

(2018) 10 CAL CK 0013
In the Calcutta High Court
Case No : Writ Petition No.23703(W) Of 201

Mr. Phiroze Edulji @APPELLANT@Hash Mr. Robiul Islam

Date of Decision : 01-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420
Constitution of India, 1950 — Article 226

Citation : (2018) 10 CAL CK 0013

Hon'ble Judges : Patherya, J

Bench : Single Bench

Advocate : P. Bhattacharya, Debabrata Saha Roy

Judgement

W. P. 23703(W) of 2017 was filed on 6th September, 2017 for the following reliefs :

â??(a) Leave be given to move the instant application ex parte and unlisted and for that purpose, the requirement of Rule 26 of the Rules relating to

applications under Article 226 of the Constitution of India, as framed by this Honâ??ble Court, may kindly be dispensed with;

(b) A writ of or in the nature of Mandamus and/or order or orders and/or direction or directions of like nature do issue commanding the respondent

nos. 1 to 4, particularly the respondent no. 4, to see that appropriate investigation and enquiry is conducted in respect of Posta P. S. FIR No. 24 dated

4th February, 2017 lodged by your petitioner and the accused persons be brought to book;

(c) A writ of or in the nature of Mandamus and/or order or orders and/or direction or directions of like nature do issue commanding the respondent

nos. 1 to 4, particularly the respondent no. 4, to restrain the respondent nos. 5 to 7 and all of them and their men and agents at premises no. 4, Adi

Banstola Lane from;

- (i) Organizing any unlawful gathering at or around the subject premises;
 - (ii) Shouting, insulting, abusing at or around the subject premises;
 - (iii) Threatening or intimidating any functionary or men or agent of your petitioner at or around the subject premises;
 - (iv) Stopping or interfering with the work carried on by your petitioner at the subject premises;
 - (v) Commanding any act of wrongful interference with the activities of your petitioner at the subject premises;
 - (vi) Commanding any act with a view to prevent work being done at the subject premises;
- (d) A writ of or in the nature of Mandamus and/or order or orders and/or direction or directions of like nature do issue commanding the respondent nos. 1 to 4, particularly the respondent no. 4, to arrest the respondent nos. 5 to 7 and their men and agents and/or each of them in the event they participate in or indulge in or aid or abet any unlawful activity at or around the subject premises;
- (e) A writ of or in the nature of Certiorari and/or order or orders and/or direction or directions of like nature do issue commanding the respondents to certify and transmit the records relating to the instant case before this Honâ??ble Court and upon perusal thereof, to quash and/or set aside the relevant part or parts thereof so as to render conscionable justice;
- (f) Rule Nisi in terms of prayers (b) to (e) above;
- (g) Rule Nisi may be made absolute is no cause or insufficient cause is shown by the respondents;
- (h) Interim order be passed directing the respondent nos. 1 to 4, particularly the respondent no. 4, to see that no breach of peace and public tranquility takes place and that no illegal act is committed by the respondent nos. 5 to 7 or any of them and/or their men and agents at premises no. 4, Adi Banstola Lane;
- (i) Interim order be passed directing the respondent nos. 1 to 4, particularly the respondent no. 4 to restrain the respondent nos. 5 to 7 and all of them and their men and agents at premises no. 4, Adi Banstola Road from;
- (i) Organizing any unlawful gathering at or around the subject premises;
 - (ii) Shouting, insulting, abusing at or around the subject premises;

(iii) Threatening or intimidating any functionary or men or agent of your petitioner at or around the subject premises;

(iv) Stopping or interfering with the work carried on by your petitioner at the subject premises;

(v) Committing any act of wrongful interference with the activities of your petitioner at the subject premises;

(vi) Committing any act with a view to prevent work being done at the subject premises;

(j) Interim order directing the respondent nos. 1 to 4, particularly the respondent no. 4, to arrest the respondent nos. 5 to 7 and their men and agents

and/or each of them in the event they participate in or indulge in or aid or abet any unlawful activity at or around the subject premises.

(k) Ad interim orders be passed in terms of prayers (h) to (j) above;

(l) Costs including full Advocates' fees be borne by the respondents;

(m) Such further or other order or orders be passed and/or direction or directions be given as to this Hon'ble Court may deem fit and proper.

Subsequent thereto CRR 1617 of 2018 was filed on 27th June, 2018 for the following reliefs :

Your Lordships may be graciously pleased to issue a rule thereby calling upon the Learned Chief Metropolitan Magistrate, Calcutta to show

cause, as to why the impugned Order dated 11.04.2018 passed by the Learned Additional Chief Metropolitan Magistrate-1, Calcutta in connection

with Posta Police Station Case No. 24 dated 04.02.2017 under Sections 420/406/120B of the Indian Penal Code thereby taking cognizance against two

accused persons namely Vishnu Tasawad @ Vishnu Kumar Tasawan and Pawan Taswad @ Pawan Kumar Tasawar and thereby discharging

another co-accused namely Manoj Soni @ Manoj Kumar Sonalia @ Manoj Sonalia shall not be set aside and/or quashed and after hearing the parties

and the cause, if any, shown Your Lordships may be graciously pleased to make the rule absolute and/or to pass any other order or orders which Your

Lordships may seem just and proper And Pending the final disposal of the present application Your Lordships may be further pleased to direct stay of

all further proceedings in connection with Posta Police Station Case No. 24 dated 04.02.2017 under Section 420/406/120B of the Indian Penal Code

(Corresponding to G. R. Case No. 215/17) now pending before the Court of the

Learned Additional Chief Metropolitan Magistrate-1, Calcutta.â??

Posta Police Station Case No. 24 of 2017 dated 04.02.2017 was filed and after investigation, charge sheet no. 10/18 dated 17.02.2018 under Sections

120B/420/406 of Indian Penal Code was submitted. Aggrieved by the said charge sheet, C.R.R. 1617 of 2018 was filed in this Court. The subject

matter in CRR 1617 of 2018 so also in W. P. No. 23703(W) of 2017 is substantially similar in nature and it is only for this reason that W. P. 23703(W)

of 2017 is released from this list so that the issues raised in W. P. No. 23703(W) of 2017 can be addressed along with CRR 1617 of 2018. Another

reason for releasing the writ petition is that the decisions in CRR 1617 of 2018 and W. P. No. 23703(W) of 2017 will conflict with each other.

Therefore, W. P. No. 23703(W) of 2017 is released from this list and be placed before the Secretariat of the Acting Chief Justice to be placed with

CRR 1617 of 2018. Photostat certified copy of this order, if applied for, be given to the parties on urgent basis.