



IMMIGRATION LAW

Calcutta HC Declines To Quash Proceedings Against Bangladeshi Hindu Woman, Says Religious Persecution Plea Must Be Established By Evidence

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The judgment delivered by Calcutta High Court in the case of *Sampa Sarkar vs State of West Bengal and Another* reflects the growing legal complexities surrounding immigration law, religious persecution, and the scope of judicial intervention under criminal jurisdiction in India. The case primarily revolved around the interpretation of the **Immigration and Foreigners Act, 2025** and the protections granted under the Immigration and Foreigners Exemption Order, 2025.

The Court was required to balance humanitarian considerations with statutory obligations and national immigration control.

Background and Facts of the Case

The petitioner, **Sampa Sarkar**, was a Hindu woman from Bangladesh who entered India on 7 December 2024 through the Ghojadanga border using a valid passport and visa. Her visa remained valid until 6 January 2025.

After entering India, she married an Indian citizen and began residing with her husband and his family. According to the petitioner, she faced severe **matrimonial cruelty and harassment** after marriage.

When she attempted to lodge a complaint against her husband and in-laws, she alleged that the police refused to register her grievance. Instead, criminal proceedings were initiated against her under Section 21 of the Immigration and Foreigners Act, 2025 on the ground that she was staying in India without valid travel documents after expiry of her visa.

Petitioner's Arguments Before the High Court

The petitioner approached the High Court seeking **quashing of the criminal proceedings**. Her principal argument was based on the Immigration and Foreigners Exemption Order, 2025 issued by the Ministry of Home Affairs under Section 33 of the Act.

Reliance on the Immigration and Foreigners Exemption Order, 2025

The **exemption order** provides protection to persons belonging to minority communities from Bangladesh, Pakistan, and Afghanistan, including Hindus, who entered India on or before 31 December 2024 due to religious persecution or fear of religious persecution. Such persons are exempted from the requirement of possessing valid passports or visas even if their documents have expired.

The petitioner contended that she fell squarely within the scope of this exemption because she belonged to the Hindu minority community in Bangladesh and had entered India before the prescribed cut-off date.

She further argued that official verification by the **Foreigners Regional Registration Office** confirmed that her visa was genuine and that she had lawfully entered India on 7 December 2024. According to her counsel, continuation of criminal proceedings despite these verified facts amounted to abuse of legal process and ignored the humanitarian purpose behind the Citizenship Amendment Act and related exemption notifications.

State's Opposition to Quashing

The State strongly opposed the plea for quashing. It raised the following objections:

- The petitioner had entered India on a **tourist visa** and had never claimed religious persecution at the time of entry or during her stay before initiation of the criminal case.
- Her claim of fear of persecution was merely an afterthought introduced to avoid prosecution for illegal overstay.
- A mere assertion of religious persecution was insufficient, and the petitioner was legally required to establish a genuine and well-founded fear supported by credible evidence.

Court's Analysis of Statutory Provisions

The High Court examined the relevant statutory provisions in detail to determine whether the petitioner's claim warranted quashing of the proceedings.

Key Statutory Provisions Examined

Section 21 of the Immigration and Foreigners Act, 2025 penalizes foreigners who enter or remain in India without valid travel documents. At the same time, **Section 33** empowers the Central Government to exempt certain categories of persons from compliance with the Act.

The Court recognized that the exemption order indeed grants protection to persecuted minorities from neighboring countries. However, the Court also emphasized **Section 16** of the Act, which places the burden of proof upon the person claiming such protection.

Burden of Proof and Factual Determination

The Court observed that claims of **religious persecution** cannot automatically be accepted merely because a person belongs to a minority community. According to the Court, factual elements requiring proper examination during trial include:

- Fear of persecution
- Social discrimination
- Concealment of faith
- Threats
- Documentary evidence

Since the State had specifically disputed the genuineness of the petitioner's claim and alleged that it was raised belatedly, the Court held that these **disputed questions** could not be conclusively determined in proceedings seeking quashing of the case.

Scope of Inherent Powers and Quashing Jurisdiction

While discussing the scope of inherent powers of the High Court, the Court relied upon the principles laid down by the Supreme Court in *Som Mittal vs Government of Karnataka* and *State of Haryana vs Bhajan Lal*.

The Court reiterated that criminal proceedings should be quashed only in **exceptional circumstances** where continuation of prosecution would clearly amount to abuse of process or where allegations fail to disclose any offence whatsoever.

Since the petitioner's entitlement to exemption required factual determination and evidence, the Court concluded that it was not a fit case for exercising extraordinary jurisdiction under **Section 482** of the Criminal Procedure Code.

Final Order of the High Court

Consequently, the High Court **dismissed the revision petition** and permitted the criminal proceedings to continue before the trial court. The Court also made the following clarifications:

- It had not expressed any opinion regarding the merits of the allegations.
- The trial court would independently decide the matter on the basis of evidence.
- The interim relaxation in bail conditions granted earlier was allowed to continue.

Significance of the Judgment

This judgment is significant because it highlights the **tension between humanitarian protection and immigration enforcement** within Indian law. Key takeaways include:

- While the law provides exemptions and safeguards for persecuted minorities, such protections are not automatic and must be established through evidence.
- The case reinforces the **limited scope of quashing jurisdiction** under Section 482 CrPC.
- It demonstrates the judiciary's cautious approach in interfering with ongoing criminal proceedings where disputed facts remain unresolved.

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