
(2009) 01 CAL CK 0037

In the Calcutta High Court

Case No : Writ Petition No. 31838 (W) of 2008

Nagendra Nath Manna

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 156, 190, 200, 203

Citation : (2009) 01 CAL CK 0037

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Abhijit Banerjee and Ganesh Banerjee, for the Appellant;

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.

The Judgment of the Court was as follows:

1. None appears on behalf of any of the respondents in spite of service of notice together with the copy of the writ application upon all the respondents.
2. This writ application is filed by the petitioner for a direction upon the respondent No. 2 namely, Officer-in-Charge, Khejuri Police Station, District-Purba Medinipur to take appropriate steps so that the respondent Nos. 4, 5 and 6 do not disturb him from enjoying his right of peaceful possession of his residential premises lying and situated at Village and P.O. Krishnagar, P.S. Khejuri, District-Purba Medinipur.
3. According to the petitioner, he is the owner of the aforesaid residential premises. From March 10, 2007, the respondent Nos. 6, 7 and 8, being three sons of the writ petitioner, have been making attempts to drive him out from his aforesaid residential premises. It is the case of the petitioner that he lodged a general diary at the Khejuri Police Station, District-Purba Medinipur on March 12,

2007. Subsequently, the petitioner submitted another complaint dated December 5, 2008 to the respondent No. 2 but the respondent No. 2 and other police officers are sitting tight over the matter.

4. Having heard the learned Counsel for the petitioner and after giving my anxious consideration to the facts and circumstances of the case, I find that this is an allegation against the police officers of the Khejuri Police Station to sit tight over the matter. A number of disputed questions of facts are involved in this writ application.

5. With regard to the maintainability of an application under Article 226 of the Constitution of India on this point, law is now well-settled. When the information is laid with the police, but no action in that behalf is taken, the complainant can u/s 190 read with section 200 of the Code of Criminal Procedure, 1973 lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code.

6. In this regard, the relevant-portions of the decision of Hari Singh vs. State of V.P., reported in AIR 2006 Supreme Court 2464, are quoted below:

"Paragraph 4.-When the information is laid with the police, but no action in that behalf is taken, the complainant can u/s 190 read with section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII or the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint u/s 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Regd.) through its President Vs. Union of India (UOI) and Others, . It was specifically observed that a writ petition in such cases is not to be entertained.

Paragraph 5.-The above position was again highlighted recently in Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, and in Minu Kumari and Another Vs. The State of Bihar and Others, .

Paragraph 6.- That being so, this petition is not to be entertained. It is case of the petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the concerned police officials to provide such security as are warranted in the circumstances in accordance with law."

7. In view of the above settled principles of law, this writ application is

dismissed. This order will not prevent the petitioner from taking recourse to law in accordance with the provisions of sections 156, 190 read with section 200 of the Code of Criminal Procedure, 1973 before the appropriate forum of law.

8. There will, however, be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for, be given to the petitioner.