are legally justified and that they are prepared to proceed in accordance with the directives issued by the Hon'ble Court. They affirm their compliance with all legal procedures and respect for the Court's authority.

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

18. 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. Sk. Safikul Islam, 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. Furthermore, this Court holds that the freezing of the petitioner's bank account without following due process constituted a violation of his right to

livelihood enshrined under the Constitution of India. The State had not provided any justifiable reason for continuing the freezing of the account, leading the Court to order its immediate defreezing. 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.

19. 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."

20. In the light of the above observations, this Court direct for a stay of all proceedings in connection with subject case Cyber Crime Police Station, Hooghly Rural, under Case No. 06 of 2024, dated 15th August 2024, invoking Sections 340(2)/353(1)(b)(2)/352 of the Bharatiya Nyaya Sanhita (BNS), 2023 dated 15th August 2024 and Manicktala Police Station under Case No. 117 of 2024, dated 2nd August 2024, under Sections 196/353(2) of the Bharatiya Nyaya Sanhita (BNS), 2023, till 31st

December, 2024 and also request the respondent authorities not to take any coercive action against the petitioner in connection with subject case Cyber Crime Police Station, Hooghly Rural, under Case No. 06 of 2024, dated 15th August 2024, invoking Sections 340(2)/ 353(1)(b)(2)/352 of the Bharatiya Nyaya Sanhita (BNS), 2023 dated 15th August 2024 and Manicktala Police Station under Case No. 117 of 2024, dated 2nd August 2024, under Sections 196/353(2) of the Bharatiya Nyaya Sanhita (BNS), 2023. A direction is also given upon the State for defreezing of the petitioner's bank account at State Bank of India being A/C No. 35126107782, affirming the protection of journalistic freedom and the right to livelihood from unlawful interference. The petitioner shall be allowed to operate the bank account including withdrawal therefrom.

21. However, a detailed statement of the accounts of transaction, conducted by the petitioner in the said account, may be obtained by the Investigating Officer from the State Bank of India being A/C No. 35126107782.

22. As prayed for by the State respondent, leave is granted to the State to file affidavit-in-opposition within four (04) weeks, reply, if any, be filed within one (01) week thereafter.

23. Let this matter again appear in the list on 25th November, 2024 under the heading "To Be Mentioned".

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

(Rajarshi Bharadwaj, J.)