

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9598 of 2015

Arising Out of PS.Case No. -319 Year- 2012 Thana -BEGUSARAI MUFFASIL District-
BEGUSARAI

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Vijay Laxmi @ Laxmi Wife of Raj Kumar @ Bittu Resident of Village-
Machaha, P.S.- Muffasil (Singhaul), District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar

2. Vikash Kumar Son of Ashok Singh Resident of Village- Machaha, P.S.-
Muffasil (Singhaul), District- Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Singh, Advocate

For the Opposite Party/s : Mr. Md. Ansharul Haque (APP)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

4 29-04-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

A supplementary affidavit has been filed on behalf of
the petitioner. Let it be kept on record.

In the present application for Cancellation of Bail
granted to Opposite Party No. 2 vide order dated 11.03.2015,
notice was issued to Opposite Party No. 2, Vikash Kumar S/o-
Ashok Singh, Village – Machaha, P.S.- Muffasil (Singhaul),



District – Begusarai, as it is alleged in the petition for cancellation of bail that the opposite party no. 2 had misrepresented before this Court and also made a clear manipulations in the First Information Report, as a result of which, this Court had been misled while passing an order granting bail to him vide order dated 24.09.2014 which was subsequently, modified by order dated 17.10.2014 passed in Cr. Misc. No. 35067 of 2014. The said modification was occasioned on account of the fact that it had been stated by learned counsel for the petitioner, namely, Sunil Kumar, Advocate (Advocate on Record No. 4012) “due to typographical error by steno, P.S. Case No. 315 wrongly mentioned in order sheet while the right P.S. case number is 319”. As such, he had prayed that the case be placed under the heading “To Be Mentioned”.

The notices so issued to opposite party no. 2 has been returned stating that the opposite party does not stay at the said address but at his “Sasural. Such a stand is obviously a deliberate intent to evading notice.

Learned counsel for the petitioner submitted that since opposite party no. 2 had committed deliberate fraud on this court, he is not likely to receive the same and that this Court may proceed in the matter of cancellation of bail as fraud vitiates any

order and can be considered as nullity in the eye of law.

Learned counsel for the petitioner had clearly stated at Paragraph-2 of the Cr. Misc. No. 35067 of 2014 that the petitioner had not moved this Hon'ble Court earlier though he had earlier filed Cr. Misc. No. 22949 of 2013 which had been dismissed by this Court on 26.11.2013, which was concealed by the petitioner.

Furthermore, what is indeed shocking is that in the said case, the petitioner moved this Hon'ble Court alongwith a First Information Report which, too, was interpolated inasmuch as the entire contents of the statement made before the police had been changed showing the petitioner, namely, Vikash Kumar (Opposite Party No. 2 herein) as not the main assailant though in the earlier First Information Report which has been placed before this Court in this criminal miscellaneous application and also Criminal Miscellaneous No. 22949 of 2013, the petitioner has been clearly referred to as the main assailant, who had fired upon the father-in-law of the informant resulting into his instant death.

Learned counsel for the petitioner in the present case submits that Cr. Misc. No. 35067 of 2014 was filed stating that it arose out of Begusarai Muffasil (Singhaul) P.S. Case No. 315

of 2012, though the exact case number is Begusarai Muffasil (Singhaul) P.S. Case No. 319 of 2012. However, at same state, the said case number was changed after/pre filing or affidavit.

Learned counsel for the petitioner submits that the petitioner, namely, Vikash Kumar (Opposite Party No.2) had earlier come before this Court in Cr. Misc. No. 22949 of 2013 seeking regular bail in connection with Begusarai Muffasil (Singhaul), P.S. Case No. 319 of 2012, which was rejected vide order dated 26.11.2013 and thus, the submissions made on behalf of the petitioner in Cr. Misc. No. 35067 of 2014 was clear misrepresentation with intent to mislead this Court with a view to obtaining the order in his favour and defeating the ends of justice.

Earlier the records of the Cr. Misc. No. 22949 of 2013 as also records of Cr. Misc. No. 35067 of 2014 was called for in order to ascertain the veracity of the allegations, made in this criminal miscellaneous application. Notice was also issued to the concerned Stamp Reporter calling upon him to show cause as to under what circumstances the said fact was not reported to this Court and a direction was issued to the registry to consider the show cause and to submit a report.

A show cause filed on behalf of the Stamp Reporter

has been placed on record before me and the comments of the Registrar General, who has enquired into the matter are also placed before me.

Without going into the merits of the show cause which can be dealt with on the administrative side, after comparing the first information report to all the three petitions, this Court finds that there is a clear interpolation in the body of the first information report. It is only to be imagined as to when and how the said manipulations have been made. But it appears from the computer generated sheet on which the original order was passed in Cr. Misc. No. 35067 of 2014 that in fact the case had been listed before this Court with stamp report stating the case number to be Begusarai Muffasil (Singhaul), P.S. Case No. 315 of 2012. Accordingly, even in the order passed on 24.09.2014, the said computer generated sheet recorded the police case number as “Begusarai Muffasil (Singhaul) P.S. Case No. 315 of 2012”. Subsequently, a mentioning slip was filed before this Court stating that a typographical error had been occasioned in the order sheet and, therefore, a prayer was made to correct modify same. This Court while noticing that at all places in the petition the number though overwritten by pen Begusarai Muffasil (Singhaul) P.S. Case No. 319 of 2012 had been stated which



matched with page no. 1 of the FIR which was clear without any cutting thereto and, accordingly, this Court vide order dated 17.10.2014 modified the order dated 24.09.2014 passed in Cr. Misc. No. 35067 of 2014 incorporating as “Begusarai Muffasil (Singhaul), P.S. Case No. 319 of 2012” in place of “Begusarai Muffassil (Singhaul) P.S. Case No. 315 of 2012”. It appears that at some stage or after the order dated 24.09.2014 was passed, certain manipulations were made, as has been reported by the Stamp Reporter.

On 08.04.2015, learned counsel for the petitioner in the present application for cancellation of bail, sought adjournment to file affidavit for bringing on record even the certified copy of the impugned order which had been annexed alongwith Cr. Misc. No. 35067 of 2014 which also appeared to be a fabricated documents as the stamp pasted thereon is not that of the Franking Machine as is prevalent these days.

Today, a supplementary affidavit has been filed before this Court in which it has been stated that even in the impugned order which was annexed to the Cr. Misc. No. 35067 of 2014, an interpolation was made and to fortify his averment, the original impugned order has been placed on record.

Original Impugned order

Informant, Vijay Laxmi gave her fardbeyan on 10.11.2012 before the S.H.O. of Singhaul O.P. at 7 a.m. alleging therein that on the same day at 6 A.M., she was at her house and her father-in-law was cleaning his mouth at the door. In the meantime, she heard sound of firing and her father-in-law made hulla, then she saw from window that Vikash Kumar was fleeing and when she came out she saw her father-in-law sustained pillet injury and he told that Vikash fired at him. On hulla nearby people assembled there then they took to him Begusarai, but her father-in-law died in the way.

Interpolated impugned order

Informant, Vijay Laxmi gave her fardbeyan on 18.11.2012 before the S.H.O. of Singhaul O.P. at 7 a.m. alleging therein that on the same day at 6 a.m. she was at her house and her father-in-law was cleaning his mouth at the door. In the meantime, she heard sound of firing and her father-in-law made hulla, then she saw from window that Sanjay Kumar, Kundan Kumar and Vikash Kumar were fleeing and when she came out, she saw her father-in-law sustained pillet injury and he told that Sanjay fired at him. On hulla nearby people assembled there then they took to him Begusarai, but her father-in-law died in the way.



A perusal of the said impugned order and after comparing the same with the impugned order annexed with Cr. Misc. No. 35067 of 2014, I am satisfied that the impugned order, too, has been interpolated and fraud was perpetuated on this court in order to mislead it into passing an order in favour of the said petitioner, namely, Vikash Kumar (opposite party no.2). A comparative study of the same is incorporated in this order in order to pin point the fraud, perpetuated inasmuch as the name of the main assailant has also been changed therein. In paragraph -2 (Annexure-8) attached to the supplementary affidavit, it has been clearly indicated that Vikash Kumar (Opposite Party No. 2) was seen fleeing and that the father-in-law had sustained pellet injury and he told that Vikash Kumar (Opposite Party No. 2) fired at him. However, in paragraph-2 of the impugned order passed on the same date which has been annexed to Cr. Misc. No. 35067 of 2014, the name of the Vikash Kumar (opposite Party no.2) has been changed to Sanjay and it is stated the three persons were seen fleeing away. In paragraph-2, it has been clearly stated in the forged and interpolated order that the father-in-law of the informant told her that Sanjay had fired at him.

Thus, it appears that not only interpolations were made before this Court by the Opposite party No. 2 (Vikash



Kumar) but the copy of the FIR and also impugned order produced before this Court had also been interpolated so as to dupe this Court and facilitate his release. Such fraudulent acts by the said Vikash Kumar (opposite party No. 2) who is facing trial in Sessions Trial No. 456 of 2013 cannot be accepted and is shocking to the conscience of this Court and if allowed to be perpetuated will result in raising serious doubts over the judicial system as it will defeat the administration of justice.

Learned counsel for the petitioner has also brought on record the original order passed by a Bench of this Court in which this Court after taking into consideration the forgery and fraud having been perpetuated in that case was pleased to direct the Court below to cancel the bail bonds of the petitioner of that case.

Having come to considered and definite conclusion that the order granting bail to the petitioner, namely, Vikash Kumar of Cr. Misc. No. 35067 of 2014 (i.e. opposite party No. 2 herein) was occasioned by fraud having been perpetuated upon this Court, this Court can well refer to the settled principle of law as held by the Apex Court in State of *Andhra Pradesh Vs. Surya Chandra Rao 2005 (6) SCC 149*, where the effect of fraud on an order passed by a Court has been dealt with in the

following manner.

***In Lazarus Estates Ltd. V. Beasley Lord Denning
observed at QB pp. 712 and 713 (All ER p. 345 C)***

“No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud, Fraud unravels everything.”

In the same judgment Lord Parker, L.J. observed that fraud “vitiates all transactions known to the law of however high a degree of solemnity”

***In Bhaurao Dagdu Paralkar V. State of
Maharashtra, [(2005) 7 SCC 605], the Hon’ble Supreme
Court held in paragraph 11 as under:-***

“11. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh V. Savitri Devi

[(2003)8 SCC 319]”

It is apparent from the facts and circumstances and the clear cogent materials brought on record before this Court that the order dated 24.09.2014 subsequently modified by order dated 17.10.2014, was occasioned on nothing but fraud and the same having been passed on the basis of fraud being committed before this court, cannot be allowed to continue. Accordingly, this Court directs the learned Trial Court, namely, the Court of Additional District and Sessions Judge –V, Begusarai in seisin of Sessions Trial No. 456 of 2013 to cancel the bail bonds furnished on behalf of the opposite party no. 2 (Vikash Kumar) forthwith and issue a non-bailable warrant of arrest against him. The opposite party no.2 (Vikash Kumar) is directed to surrender in the Court below immediately. However, if he fails to surrender in the Court below, the Court below shall take all coercive steps to ensure his arrest and remand him into judicial custody. The Registry is directed to communicate the order of this court to the court below concerned immediately. The bail which was granted to the opposite party no. 2(Vikash Kumar) vide order dated 24.09.2014 which was subsequently modified vide order dated 17.10.2014 passed in Cr. Misc. No. 35067 of 2014 stands recalled.

It has been brought to my notice that several cases of similar nature in which forged and fabricated first information reports and impugned orders have been used for procuring favorable bail orders, this Court has initiated an enquiry into the matter and directed the Registrar General, Patna High Court to entrust the matter to the CBI and lodge First Information Report. Let this case also be placed before the Registrar General, Patna High Court, who is directed to place the matter alongwith the case in which this Court had already directed the CBI to make higher and scientific enquiry in the matter of filing of forged and fabricated FIR and impugned order.

This application stands disposed of.

(Anjana Mishra, J)

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