

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 2037 of 2017****IN THE MATTER OF****Smriti Das****Vs.****State of West Bengal & Anr.****For the petitioner : Mr. Navanil De, Adv.,****For the State : Mr. Narayan Prasad Agarwal, Adv.,
Mr. Pratick Bose Adv.****Judgment on : 16.03.2023****Subhendu Samanta, J.**

This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure preferred against an order dated 23rd November, 2016 passed by the learned Chief Judicial Magistrate, Calcutta in connection with Hare Street, P.S., Case No. 59 of 2013 dated 23-01-2013 under Sections 193/196/197/201/420/468/471/474/120B of the Indian Penal Code Corresponding to G.R. Case No. 319 of 2013 wherein the final report being no. 375 of 2019 dated 30-10-

2013 was filed. Learned Magistrate by passing the impugned order has rejected the prayer of the petitioner for further investigation.

The brief fact of the case is that one petition of complaint was filed by the present petitioner with the Officer-in-charge Hare Street Police Station, Calcutta. Containing inter alia that the accused/opposite party 2 filed an application for probate and letter of administration before the Hon'ble High Court Calcutta for getting probate and letter of administration of a Will purported to have been executed by one Prafulla Bala Das, who happened to be grand-mother of the present petitioner along with some purported affidavit of consent of the legal heirs. It has been further alleged in the petition of complaint that the said Prafulla Bala Das died-intestate on 3rd July, 1975 and the probate and letter of administration case being no. PLA- 185 of 2006 was filed before the Hon'ble High Court, i.e. after long thirty years of her death. It further alleged that the Will in question is a forged document and the purported signatures/thumb impressions as well as the signatures of attesting witnesses were also forged and fabricated. It has specifically alleged in the petition of complaint that the affidavit of consent of the relatives of the deceased Prafulla Bala Das were also fake and the affidavit of consent the present petitioner is also a fake document. It has averted that the said

P.L.A. No. 185 of 2006 being contentious re-numbered as T.S. 10 of 2011. The present petitioner contested the T.S.; thereafter the said probate application was dismissed on 9th September, 2012.

The Police took up the investigation and filed final report before the Learned C.M.M. Calcutta, as the case is mistake of law on the ground that the Will in question and the alleged affidavits filed in connection with T.S. were under the custody of the Hon'ble High Court Calcutta and no complaint was made by the High Court thus with the opinion of the Learned Chief P.P. Bankshal Court, Calcutta. I.O. submitted the final report as mistake of law, considering the bar under section 195 of Cr.P.C.

The petitioner filed narazi before the Learned Magistrate below and prayed for further investigation. Learned Magistrate turned down his prayer on the ground that Section 195 (b) (ii) of Cr.P.C. prevents for taking of cognizance.

Hence this revision.

Learned advocate for the petitioner submits that the impugned order passed by the Learned Court below suffers illegality and impropriety. It is the further contention of the petitioner that the impugned order passed by the learned Court below is not a speaking order. Learned Magistrate

should have ordered for further investigation. It is the further contention learned advocate for the petitioner that learned Magistrate has mislead and misappreciated the provision u/s 195 Cr.P.C. and comes to an erroneous decision. He argued that the bar created section 195 (1) (b) (ii) of the Criminal Procedure Code would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the petitioner.

Learned advocate appearing on behalf of the State submitted that the police took up an investigation of this case and admittedly the purported Will and the affidavits of the relatives of the Prafulla Bala Das were in custody of the Hon'ble High Court, Calcutta. In that situation, the I.O. sought for a suggestion from the learned Chief P.P., Learned Bankshal Court, Calcutta who opined that to file the final report in this case as mistake of law.

The learned advocate appearing on behalf of the petitioner cited a decision reported in **(2005) 4 SCC 370** in the matter of **Iqbal Singh Marwah and Another v/s. Meenakshi Marwah and Anr.**

Heard the learned advocates perused the citation. It appears that in this case admittedly the proceeding of probate and letters of administration concerning the Will has dismissed by the order of Hon'ble High Court. It has been alleged by the

complainant that the proceeding of probate and letter of administration of the Will was filed after forged the Will itself. It has also been alleged by same affidavit of consent were also forged.

In passing the impugned order learned Magistrate is of view that section 195(1) (b) (ii) of the Criminal Procedure Code is bar for taking cognizance in that offence. He also is of opinion that alleged forgery or an attempt at using the forged document in the P.S. Dum Dum Municipality is beyond the territorial jurisdiction of the concerned Magistrate so learned Magistrate turned down the prayer of the petitioner for further investigation on the ground that would be useless. He is also an opinion that the complainant petitioner has remedy under section 340 of the Code.

In the cited decision of **Iqbal Singh Marwah** the same issue was raised before the Hon'ble five Judges Bench. It was held by the Hon'ble Supreme Court in para 10 of the said citation that

“10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice,

and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is — “Of Contempts of the Lawful Authority of Public Servants”. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as — “Of False Evidence and Offences Against Public Justice”. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression “when such offence is alleged to have been committed in respect of a

document produced or given in evidence in a proceeding in any court” occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.

Admittedly in this particular case it has been alleged in the petition of complaint that after 30 years of death of Prafulla Bala Das the Will in question was fabricated by forging the signature and L.T.I of testing witnesses and the affidavits of consent of the opinion of relatives of the deceased Prafulla Bala Das was also created. This indicates the offence of forging the documents was done prior to filing of the probate proceeding before the Hon’ble High Court. In that score, following the

dictum of the Hon'ble Supreme Court in the above mentioned citation it is true that if an embargo is created u/s 195 of Cr.P.C. for taking cognizance. The aggrieved person would appear to be remediless. The grievance of an individual should be remitted by a Court of Law.

Section 190 Cr.P.C provides a magistrate may take cognizance of an offence (a) upon receive of complaint of facts which constitute such offence (b) upon a police report of such facts, and (c) upon information receiving from any person others police officers or open his own knowledge, that such offence has been committed. Section 195 Cr.P.C is a sort of exception to this general provision and creates an embargo upon the power of the court to take cognizance of certain type of offences enumerated therein. The procedure for filing a complaint by the Court as contemplated u/s 195(1) Cr.P.C is given in Section 340 Cr.P.C. and Sub-Section (1) (2) thereof; are being reproduced as under -

340. Procedure in cases mentioned in section 195.-

(1) when, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court, or, as the case

may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable, and the Court thinks it necessary so to do, send the accused in custody to such Magistrate, and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-Section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

Section 341 Cr.P.C. provides for an appeal to the court to which such former court is subordinate within the meaning of Sub-Section (4) of Section 195 against the order refusing to make a complaint or against an order directing filing of a complaint and in such appeal the superior Court may direct withdrawal of the complaint or making of the complaint. Sub-section 2 of Section 343 lays down that when it is brought to the notice of a Magistrate to whom a complaint has been made u/s 340 or 341 that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if thinks fit, at any stage, adjourned the hearing of the case until such appeal is decided.

There is another consideration which has to be kept in mind. Sub- section (1) of Section 340 Cr.P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in

matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.

So in that score, it is evident that the injury suffered by the person affected by such forgery or forged document, having regard to the fact of impact, whether such commission of offence has upon administration of justice has done or not. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of his valuable right to property or status or the like. Such document may be just a piece of evidence produced or given in evidence in the court where voluminous evidences may have been adduced and the fact of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances the court may not consider it expedient in the interest of justice to make a complaint. The broad view of Clause b. (ii), would render the victim of such forgery or forged document

remediless. Another interpretation which leads a situation thereby a victim of a crime is rendered remediless has to be discarded (Para 23).

Considering the entire aspect and considering the view of Hon'ble Supreme Court in the given question I am of a view that the impugned Order passed by the Learned Magistrate is not proper. Considering the facts and circumstances of this case. When the document forged and created purposefully by manipulating some signatures and Left Thumb Impression for the purpose of production of the same in a proceeding of a court of law the bar created under provisions of Section 195(1)(b)(ii) of Cr.P.C does not create any embargo for taking cognizance. In that situation if the grievance of the petitioner was not entertained by the Magistrate, the petitioner would be remediless and the intend of the legislature does not allow an aggrieved person to be roam around remediless. Considering the circumstances I find there are merits to entertain the instant criminal revision.

CRR is allowed.

The impugned order passed by the Learned Magistrate is hereby set aside. Learned Magistrate is directed to issue necessary order for further investigation.

It appears that the instant investigation is pending since long this Learned Magistrate is further required to pass such

necessary order so that the investigation may be concluded in a prompt logical ending.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)