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**(2019) 02 CAL CK 0067**

**In the Calcutta High Court**

**Case No :** General Application (Ga) No. 13, 445 Of 2019, Appeal From Order (Apo) No. 35, 403 Of 2018, Writ Petitions (Wp) No. 522 Of 2018

Vedanta Dealing Pvt. Ltd.

APPELLANT

Vs

Hind General Trading Company Pvt. Ltd. & Ors

RESPONDENT

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**Date of Decision :** 25-02-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 195(1)(b)(i), 195(1)(b)(ii), 340, 482  
Indian Penal Code, 1860 — Section 192, 193, 463, 464, 471, 475, 476

**Citation :** (2019) 02 CAL CK 0067

**Hon'ble Judges :** Biswanath Somadder, J; Arindam Mukherjee, J

**Bench :** Division Bench

**Advocate :** Rupak Ghosh, Ayan Bhattacharya, Abhijit Sarkar, Sabyasachi Banerjee, Nurul Arefin, Jayshree Saha, Biswajit Mukherjee, Debangshu Mondal

**Final Decision :** Dismissed

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## Judgement

The Court : By consent of the parties both the appeals are treated as on the day's list and taken up together for consideration along with their respective connected applications.

The two appeals arise out of two orders passed by a learned Single Judge in WP No.522 of 2018 (M/s. Hind General Trading Co. Pvt. Ltd. & Ors. vs. Kolkata Municipal Corporation & Ors.). The first order dated 10th December, 2018 is an interim order. The second order is the order dated 28th January, 2019, being the final order. The appellant before us was the private respondent\ no.8 in the writ proceeding. For convenience, the two orders are reproduced hereinbelow in their entirety :-

Order dated 10th December, 2018.

"The Court:- The petitioner seeks a direction on a representation made by the petitioner dated September 25, 2018 against the mutation of premises no.52/1, Mahareshi Debendra Road, Kolkata- 700 006 in favour of the respondent no.8.

When the writ petition was taken up for consideration, on an earlier date learned advocate appearing for the Corporation produced the records available with the Corporation. Such records demonstrated that, the private respondent applied for mutation on the basis of a deed of conveyance. A photocopy of such document as produced by the private respondent before the Corporation was brought to the notice of the Court and the private respondent.

The petitioner thereafter filed a supplementary affidavit which was taken on record which contains a photocopy of the actual deed of conveyance which was registered with the registering authority in respect of the immovable property.

On perusing the two documents, that is to say, the conveyance which was actually registered with the Registrar of Assurances with a copy of the document placed before the corporation authorities for consideration, it appears that few pages of the deed of conveyance were replaced to suggest and carry a different picture than what the actual deed of conveyance contains. Corporation authorities proceeded on the basis of interpolated deed presented before it. It mutated the name of the respondent no.8 on the basis of interpolated document.

Learned senior advocate appearing for the respondent no.8 submits that, the respondent no.8 did not derive any advantage after having placed such document before the Corporation. The petitioner is not claiming ownership. He submits that, that the respondent no.8 has subsequently filed a complaint dated December 9, 2018 with the Officer-in-Charge, Posta Police Station, Kolkata in relation to such mutation proceeding. The respondent no.8 was not aware of such document being placed before the Corporation authorities.

In the present case it appears that, the respondent no.8 obtained a mutation in its favour on the basis of an application containing documents which are interpolated to say the least. The application contained document which purports to be a photocopy of a registered deed of conveyance. The registered deed of conveyance, however, speaks otherwise. Apparently, the Corporation authorities were persuaded to act on the basis of a photocopy of a registered document when the actual document speaks otherwise.

In such circumstances, it would be appropriate to direct, the respondent no.7 to make complaint to the police, inter alia, under section 340 of the Criminal Procedure Code, 1973 against the directors and other persons responsible in respect of the affairs of the private respondent no.8. Such complaint be made within a period of two weeks from the date of communication of this order.

List the writ petition on January 8, 2019 for further consideration. The advocate on record for the writ petitioner who originally appeared, seeks leave to retire.

Learned senior advocate appearing for the respondent no.8 submits that, his advocate on record has the vakalatnama of the respondent no.8 in his favour.

Mr.Abhijit Sarkar, learned advocate, undertakes to file the vakalatnama on behalf of the respondent no.8 in course of the day."

Order dated 28th January, 2019.

"The Court :- The petitioner assails a mutation made in favour of the private respondent in respect of an immovable property.

Orders were passed in the present writ petition. There is an appeal pending against one of the orders.

Learned Advocate appearing for the petitioner draws the attention of the Court to the order dated November 19, 2018 and submits that, despite the Court proceeding to give direction for affidavits, learned Advocate for the private respondent gave up the right to file an affidavit.

Learned Senior Advocate appearing for the private respondent submits that, the issue of forgery was not present on November 19, 2018.

It appears from the records that, the writ petition was taken up for consideration on diverse dates. By an order dated November 19, 2018, the Court proceeded to give direction for affidavits permitting the parties to file affidavits. After such direction for filing affidavits, learned Advocate for the private respondent gave up the right to file affidavit.

Learned Senior Advocate for the private respondent submits that, his client was not willing to file any affidavits dealing with the writ petition. Now the private respondent requires to deal with the allegation of forgery. The private respondent consciously gave up the right to file affidavit. The document submitted by the private respondent with the Corporation to obtain mutation was subsequently found to be a forgery. The document on the basis of which the private respondent obtained the mutation was known to the private respondent. Having consciously given up its right to file affidavit, I find no reason to revisit the order of November 19, 2018.

The writ petitioner assails an order of mutation.

The records produced before Court establishes that, the mutation was obtained by the private party on the basis of documents which are forged. A direction was issued for initiation of proceeding under Section 340 of the Criminal Procedure Code. The Court is informed such proceeding has been filed.

In such circumstances, the mutation in favour of the private respondent stands quashed.

WP No. 522 of 2018 is disposed of. No order as to costs."

It is the contention of the appellant that the learned Single Judge before directing initiation of the proceedings under section 340 of the Code of Criminal Procedure on 10th December, 2018, ought to have given an opportunity to the appellant/private respondent no.8 to use an affidavit.

The records reveal that the writ petition, being W.P. No.522 of 2018, was filed on 11th October, 2018 and on 19th November, 2018 the Court after hearing

the parties passed the following order :-

"The Court : The petitioner complains that its name has been wrongly deleted from the mutation record and that too, without hearing.

Learned Advocate for the private respondents submits that the private respondent is the owner of the immovable property.

Learned Advocate for the Kolkata Municipal Corporation submits that the lands is vested under Thika Tenancy. None of the private parties can claim title over the lands. He submits that if there be any mutation in respect of the property concerned, the same should not be given effect to.

In such circumstances, mutation in respect of the concerned immovable property in favour of any of the private parties, shall stand suspended until further orders of Court.

The issues raised in the writ petition are such that the parties should be afforded an opportunity to file affidavit.

At this stage, learned advocate for the private respondent submits that, the writ petition can be proceeded with without affidavits. His client is not willing to file any affidavit dealing with the writ petition.

The parties, therefore, waive their right to file affidavit.

The Corporation authorities are directed to produce the records on the next date of hearing. List the writ petition on November 26, 2018 as prayed for on behalf of the Corporation under the same heading."

It is, therefore, evident that the private respondent no.8, being the appellant herein, chose not to file any affidavit in the matter, which has been clearly recorded by the learned Single Judge in the order dated 19th November, 2018, and was also taken notice of in the final order dated 28th January, 2019.

As such, the contention of the learned advocate for the appellant that before the Court passed its order on 10th December, 2018 it ought to have been given an opportunity to his client to use an affidavit, is wholly without any basis.

During the course of hearing, the learned advocate for the appellant has referred to a judgment of the Supreme Court in the case of Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah & Anr., reported in (2005)4 SCC 370, in order to emphasis on the scope of section 340 of the Code of Criminal Procedure.

After considering the above judgment referred to by the learned advocate for the appellant, we are unable to understand how this judgment can be of any assistance to the appellant in the facts of the instant case. Rather, the facts of that case as revealed in paragraph 3 of the judgment clearly demonstrates that the genesis of the case before the Supreme Court lied in a criminal complaint made in May, 1996 in the Court of the learned Metropolitan Magistrate, New Delhi, for prosecution of the appellants and their mother Trilochan Kaur Marwah

under various sections of the Indian Penal Code on the ground that the Will of one Mukhtar Singh Marwah set up by the appellants was a forged and fictitious document. The learned Metropolitan Magistrate held that as the question as to whether the Will was a genuine document or a forged one was an issue before the District Judge in the probate proceedings where the Will had been filed, Section 195(1)(b)(i) and (ii) of the Code of Criminal Procedure operated as a bar for taking cognizance of offences under sections 192, 193, 463, 464, 471, 475 and 476 of the Indian Penal Code. The complaint was accordingly dismissed by an order dated 2nd May, 1998. The respondents, thereafter, filed a criminal revision against the order of the learned Metropolitan Magistrate before the learned Sessions Judge, who, relying on *Sachida Nand Singh vs. State of Bihar* held that the bar under section 195(1)(b)(ii) of the Code of Criminal Procedure would not apply where forgery of a document was committed before the said document was produced in Court. The revision petition was accordingly allowed and the matter was remanded to the Court of the Metropolitan Magistrate for proceeding in accordance with law. The appellants challenged the order passed by the learned Additional Sessions Judge by filing a petition under section 482 of the Code of Criminal Procedure before the Delhi High Court, but the same was dismissed on 15th September, 2000, following the law laid down in *Sachida Nand Singh's* case. Feeling aggrieved, the appellants preferred the appeal before the Supreme Court India where the judgment was pronounced in the facts of that case, as presented before it.

In the facts of our case, the learned Single Judge in the order dated 10th December, 2018, directed the Chief Manager (North), Assessment Department, Kolkata Municipal Corporation (being the respondent no.7 in the writ proceeding) to make a complaint to the police, inter alia, under section 340 of the Code of Criminal Procedure, 1973, against the Directors and other persons responsible in respect of the affairs of the private respondent no.8 (being the appellant herein). Now that the complaint has been made before the Officer in Charge, New Market Police Station on 21st December, 2018 and the matter will take its due course in accordance with law. There is no cogent or justifiable reason as to why in an Intra Court Mandamus Appeal any interference is warranted in the facts of the instant case. We do not notice any palpable infirmity or perversity on a plain reading of the two impugned orders which includes a direction upon the Chief Manager (North), Assessment Department, Kolkata Municipal Corporation (in the order dated 10th December, 2018) to make a complaint to the police, inter alia, under section 340 of the Code of Criminal Procedure, 1973. Such a direction was perfectly justifiable when the Court noticed certain facts which were presented before it, as specifically recorded in the order dated 10th December, 2018.

In such circumstances as stated above, the two appeals and the respective applications for stay are liable to be dismissed and stand accordingly dismissed.