

(2021) 06 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 163 Of 2021

Viplav Sharma Advocate

APPELLANT

Vs

Cbi & Ors.

RESPONDENT

Date of Decision : 04-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 226, 227
Prevention Of Corruption Act, 1988 — Section 11, 13(1)(d), 13(2), 19
Code Of Criminal Procedure, 1973 — Section 407, 482
Indian Penal Code, 1860 — Section 109

Citation : (2021) 06 CAL CK 0047

Hon'ble Judges : Rajesh Bindal, J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Viplav Sharma, Y.J. Dastoor

Final Decision : Dismissed

Judgement

Â The petitioner, who claims himself is a practicing Advocate in the Supreme Court of India and different High Courts in the country has filed the

present petition claiming to be in public interest, praying for the following reliefs:

i. Call for the records from the good offices of the CBI and the Governor, West Bengal, Kolkata concerning the sanction for prosecution and the

issuance of impugned four Sanction

Â Orders, all dated 7.5.2021 issued under Section 19 of the PC Act, 1988 (as amended) by Hon'ble Shri Jagdeep Dhankar, HE the Governor, West

Bengal, Kolkata (Respondent No.2) (Anx. P8 Colly) and after examining the same issue writ, order or direction in the nature of certiorari quashing (i)

the said impugned four Sanction Orders, all dated 7.5.2021 issued under Section 19 of the PC Act, 1988 (as amended) by Hon'ble Shri Jagdeep

Dhankar, HE the Governor, West Bengal, Kolkata (Respondent No.2) (Anx. P8 Colly), inter alia, malafidely, mechanically, illegally and

unconstitutionally granting Sanction for Prosecution of (proforma) respondents Nos.8 to 11 U/s 109 IPC, Section 11 and Section 13(2) R/w 13(2) r/w

13(1)(d) of the Prevention of Corruption Act, 1988 in FIR/ CBI:ACB:Kolkata Case No.RC0102017A0010 Dated 16.4.2017, (ii) impugned alleged

Press Release dated 9.5.2021 issued from the Raj Bhawan, Kolkata (Anx. P9) containing illegal and unconstitutional basis for issuance impugned

Sanction Orders dated 7.5.2021 and (iii) all subsequent proceedings emanating therefrom including alleged prosecution with arrest of Respondents 8 to

11 as initiated consequent to impugned Sanction Order dated 7.5.2021 in the Charge Sheet dated 16.4.2017 and the impugned Remand Application

dated 17.5.2021 (Anx. P12) made illegally and without any authority and/or jurisdiction by the CBI in the subject matter (FIR/ CBI:ACB:Kolkata Case

No.RC0102017A0010 Dated 16.4.2017) after the same be declared malafide, illegal and unconstitutional and thereby, void;

ii. rule that the Request Letter dated 17.5.2021 with open ended prayers (converted as WPA/10504/2021) (Anx P13) and CAN Application (Anx P17

and similar other 3 IAs) filed therein under Article 226 and Article 227 of the Constitution of India read with Section 407 read with Section 482 CrPC

to be gross abuse of process of law and the Court and thereby, not maintainable in terms of letter and spirit of binding law declared by the Hon'ble

Apex Court in case law titled as Radhey Shyam & Anr Vs Chhabi Nath & Ors reported in (2015) 5 SCC 423 ;

iii. Issue writ, order or direction in the nature of mandamus directing concerned Respondents (namely Respondents Nos.1 to 5, all 'State' within the

meaning of Article 12 of the Constitution and thereby, amenable to the writ jurisdiction of this Hon'ble Court) to strictly adhere to the rule of law and

the procedure established by law in the prosecution of subject case (namely FIR/ CBI:ACB:Kolkata Case No.RC0102017A0010 Dated 16.4.2017 and

Final Report/Charge Sheet No.2/2021 dated 17.5.2021) under the superintendence of this Hon'ble Court; iv. Require the Ld. Attorney General for

India (Respondents No.6) and the Ld Advocate General (Respondent No.7) in their respective capacities of respectively holding the highest law

offices of the Central Government and the State Government respectively and the Hon'ble Speaker, West Bengal Legislative Assembly, Kolkata

(Respondent No.4) himself and/or through Advocate General and the Governor, West Bengal, Kolkata through himself and/or through the Ld

Advocate General of West Bengal/ Ld. Attorney General for India to provide their respective valuable assistance in respect of the powers and

authority of the Hon'ble Speaker of the State Assembly qua MLAs (on the State Legislature Side) and that of the Governor qua Ministers of the State

(on the Executive side) concerning the prosecution and related issues involved in whole matter and also assist this Hon'ble Court for laying down the

binding principles to guide Respondent No.2 and Respondent No.4 as well as the Central Government to observe harmonious measures in matters of

such stature so as to continue to preserve our governing system's Federal Structure which being basic structure of the Constitution of India;

AND v. hold that the basis as disclosed in the impugned Sanction Orders, all dated 7.5.2021 (Anx P8) and in the impugned Press Release dated

9.5.2021 (Anx P9) to be malafide, illegal and unconstitutional and thereby, void and quash and the same.

AND vi. stay the effect and operation of impugned four Sanction Orders, all dated 7.5.2021 issued under Section 19 of the PC Act, 1988 (as

amended) by the HE the Governor, West Bengal, Kolkata (Respondent No.2), inter alia, mechanically, illegally and unconstitutionally granting Sanction

for Prosecution of IPC, Section 11 and Section 13(2) R/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 in FIR/ CBI:ACB:Kolkata

Case No.RC0102017A0010 Dated 16.4.2017;

AND vii. stay the proceedings of Letter dated 17.5.2021 converted as WPA/10504/2021 which is wrongly Constitution and Section 482 CrPC in gross

abuse of process of law and the Court by Respondent No.1;

The respondents impleaded in the writ petition include His Excellency Shri Jagdeep Dhankar, the Governor of West Bengal, in his personal capacity,

Speaker of the West Bengal State Legislative Assembly, Attorney General of India and the Advocate General of the State of West Bengal.

A perusal of various prayers made in the writ petition filed by the petitioner shows that issue is sought to be raised regarding sanction of prosecution

and arrest of the accused who are high-profile political leaders in the State of West Bengal. The petitioner claims that there being legal issues involved

therein, he wants to assist this Court but we find the petition and the locus of the

petitioner to be totally misconceived. There is already a matter pending in this court, which is being heard by a larger Bench consisting of five Judges where all the accused, whose cause is sought to be projected by the petitioner, are represented by senior counsels and the arguments in the petition are being heard on day-to-day basis. Even otherwise the accused, whose cause the petitioner is trying to espouse can very well take care of their rights. They do not belong a class of society which do not have access to the Court or cannot be represented by lawyers on account of their financial condition.

The present petition cannot be said to be filed in public interest rather seems to be more filed for publicity. Hence, the same is dismissed.

We would have imposed costs for filing this frivolous petition. However, we refrain to exercise that power for the time being. But if such petitions are filed subsequently, we may have exercise that power.