

Spl (A) Case No. 8/2023
CNR- WBBB01-000525-2023
JO-WB00702

Order No. & Date
14/ 19.01.2024

This day is fixed for appearance of the accused persons namely Prof. Bidyut Chakraborty and Prasanta Kumar Ghosh and for hearing of the petition dated 13.10.2023, U/s-22 of SC & ST(POA) Act,1989 .

Accused person namely Prasanta Kumar Ghosh is present by filing his hazira. Accused Prof. Bidyut Chakraborty is not present.

The accused persons Dr. Tanmoy Nag and Mahua Banerjee on Court bail filed their haziras in view of the order passed in a petition dated 05.12.2023 filed by them under section 205 of Cr. P.C.

Ld. Advocates appearing on behalf of Dr. Tanmoy Nag, Mahua Banerjee and Prasanta Kumar Ghosh are present. Accused Prof. Bidyut Chakraborty is absent and Ld. Advocate appearing on his behalf filed a computerized server copy of the order passed by the Hon'ble High Court, Calcutta dated 18.01.2024 in CRR No 5023 of 2023. The operative portion of the said order is as follows :-

“In the light of the above discussions, this Court does not have any other option but to set aside the impugned order dated 05.12.2023 and subsequent orders passed by the Learned Special Court, 1st Court, Suri only with regards to direction upon the petitioner to remain personally present on the date fixed before the Ld. Court below in connection with Special (A) 8 of 2023 arising out of Shantiniketan Police Station Case No. 89/2023 dated 05.07.2023 under Sections 500/120B/34 of Indian Penal Code read with Sections 3 (i) (r)(p)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The learned Trial Court is directed to hear the parties and dispose of the application under Section 205 of the CrPC in accordance with law without insisting upon physical appearance of the petitioner before the Ld. Trial Court without granting unnecessary adjournment to the parties preferably within a month from the next date fixed for hearing.

I make it clear that I have not gone into the merits of the application filed under Section 205 of the Cr. P.C. as such the same is to be decided by the Ld. Court below independently without being influenced by the observations, whatsoever, made herein above and in accordance with law. Other judgments referred by the parties have not been considered or analysis by this Court as the application filed under section 205 of the Cr. PC is still pending before the Ld. Court below for its disposal ”.

In compliance of the direction of the Hon'ble High Court, Calcutta, fix 05.03.2024 for appearance of accused Prasanta Kumar Ghosh and hearing of the instant petition u/s 205 of Cr. P.C.

Objection, if any, in the mean time.

Dictated & Corrected.

Judge, Special Court under
Atrocity Act, 1st Court, Suri

Judge, Special Court under
Atrocity Act, 1st Court, Suri.

Later

After passing of this order, the petition dated 13.10.2023 u/s 22 of SC & ST (POA) Act filed by the petitioners/ accused persons namely Dr. Mahua Banerjee and Dr. Tanmoy Nag is taken up for hearing wherein they prayed for dismissing the complaint petition and discharge them on the ground stated therein.

Perused the petition along with materials on record. Heard Ld. Advocate for the accused persons at length. Heard Ld. Special P.P. and Ld. Advocate appearing on behalf of the defacto complainant.

I have gone through the list of dates which has been submitted before this Court by the Ld. Advocate for the accused persons in connection with this case. I have also perused the context of the judgments of the Hon'ble Apex Court relied and cited by the Ld. Advocate for the defacto complainant.

It is submitted by the Ld. Advocate for the accused persons that all the accused persons are public servants and the employees of Visva Bharati University and they are discharging their public functions/ duties bonafidely for the purpose they have been

employed in the said University. They did not act in a malafide manner and they have done all the acts in discharge of their public duties. Ld. Advocate vehemently submitted before this court that the accused persons above named never insulted or misbehaved with the complainant who also happens to be an employee of Visva Bharati University and was working as Joint Registrar. Ld. Advocate further contended that the accused persons never used any abusive words by calling his caste but he has falsely implicated the accused persons above named without any basis. Ld. Advocate further submitted that the complainant lodged another case in the self-same cause of action which was rejected and dismissed by the National SC & ST Commission holding that two cases over the self-same cause of action at the same time is not permissible. Ld. Advocate strenuously submitted that when the accused persons did their activities/ duties in a bonafide manner in discharging their official duties as public servants and have/ had no malafide intention, the instant case lodged by the complainant is required to be dismissed and the accused persons above named may be discharged in view of the provision of Section 22 of SC & ST Act.

On the other hand, Ld. Special P.P. with the assistance of Ld. Advocate appearing on behalf of the defacto complainant raised strong objection against the instant prayer for dismissal and discharge of the accused persons from this case. He would submit that the particular provision envisaged u/s 22 of SC & ST (POA) Act is not at all meant for the accused persons. He categorically submitted that only the said section would give protection to the public servants who are discharging their public duties in purview of the said Acts. Ld. Advocate strongly submitted that the letter and spirit of provision of section 22 of the Act is not at all applicable in the fact situation of the instant case filed by the accused persons and as such the instant petition is not at all maintainable. To substantiate his contention, Ld. Advocate cited several decisions of the Hon'ble Apex Court which are as follows :- **(1998)5 Supreme Court Cases 91(MOHD HADI RAJA VS STATE OF BIHAR AND ANOTHER, (2019)7 Supreme Court Cases 148(ASIM SHARIFF VS NATIONAL INVESTIGATION AGENCY, (2020) 2 Supreme Court Cases 768(M.E.SHIVALINGAMURTHY VS CENTRAL BUREAU OF INVESTIGATION BENGALURU) and 2023 SSC Online SC 1294.**

It is finally submitted by the Ld. Advocate that the accused persons preferred one Criminal Revision being no. CRR 2599 of 2023 before the Hon'ble High Court, Calcutta for quashing the

instant case and the said Criminal Revision is still pending before the Hon'ble Court and accordingly prayed for rejection of the instant petition.

Hearing the rival submissions of both sides and on perusal of the materials on record, I am of the considered opinion that the submission of Ld. Special P.P. with the assistance of Ld. Advocate appearing on behalf of the defacto complainant are very much justified in the fact situation of this case.

In this case the charge sheet has already been submitted against the accused persons vide charge sheet no. 101/2023 dated 29.08.2023 u/s 500/120B/34 IPC read with section 3(i) (r)(p)(s) of SC & ST (POA) Act, 1989 and for considering the prayer of the accused persons under section 22 of SC & ST (POA) Act may be considered only after taking the evidence and in absence of the evidence on record, this court cannot come to a just conclusion whether the conduct and the behaviour of the accused persons being public servants and officials of Visva Bharati University towards the complainant, another public servant were bonafide or whether any offence was committed by the accused persons against the defacto complainant. I further considered that accepting the contents of the petition of the accused persons claiming that they did not commit any malafide act against the accused persons as sacrosanct at this stage to discharge them from this case without giving any opportunity to the prosecution to prove its case particularly when the charge sheet has already been submitted claiming establishment of a prima facie case, would be pre-judicial and fatal to the prosecution case. Not only that it is not possible to come to a just and reasonable conclusion merely on the basis of the submission so made by the Ld. Advocate on behalf of the accused persons.

In view of the above circumstances, I am of my considered opinion that the instant petition u/s 22 of SC & ST (POA) Act, 1989 is not at all entertainable at this stage and as such the same is liable to be rejected.

Be it mentioned here that in the open Court the next date of hearing of the petition u/s 205 of Cr. P.C. of the accused Prof. Bidyut Chakraborty has been pronounced on 05.04.2024. However, it appears from the order passed by the Hon'ble High Court, Calcutta where the Hon'ble High Court was pleased to direct this Court to hear the petition preferably within one month, hence, the date

pronounced in the open Court is hereby modified and re-scheduled to be heard on 16.02.2024 instead of 05.04.2024.

Hence, it is

O R D E R E D

the instant petition dated 13.10.2023 u/s-22 of SC & ST (POA) Act, 1989 is considered and stands rejected on contest.

To date i.e 16.02.2024 for appearance of accused Prasanta Kumar Ghosh and hearing of the instant petition u/s 205 of Cr. P.C.

Objection, if any, in the mean time.

Dictated & Corrected.

Judge, Special Court under
Atrocity Act, 1st Court, Suri

Judge, Special Court under
Atrocity Act, 1st Court, Suri.