

GAHC010111602018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./179/2018

SITARAM PRASAD
S/O. LATE SATYANARAYAN PRASAD, R/O. BAHBARI, HIJUGURI, P.O. AND
P.S. TINSUKIA, PIN- 786125, DISTRICT- TINSUKIA, ASSAM.

VERSUS

JAMUN PASWAN AND ANR.
S/O. SRI CHOTKAN PASWAN, R/O. BAHBARI, HIJUGURI, P.O. AND P.S.
TINSUKIA, PIN- 786125, DIST.- TINSUKIA, ASSAM.

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : MR. A K GUPTA (R1)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 20-07-2023

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Mr. A. K. Gupta, learned counsel for the respondent No.1.

2. This petition is filed under Section 397/401 *read with* Section 482 of Code of Criminal Procedure, 1973, challenging the impugned Judgment and Order dated 21.12.2017, passed by the learned Sessions Judge, Tinsukia in Criminal Appeal No.48(3) of 2013, dismissing the appeal, which was preferred against the impugned order dated 15.07.2013 passed by the learned Munsiff No.-1 in T.S. No.20/2002.

3. It is stated that the respondent was a Sardar of Labours Working in FCI Godown, Tinsukia, who forcefully dispossessed the petitioner on 05.03.2002 from the plot of land. Against the said forceful act of dispossession, the petitioner filed a Title Suit No.20/2002, under Section 6 of the Specific Relief Act for recovery of possession in respect of dispossessed land and accordingly the suit was decreed in favour of the petitioner vide Judgment and Order dated 27.06.2006. Thereafter, the respondent preferred an appeal to stop execution of decree on the ground of adducing false evidence. The learned appellate Court dismissed the aforesaid appeal and as per direction, the respondent instituted a Title Suit, which is presently pending before the Court of learned Munsiff at Tinsukia. The respondent after lapse of more than 7 years from the date of Judgment and Decree passed in the aforementioned T.S.No.20/2002, the respondent filed a petition in the said suit on 05.04.2013 being petition No.909/2013 under Section 340 of Cr.P.C. *read with* Section 195 Cr.P.C., praying

for taking cognizance of the offence for giving false evidence and dishonestly making false allegation against the petitioner. It was alleged that the petitioner/plaintiff in T.S.No.20/2002 gave false evidence regarding execution of written agreement, which he admitted in a subsequent criminal proceeding in G.R.Case No.803/2008 including signature, which he denied in the earlier proceeding, which were exhibited as Ext.Ka and Ext.A respectively. Based on the aforesaid petition and on being forwarded, the Court of learned CJM, Tinukia registered a Complaint Case being CC No.141^c/13 under Section 193 of Cr.P.C. and transferred to the Court of learned Additional CJM, Tinsukia for disposal. Against the aforesaid order of the learned Munsiff No.-1, dated 15.07.2013 passed in T.S.No.20/2002, the plaintiff/petitioner herein preferred a criminal appeal being No.48(3)/2013 before the Court of learned Sessions Judge, Tinsukia and the aforesaid appellate Court by Judgment and Order dated 21.12.2017 dismissed the same holding the aforesaid order passed by the learned Munsiff No.1. Tinsukia.

4. On being highly aggrieved and dissatisfied with the Judgment and Order dated 21.12.2017 passed by the Court of learned Sessions Judge, Tinsukia in Criminal Appeal No.48(3)/2023 dismissing the appeal, the petitioner/plaintiff prefer this revision petition on the following grounds:-

4.1. The learned Sessions Judge, Tinsukia as well as learned Munsiff No.1, Tinsukia, completely erred in law and failed to understand the meaning and procedure provided under Section 340 *read with* Section 195 of Cr.P.C, while, dealing with the offence committed under Section 193 of IPC. Hence, the order dated 05.04.2013, 15.07.2013 as well as 21.12.2017 passed by the aforementioned Courts are bad in law and liable to be set aside and quashed.

4.2. The impugned order dated 15.07.2013 was passed without holding inquiry as envisaged in Section 340 Cr.P.C., and that too after lapse of 5 years, and without making any inquiry came to the findings that the petitioner/plaintiff has committed the offence of giving false evidence in a judicial proceedings and lodging the complaint petition under Section 193 of IPC is totally bad in law, and the same is liable to be set aside and quashed.

4.3. There was nothing to held that the petitioner\plaintiff adduced false evidence, either in T.S. Case No.20/2002, or in G.R. Case No.803/2008, and hence, the order dated 15.07.2013 holding the petitioner willingly gave false evidence is a perverse findings and the Order and Judgment dated 15.07.2013 and 21.12.2017 passed by the learned Sessions Judge are bad in law and liable to be set aside and quashed.

4.4. The learned Munsiff No.1 and the Sessions Judge, Tinsukia failed to ascertain either of the statement relating to Ext.Kha in T.S. Case No.20/2002 or Ext.A. in G.R. Case No.803/2008 is false in reference to offence committed in Section 193 of IPC. Hence, the order dated 15.07.2023 and the Judgment dated 21.12.2017 are liable to be set aside and quashed.

5. Mr. P. Mahanta, learned counsel for the petitioner has submitted that the Trial court had passed the Order dated 15.07.2013 & 21.12.2017, without making any inquiry and came to the findings that the petitioner/plaintiff has committed an offence by providing false evidence in two judicial proceedings and lodged the complaint petition under Section 193 of IPC7.

6. In support of his submission, he relies on the decision of Hon'ble Apex Court in the case of ***Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah***

& Anr. reported in 2005 (4) SCC 370, wherein, in para-10 of the said judgment read as under;

“Para-10. The scheme of the statutory provision may now be examined. Broadly, [Section 195](#) Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under [Sections 172 to 188](#) IPC which occur in Chapter X of the [IPC](#) and the heading of the Chapter is 'Of Contempts Of The Lawful Authority Of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of [IPC](#) which is headed as 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice ([Sections 205](#) and [211](#) IPC). This being the scheme of two provisions or clauses of [Section 195](#), viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of [Section 195](#) Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.”

7. In this context, Mr. A. K. Gupta, learned counsel for the respondent has submitted that both the learned Courts has not committed any error or mistakes while passing the Judgment & Order dated 15.07.2013 and 21.12.2017 respectively. He also submitted that from the evidence adduced by the accused in both the cases i.e. T.S. No.20/2002 and G.R. Case No.803/2008, it is seen

that in T.S. No.20/2002 he denied the execution of any deed or documents and claimed that the documents (Ext-Ka) was forged one and in cross-examination the said accused also denied his signature which was marked as Ext-Ka(1),Ka-(2). But, the accused while deposing in G.R. Case No.803/2008 admitted those signatures which he denied earlier and also admitted the documents which he claimed earlier as forged, i.e the document Ext-Ka in T.S. No.20/2002 and the document in Ext-A, in G.R. Case No.803/2008 are same and one document. Further, he also submits that Section 193 of IPC does not specify about the oral or documentary evidence. But, a person may be guilty for adducing false evidence in judicial proceeding either in oral or documentary evidence.

8. He further relies on the decision of the Hon'ble Apex Court reported in ***2002 CRI.L.J.548 SCC***, wherein he mainly stressed on para-9 of the said judgments, which read as under;

“Para-9- Reading of the Sub-section makes it clear that hub of this provision is formation of an opinion by the Court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the Court is empowered to hold that a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the Court can form such an opinion when it appears to the Court that an offence has been committed in relation to a proceeding in that Court. It is important to notice that even when the Court forms such an opinion it is not mandatory that the Court should make a complaint. This sub section has conferred a power on the court to do so. It does not mean that the Court should, as a matter of course, make a complaint. But once the Court decide to do so, then the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the Court finds it necessary to conduct a preliminary inquiry to reach

such a finding it is always open to the Court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the Court regarding its opinion. It should again be remembered that the preliminary inquiry, contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from, the purpose of preliminary inquiry, even if the Court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.”

9. After hearing the submission made by the learned Advocates of both sides; I have perused the records as well as Judgment & Order dated 15.07.2013 and 21.12.2017, it is seen that after receiving the petition with the allegation against the present petitioner, that he gave false evidence in two judicial proceedings, thereafter, the learned Munsiff No.1 made an enquiry and framed an opinion that in both the aforementioned cases the petitioner being the plaintiff as well as informant he knowingly or willfully given false evidence in judicial proceedings and it is found necessary and expedient in the interest of justice that he should be tried for giving false evidence in judicial proceedings. And, the learned Munsiff No.1 arrived at a finding that the present appellant had committed an offence under Section 193 of IPC and therefore, filed a complaint before the Court of the learned CJM. Thus, the said Courts has not committed any illegality or mistake while passing the Judgment & Order dated 15.07.2013 and 21.12.2017 respectively.

10. Section 193 of the IPC read as under:-

“Section-193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend

to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.”

11. Considering the entire facts of the case, I do not find it a fit case to set aside the impugned Judgment and Order dated 21.12.2017, passed by the learned Sessions Judge, Tinsukia in Criminal Appeal No.48(3) of 2013, dismissing the appeal, which was preferred against the impugned order dated 15.07.2013 passed by the learned Munsiff No.-1 in T.S. No.20/2002, and accordingly, the same stands dismissed.

12. In the result, I find no merit in this Criminal Revision Petition and accordingly, the same stands dismissed. However, there shall be no order as to cost.

JUDGE

Comparing Assistant