

S/L 2  
03.08.2022  
Court. No. 19  
GB

WPA 9658 of 2020

Jayarshi Bhattacharya  
VS  
The State of West Bengal & Ors.

*Mr. Bikash Ranjan Bhattacharya.*

*... for the Petitioner.*

*Mr. Lalit Mohan Mahata,  
Mr. Prasanta Behari Mahata.*

*... for the State.*

The writ petitioner is an artist. He has posted a portrait of Lord Krishna, which had been displayed in the Christie's, an auction house. The auction house is the heart of the international art market. The picture is a depiction of an intimate scene between Lord Krishna and Radha, influenced by Geet Govinda. The Geet Govinda is an epic love poem of Jaya Deva.

It is contended by the petitioner that the facebook post within a specified group of artists, namely, 'Akiyader Adda' could not be treated as an offence under Section 295A of the Indian Penal Code, read with Section 67 of the Information Technology Act. It is submitted that the complaint did not disclose an offence. The complaint was filed by one Prasun Maitra, alleging that the post may hurt religious sentiments and incite communal hatred.

Prima facie, the complaint does not disclose any cognizable offence. It has been legally settled that the provisions of Section 295A of the Indian Penal Code would be attracted when there is an intention to deliberately hurt religious sentiments. This post is a portrait and the artist has

remarked that the love was the essence of Janmasthan. The registration of the FIR, in the prima facie view of the Court, amounts to curtailment of the right to freedom of speech under Article 19(1)(g) of the Constitution of India, and also the liberty of the petitioner.

The complaint was filed on an apprehension that the post may hurt religious sentiments, although the said picture is available publicly at art galleries and in different illustrated and translated version of Geet Govinda.

Mr. Mahata, learned advocate appearing for the State respondents submits that the FIR was lodged by the Cyber Crime Police Station vide Cyber Crime Police Station, Raiganj Case No.19 of 2020, upon receipt of a zero FIR from the Officer-in-Charge, Cyber Police Station, Lal Bazar, Kolkata. It appears that the same was forwarded by the Superintendent of Police, Raiganj Police District on the basis of the order of the learned Chief Metropolitan Magistrate, Calcutta.

The investigation shall remain stayed for a period of three months. The Inspector-in-Charge, Cyber Crime Police Station, Raiganj, Uttar Dinajpur shall produce the order of the learned Metropolitan Magistrate, on the basis of which the investigation was started. Further decisions will be taken as to whether this writ petition shall be heard on the facts and law pleaded or the petitioner will be relegated to the appropriate forum under Section 482 of the Code of Criminal Procedure, on perusal of the records to be produced by the investigating officer.

Mr. Bhattacharya, learned senior advocate appearing on behalf of the petitioner vehemently urges this Court to entertain the writ petition despite any order having been passed, if at all, by the learned Metropolitan Magistrate on the ground that denial of the fundamental right of the petitioner has to be adjudicated by the writ court. According to Mr. Bhattacharya, the constitutional point which has been raised, cannot be decided by the criminal court under Section 482 of the Code of Criminal Procedure.

A copy of this order be served upon the defacto complainant.

Let this matter appear on November 1, 2022 under the heading Top Fixed, in the supplementary list.

**(Shampa Sarkar, J.)**