

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

**MAT 1100 of 2025
With
IA No.: CAN 1 of 2025
Sambhu Naskar
Vs.
Khalil Ali Molla & Ors.**

For the Appellant : Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Advocate
Mr. Uday Sankar Chattopadhyay, Advocate
Mr. Suman Sankar Chatterjee, Advocate
Mr. Pronay Basak, Advocate
Mr. Rajashree Tah, Advocate
Ms. Bidisha Chakraborty, Advocate

For the Writ Petitioner/ : Mr. Soumya Nag, Advocate
Respondent No.1 Mr. Aditya Tiwari, Advocate
Ms. Namrata Chatterjee, Advocate

For the State : Ms. Sangeeta Roy, Advocate
Mr. Nilofer Siddiqui Alam, Advocate

Hearing & Judgment on: August 8, 2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a private respondent in a writ petition and directed against the order dated July 10, 2025 passed in WPA 11305 of 2025.
2. By the impugned order, learned Single Judge directed change of a Public Prosecutor in a pending criminal case. Learned Single Judge directed the

Legal Remembrancer to take a decision within a fortnight from the date of communication of the order.

3. Learned Senior Advocate appearing for the appellant submits that, the appellant is a de facto complainant in a police case involving murder. The writ petitioner is an accused in such criminal case. He submits that, the writ petitioner/accused is raising frivolous points one after another in order to stall the disposal of the criminal case.
4. Learned Senior Advocate appearing for the appellant submits that, the writ petitioner/accused raised an issue with regard to the Public Prosecutor engaged by the State. He submits that, it was alleged as against the Public Prosecutor that, his name appeared in the Vokatnama of the de facto complainant along with his daughter. Subsequently, the Public Prosecutor appeared for the prosecution. These facts were alleged before the jurisdictional Court by way of an application. Such application and the contentions raised by the writ petitioner in the writ petition received consideration by the jurisdictional Court and an Order No.59 dated April 4, 2025 was passed.
5. Learned Senior Advocate appearing for the appellant submits that, the contentions of the writ petitioner before the jurisdictional Court were negated. Public Prosecutor appointed by the State was allowed to continue.
6. Learned Senior Advocate appearing for the appellant submits that, thereafter, the writ petitioner suppressing such facts before the jurisdictional Court approached the High Court by way of a writ petition

resulting in the impugned order. He submits that, in the body of the writ petition, there is no pleading with regard to the events occurring relating to the Public Prosecutor before the jurisdictional Court.

7. Learned Senior Advocate appearing for the appellant submit that, a judicial order is not amenable to writ jurisdiction under Article 226 of the Constitution of India. He submits that, in effect, the writ petitioner is seeking setting aside of a judicial order. He draws the attention of the Court to the order dated July 3, 2025 passed in the writ petition, where these facts were brought to the notice of the learned Single Judge. He submits that, the learned Advocate appearing for the writ petitioner took time on such date to take instructions.
8. Learned Advocate appearing for the writ petitioner/respondent no.1 submits that, the Public Prosecutor who was conducting the case for the prosecution, sought to appear on behalf of the de facto complainant. He points out the Vokatnama filed by the de facto complainant. He submits that, the name of the Public Prosecutor appears in such Vokatnama *albeit* subsequently scrolled out. He points out that, such Vokatnama bears the name of the daughter of the learned Public Prosecutor as Advocate for the de facto complainant.
9. Learned Advocate appearing for the writ petitioner/respondent no.1 submits that, the trial is in progress. In terms of Section 207 of the Code of Criminal Procedure, documents were made over to the writ petitioner as an accused in that criminal case. As part of the disclosure under Section 207

of the Code of Criminal Procedure, the writ petitioner received a copy of the statement recorded under Section 161 of the Code of Criminal Procedure which was subsequently found to be not available in the records of the case diary. This fact was pointed out by the Public Prosecutor In-Charge appearing for the prosecution on a particular date. Immediately upon such fact coming to the notice of the writ petitioner, necessary application was made before the jurisdictional Court.

10. Learned Advocate appearing for the writ petitioner/respondent no.1 points out the application filed before the jurisdictional Court. He submits that, it is not within the jurisdiction of the learned Court in *seisin* of the trial to direct replacement of a Public Prosecutor. Such jurisdiction vests in the High Court. Therefore, his client was advised to approach the High Court, which his client did.
11. Relying upon **(2004) 7 SCC 166 (S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar & Ors.)**, learned Advocate for the writ petitioner submits that his client is not guilty of suppression of any material fact.
12. Learned Advocate appearing for the State submits that, pursuant to the impugned order, learned Legal Remembrancer by a writing dated July 23, 2025 replaced the Public Prosecutor.
13. A criminal trial is in progress. A Public Prosecutor was conducting such trial. Name of such Public Prosecutor apparently appeared in the Vokatnama filed on behalf of the de facto complainant along with the daughter of such Public Prosecutor as an Advocate for the de facto

complainant. Name of such Public Prosecutor in the Vokatnama for the de facto complainant was subsequently scrolled out. There is nothing on record to suggest that Public Prosecutor appeared for the de facto complainant.

14. Court is informed that the daughter of the Public Prosecutor also recused herself from appearing as an Advocate of the de facto complainant from 2020 onwards.
15. There is the subsequent issue of an alleged statement recorded under Section 161 of the Code of Criminal Procedure which was allegedly not in the case diary and pointed out by the Public Prosecutor In-Charge.
16. These two issues were canvassed by the writ petitioner before the jurisdictional Court by way of a petition which is at page 92 of the present stay petition. Such petition of the writ petitioner was considered by the jurisdictional Court and an Order No.59 dated April 4, 2025 was passed rejecting the contentions of the writ petitioner.
17. In the Order No.59 dated April 4, 2025, the jurisdictional Court noted the relationship of father and daughter between the Public Prosecutor and the Advocate for the de facto complainant. Jurisdictional Court returned a finding that, factually there is no clash of interest between the de facto complainant and the prosecution.
18. So far as the Section 161 of the Code of Criminal Procedure is concerned, learned jurisdictional Court was pleased to observe that, the defence did not show any failure of justice due to the conduct of the Public Prosecutor and,

therefore, Court was not inclined to act on the mere objection raised by the writ petitioner/accused.

19. The order dated April 4, 2025 passed by the jurisdictional Court was not assailed by the writ petitioner. Writ petitioner filed the present writ petition without alluding to the facts with regard to the criminal trial including the order dated April 4, 2025 passed in the writ petition.
20. Writ petitioner sought relief with regard to the change of Public Prosecutor in that criminal case without alluding to the order dated April 4, 2025. Writ petition proceeds on the same ground which was negated by the jurisdictional Court for the purpose of replacement of the Public Prosecutor.
21. In ***S.J.S. Business Enterprises (P) Ltd.*** (supra) the Hon'ble Supreme Court is of the view that, since all facts necessary for determining a writ petition on merits were before the Court, then it was not open to the Writ Court to hold that the writ petition was not maintainable on the ground of suppression of fact.
22. In the facts of the present case, the previous application before the jurisdictional Court as also the order passed by the jurisdictional Court were brought to the notice of the learned Single Judge. Learned Single Judge recorded such fact by an order dated July 3, 2025. However, by the impugned order, learned Single Judge proceeded to direct the Legal Remembrancer to replace the Public Prosecutor. Impugned order tantamounts the setting aside of a judicial order passed in a pending judicial proceeding.

23. It is trite law that a writ of mandamus under Article 226 of the Constitution of India is not available in respect of an order passed by a judicial officer, discharging judicial functions, in a judicial proceeding.
24. In the present case, there is an order dated April 4, 2025 which determines the issue with regard to the change of Public Prosecutor on the grounds as alleged by the writ petitioner in his writ petition.
25. In our view, a Writ Court was not clothed with requisite jurisdiction to interfere in respect of a judicial order passed in a judicial proceeding by way of Article 226 of the Constitution of India.
26. In such circumstances, we set aside the order impugned.
27. Since the learned Legal Remembrancer acted in terms of the order impugned before us which we set aside, it would be open to the learned Legal Remembrancer to decide on the Public Prosecutor, afresh.
28. Court is informed that the next date before the jurisdictional Court is fixed on August 22, 2025. It is expected that the learned Legal Remembrancer takes a decision on the Public Prosecutor with regard to the trial in question at least seven days prior thereto.
29. **MAT 1100 of 2025** and **IA No.: CAN 1 of 2025** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

30. I agree.

(AD)

(Prasenjit Biswas, J.)