

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.A. No. 4525 of 2025

***Ahasanuddin Ahammed*
versus
*The State of West Bengal & Ors.***

For the Petitioner : Mr. Mujibar Ali Naskar,
Mr. Imtiaz Ahammed

For the Respondent Nos. 5 & 6 : Mr. Manas Kumar Das,
Mr. Tusar Sil

For the State : Mr. Rajrashi Basu,
Mr. Ananda Dulal Sarkar

Reserved On : 11.03.2025

Judgement On : 11.03.2025

Tirthankar Ghosh, J. :

Learned Advocate appearing for the Petitioner, State and the private Respondent Nos. 5 & 6 is present.

As per submission by the learned advocates it is understood that the petitioner and the private respondents are already contesting for establishing their right before the civil court. The foundation of the case is based on a power of attorney. The power of attorney is disputed by the petitioner.

It is reflected from the records that initially the petitioner was successful before the Trial Court. Against the said order, the respondents preferred an appeal wherein the respondents were successful in the appeal.

The Petitioner thereafter preferred a second appeal, which is still pending.

In view of the Civil Court already in seisin of the matter, the police authorities have hardly any scope to interfere until and unless a specific direction is passed by the Civil Court. So far as the issue relating to power of attorney is concerned, if there is any allegation regarding the veracity of the document or the document being manufactured, it would be the petitioner who would approach the jurisdictional court in respect of the document which the petitioner claims to be manufactured so that appropriate directions upon the police authorities can be passed by the concerned Court.

Petitioner would also be at liberty to invoke the jurisdiction of the criminal court by adhering to the ratios decided by the Hon'ble Supreme Court. It has been held in *Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr* reported in (2005) 4 SCC 370, in respect of forged documents being produced before Court to obtain an order, appropriate provisions of CrPC are to be invoked. Paragraphs 10 and 11 are relevant which held as follows:

“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.

- 11.** Section 195(1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 CrPC which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is — “Provisions as to Offences

Affecting the Administration of Justice”. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (See Craies on Statute Law, 7th Edn., pp. 207, 209.) The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice.”

In *Sachida Nand Singh & Anr. Vs. State of Bihar & Anr.* reported in (1998) 2 SCC 493 it has been held that in respect of the applicability of Section 156 (3) CrPC in cases where a document is prepared/ manufactured outside the Court and subsequently the same is produced before the Court in seisin of the proceeding, the affected party may invoke the jurisdiction of the Magistrate. Paragraphs 23 of the said judgment reads as follows:

“23. *The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where*

forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal.”

Petitioner, if so advised, will take steps by following any of the procedures as referred to in the aforesaid two cited judgments.

So far as the State is concerned, State has submitted a report and in order to prevent any breach of the peace and tranquillity have already drawn up proceedings under section 126 of BNSS against both the parties.

In view of the police authorities keeping surveillance, they would continue to ensure that there is no breach of the peace and tranquility and/or any untoward incident resulting from the strained relationship existing between the parties.

With the aforesaid observations WPA 4525 of 2025 is disposed of.

Report so submitted be kept with the record.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)