

ITEM NO.20

Court 6 (Video Conferencing)

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.4937/2020

(Arising out of impugned final judgment and order dated 29-09-2020
in CRAN No. 2/2020 passed by the High Court at Calcutta)

ROSHNI BISWAS

Petitioner(s)

VERSUS

STATE OF WEST BENGAL & ANR.

Respondent(s)

(With appln.(s) for I.R. and IA No.104136/2020-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.104135/2020-EXEMPTION FROM
FILING O.T. and IA No.104137/2020-PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 28-10-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Mahesh Jethmalani, Sr. Adv.
Mr. Anunaya Mehta, Adv.
Ms. Gunjan Mangla, Adv.
Ms. Arunima Dwivedi, AOR

For Respondent(s) Mr. R. Basant, Sr. Adv.
Mr. Suhaan Mukerji, Adv.
Mrs. Liz Matthew, Adv.
Mr. Vishal Prasad, Adv.
Mr. Nikhil Parikshith, Adv.
Mr. Vishnu Pazhanganat, Adv.
Mr. Abhishek Manchanda, Adv.
Mr. Sayandeep Pahari, Adv.
M/s. Plr Chambers and Co.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Issue notice.
- 2 Mr R Basant, learned senior counsel appears on caveat with Mr Suhaan Mukherjee and waives service.
- 3 Acting on the basis of an FIR (Annexure P-1) which contains allegations of certain objectionable posts shared on a Facebook page, summons were issued to the petitioner under Section 41A of the Code of Criminal Procedure 1973 by the Investigating Officer at Ballygunge Police Station. The FIR specifically refers to two posts alleging that:
 - (i) The lockdown is not being followed at Rajabazar; and
 - (ii) During the lockdown, thousands of people have come together and raising concerns as to whether the State administration would do something about it.

The FIR contains a statement that the posts imply that (i) the State administration was going soft on the violation of the lock down at Rajabazar as the area is predominantly inhabited by a particular community and; (ii) that the State administration is complacent while dealing with lock down violations caused by a certain segment of the community. The FIR relies on Facebook links.

- 4 The Delhi High Court which was moved initially for anticipatory bail, granted liberty to the petitioner to move an application before the Calcutta High Court. The Delhi High Court, by an order dated 19 May 2020 protected the petitioner until 18 June 2020. The petitioner then moved the Calcutta High Court for quashing the FIR. On 5 June 2020, a learned Single Judge directed that no coercive steps would be taken by the State against the petitioner during the pendency of the investigation. The petitioner stated through her counsel that she is willing to answer any questions of the investigating officer by email and even indicated that she would be willing to proceed to Calcutta if the lock down is lifted in the first week of September 2020. The

proceedings before the High Court for quashing the FIR are pending consideration. By the impugned order dated 29 September 2020, the learned Single Judge has directed the petitioner to appear before the Investigating Officer, if a fresh notice is issued under Section 41A with ten days' prior intimation.

- 5 Mr Mahesh Jethmalani, learned senior counsel appearing on behalf of the petitioner submits that the petitioner has stated on oath that she disclaims any association with the Facebook post and that she does not operate the web page which forms the subject matter of the FIR. That apart, it has been submitted that the petitioner is willing to cooperate with the Investigating Officer to establish that she has no connection with the post whatsoever. However, it has been submitted that the condition precedent for the exercise of the power under Section 41A has not been met in the present case because neither is there a reasonable complaint nor credible information or, for that matter, a reasonable suspicion that the petitioner has committed a cognizable offence.
- 6 Opposing these submissions, Mr R Basant, learned senior counsel appearing on behalf of the State has submitted that in view of the decision of this court in ***Arnesh Kumar vs State of Bihar and Another*** (2014) 8 SCC 273, which is based on the earlier precedents, the court would not interfere with the course of investigation. Moreover, it has been submitted that the petitioner having indicated before the learned Single Judge on 5 June 2020 that she would be willing to travel to Calcutta after the lock down is lifted in the month of September 2020, there is no reason or justification for her to oppose complying with the summons that has been issued under Section 41A.
- 7 There can be no gainsaying the fact that the court in the exercise of judicial review does not interfere with the conduct of investigation under and in accordance with the provisions of the Code of Criminal Procedure 1973. The issue, however, is whether in the facts which we have narrated above, it would constitute a reasonable exercise of power within the meaning of Section 41A for the Investigating Officer to compel the petitioner to attend to

the Ballygunge Police Station, in the face of a post suggesting that the lock down restrictions have not been appropriately implemented by the State of West Bengal in a particular area. Cognizant as the Court is of the underlying principles which restrain the exercise of judicial review in the matter of police investigation, equally, the court must safeguard the fundamental right to the freedom of expression under Article 19(1)(a) of the Constitution. There is a need to ensure that the power under section 41A is not used to intimidate, threaten and harass.

- 8 We should not, at this stage, be construed to have expressed a view on the merits of the petition for quashing which is pending before the Calcutta High Court under Section 482 of the Code of Criminal Procedure 1973. The mere filing of a petition to quash an FIR under Section 482 is not sufficient in and of itself to obviate compliance with a summons under Section 41A. We are, however, of the considered view that to require the petitioner at this stage to comply with the summons under Section 41A during the pendency of the proceedings before the High Court would not be justified in the facts as they have emerged in this case. Hence we grant an ad-interim stay against the implementation of the direction of the High Court requiring the petitioner to appear before the Investigating Officer at Ballygunge Police Station. This is subject to the condition that the petitioner undertakes to respond to any queries that may be addressed to her by the Investigating Officer and, if so required, attend to those queries on the video conferencing platform with sufficient notice of twenty-four hours. Mr Jethmalani, learned senior counsel appearing on behalf of the petitioner states that the petitioner would cooperate in all respects though after the order of 5 June 2020, no query was addressed to the petitioner, despite five months having elapsed since then. Mr R Basant, learned senior counsel submits that liberty may be granted to the Investigating Officer, if so required, to come to Delhi for the purpose of eliciting specific responses by way of clarification from the petitioner in regard to the alleged Facebook posts. Mr Jethmalani states that there is no objection to the Investigating Officer doing so with twenty-four hours' notice. We accede to the request of Mr Basant.

- 9 The respondents shall file their counter affidavit within a period of four weeks from today.
- 10 The direction contained in the impugned order of the High Court requiring the petitioner to attend at the Ballygunge Police Station shall accordingly remain stayed pending further orders. The High Court may dispose of the petition under Section 482 uninfluenced by the pendency of these proceedings and nothing contain in the present order shall amount to an expression of opinion on the merits of the rival contentions in the pending petition under Section 482.
- 11 List after four weeks.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Court Masterq