FORM NO.(J2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Girish Chandra Gupta
And
Hon'ble Justice Tapabrata Chakraborty

AST 352 of 2014
With
ASTA 254 of 2014
TAPAS PAUL
VS.
BIPLAB KUMAR CHOWDHURY & ORS
With
AST 355 of 2014
With
ASTA 255 of 2014
STATE OF WEST BENGAL & ORS.
Versus
BIPLAB KUMAR CHOWDHURY & ORS.

Advocate for the Appellant in AST 355 of 2014:-Mr. Kalyan Banerjee, Sr. Adv.
Mr. Manjit Singh, ld. Public Prosecutor
Mr. Sakya Sen,
Mr. Suman Sengupta,
Mr. B.P. Vaisya
Mr. Pawan Kumar Gupta

Advocate for the Appellant in AST 352 of 2014 :Mr. Kishore Dutta, Sr. Adv.
Mr. Rajdeep Majumder

Advocate for the Respondent No.1 in AST 355 of 2014 & AST 352 of 2014:
Mr. Aniruddha Chatterjee
Mr. Sukanta Chakraborty

Heard on :30.07.2014, 31.07.2014 & 01.08. 2014

Judgment delivered on : 13.08.2014

GIRISH CHANDRA GUPTA, J.: 1. The case of the writ petitioner is that there has been "inaction on the part of the respondent authorities thereby not taking necessary steps to arrest the private respondent No.7

thereby treating the complaint dated July 2, 2014 of the petitioner as F.I.R."

2. The written complaint dated 2nd July, 2014 addressed to the Inspector-in- Charge, Nakashipara Police Station, District Nadia referred to above reads as follows:-

> Dear Sir(s),
>
> This is to bring to your kind notice that I, Biplab Kumar Chowdhury, son of Late Birendra Nath Chowdhury, residing a 108 M. B. Road, Purbati Kumari Kabi, Sukanta Sarani Birati, Kolkata – 700051, being a public spirited citizen is highly perturbed by the way when I heard and came to know from video footage telecast by some private channels that a sitting Member of Parliament, Sri Tapas Paul who openly declared on June 14, 2014 that he "carries a revolver" which he would use to "liquidate" CPIM activists and claimed that he was a top "gangster".
>
> Mr. Paul made these starling and controversial remarks while addressing a worker's meeting at Chowmatha village in Tehatta in Nadia District which falls in his Parliamentary Constituency of Krishnanagar.
>
> I further state that the video footage and newspaper articles of his statement was telecast by some private channels during the entire day from which it appears that he remarked "I'm not from Kolkata …… but Chandernagore. I carry maal (firearms).

If anybody dares touch our supporters, I'll come and shoot them myself. Let them stop me if they can".

I further state that Mr. Paul further threatened that he would unleash his boys, who would rape them. He further claimed that he is a chap from Chandernagar and not from Kolkata and as such he knows very well what gangsterism is, since he tried his hand in it as well.

I further state that being a citizen of India when stringent actions being taken by the law enforcing authorities against the law breakers who commit offence against women the same should also apply to a sitting Member of Parliament.

In view of the circumstances as stated above I would like to inform you that being a peace loving and permanent citizen of India and aggrieved by and dissatisfied with the statement of Mr. Tapas Paul being a sitting Member of Parliament I apprehend that the law and Order of the his Parliamentary Constituency is not in safe hand and as such kindly take necessary steps to register a F.I.R. on the basis of this complaint against Mr. Tapas Paul and to submit a report after investigation since he has given open threat and abetted others in open forum to commit cognizable and non-bailable offences. I further state that he is trying to promote enmity between different groups and should be punished for preaching and practising social crimes such as offence against women. Photostat copies of the newspaper articles, a compact disc containing video footage of the relevant portion of Mr. Tapas Paul's speech are enclosed herewith for your kind perusal.

Please acknowledge the receipt and oblige. Thanking you.

Yours truly

Enclo: As state above
Dated:July 1, 2014"

3. In the body of the writ petition, besides elaborating the written complaint and alleging that the respondents – police authorities including the Chief Electoral Officer had failed to take any effective step, it was also pointed out that he came to know from an article dated 2nd July, 2014 published in BBC NEWS INDIA Website "*that the private respondent No.7 ultimately confessed before the media "Some remarks made by me in the heat and dust of the election campaign have caused dismay and consternation. I apologise unreservedly for them, "I have no excuses to offer. It was a gross error of judgement and deeply insensitive….. It should not have happened. And I assure you it will not happen again,".*

4. The aforesaid writ petition was moved on 23rd July, 2014 upon notice to the learned Advocate for the State. Prayer for ad interim order was made. The writ petitioner relied upon the judgment in the case of Lalita Kumari (reported in 2014(2) SCC 1) whereas on behalf of the State it was contended that the written complaint did not disclose any cognizable offence. After a brief hearing judgment was reserved and ultimately delivered on 28th July, 2014 holding inter alia as follows:-

> "*The gist of the complaint has been noticed above. Does it not disclose commission of a cognizable offence by Mr. Paul? To me, Sections 115, 141, 153A and 509, IPC, prima facie, seem to be attracted.*
>
> *It would not be proper at this stage of the proceedings to delve deep into a detailed discussion for assigning elaborate reasons in support of the prima facie view expressed above, since that might prejudice the interest of some in future. However, an indication of the line of thought may make the position clear and save this order from the vulnerability of being branded as unreasoned. An allegation of abetment to commit cognizable offence is evident from the complaint. Regarding applicability of Section 141, IPC, whether or not there was an unlawful assembly, whether or not an assembly of persons which was not unlawful when it assembled but subsequently became an unlawful assembly, and whether or not any person*

joined the unlawful assembly armed with deadly weapon are all maters requiring thorough investigation. Law also seems to be well settled regarding the scope and impact of Sections 153A and Section 509, IPC. The gist of the offence spoken of in Section 153A is the intention to promote feelings of disharmony or enmity or hatred or ill-will between different classes of people on whatever ground, and committing an act prejudicial to the maintenance of harmony between different classes of people with the intention to disturb public tranquillity. Here, Mr. Paul was speaking on behalf of one group and the contents of his speech were directed against a particular group or community of people. Section 509 makes a word, gesture or act intending to insult the modesty of a woman punishable. Mr. Singh's reading of Section 509, IPC based on the decision in S. Khushboo (supra) does not prima facie commend to be correct, since it is not necessary that the offence should have been committed against an individual woman but it would extend to cases where a distinct identifiable group of women is targeted. These are the provisions under which Mr. Paul could have been booked and investigation conducted to unearth the truth on the basis of the petitioner's complaint."

Based on the aforesaid findings the learned Trial Court passed the following directions:-

"At this stage by directing registration of an FIR the Court is not concerned with the merits of the accusations or the individuals alleged to be involved but only with the performance of the legal duty by investigating agencies fairly, properly and meaningfully for investigating into the accusations that have been made and to take the investigation to its logical conclusion in accordance with law. In view of the stand taken by the State that no cognizable offence was committed by Mr. Paul, I am sceptical about effective progress of investigation should the writ petition be disposed of. This is an exceptional case and in view of the decision in Vineet Narain v. Union of India, reported in (1998) 1 SCC 226, I propose to keep it pending for effective monitoring of the investigation by the Court upon being apprised of the developments in regard to investigation. Since the investigation would be monitored by the Court, the investigating officer shall not file the police report under Section 173(2) Cr. P.C. without obtaining the leave of Court.

Put up W.P. 20515 (W) of 2014 under the heading "To Be Mentioned" on September 1, 2014 for the investigating officer to be appointed to submit a report on the progress of investigation.

Photocopy of this judgment and order duly countersigned by the Assistant Court Officer shall be retained with the records of W.P. No.20515(W) of 2014. Urgent website copy of this judgment and order, duly countersigned, if applied for, may be furnished to the applicant at an early date."

5. Aggrieved by the order both the State and the private respondent No.7 to the writ petition have filed two separate appeals.

Mr. Banerjee, learned Senior Advocate appearing for the State advanced the following submissions:-

a. The following findings are not based on any allegation contained in the writ petition and are wholly based on the personal knowledge of the learned Trial Court which according to him could not have been taken into consideration.

> *"The speech of Mr. Paul could not have and did not go unnoticed. The issue was raised in the Parliament, as reported by the media. I need not dilate much on the aspect of protest that followed except noting that the political party to whom Mr. Paul owes allegiance reportedly pulled him up and he has since apologised for the comments made by him to such party."*

> *"An English news channel, not too long ago, telecast an interview with an Hon'ble Member of Parliament (Lok Sabha) elected from Barasat constituency, in the district of 24 Parganas (North). The ugly happenings in the hall of the Lok Sabha during the budget session and the dirty exchanges between the Parliamentarians that she narrated, if the same are to be believed, are beyond all bounds of decorum and dignity that one would attach with the proceedings of the Parliament. My sense of ethics chokes my voice to express the uncivil utterings and exchanges. Fortunately, none of the founding fathers is alive and I wonder how they would have reacted looking at the temple being defiled."*

b. A final verdict under the garb of a reasoned order and a prima facie finding has, in fact, been recorded by the learned Trial Court even before the investigation began which is not permissible in law. He in support of his submissions relied upon paragraph 17 of the judgment in the case of M. C. Abraham & Anr. -V- State of Maharashtra & Ors. reported in 2003 (2) SCC 649 wherein the following views were expressed:-

> *"The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate*

after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation."

(c) When the learned Trial Court was influenced by the reports of the media it is unlikely that the Magistrate, who may have to ultimately try the matter in case a charge-sheet is filed, would not be influenced by the judgment rendered by the Trial Court.

(d) The direction that the report under Section 173 CRPC should be produced before the High Court rather than before the Magistrate is contrary to law.

(e) Section 153 A of the Indian Penal Code is not, according to him, attracted to the facts and circumstances of this case. He contended that the views in that regard expressed by the learned Trial Court in paragraph 37 of the impugned judgment are not tenable. Relying upon the judgment in the case of Balwant vs. State of Punjab reported in 1995 (3) SCC 214 he contended that “intention to cause disorder or incite people to violence” is not visible from the written complaint.

The aforesaid judgment was also applied in the case of Bilalhmed Kaloo vs. State of AP reported in 1997(7) SCC 431.

(f) Section 509 of the Indian Penal Code, according to him, cannot operate in a case where no particular woman was identified. He in support of his submission relied upon a judgment in the case of S. Khushboo –V- Kanniammal & Anr. reported in 2010 (5) SCC 600 which read as follows:-

> *"In order to establish the offence under Section 509 IPC it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act."*

(g) The written complaint was lodged on 2nd July, 2014 and the writ petition was presented on 15th July, 2014. No sufficient time was given to the police to act. He added that the complaint of the writ petitioner has, in fact, been entered into the general diary. The State

is aggrieved because the learned Trial Court demonstrated lack of confidence in the State machinery.

(h) The police, in fact has commenced an enquiry. He submitted that an identical complaint was earlier received on 1st July, 2014 from an inhabitant of Bethuadahari, on the basis whereof the police has already requested the concerned News Channel (24 Ghanta) to supply an unedited version of the video clip. He submitted that the aforesaid request was made and diarised in GD No.109 dated 2nd July, 2014 and was sent by fax. He added on instruction that the police has commenced an enquiry and is willing to further enquire into the matter under Chapter XII of the Code of Criminal Procedure.

(i) The finding of the learned Trial Court that alternative remedy does not stand in the way of the writ Court issuing an order is contrary to the law declared by the Supreme Court. He relied upon a judgment in the case of Aleque Padamsee & Ors. –V- Union of India & Ors. reported in 2007

(6) SCC 171. He relied upon paragraphs 7 & 8 of the judgment which read as follows:-

"Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if he police does not do it. As was held in All India Institute of Medical Sciences case and reiterated in Gangadhar case the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences case, Gangadhar case, Hari Singh case, Minu Kumari case and Ramesh Kumari case, we find that the view expressed in Ramesh Kumari case related to the action required to be taken by the police when any cognizable ofence is brought to its notice. In Ramesh Kumari case the basic issue did not relate to the methodology to be

adopted which was expressly dealt with in All India Institute of Medical Sciences case, Gangadhar case, Minu Kumari case and Hari Singh case. The view expressed in Ramesh Kumari case was reiterated in Lallan Chaudhary v. State of Bihar. The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences case, Gangadhar case, Hari Singh case and Minu Kumari case. The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24-2-2003 with WP (c) No.221 of 2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions.

The writ petitions are finally disposed of with the following directions:-

(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3) So far as non-grant of sanction aspect is concerned, it is for the Government concerned to deal with the prayer. The Government concerned would do well to deal with the matter within three months from the date of receipt of this order.

(4) We make it clear that we have not expressed any opinion on the merits of the case."

He also relied upon paragraph 120 of the judgment in the case of Lalita Kumari – V- Government of U. P. reported in 2014 (2) SCC 1 which reads as follows:-

"In view of the aforesaid discussion, we hold:

The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

If the inquiry discloses the commission of cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an

inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

(j) The impugned order is, according to him, a glaring example of judicial activism which the Supreme Court has on a number of occasions deprecated. He in support of his submission relied upon a judgment in the case of Shashikant –V- Central Bureau of Investigation & Ors. reported in 2006 AIR SCW 6182. He referred to paragraph 28 which read as follows:-

"The First Respondent is a statutory authority. It has a statutory duty to carry out investigation in accordance with law. Ordinarily, it is not within the province of the court to direct the investigative agency to carry out investigation in a particular manner. A writ court ordinarily again would not interfere with the functioning of

an investigative agency. Only in exceptional cases, it may do so. No such case has been made out by the appellant herein. The nature of relief prayed for in the writ petition also is beyond the domain of a writ court save and except, as indicated hereinbefore, an exceptional case is made out."

(K) By the impugned order the power of executive has been encroached upon which is not permissible. In this regard he drew our attention to the judgment in the case of Divisional Manager -V- Chander Hass & Anr. reported in 2008 SCW 406. He relied on paragraphs 17, 18, 19 and 39 which reads as follows:-

"Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where Judges are unjustifiably trying to

perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism Judges cannot cross their limits and try to take over functions which belong to another organ of the State.

Judges must exercise judicial restraint and must not encroach into the executive or legislative domain vide Indian Drugs & Pharmaceuticals Ltd. vs. The Workman of Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408 and S. C. Chandra and Ors. vs. State of Jharkhand and Ors. Jt 2007 (10) 4 SC 272.

Under our Constitution, the Legislature, Executive and Judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

We hasten to add that it is not our opinion that judges should never be 'activist'. Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the U. S. Supreme Court vide Brown vs. Board of Education 347 U. S. 483 (1954), Miranda vs. Arizona 384 U.S. 436, Roe vs. Wade 410 U.S. 113, etc. or the decisions of our own Supreme Court which expanded the scope of Articles 14 and 21 of the Constitution. This, however, should be resorted to only in exceptional circumstances when the situation forcefully demands it in the interest of the nation or the poorer and weaker sections of society but always keeping in mind that ordinarily the task of legislation or administrative decisions is for the legislature and the executive and not the judiciary."

(l) The writ petition contains a prayer for a writ in the nature of mandamus. Such a prayer cannot be maintained unless a demand for justice has been made and the State has been given an opportunity to

act in the manner which according to the writ petitioner ought to have been done. He relied upon a judgment in the case of State of Haryana – V- Chanan Mal reported in 1977 (1) SCC 340. He relied upon paragraph 49 which reads as follows:-

> *"Any petitioner who applies for a writ or order in the nature of a mandamus should, in compliance with a well known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a court for such an order even where the alleged obligation is established."*

(m) The majority of the judgments referred to by the learned Trial Court were pressed into service without notice to the learned advocates resulting in violation of the principles of natural justice.

For the aforesaid reasons, Mr. Banerjee contended that the judgment and the order under challenge should be set aside and the appeal should be allowed.

Mr. Dutta, learned Senior Advocate appearing for the private respondent No.7 to the writ petition who has preferred an independent appeal adopted the submissions made by Mr. Banerjee and contended that the complainant/ writ petitioner should have taken recourse to the remedy provided by the Code of Criminal Procedure rather than rushing to the High Court. According to him no case has been made out for invoking Writ Jurisdiction.

6. Mr. Chatterjee, learned Advocate appearing for the writ petitioner/respondent submitted that the enquiry allegedly commenced by the police was never disclosed to the learned Trial Court. He added that the learned Trial Court cannot be said to have overstepped his jurisdiction simply because he took care to assign reasons for the view taken by him. The learned Court, according to him, has also taken care

to point out that the views expressed were prima facie in nature which is an adequate safeguard to the accused. He commented that the nexus between the accused and the State of West Bengal is more than apparent. The accused is an M.P. on the ticket of the party which is ruling the State. Therefore, the attempt on the part of the State to downplay the gravity of the offence is understandable. He concluded by saying that the learned Trial Court has merely directed the C.I.D. to investigate the matter. Keeping in view the gravity of the complaint CID was entrusted with the job. The direction that the Court shall monitor the investigation was issued for the ends of justice in the facts and circumstances of the case. This Court should, therefore, refrain from interfering with the order under challenge.

7. It is not in dispute that during a brief hearing on 23rd July, 2014 a prayer for ad interim order was made on behalf of the writ petitioner which was resisted by the learned G. P. on the ground that the complaint did not disclose a cognizable offence. Consequently the police,

was not authorised in law to investigate the mater. It is also not in dispute that on behalf of the writ petitioner reliance was placed only on the judgment in the case of Lalita Kumari –V- Govt. of U. P. & Ors. reported in 2014 (2) SCC 1 which has been relied upon before us by both the parties.

It is the controversy as to whether the complaint disclosed a cognizable offence which presumably activated the learned Trial Court to undertake the lengthy exercise which may not have been necessary if the State had evinced its intention to take steps under Chapter XII of CRPC as has now been undertaken by Mr. Banerjee.

The learned Trial Court had no occasion to consider the submissions advanced on behalf of the appellants not only assailing the impugned judgment but also on merits including maintainability of the writ petition. We are hearing an appeal against the ad interim order. The writ petition is still pending. Confining ourselves to the impugned order we are, unable to endorse the view of the learned Trial Court that

the private respondent No.7 could be booked under Sections 115, 141, 153A and 509 of the Indian Penal Code. In expressing our dissent we wish to point out the caution sounded, in the case of State of Bihar –V- J.A.C. Saldanha reported in 1980 (1) SCC 554, in dealing with criminal matters ***"relevant facts may be stated with circumspection, as the case is sub-judice because any overt or covert expression of opinion on the facts in controversy awaiting adjudication may be censored as judicial impropriety."***

Reference may also be made to the judgment in the case of Abhinandan Jha –V- Dinesh Mishra reported in AIR 1968 SC 117 wherein it was held that *" the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the Officer-in-Charge of the police station and that opinion determines whether the report is to be under Section 170, being a charge-sheet or under Section 169 'a final report'."*

The judgment in the case of M. C. Abraham (supra) is also a pointer. The sections under which the accused can be booked even for the purpose of starting a case against him in the case of a cognizable offence would depend upon the allegations appearing from the written complaint. Any external aid in that regard, in our opinion, is not permissible because the cycle is from complaint to investigation; from investigation to police report; from police report to framing of charge and from charge to trial. The cycle cannot be reversed. If the complaint does not on the face of it disclose a cognizable offence, the police can hold an enquiry to find out whether any cognizable offence is disclosed or was intended to be disclosed but the police cannot proceed on the basis that a cognizable offence is disclosed even though the complaint does not do so. The point of importance which was not brought to the notice of the Trial Court is that police is not incompetent to commence an enquiry in a case where the written complaint does not disclose a cognizable offence or even an investigation provided prior authorization from the Magistrate

has been obtained as would appear from a plain reading of Section 155 of the Code of Criminal procedure which provides as follows:-

" (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

Reference in this regard may be made to the judgment in the case of the State of U. P. –V- Ram Nath reported in AIR 1972 SC 232 wherein the following views were expressed:-

" In such cases under Section 155 of the Criminal Procedure Code when an information is given to an Officer-in-Charge of the Police Station of the commission of a non-cognizable offence, he has to enter the substance of the information in a book to be kept for the purpose and refer the informant to the Magistrate, but he cannot under sub-sec. (2) investigate such a case without the order of a Magistrate. On receiving such an order any Police Officer may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an Officer in Charge of police station may exercise in a cognizable case. On receipt of a report from the Police in compliance with such orders, the Magistrate may

if the report discloses the commission of an offence try the accused by the procedure prescribed under Section 251 - A of the Criminal Procedure Code."

Reference in this regard may also be made to the judgment in the case of Parkash Singh Badal & Anr. –V- State of Punjab & Ors. reported in 2007 (1) SCC wherein the following views were expressed:-

"In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offence on his own as in the case of cognizable offence, he can investigate a non-cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155(2) of the Code but subject to Section 155 (3) of the Code. Further, under sub-section (4) to Section 155, where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore,

under such circumstances the police officer can investigate such offences with the same powers as he has while investigating a cognizable offence."

It would appear that it was in the contemplation of the writ petitioner that a possible defence could be that the written complaint did not disclose a cognizable offence. In order to guard against any such contention the ground V has been taken at page 19 of the writ petition which reads as follows:-

"For that the respondent authorities should have considered the fact that if the information received does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not."

The aforesaid ground is a replica of paragraph 120.2 of the judgment of the Apex Court in the case of Lalita Kumari (supra) which was the only judgment relied upon, according to Mr. Chatterjee, before the learned Trial Court on behalf of the writ petitioner.

The grievance of the writ petitioner in substance was that the police was inactive. For redressal of that grievance it was not necessary even to find **prima facie** that the complaint in fact disclosed a cognizable offence under Sections 115, 141, 153A and 509 of IPC. This exercise is initially in the realm of Police. After proper investigation including collection of evidence, in case a charge-sheet is filed by the police, a question necessarily shall arise before the Magistrate or the Court as the case may be as to whether there is sufficient ground for proceeding against the accused. It is at that stage that a **prima facie** judicial opinion has to be formed. Reference in this regard may be made to the judgment in the case of State of Bihar –V- Ramesh Singh reported in AIR 1977 SC 2018 wherein the following views were expressed:-

"…….. at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the

accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. ***But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.*** *If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S. 227 or S.228, then in such a situation*

ordinarily and generally the order which will have to be made will be one under S.228 and not under S.227."

Any **prima facie** finding by the writ court even before the investigation has started should therefore be avoided because any such prima facie opinion of the High Court is bound to create hurdles for the Magistrate or Court as the case may be in forming a **prima facie** opinion as regards the question as to whether there is sufficient ground for proceeding to try the accused.

8. In so far as the question, as regards monitoring the investigation is concerned it can be pointed out that in the case of Vineet Narain –V- Union of India reported in 1998 (1) SCC 226 necessity was felt because investigation in that case was not making any significant progress and the need to insulate the agency from external pressures was felt. Moreover the order in that case was passed by the Apex Court in exercise of power under Article 142 which exists as a separate and independent basis of jurisdiction apart from the statutes. That was an exceptional case.

The rule, however, is to avoid any interference with the investigation. Reference in this regard may be made to the judgment in the case of Director of CBI –V- Niyamavedi reported in 1995 (3) SCC 601 wherein the following views were expressed:-

"Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralize the investigation. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences. We say no more. However, we clarify that certain directions given to the Director of CBI in regard to the investigation matters do not meet with out approval and may be ignored. In short the adverse comments against the CBI were, to say the least, premature and could have been avoided. Ignoring the innuendoes the court was, however, right in expressing a general view that the investigating agency is expected to act in an efficient and vigilant manner without being pressurized".

Reference may also be made to the judgment in the case of Dukhishyam Benupani –V- Arun Kumar Bajoria reported in AIR 1998 SC 696 wherein the following views were expressed:-

"It is not the function of the Court to monitor investigation processes so long as such investigation does not transgress any provision of law. It

must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences."

In the present case when the direction for monitoring investigation was issued neither enquiry nor investigation was disclosed to have been commenced.

For the aforesaid reasons the impugned order is set aside.

We, however, hope and trust that the State shall sincerely investigate the matter in accordance with law and bring the complaint of the writ petitioner to its logical conclusion.

(GIRISH CHANDRA GUPTA, J.)

(TAPABRATA CHAKRABORTY, J.)

13.08.2014

AST 352 of 2014
With
ASTA 254 of 2014
With
AST 355 of 2014
With
ASTA 255 of 2014

Mr. Kishore Dutta
Mr. Rajdeep Majumder
...for the Appellant
(In AST 352 of 2014)

Mr. Kalyan Bandopadhyay
Mr. Manjit Singh
Mr. Sakya Sen
Mr. Suman Sengupta
Mr. B. P. Vaisya
Mr. Pawan Kumar Gupta
Mr. A. Keshari
... for the State
(In AST 355 of 2014)

Mr. Aniruddha Chatterjee
Mr. Sukanta Chakraborty
... for the respondent No.1

Interim order will continue for a period of three weeks from date.

Since we have not been able to agree, the matter has now to be dealt with further and the matter be placed before the Hon'ble Chief Justice.

(**Girish Chandra Gupta, J.)**

(Tapabrata Chakraborty, J.)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:
The Hon'ble Justice Girish Chandra Gupta
And
The Hon'ble Justice Tapabrata Chakraborty

AST 352 of 2014
With
ASTA 254 of 2014
TAPAS PAUL
VS.
BIPLAB KUMAR CHOWDHURY & ORS.
With
AST 355 of 2014
With
ASTA 255 of 2014
STATE OF WEST BENGAL & ORS.
Versus
BIPLAB KUMAR CHOWDHURY & ORS.

For the Appellants in AST 355 of 2014	:	Mr. Kalyan Bandopadhyay, Sr. Adv. Mr. Manjit Singh, ld. Public Prosecutor Mr. Sakya Sen, Mr. Suman Sengupta Mr. B. P. Vaisya Mr. Pawan Kumar Gupta
For the Appellant in AST 352 of 2014	:	Mr. Kishore Dutta, Sr. Adv. Mr. Rajdeep Majumder
For the Respondent No.1 in AST 355 of 2014 & AST 352 of 2014	:	Mr. Aniruddha Chatterjee Mr. Sukanta Chakraborty
Judgment On	**:**	**13th August, 2014.**

Tapabrata Chakraborty, J.

I have read the judgment delivered by my respected brother. With the deepest of humility, I express that I have

not been able to agree with the said judgment. Accordingly, I proceed to deal with the appeals, one being AST No.352 of 2014, filed by the private respondent no.7 in the writ application being W.P. No. 20515 (W) of 2014 and the other, being AST No.355 of 2014, filed by the State respondents in the said writ application. Both the appeals have been preferred assailing an order dated 28th July, 2014 passed in the writ application being W.P. No.20515 (W) of 2014.

In the said writ application it has, inter alia, been averred that from a video footage and articles published in local newspapers, the petitioner came to learn that Mr. Tapas Paul (hereinafter referred to as Mr. Paul), a sitting Member of Parliament has openly declared on 14th June, 2014 that he carries a revolver, which he would use to liquidate the CPI (M) activists and he is a top gangster from Chandernagore and he carries maal (Fire Arms) and if anybody dares to touch his supporters, he would shoot them and he would unleash his boys to rape them. Such startling and controversial remarks of Mr. Paul led to an apprehension that law and order of Sri Paul's parliamentary constituency is not on safe hands and

accordingly the petitioner lodged a complaint before the Inspector-in-Charge, Nakasipara Police Station enclosing the photocopy of the newspaper articles and a compact disc containing video footage of all the relevant portions of Mr. Paul's speech. But unfortunately no steps were taken by the police authorities on the basis of the said complaint dated 1st July, 2014. Subsequent thereto, from an article dated 2nd July, 2014 published in BBC NEWS INDIA website the petitioner came to learn that the said Mr. Paul has confessed before the media that some remarks made by him in the heat and dust of the election campaign have caused dismay and consternation and that he apologises unreservedly for the same.

Upon contested hearing, the Hon'ble Trial Court passed an order dated 28th July, 2014 in the writ application being W.P. No.20515 (W) of 2014 which contains the following interim directions :

"58. The Inspector-in-Charge, Nakasipara Police Station, shall immediately but not later than 72 hours of service of an authenticated website copy of this order upon him register an

FIR on the basis of the complaint dated July 1, 2014 lodged by the petitioner. Having regard to the sensitivity involved, it would further be in the interest of justice to entrust the C.I.D. to investigate the complaint. The Director General of Police shall issue appropriate instructions to the DIG, C.I.D. for a free, fair, proper and meaningful investigation of the FIR.

59. At this stage by directing registration of an FIR the Court is not concerned with the merits of the accusations or the individuals alleged to be involved but only with the performance of the legal duty by investigating agencies fairly, properly and meaningfully for investigating into the accusations that have been made and to take the investigation to its logical conclusion in accordance with law. In view of the stand taken by the State that no cognizable offence was committed by Mr. Paul, I am sceptical about effective progress of investigation should the writ petition be disposed of. This is an exceptional case and in view of the decision in Vineet Narain V. Union of India, reported in (1998) 1 SCC 226, I propose to keep it pending for effective monitoring of the investigation by the Court upon being apprised of the

developments in regard to investigation. Since the investigation would be monitored by the Court, the investigating officer shall not file the police report under Section 173(2) Cr. P.C. without obtaining the leave of Court.

60. Put up W.P. 20515(W) of 2014 under the heading 'To be Mentioned' on September 1, 2014 for the investigating officer to be appointed to submit a report on the progress of investigation."

Mr. Kalyan Bandopadhyay, learned senior counsel appearing for the State respondents/appellants, submits that the Hon'ble Trial Court was swayed by a preconceived notion to the effect that as Mr. Paul is a sitting Member of Parliament, the State Government is trying to shield and protect him. According to him, the authority conferred upon the Writ Court has been misused.

He draws the attention of this Court to the contents of paragraphs 2, 3 and 16 of the impugned order and submits that the observations made therein have not at all been pleaded in the writ application and that the said observations are nothing but personal knowledge of the Hon'ble Trial Court.

According to him, the Hon'ble Trial Court has given a go-bye to the procedure prescribed under the Code of Criminal Procedure (hereinafter referred to as the said Code) and that at the interim stage, the Hon'ble Trial Court has passed the final order. Such final order has been sought to be camouflaged by adding the term "prima facie". The order, read in its totality, reveals that the Hon'ble Trial Court wants to penalize the Member of Parliament and in furtherance of such mindset, the writ application has been kept pending for an alleged purpose of monitoring the steps. But such a procedure towards monitoring does not feature under the statutory provisions and that the Hon'ble Trial Court ought to have exercised self-restraint as is expected from a Writ Court exercising jurisdiction under the provisions of Article 226 of the Constitution of India.

He further submits that the Hon'ble Trial Court has arrived at a conclusive finding to the effect that the complaint lodged by the petitioner discloses cognizable offences and on the basis thereof, the Writ Court directed the Inspector-in-Charge to treat the complaint of the petitioner as an FIR.

According to him, there is no provision in the Code of Criminal Procedure (hereinafter referred to as the said Code) to the effect that the Writ Court can monitor investigation.

He further contends that the observations of the Hon'ble Trial Court to the effect that the offences complained of comes within the ambit of the provisions of Section 153A and Section 509 of the Indian Penal Code (hereinafter referred to as IPC), are not sustainable in law and that the issue needs to be considered dispassionately and with an understanding that more weightage needs to be granted to the legality of the issue instead of dwelling on the issue of morality.

According to him, the State authorities have rightly approached the appellate forum, assailing the order by which the Hon'ble Trial Court has adopted steps which are ex-facie derogatory to the statutory provisions and has proceeded with a preconceived notion that the entire State machinery has failed.

He further contends that the direction upon the Inspector-in-Charge to register the complaint as an FIR tantamounts to an interference with the statutory

responsibilities and duties of the police officer. It is explicit from the provisions of Section 156 and 157 of Cr. P. C. that a police officer can hold a preliminary enquiry when the information received does not disclose a cognizable offence and in fact the complaint lodged by the petitioner was registered as a General Diary but before further steps could be taken by the concerned police officer, the petitioner has approached the Court within a period of less than two weeks.

In course of hearing, Mr. Bandopadhyay placed before this Court a representation made by the Sub-inspector of Police, Nakashipara Police Station to the Managing Director 24 Ghonta, which according to him was registered as G.D. Entry No.109 dated 22th July, 2014.

Placing reliance upon the said representation Mr. Bandopadhyay submits that the police authorities have already acted upon the petitioner's complaint and that as such the allegation of inaction on the part of the respondents is absolutely unfounded.

In support of his submissions, Mr. Bandopadhyay has relied upon the following judgments :-

a) **S. Khushboo –vs- Kanniammal & Anr, reported in (2010) 5 SCC 600**. (para 23)

b) **Gian Singh –vs- State of Rajasthan, reported in (1999) 5 SCC 682**.

c) **Bilal Ahmed Kaloo –vs- State of Andhra Pradesh, reported in (1997) 7 SCC 431**. (para 11, 12, 15)

d) **Balwant Singh and Another –vs- State of Punjab, reported in (1995) 3 SCC 214**. (para 9)

e) **Aleque Padamsee –vs- Union of India, reported in (2007) 6 SCC 171**. (para 7)

f) **Lalita Kumari –vs- Government of Utter Pradesh and Others, reported in (2014) 2 SCC 1**.

g) **M/s. Bajaj Hidustan Ltd. –vs- Sri Shadi Lal Enterprises Ltd. & Anr., reported in (2011) 1 SCC 640**. (para 22)

h) **Divisional Manager, Aravali Golf Club & Anr. –vs- Chander Hass & Anr., reported in (2008) 1 SCC 683**. (paras 17, 18, 38 & 39).

i) **State of Haryana and another –vs- Chanan Mal etc., reported in (1977) 1 SCC 340**. (para 49)

j) **Saraswati Industrial Syndicate Ltd. etc. –vs- Union of India, reported in (1974) 2 SCC 630**. (paras 24 and 25)

k) **Shashikant –vs- Central Bureau of Investigation & Ors., reported in (2007) 0 AIR(SC) 351**.

l) **Gangadhar Janardan Mhatre –vs- State of Maharashtra and others, reported in (2004) 7 SCC 768**.

In S. Khushboo (supra) the Hon'ble Supreme Court was considering the validity of an order relating to quashing of a criminal proceeding, pertaining to an offence contemplated by Section 499 of Indian Penal Code.

In the case of Gian Singh (supra) the Hon'ble Supreme Court was considering the validity of an order by which a criminal prosecution under Section 498 of Indian Penal Code was denied to be quashed.

In the case of Bilal Ahmed Kaloo (supra) the Hon'ble Supreme Court was considering an appeal preferred by the convict under Section 19 of the TADA and in the same the applicability of the provisions of Section 153A was considered.

In the case of Balwant Singh and Another (supra), the appellants were tried for offence under Section 153A of IPC and were sentenced and in the same the Hon'ble Supreme Court inter alia observed that the slogans of the appellant which neither evoked any response nor any reaction from the people, cannot attract the provisions of Section 153A of IPC.

In the case of Aleque Padamsee (supra) the Hon'ble Supreme Court was considering an application under Article 32 of the Constitution of India and in the facts of the case directions were issued to follow the procedure prescribed under the said Code.

In the Lalita Kumari (supra) the Hon'ble Supreme Court discuss the provisions of Sections 154, 155, 156 and 157 of the Code of Criminal Procedure explaining the circumstances under which a complaint is to be treated as an FIR.

The judgment delivered in the case of M/s. Bajaj Hidustan Ltd. (supra) is pertaining to judicial restraint in fiscal and economic regulatory measures.

In the case of Divisional Manager, Aravali Golf Club & Anr. (supra), the dispute was as to whether the Court can

direct creation of post and in the said judgment it was inter alia held that creation and sanction of post is a prerogative of the executive or legislative authorities and the Court cannot arrogate to itself such executive or legislative function.

In the case of State of Haryana and another (supra) it has inter alia been held that the Writ Court can be approached only after the competent authority has been called upon to discharge its legal obligation and after the said authority refuses or neglects the carry it out.

In the case of Saraswati Industrial Syndicate Ltd. etc. (supra) it has inter alia been held that no writ or order in the nature of mandamus would issue when there is no failure to perform a mandatory duty.

In the case of Shashikant (supra), the Hon'ble Supreme Court has observed that the Writ Court, ordinarily, would not interfere with the functioning of investigative agency.

In the case of Gangadhar Janardan Mhatre (supra), the Hon'ble Supreme Court was considering the legality of an order passed by the Division Bench of the Bombay High Court, in the backdrop of the reliefs claimed in the writ application,

which are different from the reliefs claimed in W.P. No.20515 (W) of 2014.

Mr. Dutta, learned advocate appearing for Mr. Paul/the appellant, upon adopting the submissions made by Mr. Bandopadhyay, submits that the writ petitioner's complaint does not disclose commission of any cognizable offence. Placing reliance upon the provisions of Sections 154 and 156 of the said Code, Mr. Dutta submits that the writ application itself is not maintainable since appropriate remedy is available to the petitioner under the provisions of the said Code.

Mr. Dutta further submits that the contents of the speech of the appellant do not reveal any cognizable offence warranting registration of an FIR. Furthermore, according to him, the appellant has already apologised for the remarks made by him and in the backdrop of such admitted sequence, the interim directions could not have been issued by the Hon'ble Trial Court.

Mr. Chatterjee, learned advocate appearing for the writ petitioner/respondent submits that the State respondents themselves have admitted that the speech of Mr. Paul was

obnoxious and Mr. Paul himself has confessed before the media that "*some remarks made by me in the heat and dust of the election campaign shall cause dismay and consternation. I apologise unreservedly for them. I have no excuses to offer. It was a gross error of judgment and deeply insensitive... It should not have happened. And I assure you it will not happen again".*

According to him, the complaint made by the writ petitioner clearly makes out a cognizable and non-bailable offence punishable under the provisions of the Indian Penal Code.

He further submits that the State authorities have categorically observed before the Hon'ble Trial Court that the complaint does not disclose any cognizable offence warranting registration of an FIR and that in the backdrop of such consistent and confident plea, the Court had no other option but to ascertain as to whether the contents of the complaint, prima facie, disclose any cognizable offence and require an investigation to unearth the truth.

In support of his contention that the Hon'ble Trial Court has rightly observed that the writ application needs to be kept pending for effective monitoring of the investigation, Mr. Chatterjee submits that the sequence of facts clearly reveals that the State authorities are desirous of nipping the investigation at its nascence and such desire and intent has reached the concerned Inspector-in-Charge as is explicit from his indolence towards investigation into the offence alleged in the complaint filed by the petitioner.

In support of his contentions Mr. Chatterjee has relied upon the following judgments :-

a) **S. Khushboo –vs- Kanniammal & Anr, reported in (2007) 3 SCC 758**. (para57)

b) **Vineet Narain & Ors. –vs- Union of India & Anr., reported in (1998) 1 SCC 226**. (paras 8, 9, 15, 15 and 55)

c) **Lalita Kumari –vs- Government of Uttar Pradesh, reported in (2014) 2 SCC 1**. (paras 49 , 52)

In reply to the argument advanced by Mr. Bandopadhyay placing reliance upon the representation

allegedly registered as G.D. Entry No. 109 dated 2nd July, 2014, Mr. Chatterjee submits that the said document was never produced before the Hon'ble Trial Court and even assuming that the representation was registered, no answer is forthcoming as to why no further steps were taken by the authorities prior to filing of the writ application.

I have heard the submissions made by the learned advocates appearing for the respective parties and I have considered the materials on record.

It is well-settled that a Court of Appeal should not ordinarily interfere with the discretion exercised by the Courts below. It is not that every decision of the Hon'ble Trial Court, which is brought in appeal, will be viewed from pedagogy as if the decision rendered, was of a subaltern nature.

A perusal of the order impugned reveals that the Hon'ble Trial Court has observed that the complaint, prima facie, was found to attract Sections 115, 141, 153A and 509 of IPC. It has also been observed that assignment of elaborate reasoning in support of the prima facie view would not be proper "since that might prejudice the interest of some in future".

Paragraph 40 of the said order runs as follows :

"At the end of the discussion on the point, I owe a duty to make one thing clear. Observations made in this order might affect Mr. Paul in proceedings initiated in future. Since the writ petition is at the interim stage, all observations in respect of the complaint as well as those touching Mr. Paul's conduct made hereinabove are prima facie and without prejudice to his rights and contentions in future proceedings".

It is preposterous to suggest that the said prima facie observations in the order does not leave any room for the investigative authority to exercise its duties in terms of the provisions of Chapter XII of the said Code.

The judgments delivered in the cases of S. Khushboo (supra), Gian Singh (supra), Bilal Ahmed Kaloo (supra), and Balwant Singh (supra) pertain to a stage after the investigation was completed. But in the present matters the lis is pertaining to a stage of commencement of investigation.

The judgments delivered in the case of M/s. Bajaj Hindustan Ltd. (supra) and Divisional Manager, Aravali Golf Club & Anr. (supra) are distinguishable on facts.

In the judgment delivered in the case of Sashikant (supra), the crux is that the petitioner being aggrieved by his transfer and having failed before the Central Administrative Tribunal, invoked the extra ordinary criminal jurisdiction of the Court by filing the writ application. Thus, the facts involved in the case of Sashikanta (supra) are clearly distinguishable and that as such the said judgment has no manner of application in the instant case.

It is now well-known that the decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well-known that even a slight distinction in fact or an additional fact may make a lot of difference in the decision making process.

In course of hearing we have seen the video footage pertaining to the speech of Mr. Paul, a sitting Member of Parliament. In the said speech Mr. Paul exhorted his followers to slay his political opponents and to even rape their womenfolk, if they dared to touch them (his followers). Such pernicious, horrid and disgusting remarks by a sitting Member of Parliament have been stated to be obnoxious by none other

than the learned Government Pleader representing the State respondents in the said writ application. Such speech of a sitting Member of Parliament is exceptionally depraved and the monstrosity of the situation warranted timely judicial interdict and mandate and that as such the Hon'ble Trial Court has rightly passed the interim directions and has kept the writ application pending for effective monitoring of the investigation by the Court.

The State must live up to its highest commitments, as enshrined in the Constitution of India and such commitments should not fall behind the civilizational progress towards a better and just social order.

The undated representation relied upon by Mr. Bandopadhyay, appears to have been issued on the basis of a complaint lodged by a lady after hearing the speech of Mr. Paul in the news channel(24 Ghonta) and not by the writ petitioner and the production of the said document on the date of final hearing of the matter and expression of willingness on the part of the State authorities to proceed on the basis of the said representation, if so directed, speaks of

the desperation on the part of the State authorities to pull the plug.

Mr. Bandopadhyay has contended that there is no provision in the said Code to the effect that the Writ Court can monitor an investigation. There is a basic fallacy underlying such submission as regards the purpose and scope of jurisdiction under Article 226 of the Constitutional of India. The said article is couched in a wide language so that the authority of the Writ Court is not confined only to issue prerogative writs. Such wide language is used to enable the Writ Court "to reach injustice wherever it is found" and as such the issuance of directive towards monitoring of investigation cannot be said to be without jurisdiction. The jurisdiction of under Article 226 of the Constitution of India is expansive and extraordinary and the same does not stand fettered by the rules of Criminal Procedure.

The argument to the effect that the writ application is not maintainable as the petitioner did not file any representation before filing the petition does not hold good as there was

immediate threat of a catastrophe in view of the speech of a sitting Member of Parliament.

The interim directions issued by the Hon'ble Trial Court are based upon an observation that the matter requires thorough investigation to unearth the truth on the basis of the writ petitioner's complaint and to sub-serve justice and that as such the interim directions cannot be said to have caused any prejudice to the appellants.

The anticipation explicit from the argument of Mr. Bandopadhyay to the effect that unless the order of monitoring by the Hon'ble Trial Court is interfered with, the Hon'ble Trial Court may issue further directives which would render the investigation vulnerable, is absolutely unfounded.

The order dated 28th July, 2014 passed by the Hon'ble Trial Court stands supported with cogent reasons and in the backdrop of the exceptional circumstances, the Hon'ble Trial Court rightly passed the interim directions inasmuch as the refusal of such interim directions would have done violence to the sense of justice.

For the reasons as discussed above, I do not find any merit in the appeals and the same are, accordingly, dismissed.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(TAPABRATA CHAKRABORTY, J.)