

(1984) 02 CAL CK 0010
In the Calcutta High Court

Mayapur Sree Chaitanya Math and Others

APPELLANT

Vs

Sachidananda Brahmachari and Others

RESPONDENT

Date of Decision : 28-02-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Criminal Procedure Code, 1973 (CrPC) — Section 195, 196, 340, 471, 476

Penal Code, 1860 (IPC) — Section 467, 471

Citation : (1984) CriLJ 1692

Hon'ble Judges : Monjula Bose, J

Bench : Single Bench

Judgement

Monjula Bose, J.—The short point requiring determination in this application is whether the plea of the defendants in their written statement as also in the several affidavits filed in the interlocutory proceedings before this Court in Suit No. 939 of 1978 Mayapur Sree Chaitanya Math v. Tridandeeswami Bhakti Kusum Sraman Maharaj contending that the two deeds dated 7th July, 1976 are genuine documents and not liable to be set aside, makes the respondents or any of them liable for prosecution for perjury in an application u/s 340 of the Cr.P.C. The respondents before the Court are six in number of whom respondents 3 and 4 are admittedly not parties to the suit, and who have been charged in the petition with aiding and abetting the respondents in manufacturing false documents.

2. The case of the plaintiffs-petitioners in their petition, shortly, is that the two alleged deeds of appointment dt. 7th July 1976 were not executed by Bhakti Vilas Tirtha and the said documents have been charged by the plaintiffs in Suit No. 939 of 1978 to be forged and fabricated documents, neither signed nor executed by the said executant held out and represented to be so after his death before the Registering Authority. It is contended that the documents were forged and brought into existence falsely with the fraudulent motive and intention to usurp the position of the Shebait of the said deities with powers of management, administration, control and custody of vast and valuable debutter properties including the temple Maths and residential houses dedicated to the

deities. Reliance was placed upon a letter dt. Sept. 14, 1976 alleged to be addressed by the respondent No. 1 to the respondent No. 2 recording that no deed was executed by Bhakti Vilas Tirtha before his death. It is contended that the respondents are guilty of having committed acts which are offences under the Indian Penal Code, particulars whereof are given in paragraph 24 of the petition. Reliance is also placed on the report of Sri A.R. Samasdar, Handwriting Expert and of the Forensic Laboratory of the Government of West Bengal indicating that the signatures appearing in the impugned deeds are not the genuine signatures of the executant, and the reports were collectively marked "F" and annexed to the petition. It is alleged that the respondents have committed an offence inter alia u/s 471 of the Cr.P.C. read with Section 467 of the Indian Penal Code and contended that respondents, (other than respondents Nos. 3 and 4 in the Suit No. 939 of 1978) have knowingly produced the said two documents in connection with the aforesaid proceedings and as such it is expedient in the interest of justice that an enquiry should be made into the offence u/s 467 and 467/471 of the Indian Penal Code and a complaint be directed to be made accordingly.

3. In the various affidavits-in-opposition filed by the respondents, it is urged that the application is thoroughly misconceived and mala fide requiring the same to be dismissed in limine. It was reiterated that the said Bhakti Vilas Tirtha had executed two deeds of appointment of shebais, for Shree Chaitanya Math and Shree Chaitanya Research Institute on 7th April 1976 and the same were presented for registration on 5th and 8th Oct. according to law. It was particularly denied that any of the two deeds is forged and/or fabricated and/or not signed or executed by the executant. It is averred that the petitioners themselves had admitted the said two deeds of appointment of shebais relating to Shree Chaitanya Math, Mayapur and Shree Chaitanya Research Institute. Calcutta, in several meetings of shebais attended by them and held on 25th Oct 1976. 31st Oct. 1976. 2nd Nov. 1976, 29th Nov. 1976 and 10th July 1977. Reliance was also placed upon the report of Handwriting Expert. Mr. P. Chatterjee. where he opined that the signatures were genuine. It was denied that the respondents or any of them are guilty of any offence or acts as alleged. The letter of 14th Sept. 1976 alleged to have been signed by the respondent No. 1 recording that there was no document executed by the said Bhakti Vilas Tirtha before his death is also denied, and contended that the contents of the letter are false and the same is a subsequently manufactured and fabricated document and the English signature appearing on the alleged letter of 14th Sept. 1976 is a manufactured and a fabricated signature of the Respondent No. 1. It is denied that the respondents knowingly produced any forged document in connection with any proceedings before this Court or it is expedient that any enquiry or complaint should be made. To appreciate the rival contentions of the parties it is necessary to record that on 22.12.78 suit No. 939 of 1978 Mayapur Sree Chaitanya Math v. Tridandeeswami Bhakti Kusum Sraman Maharaj was instituted in this Court claiming inter alia the following reliefs:

- (a) Leave under Clause 12 of the Letters patent;
- (b) Leave u/s 92 of the C.P.C.
- (c) A declaration that the plaintiffs Nos. 2 to II and the defendants Nos. 7 to II are the only members of the lawfully constituted Governing Body of the plaintiff No. 1 and as such are solely and exclusively entitled to remain in control, possession, custody, management and administration of [he plaintiff No. 1, all its temples. Maths, lands, buildings and other properties and offices including the said Sri Chaitanya Research Institute;
- (d) A further declaration, if necessary, that the defendants Nos. 1 to 6 have no right or title or interest over or in respect of the plaintiff No. 1 or its temples or Maths or lands or buildings or any other assets or offices of the said Sri Chailanya Research Institute and have no right to manage;
- (e) A permanent injunction restraining the defendants Nos. 1 to 6 and their servants or agents from:
- (i) Interfering in any way with the rights, powers and function of the said Governing Body of the plaintiff No. 1 in connection with the management. control, administration, custody and possession of the plaintiff No. 1 and its temples. Maths, lands, buildings, properties, assets and offices including the said Sri Chaitanya Research Institute;
- (ii) In any way interfering with the daily seva puja and the periodic festivals of the deities Sri Guru Gandharbika and Giridhari Jew;
- (iii) In any way interfering with daily seva puja and the periodic festivals of the deities Sri Guru Sri Guru Sunder Sri Radha Dayita Kunja Behari Jew located at No. 70B. Rash Behari Avenue, Calcutta-26;
- (iv) Selling, letting out, encumbering, making any new construction upon or in any manner dealing with any of the properties, assets, lands, buildings and funds of the said Debutor Estate including those of Mayapur Sree Chaitanya Math and Sri Chaitanya Research Institute;
- (f) A declaration that alleged deeds of appointment dated the 7th July, 1976 alleged to have been executed by Bhakti Vilas Tirtha Maharaj are void, inoperative ineffective and not binding on the plaintiffs including the said Mayapur Sri Chaitanya Math and the said Sri Chaitanya Research Institute;
- (g) If necessary a decree directing that the said two deeds of appointment to be delivered for cancellation and be cancelled;
- (h) An injunction restraining the defendants Nos. 1 to 6 and each of them and their servants and agents from claiming or usurping the office of shebait or any other rights, or titles or interest by virtue of or under or in terms of the alleged two deeds of appointments, both dt. 7th July, 1976.
- (i) A further injunction in such other terms and to such other effect as deemed

necessary in the facts and circumstances of this case;

(j) If necessary a Receiver be appointed;

(k) Costs;

(l) Further or other reliefs.

After several interlocutory proceedings, including an application for revocation of Clause 12 of the Letters Patent, a Division Bench of the Court held this Court had no jurisdiction to entertain the proceedings as the suit was a suit for land and accordingly the plaint filed in this Court was directed to be returned for presentation to the appropriate Court. Admittedly on 2.6.83 the suit was filed in the Alipore Court where the suit is now pending.

4. Mr. Hirak Mitra, Learned Counsel for the petitioners, contended that Section 195 of the Cr.P.C. puts a fetter on initiation of criminal proceedings in any Court other than the Court before which the alleged forged documents are produced and or given in evidence, as it is that court alone which is competent to initiate proceedings contemplated u/s 340 of the Cr.P.C. In considering an application u/s 340 of the Cr.P.C. the Court is required to be satisfied that it is both expedient and in the ends of justice, that any preliminary enquiry be held and/or before recording any findings to the effect that an offence has been committed. The words "appears to the Court" appearing in the said Section 340 merely require prima facie material, which indicate the likelihood of the offence being committed, in support of which contention he cites: - Nagar Mahapalika Vs. Smt. Sudheshwari Devi and Another, M.S. Sheriff Vs. The State of Madras and Others, and Indranarayan Vs. Roop Narayan and Another, . In the instant case there is more prima facie material before the Court to indicate and or arouse its suspicion that the document is a forged one in as much as there is no explanation as to why two separate deeds should have been executed by the executant Tirtha Bilash on the same day. nor any indication on the face of the deeds as to whether the same was drafted by any lawyer. No explanation at all is forthcoming as to by whom and or on whose instruction such deeds were drafted. A serious comment is also made of the fact that the two attesting witnesses to the deed, the respondents Nos. 3 and 4. are not connected with the Math as also the fact that the said deeds were registered on two different dates more than 27 months alter the death of the executant.

5. Relying on the report of the Handwriting Expert as also of the Forensic Science Laboratory. Government of West Bengal it is contended that the signatures of Tirtha Maharaj on the 2 deeds indicate negligible and or slight tremor, whereas an earlier power of Attorney admittedly executed by the self same person indicates the signature to be full of tremors. Reliance is also placed on the letter of 14th Sept. 1976 alleged to be signed by the respondent No. 1 and it is contended that the contents thereof are admission that no deed was executed by the executant up till the time of his death. A comment is also made on the entries in the Stamp Vendor's Book produced under subpoena, and it is

submitted that at a cursory glance it is apparent that interpolation appears in the entries accommodating spurious dates of stamps in respect of both the deeds. The fact that stamps were purchased on different dates and in different names is also a matter of criticism.

6. It is contended that the dictionary meaning of "expediency" is "suitable" and or "advisable" and reliance is placed on Chambers as also Oxford Dictionary 1972 Edition, page 459. The undernoted cases were cited to show in what circumstances the Court considered it expedient in an application u/s 340 of the Cr.P.C. to issue the necessary directions. The Supreme Court in *M.S. Sheriff Vs. The State of Madras and Others*, held that the same involved a careful consideration of many factors, and the question would be whether there was ample material on which a judicial mind could reach the conclusion that there is a matter which requires investigation in a Criminal Court. Reliance was also placed on *Emperor Vs. Ningapa Ramappa Kurbar*, *Santokh Singh Vs. Izhar Hussain and Another*, *Rash Behary Ray and Others Vs. Emperor*, and (*Mt.*) *Radharani Dassaya Vs. Purna Chandra Sarkar*. It was contended that even a Court not having jurisdiction and not having gone into merits, is competent to sanction prosecution under this section. A Division Bench of this Court in *Jabbar Ali and Another Vs. Emperor*, viewed that any forged document filed in support of a defence in a Court in which the suit was filed, and which only had the power to return the plaint to be presented in another Court was competent to initiate proceeding u/s 476 of the Criminal Procedure Code, as the document was filed in a judicial proceeding attracting the said provisions. For the same proposition reliance is placed on *Nandiram Fatechand v. Emperor* reported in AIR 1948 Sind 114 : 1948 Cri LJ 454 where the Court viewed that Section 476 of Criminal Procedure Code had no reference to jurisdiction of Court in regard to proceedings with reference to which the offence was committed. The Court further viewed that the complaint filed by the Court u/s 476 against persons who have committed offence referred to in Section 195(1)(b) or (c) in regard to certain proceedings in the Court cannot fail because such proceedings have ultimately been held to be without jurisdiction.

7. *M.S. Sheriff v. State of Madras* reported in AIR 1934 SC 397 : 1954 Cri LJ 1019 is relied upon for the proposition that when considering an application u/s 476 the only relevant consideration is whether it is expedient in the interest of justice that an enquiry should be made and a complaint filed, which necessarily involves the careful balancing of many factors. The Court further viewed that as between the Civil and Criminal Proceedings criminal matters should be given precedence. Although no hard and fast rule can be laid down nevertheless it held that the possibility of conflicting decisions in the civil and criminal courts is not a relevant consideration and the only relevant consideration is a likelihood of embarrassment. The other factor which weighed with the Court, is that a Civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned had forgotten the crime. In that background the Court observed that public interest demands that criminal justice should be

swift and sure and the guilty should be punished while events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Reliance is also placed on the decisions reported in (1902) 4 Bom LR 618, AIR 1927 Sind 89 1926 Cri LJ 1249 and In Re: Perumalla Venkatasubbiah, for the proposition that there is no rule of law which precludes the Court from taking notice against persons u/s 476 of the Criminal Procedure Code even before civil proceedings had come to an end.

8. In Chajoo Ram Vs. Radhey Shyam and Another, the Court viewed that the prosecution for perjury should be sanctioned by the Courts" only in those cases where the perjury appears to be deliberate and conscious and that conviction is reasonably probable or likely. The Court also took notice of long lapse of time of more than 10 years since the filing of the affidavit which is the subject matter of the charge of perjury and viewed that "this factor is also not wholly irrelevant for considering the question of expediency of initiating prosecution for the alleged perjury".

9. It is contended that there is sufficient intrinsic evidence before the Court to establish that the matter is not free from suspicion, requiring an investigation. There is also sufficient prima facie evidence to indicate that there is a likelihood of the offence having been committed. The magnitude of the offence of perjury and the likelihood of the same being continued is a factor which should weigh with the Court directing an enquiry to be made, and it is not at all necessary for the Court to come to the conclusion that the deed was in fact a forgery.

10. It is next contended that the issues in the civil suit and the criminal case would not necessarily be identical as the respondents Nos. 3 and 4 are not parties to the suit. In any event the issue in the civil suit as to whether documents are forged may not be gone into, as there are other assertions in the plaint which if established will entitle the plaintiffs to a decree setting aside the deeds i.e. the executant Bhakti Bilas Tirtha never had any power to make the alleged appointment as alleged to have been made by him under the said two deeds dated the 7th July 1976 and/or that the founder of the Shri Chaitanya Math and its branches had by a will laid down the mode and manner of appointment of successive shebais and there is no provision in his will authorising appointment of the future shebais by the surviving executor Bhakti Bilas Tirtha. It is also the plaintiffs' case that the founder had clearly laid down the manner of allocation and/or appointment of the future shebais by the majority of shebais assembled together and the said Tirtha Maharaj had no right to alter the provisions for appointment of future shebais nor had he any right to make any appointment by himself. A grievance is also made that premises No. 70B, Rash Behari Avenue, Calcutta or the properties at Guntur, at Burdwan and/or any property governed by either of the said two deeds did not belong to the said Bhakti Tirtha Maharaj as erroneously stated in the deed, and that all the properties dealt with in the deed form part of the debutter estate. It is contended that the finding on any one of the aforesaid issues will entitle the plaintiff to

succeed and there can be no oppression, prejudice or embarrassment caused to the respondents if an enquiry be now directed. More so, as the defence in the civil proceedings asserting the genuineness of the documents in question, has been revealed.

11. Mr. A.C. Bhabra and Mr. P.K. Roy, learned Counsel for the respondents have in turn submitted that it is well-settled that in an application u/s 476 (Old) or Section 340 of the present Code of Criminal Procedure, delay is a factor for consideration as to whether it is expedient for the court to direct an enquiry. In the instant case the suit was filed on the 22nd Dec. 1978 and no steps were taken by the petitioner until the present application was moved on the 2nd June, 1983. The finding that it is expedient for an order u/s 340 Cr.P.C. to be passed is thus a condition precedent by itself and the application must on this ground fail.

12. Reliance was also placed on *Narain Singh Vs. Emperor*, which is an authority for the proposition that delay in filing a complaint u/s 476 is fatal. It is to be noticed that the plaintiff No. 4 who filed an affidavit-in-opposition to the application for revocation of leave under Clause 12, averred therein that till the middle of the year 1977 the plaintiffs had no knowledge that the alleged deeds of appointment were not genuine documents, and that for the first time the deeds were seen by Bhakti Parajnan Jyoti at the meeting of 19th July 1977. The suit was instituted on 22nd Dec. 1978 and this application was moved as late as on 2nd June 1983 which make it apparent that the application is not bona fide and/or in the interest of justice. Having lost the revocation proceedings before this Court, and having failed in having a Receiver or Board of Management appointed over the properties which are the subject matter of the proceedings, this application is now moved mala fide to pressurise the defendants to have the deeds set aside. The appeal Court by its judgment dated July 22, 1983 held the suit to be one for land and further viewed that the prayers in the plaint clearly indicate that the same relate to the question of title, possession control and management of land and buildings, necessitating adjudication thereof. From the judgment delivered it appears that the plaintiffs, submitted before the Court that the primary object of the suit was for cancellation or setting aside of the impugned deeds and thus a declaration that the impugned deeds were illegal inoperative and void, was claimed in prayers (f) and (g) of the plaint, whereas now a submission is made that the issue of forgery may or may not require deliberation.

13. Mr. Bhabra placing para 45 of the plaint, submits that it is alleged that the plaintiffs did not take any steps for the last two years for setting aside the two alleged deeds of appointment, as friends and well wishers of the defendants were trying to bring about a settlement. The petitioners thus could have no genuine grievance of the deeds being forged as there could be no settlement with a forger.

14. Reliance is also placed on *Paramananda Mohapatra Vs. The State*, which decision draws out the distinction between "interest of justice" and "expediency". In that case the Court viewed (Para 9)-

There are cases where though it would serve interests of justice to place a man on trial nevertheless expedience may dictate against such prosecution. Consequently, before lodging a complaint, the Court must be satisfied that not merely the bare interest of justice is served, but also that it is expedient in the interest of justice to prosecute. The Court which is lodging the complaint must be satisfied about this expedience and clearly record that jurisdictional finding before any step is taken for prosecution.

15. Har Gobind and Others Vs. State of Haryana, is an authority for the proposition that when considering Section 476 of the Cr.P.C (1898) and the prosecution for an offence referred to in Section 196(c) it is incumbent on the Court filing the complaint to record a clear finding regarding the exact offence which was committed by the party to the proceeding and in the absence of such a finding the order filing the complaint is one not stipulated by law.

16. Analysing the contents of the plaint Mr. Bhabra contends that there is no precise offence against the respondents pleaded at all and merely stated in para 39 thereof:

Each of the two deeds of appointment f is a forged and fabricated document. Neither of the said two deeds was signed or executed by the purported executant thereof. The signatures appearing on the said alleged deeds are not the signatures of the executant, Bhakti Vilas Tirtha The said documents have been forged and brought into existence fraudulently by the defendants or some of them with the wrongful and fraudulent motive and intention of usurping the alleged position of shebait and powers of management, administration, control and custody of the vast debutter properties.

17. In para 23 of the petition the charge of forgery is made against defendants Nos. 1 to 6 for falsely and fraudulently forging the said documents and further it is alleged that the respondents Nos. 3 and 4 aided and abetted the forging and fabrication of the said deeds. In so far as the respondents Nos. 3 and 4 are concerned para 35 of the petition alleged that they did not produce the aforesaid two forged documents before the Court, and as such no case at all is made out against them. The reports relied on do not indicate as to which of the defendants, if any, has been found guilty of forgery. The very basis of the petitioners' application that it is patent that the respondents have committed an offence, inter alia, u/s 471 read with Section 467 of the Penal Code, is not only not prima facie established, but it includes charges against two outsiders who are not parties to the proceedings. In any event that the documents were knowingly produced by the respondents and/or any of them knowing the same to be forged is required to be established before any liability can be fixed on any of the respondents.

18. I have given my anxious thoughts to the rival contentions of the parties and I am of the considered view that submissions on behalf of the respondents are more sound and are required to be sustained.

19. The distinguishing feature of this case which makes it different to all the cases cited on behalf of the petitioners, is that the petitioners' suit for cancellation of the two impugned deeds dt 7th July, 1976, inter alia, proceeds on the basis that the two deeds are forged and manufactured documents, not executed by Bhakti Tirtha Bilash. The defence that the deeds are genuine, necessarily raises the issue as to whether the documents are forged as contended by the plaintiff-petitioners, which issue is very much alive requiring adjudication in the pending Alipore proceedings. In fact the Appeal court by judgment dated July 22, 1983 viewed that the question of title was required to be adjudicated upon, and it was the plaintiff-petitioners who contended that the primary object of the suit was cancellation. As such, it is imperative that the issue of forgery should not be prejudged and there must be a prima facie finding of forgery by this Court before the respondents or any of them can be held to be guilty of the offence of using or producing a forged document in this Court in a judicial proceeding contemplated by Section 340 read with Section 195(1)(ii) of the Cr.P.C.

20. To my mind, the intention of the legislature in enacting Section 340 was to ensure that no fraudulent or forged document be used or produced in a judicial proceeding to assist a claim or defence, thus impairing the administration of justice. Mr. P.K. Roy, learned Counsel for the respondents, rightly contended that a litigant has a right to plead freely and as such, is entitled to set up any defence open to him. In the instant case, any denial of forgery and the assertion that they are genuine documents requiring the plaintiffs to prove the case pleaded, cannot by itself tantamount to perjury and/or interference with the administration of justice, prior to any adjudication and/or finding on the issue of forgery raised. For administration of justice to be thwarted it must be shown that the Court was obstructed from reaching a correct conclusion by reason of production and/or user of a fraudulent document. If the contesting defendants keep themselves away from the witness box and abstain from supporting the Case pleaded, possibly they may be made liable for perjury for using and or relying upon documents to their advantage in the interlocutory proceedings before this Court, which at the lime of the trial were not defended as being genuine documents. Whether such deeds will be proved to be forged is yet to be seen and tested. The case reported in Nagendra Nath Chakravarty and Another Vs. Emperor, proceeded on the basis that the finding of forgery in the trial court will suffice, and making of the complaint should not be slaved till the final disposal of the appeal which may pass through more courts than one. Hence, where there is no prima facie finding, whether reaching a final determination is to be time consuming or not is a matter not warranting any consideration. The various decisions relied upon moreover make it clear that no hard and fast rule of law can be laid down requiring civil proceedings to come to an end, prior to taking action u/s 476 of the Criminal Procedure Code which section corresponds to the present Section 340 of the Act now under consideration, and necessarily the facts of each case require different consideration. A proposition of law is thus

necessary to be read in the context of a particular case.

21. To my mind, the insurmountable obstacle which stands in the way of the petitioners in seeking an order u/s 340 of the Cr.P.C. is the fact that the plaintiffs viz. the petitioners in this application themselves filed Suit No. 939 of 1978 in the Original Civil Jurisdiction of this Court in December, 1978 as also several interlocutory applications (viz. application for appointment of Receiver taken out in Dec. 22, 1978, application for appointment of a joint board of management in May 4, 1979, application for amendment of plaint in Sept. 22, 1980 and two applications for examination of the two deeds by hand-writing experts and examinations of the deeds by Forensic Expert on the 10th of May 1979 and 20th May 1980) and also contested an application moved by the respondents for revocation of leave under Clause 12 of the Letters Patent taken out by the respondents on the 20th Feb 1979 and also the appeal No. 453 of 1979 which culminated in favour of the respondent defendants. The Court viewing that the Court had no jurisdiction in the matter of leave under Clause 12 was accordingly revoked on April 22, 1983. It is thus evident that the plaintiff-petitioners throughout these long years from Dec. 1978 were challenging the two several deeds as being forged and fabricated documents and throughout asserted that the main issue involved as recorded in the appeal court judgment was the issue of forgery which was required to be adjudicated as viewed by the Appeal Court and the said decision is finally binding on the plaintiff petitioners.

22. It is noticed from the averments in para 38 of the plaint that the defendants, in fact, were called upon to produce the originals of the two deeds of appointment dt July 7, 1976 in Court. In this background, can it be legitimately said that by producing the documents pursuant to an order of the Court and/or relying upon the same in several affidavits in opposition and in its written statement in support of a defence yet to be adjudicated upon any offence is committed and/or prima facie shown to be committed in this Court when the written statement filed and interlocutory applications moved and/or resisted? To my mind, where the genuineness of a deed is the main issue in a Civil Court any direction in this application directing an enquiry and/or recording a finding "that the deed is a forgery and/or lodging a complaint in respect thereof is bound to prejudice the result of the pending civil litigation," particularly so as the criminal offence complained of is founded on facts which are required to be determined in the civil suit. There can be no short circuit of proceedings, and the procedural laws of the land are required to be followed to their legitimate conclusion. In this view of the matter, it would be neither expedient nor in the interest of justice to resort to Section 340 proceedings when there is an apprehension in the mind of the Court that a decision herein may hamper the fair trial of the issue of forgery in the civil Court. This is all the more so as it is settled law that a decision in the criminal court will not be binding in the civil proceedings whereas a decree in the civil suit adjudicating upon the merits of the documents in question will be binding on the parties to the proceedings, most, of whom are the main respondents in this application.

23. To my mind, further when considering any application u/s 340 of the Cr.P.C. the Court is required to judicially consider whether it is expedient in the interest of justice to direct an enquiry and/or to lodge a complaint and not whether there are sufficient grounds for an enquiry. Paramananda Mohapatra's case reported in Paramananda Mohapatra Vs. The State, is an authority for the proposition that it is expediency as opposed to interest of justice which is the prime objective of the court when considering an application u/s 340. In the instant case, where a civil suit is still pending for adjudication on the very point which is. *prima facie* required to be determined herein, it would neither be in the interest of justice or expedient for the court to allow such an application as indicated earlier. If ultimately the trial court decides in the defendants favour and the suit is dismissed (even if such a decision be erroneous) until the said decision is set aside, could it be said that a forged document was utilised and/or produced in the judicial proceedings before this Court? My answer would be an emphatic "No".

24. The decision reported in M.S. Sheriff Vs. The State of Madras and Others, , is of no assistance to the petitioners, firstly, because therein the Court took into cognizance that a different course may be necessary and/or expedient in the particular facts of a given case requiring special consideration; secondly, the ratio that between civil and criminal proceedings, criminal matters be given priority and the possibility of conflicting decision is not a relevant consideration, as it is desirable that criminal prosecution should be prompt are general observations which have no bearing to the dispute in question. Thirdly; the question of promptness cannot be agitated by the petitioners in the facts of this case where more than five years have elapsed since the institution of the suit and before the petitioners deemed it proper to move an application of this nature. Moreover, the present proceedings u/s 340 of the Cr.P.C are proceedings before a Civil Court though criminal in nature, and expediency in the interest of justice requires a careful balancing of many factors.

25. The question of public interest as argued by learned counsel for the petitioners does not also seem to be a *bona fide* plea as from the plaint it appears that the plaintiff litigants were not over-zealous to protect public interest prior to moving this application. In para 45 of the plaint it is their case that in spite of knowledge that the Deeds of Appointment were forged deeds, no steps were taken by them to institute any comprehensive proceedings relating to the said two alleged deeds of appointment inasmuch as at the behest of well wishers and devotees a settlement and mutual understanding was sought to be brought about If the plaintiffs-petitioners were so sanguine of their charge of perjury, it is not understood why a criminal complaint was not*lodged earlier and/or why any attempts to settle the matter should be at all made. This attitude on their part leads the Court to believe that their attempt to prosecute the respondents for forgery, is not a *bona fide* one. The delay in moving this application is a factor which has impressed the Court in viewing the application to be a *mala fide* one and also a factor, which the court is required to take into consideration when

considering the question of expediency in initiating any prosecution for the alleged perjury.

26. Following the decision in Shaikh Alimuddin Ahmed Vs. State of West Bengal, , this Court views that the long delay on the part of the petitioners in moving this application militates against the expediency of prosecution.

27. Before concluding, it may also be noted that it was alleged by the plaintiffs that each of the deeds was a forged and fabricated document brought into existence falsely and fraudulently by the defendants or some of them with the wrongful and fraudulent motive and intention to usurp the alleged position of shebait and powers of management, administration, control and custody of the debutter properties. At the time of institution of the suit or till the present application, the petitioners did not think fit to move an application u/s 340 of the Cr.P.C. The Appeal court after considering the averments and reliefs claimed by the plaintiffs viewed that the suit was one for land and relates to the question of title, possession, control and management of lands and buildings necessitating an adjudication thereof. The Appeal Court also viewed that the primary object of the suit which the plaintiffs themselves contended was for cancellation of the impugned deeds of appointment requires an adjudication on the question of title and held, "In the instant case, the impugned deeds of appointment purport to affect and/or interfere with the alleged title of the plaintiff No. 1 Mayapur Sree Chaitanya Math to the Temples, Maths and buildings including the said premises No. 70ft Rash Behari Avenue, Calcutta and also the alleged right of the members of the Governing Body of the plaintiff No. 1 relating to the management, control possession and administration thereof, as claimed in the plaint Unless, therefore, the plaintiffs are able to prove the title of the plaintiff No. 1 to the disputed properties and the right of the members of the Governing Body of plaintiff No. 1 to the management control, possession, custody and administration of the disputed properties, the plaintiffs will not be entitled to claim the cancellation or setting aside of the impugned deeds." Further viewing "the success of the plaintiffs in setting the impugned deeds aside will depend upon their proving title of the plaintiff No. 1 to the disputed properties and the right of its Governing Body to manage, control and possess the same."

28. In the above view of the matter finding that the said suit was a suit for land, leave under Clause 12 of the Letters Patent and u/s 92 of the CPC was revoked and the plaint returned for presentation to the appropriate Court This decision of the Appeal Court is binding on the parties and it is apparent that at the stage and/or earlier thereto the plaintiffs-petitioners were not conscious of any interference with the administration of justice and did not seek to move any application u/s 340 which was taken out long after the said judgment was delivered which also indicate this application not to be a bona fide one. It would neither be expedient nor in the interest of justice to act on such an application.

29. Santokh Singh Vs. Izhar Hussain and Another, , is an authority for the proposition that the Court has to exercise judicial discretion in the light of all

relevant circumstances when it determines the question of expediency and the Court orders prosecution in the larger interest of administration of justice and not to gratify feelings of personal revenge or vindictiveness to serve the ends of a private party.

30. *Champarani Majumdar v. Mrinal Kanti Mazumdar* reported in 1978 Cal HN 319 is an authority for the proposition that in the absence of any positive finding that the defence was grossly false, action should not be taken in respect of a complaint, as the Court should be cautious in its approach and such a complaint should be lodged only when the Court is of the opinion that lodging of such a complaint is expedient in the interests of justice. In that case, the Court took cognisance of the fact that there was no finding that the defence taken by the husband was false necessitating a complaint to be lodged

31. *K. Karunakaran Vs. T.V. Eachara Warriar and Another*, was also relied upon to show that it is only a Court which has seisin of a matter and who may be tentatively of an opinion that further action against some party or witness may be necessary in the interests of justice, who suo motu or on the application of a party u/s 340 of the Cr.P.C. may pursue the matter. In the instant case, there is no prima facie finding of this Court and/or the Alipore Court that the document produced and/or relied upon by the defendants is a forged one. It is of significance that the plaintiffs failed to obtain orders of appointment of a Receiver and/or a Board of Management which necessarily indicate that the Court in the facts and circumstances of the case did not think it necessary so to appoint. Thus unless there is a prima facie finding of the Trial Court, it is premature to contemplate any application u/s 340 of the Cr.P.C.

32. The contentions of learned Counsel for the respondents that having failed in opposing the application for revocation of leave under Clause 12 of the Letters Patent and not having succeeded in either the application for appointment of Receiver or for framing a scheme of joint management, any attempt now being made to thwart the civil proceedings must be held to be an abuse of the process of the Court have substance. Even in the Alipore proceedings merely an order of injunction has been obtained by the plaintiffs which order inter alia restrains the defendants from dealing with or disposing of the suit properties. The decisions reported in (1908) ILR 31 Mad 510 *Jogiah v. Emperor* AIR 1916 Mad 1123 : 1915 Cri LJ 637 *Mahomad Ibrahim Ravuthar v. Kattayyan and Ashru Bindu Ray Vs. Chittaranjan Banerjee and Others*, are authorities for the proposition that where the same point is involved in a criminal case and "civil proceedings the court has power to stay the criminal proceedings and in fact the same should be stayed till the hearing of the civil proceedings. In all the cases the test is to ascertain whether the accused would be prejudiced if the criminal proceedings are not stayed until the disposal of the civil suit. The need of prompt action in criminal proceedings is not required to be considered in a case where there is no prima facie finding of an offence, and where the petitioners themselves are guilty of delay, and where an earlier civil suit is pending adjudication in a court of law.

33. In so far as letter dt. 14th Sept. 1976 is concerned, the same is a disputed letter alleged to have been written by defendant No. 1 and no cognizance can be taken of the same unless proved to be a genuine document As such no reliance can be placed on the said document, at this stage.

34. In view of the aforesaid, this Court refrains at this stage from expressing its views on the various submissions made of the suspicious circumstances of the case so strongly relied upon in an attempt to prove prima facie that the documents are forged, lest the views of the Court might later on affect one party or the other.

35. For all the reasons aforesaid the application must fail and is dismissed with costs.

36. On the prayer of the petitioners for stay of the order, there will be stay of operation of this order for four weeks from date. Interim order to continue in the meantime.

37. Documents kept in the safe custody of the Registrar, O.S. in connection with Suit No. 939 of 1978 Mayapur Sree Chaitanya Math v. Tridandeeswami Bhakti Kusum Shraman Maharaj as also the documents in connection with Suit No. 1018 of 1983 Mayapur Sree Chaitanya Math v. Sachidananda Brahmachari which are kept in the Registrar's safe custody as per order of this Court dated 16.2.84 will continue to remain in the safe custody of the Registrar, O.S. until further orders, in view of the serious allegations made with regard to the said documents.

38. Registrar, O.S. and all parties are to act on a signed copy of the minutes.