
(2008) 04 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 2563 (W) of 2008

Saraju Bala Roy and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (2008) 3 CHN 995

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Manas Ghosh and A. Bhattacharya, for the Appellant; D. Choudhury and Billwadal Bhattacharya and Rajiv Lochan Chakraborty for Respondents 4 and 5, for the Respondent

Judgement

Dipankar Datta, J.—A mother has come up before this Court complaining of police inaction in respect of alleged torture inflicted on her and her husband by her eldest son (respondent No. 4) and her daughter-in-law (respondent No. 5).

2. It is not in dispute that the petitioner had approached the Executive Magistrate with a petition u/s 107 of the Code of Criminal Procedure, giving rise to M.P. Case No. 2 of 2007 and that the Magistrate by an order dated 5.12.07 had directed the respondents 4 and 5 herein to execute a bond of Rs. 5,000/- each with two sureties of equal amount for maintaining good behaviour for one year from the date of execution of such bond and the Inspector-in-Charge, Lake Town Police Station was directed to ensure that the life and property of the petitioner and her family members are not violated in any manner by the opposite parties therein, and that such order of the Executive Magistrate has been stayed in Criminal Revisional Application No. 249 of 2007 by the Sessions Court.

3. It is further not in dispute that a civil suit instituted by the petitioner for eviction of the respondents 4 and 5 from the premises in question is pending.

4. It is in the background of these facts that this Court is called upon to consider the reliefs claimed in the petition.

5. Mr. Ghosh, learned Counsel for the petitioner submits that right to life of the petitioner has to be given primacy under Article 21 of the Constitution and the police authorities ought to be directed to restrain the respondents 4 and 5 from torturing her as well as her husband who has been suffering from Cancer. It has been further submitted that the police should also be directed to restrain the respondents 4 and 5 from affecting their rights to property.

6. Mr. Choudhury, learned Counsel for the State has placed before the Court the instructions given to him by the Officer-in-Charge, Lake Town Police Station. He submitted that the police would abide by any direction to be given by the Court.

7. Mr. Bhattacharya, learned Counsel for the respondents 4 and 5 contests the petition by submitting that the writ petition is not maintainable in law. According to him, the petitioner having taken recourse to the civil and criminal laws for protection of her interest, the writ petition which in fact is a parallel proceeding cannot be maintained on the authority of the decision reported in Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd. and Others, . He further submits that any other directing the police authorities to give protection to the petitioner in the manner directed by the Executive Magistrate by order dated 5.12.07 would amount to revived of an order which has already been stayed by a competent Superior Court.

8. By placing reliance on the decision of this Court reported in 1995(2) CLT (HC) 35, he contends that the Writ Court cannot assume unto itself the powers of an Executing Court. He has also relied on the decision of the Apex Court reported in P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, He contends that the writ petition for police protection would only be maintainable in the event the person aggrieved perceives a threat to his life guaranteed under Article 21 of the Constitution. There being no inaction on the part of the police, no case for interference has been made out and the petition is liable to be dismissed.

9. Having heard learned Counsel for the parties, this Court is ad-idem with Mr. Bhattacharya that a proceeding before a Writ Court is not intended to displace the ordinary remedies provided by law and having regard to the fact that the petitioner has approached the competent Civil and Criminal Courts for vindication of her grievance, no further order in this respect is called for at this stage.

10. However, having regard to subsequent acts of torture alleged to have been perpetrated by the respondents 4 and 5 on the petitioner and her husband, this Court on the authority of the decision in P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, is of the considered view that a writ petition seeking enforcement of the right to life cannot be thrown out on the ground that certain past incidents are the subject-matter of consideration by the appropriate Criminal Court. Right to life, it is settled law, includes the right to live

with dignity and such life can only be led if the situation is conducive therefore. It appears from the report filed by the Officer-in-Charge, Lake Town Police Station that even after an order has been passed by the appropriate Criminal Court, torture on the person of the petitioner and the husband is continuing and that they are passing their days in fear and mental agony and there is a chance of apprehension of serious harm to them by the respondents 4 and 5. In such circumstances, this Court is of the further considered view that it would not be unjustified in exercising its discretion by directing the police authorities to ensure, without affecting the pending proceedings, that the life of the petitioner and her husband is not threatened or that they are not tortured at the instance of the respondents 4 and 5. To this limited extent, the petitioner is entitled to relief and it is ordered accordingly.

11. It is, however, made clear that any observation made in this order shall not influence the appropriate Civil and Criminal Courts before whom proceedings are pending and they shall proceed to decide the issues before then on merits.

12. The writ petition stands disposed of. There will be no order for costs.

13. Urgent xerox certified copy of this order, if applied for, be furnished to the parties within four days from date of putting in requisites therefore.