

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 4407 of 2021
Muhammad Tariq
Versus
Muhammad Ibrahim and another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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12.01.2022 Mr. Usman Ali, Advocate for the petitioner.

This writ petition assails the order dated 08.09.2021 passed by the learned Additional District Judge, West-Islamabad, whereby he dismissed the petitioner's application under section 476 Cr.PC.

2 The petitioner is a party in a suit for declaration and permanent injunction in relation to a house in Islamabad. He claims that the power of attorney filed on his behalf by another party in the suit is forged because he was in jail at the relevant time and did not sign it. He therefore filed the application under section 476 Cr.PC for prosecution of the party filing his allegedly forged power of attorney before the trial Court. Per his allegation, section 195(1)(c) Cr.PC would be attracted, which provides for the prosecution of offences relating to forgery of documents given in evidence before the trial Court. The petitioner wants this Court to set aside the order of the learned Additional District Judge, and also wants a direction to be issued for the registration of an FIR.

3 After stating the background facts, the court of the learned Additional District Judge dismissed the application under section 476 Cr.PC observing as follows:-

“The petitioner filed the instant petition just to grind his personal axe and wants to drag the respondent in the court *despite the pendency of the civil litigation*. The court finds no reason to issue notices to the respondent to face the proceedings u/s 476 Cr. PC.” [Emphasis added]

4 Certain principles are well settled for the purposes of section 476 Cr.PC. A substantial body of case law exists. A brief summary of these principles follows:

- i) Neither private prosecution nor collateral criminal proceedings alleging forgery in respect of documents filed in a pending litigation can be commenced except on a complaint in writing of the trial Court itself.

1997 MLD 2097; 1998 MLD 686; 1984 P Cr.LJ 381; 1990 P Cr.LJ 97; 1999 P Cr.LJ 61

- ii) Where a private party applies to the Court to prosecute its opponent during a pending civil litigation, it can safely be assumed that there is malice behind the application.

2005 MLD 1103

- iii) Prosecution under section 476 CrPC is primarily to secure the public interest (prospect of prosecution for using false means to secure a favourable verdict) and not to satisfy a private grudge.

1970 SCMR 10

- iv) The court is to apply its mind to the question whether there is a reasonable probability of conviction if prosecution was initiated.

1969 SCMR 37; 2003 YLR 249

- v) It is not befitting to force a Court which has exercised discretion not to prosecute, all the more so where other remedies can be availed.

2004 SCMR 805; 2003 YLR 249

The citations listed for the above stated principles are for quick reference and are only a few of many.

5 The application under section 476 Cr.PC in the case at hand was moved in a pending litigation wherein the petitioner could contest the authenticity of the power of attorney in question by leading evidence. The trial Court might find the power of attorney genuine; to hold a parallel inquiry on the same question does not make sense, all the more so where the criminal prosecution would require proof beyond reasonable doubt. Insisting on prosecution in these circumstances is inexplicable, except that this is yet another instance calling for the application of the principle noted at sub-para (ii) of paragraph 4 above. It is a safe assumption that the trial Court is the proper judge to evaluate the prospects of a successful prosecution for filing of forged documents before it as it

would have the occasion to hear evidence by the party contesting the document. That is why judicial precedent respects its discretion and is averse to forcing it to decide otherwise. That is not to say there might not be instances where a supervisory court may come to a different conclusion, but such instances can never arise before the trial is concluded or would be the ones where the forgery is so obvious (to wit: patent on the face of the record) as not requiring any investigation.

6 In view of the foregoing, I see no merit in the instant writ petition which is dismissed *in limine* with costs of Rs.5,000/- payable by the petitioner's counsel for failing to carry out basic research into the principles applicable to section 476 Cr PC and insisting on pursuing this petition even though this Court gave him a way out on the last date of hearing. He will deposit this cost in the account of the Federal Government used to disburse fee to State counsel, the details of which he can gather from the Deputy Registrar (Judicial).

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran

Approved for reporting.