

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 43735 of 2009

Arising out of P.S. Case No. -0 Year- null Thana -null District-
BHABHUA (KAIMUR)

Swami Triyoganand Ji Maharaj @ Ram Narayan Prasad @ Ram Narayan Bind, From The Compliant Parental Address S/o Late Raghunath Bind R/o Vill.- Sariaon, P.S. Durgawati, Distt.- Kaimur at Bhabua, Present Address Chela Of Brahmlin Swami Shiv Dharmand Ji Maharaj, R/o Brahama Vidyalaya And Ashram Situated at Chhotaka Rajpur, P.S.- Simri, Distt.- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ram Chandra Prasad Mahatha, Bench Clerk (B/C), Munsif Court, Bhabua (Kaimur)
3. Ramesh Kumar, Office Clerk (O/C), Munsif Court, Bhabua (Kaimur).
4. Mahatma Vedprakashanand disciple of Swami Satyanand Jee Maharaj, R/o Brahma Vidyalaya & Ashram Chhotka Rajpur, P.S. Simri, Distt.- Buxar.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan, Adv.

For the Opposite Party/s: Mr. APP.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 25-08-2015

The Petitioner seeks quashing of the order of cognizance dated 11.11.2009 passed by the Chief Judicial Magistrate, Kaimur at Bhabhua in Complaint Case No. 0003(0) of 2009 under Sections 193 and 209 IPC.

The background facts of the case is that a Title Suit bearing T.S. No. 123 of 1987 was instituted by one Shyam Lal Chauhan and others against Swami Sheo Dharma Nand alias Deo Shankar Tiwary which was dismissed against which the Plaintiff filed F.A. No. 13 of 1999 which was allowed. Then Defendant filed a Second Appeal numbered as SA No. 169 of 1993 in the High Court in which by an order dated 04.09.1996 this Court stayed the further proceedings. In the meanwhile, the Appellant i.e. Shiv Dharma Nand Ji Maharaj died on

20.03.1999 upon which a substitution application was filed on behalf of Shri Triyoganand Ji Maharaj i.e. Petitioner and by Satya Nand Ji on 21.05.1999 and 28.06.1999. On 13.08.1999, this Court directed that both the Interlocutory Applications be considered at the time of hearing.

In the meanwhile, the Plaintiffs filed Execution Case No. 6/1995 before the Munsif Court, Kaimur wherein much before on 27.08.1999 Shyam Lal Chauhan filed a petition in the execution case that the High Court had impleaded both Satyanand Ji as well as Triyoganand Ji as legal representative of deceased Shiv Dharmanand Ji. The Court below by order dated 06.05.2000 allowed the substitution of the two persons in the case. Later the said orders were repeated on 19.8.2000 and 27.08.2000. This was evidently contrary to the records of the case since it was finally only on 24.02.2009 an order was passed by this Court which is annexed as Annexure-D to the Counter-Affidavit. The Munsif, Bhabhua then held an inquiry into the statement made by Shiv Darmanand Ji Maharaj the judgment-holder with regard to the correct position of being legal heirs. It was then found that a wrong statement had been made and he opined that it was at the behest of the Petitioner that such a Petition had been filed since he had appeared subsequently through a Vakalatnama and got instituted the present case.

Later, this Court sent the matter to the Court below in terms of Order XXII Rule 5 CPC which sent a report dated 04.12.2008 holding Mahanth Satyanandji the legal representative of the Plaintiff. However, this Court disregarded

this report on the ground that since substitution by itself would not create any right of heir-ship in his favour and it would be subject to the determination of his right to succession in the Civil Court allowed both the parties to be substituted by an order dated 24.02.2009.

It has been submitted on behalf of the Petitioner that it is not in dispute that he was not the person who had filed an application with misleading claims and even though subsequently he had participated in the execution case by filing his Vakalatnama he not be held liable.

On the other hand, Counsel for the Opposite Party No. 4 submits that the Petitioner can not extricate himself from the liability of the false affidavit filed since he had filed a Vakalatnama even though knowing that the substitution petition before this Court had not been decided which shows his complicity in the proceeding.

Further, since the Bench Clerk was authorized to file the Complaint it does not suffer from procedural error. In the facts of the case, an offence under Sections 193 and 209 IPC is made out and, hence, the Petitioner be prosecuted.

Considering that when the admitted position is that it was not the Petitioner who had filed the affidavit in the Court below with regard to him having been substituted as a legal heir speculation that being a party in the Second Appeal his involvement is inevitable does not stand the test of reasonableness. Moreover, there is no denying that the Petitioner filed his Vakalatnama only after the Court below had substituted him even if on erroneous grounds and, hence, if at



all he took advantage of it, he could be held liable under Sections 193 and 209 IPC.

Hence, the proceeding including the order of cognizance dated 11.11.2009 passed by the Chief Judicial Magistrate, Kaimur at Bhabhua in Complaint Case No. 0003(0) of 2009 is, hereby, set aside so far as the Petitioner is concerned.

The Application stands allowed.



Vikash/-

(Anjana Prakash, J.)

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