

Court No. 7
29.12.2023
(Item No. 7)
Vacation Bench
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 29210 of 2023

Atreyee Ghosh
VS
The State of West Bengal & Ors.

Mr. Kaustav Bagchi
Ms. Priti Kar
.... For the petitioner
Mr. Mansoor Alam
Mr. Lal Mohan Basu
.... For the State
Mr. Anindya Halder
.... For respondent No. 6

Affidavit of service filed in Court today is taken on record.

The petitioner contends that, she has been entangled in a criminal complaint in connection with an allegation of execution of an alleged forged Power of Attorney where the petitioner was alleged to be a witness.

The petitioner contends that, petitioner has not signed any such power of attorney as witness or otherwise and the petitioner has no nexus with the said incident. The petitioner in this regard submitted a representation dated **July 27, 2023, Annexure P-3** at **page 23** to the writ petition before the jurisdictional investigating officer, P.S. Mohanpur, District – North 24-Parganas in connection with Police Station case **No. 182 of 2023**. She submits that, through the said representation the petitioner contended that, the

necessary verification can be made with regard to her hand writing/signature on the alleged forged document and if necessary, by the respondent No. 3. The said representation has not yet received any attention of the concerned Investigating Officer, hence, this writ petition.

Mr. Kaustav Bagchi, learned counsel appearing for the petitioner submits that, the Investigating Officer should be directed to consider and dispose of the representation in accordance with law and if necessary, the hand writing of the petitioner can be sent for verification/examination by the respondent No. 3. He also prays for a limited protection to the extent that, no coercive steps should be taken against the petitioner till such exercise is carried out.

Mr. Anindya Halder, learned advocate appearing for respondent No. 6, the defacto complainant. He submits that, the accused cannot dictate the investigating authority as to the manner and mode how the investigation shall be conducted. He submits that, this writ petition is premature. He submits that, it is the discretion left open to the Investigating Officer whether the alleged signature of the petitioner shall be sent for verification/examination before the expert. He further submits that, in paragraph 3 to the writ petition the petitioner pleaded that, she came to know of the complaint in the month of **July, 2023** and the

representation was also dated July 27, 2023 but the petitioner applied before this Court through the instant writ petition only on **December 27, 2023**. He submits that, the principal accused was arrested on **December 26, 2023** and only thereafter after being apprehensive of arrest this writ petition was filed.

Md. Mansoor Alam, learned State counsel appearing for respondent Nos. 1 to 5 places a report dated **December 29, 2023** prepared under the seal and signature of the Officer-in-charge, Mohanpur Police Station. The original report is taken on record. The relevant portion relied upon by the learned State counsel is quoted below:

“During investigation, according to statement of witnesses and collection of evidences, involvement of the instant petitioner of this writ petition is not substantiated till date. Hence, neither any notice has been issued to the instant petitioner nor held raid to her residence. The original Power of Attorney could not be recovered in investigation till date; therefore, the procedure of signature verification of the instant petitioner could not be completed. However, the investigation of the case is in progress.”

The learned State counsel submits that, the investigation is going on and this is a premature writ petition. In effect, the petitioner is seeking quashing of the FIR on the basis whereof investigation is being proceeded with.

After considering the rival submissions of the parties and upon perusal of the materials on record it

appears to this Court that, a detailed investigation has already been commenced in connection with the Mohanpur Police Station case **No. 182 of 2023**. It is a fact that the representation of the petitioner dated **July 27, 2023** has not yet received the attention of the concerned jurisdictional Investigating Officer. It is the obligation of the State authority if representation is made to it, the State authority shall have to deal with it and give its reasoned decision on the same.

From the police report filed today and from the portion thereof as quoted above it appears to this Court that, the investigation is in progress and during the investigation, according to the statement of witness and collection of evidence, involvement of the writ petitioner is not substantiated till date. Hence, no notice was issued to the petitioner neither any raid was held at her residence. The original Power of Attorney could not be recovered. Therefore the procedure of signature verification of the petitioner could not be completed.

This was the report prepared by the Investigating Officer and made over to this Court.

Hence, the respondent No. 5 shall dispose of the representation of the petitioner dated **July 27, 2023, Annexure P-3 at page 23** to the writ petition with reasons forthwith and positively within a period of **two weeks** from the date of communication of this order. The reasoned order shall immediately be

communicated to the petitioner within **48 hours** from the date of the said reasoned order to be passed.

In so far as, the limited protection that has been sought for on behalf the petitioner not to take any coercive step in the mean time, this Court is of the firm view that, charge sheet has not yet been furnished, trial has not yet been commenced, in such situation if the petitioner is apprehensive of any coercive step she has a remedy in law.

The writ Court of course has a plenary jurisdiction, such plenary jurisdiction power has to be exercised judicially, equitably and within the framework of law. The fact of this case as discussed above is not such where this Court in exercise of its equitable jurisdiction under Article 226 of the Constitution of India shall grant even a limited protection to the petitioner, as prayed for.

In an appropriate situation the petitioner shall be free to avail of remedy in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that, this Court has not made any observation whatsoever touching the merits of the criminal complaint and the jurisdictional criminal Court while proceeding with the trial of the case shall not be influenced by any observation made by this Court in any manner. The Investigating Officer shall

also be free to take steps in accordance with law by proceeding with the criminal investigation on the issue, as expeditiously as possible.

With the above observations and directions, this writ petition being **W.P.A. 29210 of 2023** stands **disposed of**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)