

Constitutional Writ
Present : The Hon'ble Mr Justice Jayanta Kumar Biswas
Judgment on : May 3, 2010
W.P.No.7887(W) of 2006
Sanjay Banerjee
-vs-
State of West Bengal & Ors.
With
C.A.N.No.755 of 2010 (Interim order)

Points:

Scope of writ: Writ court whether direct the police authority to register F.I.R. except an exceptional case- Constitution of India Art 226

Facts:

Under a higher purchase agreement dated June 14, 2004 between the petitioner and one Sundaram Finance Limited, the fifth respondent, he purchased the vehicle, a goods carriage. Sundaram did not supply him a copy of the agreement. Alleging default on the loan Sundaram took forcible possession of the vehicle on February 16, 2006. Under the circumstances, steps should be taken to punish the guilty party under the Indian Penal Code and recover the vehicle.

Held:

Even if it is accepted that inspite of receipt of his letter dated March 27, 2006 police did not take any step, High court should not exercise power under art.226 for directing the police to register an FIR, make investigation, recover the vehicle and restore the petitioner's possession thereof. Orders for all these are to be passed, if at all, by the magistrate under the various sections of the Code of Criminal Procedure, 1973. There is nothing to show that it is such an exceptional case that the high court under art.226 should direct the police to register an FIR. Para-5

Mr. Dilip Kumar Samanta

Mr. Biswapriya Samantafor the petitioner
Mr. Amitava Mitrafor the company

The Court : The petitioner in this art.226 petition dated April 3, 2006 is seeking a mandamus commanding the respondents to repossess vehicle no.WB-41B/4510 on the basis of his letter dated March 27, 2006, Annexure P13 at p.21, and restore his possession thereof.

2) According to the petitioner, his letter dated March 27, 2006 is his complaint to the Superintendent of Police, Burdwan and the Officer-in-charge of Burdwan Sadar Police Station in Burdwan.

3) In the letter dated March 27, 2006 the petitioner stated these. Under a higher purchase agreement dated June 14, 2004 between him and one Sundaram Finance Limited, the fifth respondent, he purchased the vehicle, a goods carriage. Sundaram did not supply him a copy of the agreement. Alleging default on the loan Sundaram took forcible possession of the vehicle on February 16, 2006. Under the circumstances, steps should be taken to punish the guilty party under the Indian Penal Code and recover the vehicle. Sundaram has filed an opposition contending that the petition is not maintainable. It has disputed the correctness of the allegations made in the petitioner's letter dated March 27, 2006.

4) The question is whether the petitioner is entitled to any relief from the high court under art.226. I am of the view that the petitioner is not entitled to any relief from the high court under art.226.

5) Even if it is accepted that inspite of receipt of his letter dated March 27, 2006 police did not take any step, I do not see why the high court should exercise power under art.226 for directing the police to register an FIR, make investigation, recover the vehicle and restore the petitioner's possession thereof.

Orders for all these are to be passed, if at all, by the magistrate under the various sections of the Code of Criminal Procedure, 1973. There is nothing to show that it is such an exceptional case that the high court under art.226 should direct the police to register an FIR.

6) For these reasons, the petition is dismissed. CAN No.755 of 2010, treated as on the day's list, by consent of counsel for the parties, shall be deemed to be disposed of. The department is directed to trace out the application and file it in the file. No costs. Certified xerox.
(Jayanta Kumar Biswas, J)