

**13.07.2022**

Sl. No. 06

Srimanta

Ct.No. 42

**CRR/2442/2022**

In the matter of : **Suvendu Adhikari**

**...petitioner.**

Mr. Rajdeep Majumder, Adv.,  
Mr. Sourav Chatterjee, Adv.,  
Mr. Moyukh Mukherjee, Adv.,  
Mr. Pritam Roy, Adv.,  
Ms. Aishwarya Bazaz, Adv.

...for the petitioner.

Mr. Saswata Gopal Mukherjee, Adv.,  
Mr. Rudradipta Nandy, Adv.

...for the State.

Mr. Ayan Bhattacharjee, Adv.,  
Mr. Anand Keshari, Adv.

...for the opposite party no. 2.

Invoking the inherent power of this Court, the petitioner has prayed for quashing of the proceedings of G.R.(S)Case No. 278/2022 arising out of Sec-G(Hare Street Police Station) Case No. 53/2022 dated 17<sup>th</sup> March, 2022 under Sections 166/189/341/506(ii) of the Indian Penal Code presently pending before the Learned Chief Judicial Magistrate, Calcutta.

It is contended on behalf of the petitioner that petitioner is an elected Member of West Bengal Legislative Assembly and Leader of Opposition Party. The Secretary, West Bengal Legislative Assembly forwarded a copy of joint representation submitted by Shri Biswajit Das, Shri Tanmoy Ghosh, Shri Krishna Kalyani and Shri Somen Roy, all Members of West Bengal Legislative Assembly against the petitioner herein as per the direction of the Speaker of the West Bengal Legislative Assembly. The said representation submitted by the above-named Members of the West Bengal

Legislative Assembly on 16<sup>th</sup> March, 2022 before the Speaker of the West Bengal Legislative Assembly discloses an allegation against the petitioner that during the debate in connection with budget speech of Home and Hill Affairs Department, Government of West Bengal, the petitioner and some other Members of West Bengal Legislative Assembly left the House. The above-named Members of the West Bengal Legislative Assembly did not join the petitioner and decided to stay inside the House. The petitioner as Leader of Opposition threatened them saying that he would send the Income-tax Department to the respective house of the above-named MLAs to implicate them in false and fabricated case and also threatened them to kill by engaging goons.

The Secretary, West Bengal Legislative Assembly sent aforesaid representation to the Officer-in-Charge of Hare Street Police Station requesting him to do the needful considering the gravity of the offence stated therein.

On the basis of the said representation along with the forwarding letter dated 17<sup>th</sup> March, 2022 issued by the Secretary, West Bengal Legislative Assembly, Police registered a criminal case treating the same as letter of complaint.

Mr. Rajdeep Majumder, Learned Advocate for the petitioner submits that offence under Sections 166/189/506(ii) are non-cognizable in nature. Only the offence under Section 341 of the Indian Penal Code is cognizable. It is submitted by him that only to harass the petitioner, a false case has been registered by the Police on the basis of a representation filed by the four Members of the West Bengal Legislative Assembly. It is further stated by Mr. Majumder that the said four Members of the West Bengal Legislative Assembly were elected as candidates of the Opposition Party. Subsequently, they joined the ruling party

violating the law of defection. Mr. Majumder further submits that after the petitioner being elected as MLA and Leader of Opposition, series of criminal cases with false and fabricated allegations were filed against him due to political rivalry. Investigation of Contai Police Station Case No. 248/2021 and Nandigram Police Station Case No. 110/2021 have been stayed by this Court in WPA No. 11803/2021. On the basis of the order passed by this Court in the said writ petition to other cases, viz., Manicktala Police Station case No. 28/2021 and Tamluk Police Station Case No. 595/2021 were directed to proceed but no coercive action should be taken against the petitioner on condition that the petitioner shall cooperate in the investigation. The State of West Bengal challenged the aforesaid interim order passed in WPA 11803/2021 before the Hon'ble Supreme Court. The Hon'ble Supreme Court disposed of the Special Leave Petition filed by the State of West Bengal holding as hereunder:-

"The *prima facie* observations of the High Court at this stage are in support of the *ad interim* stay which has been granted. Since the High Court is seized of the proceedings, and the Special Leave Petitions arise of an interlocutory order we are not inclined to exercise the jurisdiction of this Court under Article 136 of the Constitution".

Mr. Majumder has also drawn my attention to another order passed by a Coordinate Bench in WPA No. 129/2022 which was disposed of on the basis of an assurance given by the Learned Advocate General by observing that the petitioner and his security personnel has the right, as citizen of India, to visit not only Netai village but any other place in India, subject to legal restrictions, without violating any provision of law. If the petitioner so visits, along with his security personnel, the Netai village on January 7, 2022, there is no impediment for the petitioner and his men to do

the same. In spite of such order, the petitioner was not allowed to enter into Netai village on 7<sup>th</sup> January, 2022 and he was restrained by the police Authority. A contempt proceeding is pending for violation of the order passed in WPA 129/2022.

It is also submitted by Mr. Majumder that from the written complaint and the representation it is clear that the alleged incident took place inside West Bengal Legislative Assembly during debate over budget speech in budget session. The rules of procedure and the conduct of business of the West Bengal Legislative Assembly says that if a Member of the West Bengal Legislative Assembly violates any rule of procedure of assembly during a particular session, any Member may, with the consent of the Speaker raise a question involving a breach of privilege. Rule 227 says that if the Speaker is satisfied that there is a prima facie case that a breach of privilege has been committed and that the matter is being raised at the earliest opportunity, he may allow the Member to raise him as a question of privilege.

In the instant case the petitioner used to enjoy privilege during the session of West Bengal Legislative Assembly. The conduct of a Member inside the House during a session cannot be called in question under penal provision of the Indian Penal Code or any other Statute.

The instant criminal revision be admitted for hearing. The petitioner is directed to serve notice of the instant proceeding to the opposite parties in course of this day.

Matter be listed for final hearing under the heading 'Specially Fixed Matter' on 2<sup>nd</sup> August, 2022.

In the meantime, operation of notice under Section 41A of the Code of Criminal Procedure issued by the Investigating Officer of the case on 1<sup>st</sup> July, 2022 which was received on behalf of the petitioner on 6<sup>th</sup> July, 2022 be kept in abeyance.

The Investigating Officer of the case is at liberty to examine the de facto complainant and concerned Members of the West Bengal Legislative Assembly as a part of investigation but no further step shall be taken by the Investigating Officer till 4<sup>th</sup> August, 2022.

**( Bibek Chaudhuri, J. )**