

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : August 23, 2010

W.P.No.17630(W) of 2010

Sri Gour Chandra Jana & Anr.

-vs-

The State of West Bengal & Ors.

Points:

Police Action- Whether writ is maintainable for inaction of the police authority on the basis of General Diaries and for violating a party the order of Civil Court-Constitution of India –Art. 226

Facts:

The petitioners in this art.226 petition are seeking direction upon the police authorities to take steps against the Private Respondent on the basis of the General Diaries lodged by the petitioner and for violating the direction of the Civil Court.

Held:

The information given by the petitioners could be entered in the general diary only in terms of the provisions of s.155 of the Code of Criminal Procedure, 1973. The petitioners' remedy, if any, was before the Magistrate. Their allegation of inaction on the part of the officer in charge of the police station is unacceptable. Para 3 and 5

The Civil Court did not make any order directing the officer in charge of the police station to ensure that the parties in the suit did not act in breach of its status quo order. The officer in charge could take steps, if at all, only if he was ordered by the Civil Court to act. If any party in the suit acted in breach of the status quo order of the Civil Court, the petitioners' remedy was before

the Civil Court that made the order. Making the allegation they cannot approach the High Court under art.226 involving the police for no valid reason.

Para 7 and 8

Mr. Gurupada Dasfor the petitioners

The Court : The petitioners in this art.226 petition dated August 18, 2010 are seeking the following principal reliefs :

“(a) A writ in the nature of mandamus directing the concerned respondents, particularly the police authorities to take steps against the Private Respondent on the basis of the General Diaries lodged by the petitioner.

(b) A writ in the nature of mandamus directing the concerned respondents, particularly the police authorities to take steps against the private respondents for violating the direction of the Learned Civil Judge (Junior Division).”

2. Counsel submits that once the information given by the petitioners was entered by the officer in charge of Kakdwip police station in the district South 24- Parganas in the general diary, the officer in charge incurred a statutory obligation to take further steps in the matter.

3. The information given by the petitioners could be entered in the general diary only in terms of the provisions of s.155 of the Code of Criminal Procedure, 1973.

4. It is evident from the provisions of s.155 that if the officer in charge of a police station enters information given by anyone in the general diary, then the officer in charge has to refer the person concerned to the Magistrate.

5. Under the circumstances, the petitioners' remedy, if any, was before the Magistrate. Their allegation of inaction on the part of the officer in charge of the police station is unacceptable.

6. Counsel next submits that in view of the status quo order of the Civil Court in the pending suit between the private parties, the officer in charge of the police station was under an obligation to take steps for preventing the private respondents from acting in breach of the order of the Civil Court.

7. The Civil Court did not make any order directing the officer in charge of the police station to ensure that the parties in the suit did not act in breach of its status quo order. The officer in charge could take steps, if at all, only if he was ordered by the Civil Court to act.

8. If any party in the suit acted in breach of the status quo order of the Civil Court, in my opinion, the petitioners' remedy was before the Civil Court that made the order. Making the allegation they cannot approach the High Court under art.226 involving the police for no valid reason.

9. For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)

