

17.12.2025
Item No.15
Ct. No. 1
KS

M.A.T. 798 of 2025
With
I.A. No. CAN 1 of 2025

Abdul Rashid Khan
Vs.
State of West Bengal & Ors.

Mr. Dilip Kumar Samanta
Mr. Biswapriya Samanta
.....For the Appellant
Mr. Santanu Kumar Mitra
.....For the State

PER, SUJOY PAUL, ACJ.:

1. Mr. Samanta, learned counsel appears on behalf of appellant and Mr. Mitra, learned counsel appears on behalf of State.
2. Heard on admission.
3. This intra-Court appeal questions the validity and correctness of order dated 11.04.2025 passed in W.P.A. 6606 of 2025. The petitioner/appellant before the learned Single Judge prayed for following reliefs:-

*“The Application is made bonafide and for the ends of justice.
Under the circumstances the petitioner, therefore, pray for:*

- a) A Writ in the nature of Mandamus commanding the respondent no.4 to take steps on the basis of the complaint of the petitioner (Annexure P/2 to the Writ Petition) for bringing the respondent no.5 to 14 under justice and by initiating appropriate criminal proceeding forthwith;*
- b) A Writ in the nature of Certiorari directing the respondents to transmit and produce all relevant records of this case before this Hon'ble Court so that conscionable justice may be done to the petitioner,*
- c) Rule NISI in terms of prayers (a) and (b) as above,*
- d) Interim order directing the respondent no.4 to take steps on the basis of the complaint of the petitioner (Annexure P/2 to the Writ Petition) for bringing the respondent no.5 to 14 under justice and by initiating appropriate criminal proceeding forthwith;*
- e) Ad-interim orders in terms of prayer (d) above,*
- f) Costs of and incidentals to this Writ Petition."*

4. The learned Single Judge opined that so far long standing land dispute between petitioner and private respondents is concerned, the petitioner/appellant has a remedy under the civil law. In addition, learned Single Judge opined that police authorities would continue to oversee that no breach of peace or tranquility takes place or any untoward incident happens.
5. This is trite that no Writ of Mandamus can be issued to reduce a complaint into F.I.R. and take consequential action. This Court has considered a catena of Supreme Court Judgments and High

Court Judgments and in *Sourav Mitra vs. Swati*

Chakraborty Bhattacharya and Ors., (2025) SCC

OnLine Cal 9425 opined as under:-

“7. On careful perusal of the prayers made by the Respondent No. 1/writ petitioner it thus appears to this court that it is the primary grievance of the Respondent No. 1/writ petitioner regarding inaction of the police authority in registering FIR and in initiating police case on the basis of her complaint dated 17.09.2025. The second fold of the grievance of the Respondent No. 1/writ petitioner is also the inaction of the police authority in assisting her in opening the padlock of the said flat as has been allegedly put by the appellant/private Respondent No. 7.

8. It thus, appears to us that indisputably at the time of filing of the said writ petition the writ petitioner was out of possession of the said flat, may be on account of allegedly putting of padlock by the appellant Respondent No. 7.

9. The moot question cropped up before us as to whether the learned Single Bench while disposing the said writ petition can at all grant the reliefs as prayed for by passing the order impugned.

10. At this juncture, we propose to look to the provisions of Section 173 (corresponding Section 154, Cr.P.C.) and Section 175 (corresponding Section 156, Cr.P.C.) of the Bhartya Nagarik Suraksha Sanhita, 2023 (BNSS in short) which are reproduced hereunder in verbatim:

“173. Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given-

- (i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced*

to writing as afore-said, shall be signed by the person giving it;

- (ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:*

Provided that.....

Provided further that.....

(2).....

(3).....

- (4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.*

175. Police officer's power to investigate cognizable case.-

(1).....

(2).....

- (3) Any Magistrate empowered under Section 210, after considering the application supported by an affidavit made under sub-section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.*
- (4)....."*

11. We also propose to look to Section 6 of the Specific Relief Act, 1963 and the said Section is also reproduced hereinbelow in verbatim:

“[s.6.] Suit by person dispossessed of immovable property.-

(1) if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person [through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

12. On conjoint perusal of Sections 173 and 175 of the BNSS, it reveals that any person aggrieved by a refusal on the part of an Officer-in-charge of a police station to register an FIR may approach the jurisdictional Superintendent of Police by sending the substance of the information of the cognizable offence in writing and by post and the said jurisdictional Superintendent of Police on receipt of such information and after being satisfied that such information discloses the commission of a cognizable offence may direct the Officer-in-charge the Jurisdictional Police Station to initiate a police case by registering an FIR.

13. Section 175(3) of BNSS further postulates that the event the jurisdictional Officer-in-charge of the Police Station or the Jurisdictional SP refuse to register FIR, the aggrieved person still has his remedy to approach before the jurisdictional Judicial Magistrate by filing an application supported by affidavit and the jurisdictional Judicial Magistrate on receipt of such application after making such enquiry may order investigation

by a police officer. It thus, appears to us that there is availability of alternative remedy to an aggrieved person regarding inaction of police in registering an FIR.

14. Similarly, if we look to the provisions of Section 6 of the Specific Relief Act, it appears to us that the legislatures in their own wisdom have enacted the provisions of Section 6 of this Specific Relief Act thereby granting a dispossessed person an efficacious and speedy remedy to recover his possession without proof of any title to the property where from he has been evicted and in the proceeding of such nature, the aggrieved person has his right to seek injunction also.

15. In the backdrop of the aforementioned legal scenario, if we once again look to the prayers of the Respondent No. 1/ writ petitioner, it appears to us that the writ petitioners have alternative efficacious remedy to redress her grievance and instead of availing the same she had approached the writ Court for getting relief.

16. In the reported decision of Radha Krishan Industries Vs. The State of Himachal Pradesh reported in (2021) 6 SCC 771 the Hon'ble Supreme Court had occasioned to consider the scope of exercising writ jurisdiction by a constitutional Court even when alternative remedy is available and in doing so the Hon'ble Apex Court expressed the following view:

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where:

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad* reported in (2003) 5 SCC 399, *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* reported in (1974) 2SCC 706 and *Rajasthan SEB v. Union of India* reported in (2008) 5 SCC 632 among other decisions."

(Emphasis Supplied)

17. Keeping in mind the proposition of law as decided in the case of *Radha Krishan Industries (Supra)* if we look to the factual aspect as involved in the said writ petition, it appears to us that no endeavour was made by the Respondent No. 1/ writ petitioner to substantiate that the facts as involved in such writ petition falls under the exception clauses to the rule of alternative remedy.

18. Learned Advocate appearing on behalf of the Respondent No. 1/ writ petitioner also fails to

substantiate as to how the case of the Respondent No. 1/writ petitioner falls in the category of exception to the rule of alternative remedy.

19. We have noticed that the impugned order was passed by the learned Single Bench without exchange of affidavits and despite the same, the learned Single Bench made a venture to deal with disputed questions of facts as reveals from the last paragraph of Page No. 2 of the order impugned which in our considered view ought not to be done by the learned Single Bench in view of the ratio of decision in the case of Radha Krishan Industries (Supra).

20. The question as to whether the remedy under Article 226 of the Constitution of India can be availed of if there exists inaction and/or nonaction of police in registering the FIR in relation to a cognizable offence has been duly considered by the Hon'ble Apex Court in the reported decision of *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage*, (2016) 6 SCC 277; (2016) 2 SCC (Cri) 549 wherein the Hon'ble Apex Court had drawn has drawn the curtains on the said aspects in the following words: "2. This Court has held in *Sakiri Vasu v. State of U.P.* [(2008) 2 SCC 409], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C. If such an appointment under Section 156(3) Cr.P.C. is made and the Magistrate is, prima facie, satisfied, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the mater. We have said this in *Sakiri Vasu* case because what we have found in this country is that the High courts have been flooded with writ petitions praying for

registration of the first information report or praying for a proper investigation”

(Emphasis Supplied)

21. Similar point of law was involved before a **Division Bench of this Court in which one of us (Sujoy Paul, J.) was in the Bench in connection with WPA (P) No. 517 of 2022 (Merjul Hoque Mondal Vs. The State of West Bengal).**

22. In the case of *Merjul Hoque (Supra)* the said Division Bench while disposing the said writ petition by its order dated 04.08.2025 had occasioned to consider the reported decisions of *Lalita Kumari Vs. Government of U.P.*, (2014) 2 SCC ;, (2014) 1 SCC (Cri) 524, *Aleque Padamsee Vs. Union of India*, (2007) 6 SCC 171; (2007)3 SCC (Cri) 1 and *Sakiri Vasu Vs. State of U.P.*, (2008) 2 SCC 409; (2008) 1 SCC (Cri) 440, as well as a judgment of the Division Bench of MP High Court and in doing so, the said Division Bench expressed the following :

“10. In view of the authoritative pronouncement of the Hon’ble Supreme Court and the Division Bench of the Madhya Pradesh High Court on the above aspect, **no writ of mandamus/direction can be issued for lodging of FIR. The petitioner has an efficacious remedy under the criminal law. Hence the PIL cannot be entertained.**”

(Emphasis Supplied)

23. In view of the aforementioned authoritative decisions of the Hon’ble Supreme Court as well as the judgments as passed by a coordinate Bench of this court and a Division Bench of Madhya Pradesh High Court we are of considered view that the order impugned before us is contrary to the settled principle of law.

24. We are accordingly constrained to hold that the impugned order dated 13.11.2025 as passed in WPA 24934 of 2025 by the learned Single Bench of this Court is not an authoritative decision and has got no binding effect.

25. In view of the factual positions as discussed (supra), we would have set aside the order impugned before us

but not inclined to do so in view of the fact that a report is filed on behalf of the State to the effect that pursuant to the order impugned, the Respondent No. 1/ writ petitioner was put into the possession of the said flat in execution of the order impugned.

26. In view of such, while disposing the instant writ petition, we permit the parties to the instant appeal to take recourse to the law before the appropriate forum, if so advised and in the event if such approach is made, the jurisdictional Court(s)/ forum(s) shall pass appropriate order without being influenced by any of the observations as made by the learned Single Bench in its order dated 13.11.2025 in WPA 24934 of 2025 (Swati Chakraborty Bhattacharya Vs. State of West Bengal and Ors.)

27. MAT 1989 of 2025 is disposed of in the light of the observation made hereinabove."

(Emphasis Supplied)

6. In view of aforesaid judgments, no case is made out for grant of relief claimed in the writ petition.

Learned Single Judge has taken a plausible view that "police authorities, until and unless directed by the civil court or any Court of Law, will not act in cases of property dispute" is watered down by holding that the police authorities will take decision on such complaint on its own merit, in accordance with law.

7. With this aforesaid observation, intra-Court appeal being, M.A.T. 798 of 2025 is disposed of

alongwith the connected application (I.A. No. CAN 1 of 2025).

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, ACJ.)

(PARTHA SARATHI SEN, J.)