

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.148 of 2015

Arising Out of PS.Case No. -69 Year- 2012 Thana -BIHPUR District- BHAGALPUR

=====

1. Sanjay Kr. Mishra @ Kumod Mishra son of Indra Nand Mishra
2. Ujjwal Kumar Mishra, son of Sanjay Mishra
Both resident of village Bharamhpur Police Station- Bihpur, District- Bhagalpur.
.... Appellant/s

Versus

1. The State of Bihar
2. Ganesh Jha, S/o Late Jiya Lal Jha, resident of Khawas Pur Police Station
Pirpanti, District- Bhagalpur.
.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. N.K. Agrawal, Sr. Adv.
Mr. Vikram Singh, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 22-04-2015

This appeal under Section 341 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') is directed against the order dated 11.09.2014 passed by the learned Additional District & Sessions Judge, Naugachia in Sessions Trialo No. 659 of 2012, whereby and whereunder the application filed by the appellants on 09.07.2014 for initiating an enquiry in terms of clause (b) of sub-section (1) of Section 195 of the Code has been kept pending till the date of judgment.

The appellants have been made accused in Bihpur P.S.Case No. 69 of 2012 dated 3rd March, 2012 registered under Section 302 read with 34 of the Indian Penal Code. According to the prosecution case, the appellants assaulted upon the father of the



informant Rohit Kumar Mishra with bricks and piece of wood, as a result of which he sustained fatal injury over his head and nose. The police investigated the case and, finding the allegations to be true, submitted charge sheet against the appellants, pursuant to which cognizance for the offence punishable under Section 302 read with 34 of the Indian Penal Code has been taken against them. Subsequently, the case was committed to the court of Sessions for trial. In course of trial, one Assistant Sub-Inspector of Police Ganesh Jha was examined as P.W.9 and during his examination-in-chief, he has proved the seizure list and inquest report as well as material exhibits of the case. In this regard, an application was filed by the appellants before the learned Adhoc Additional District & Sessions Judge, Naugachia on 09.07.2014 in which a prayer was made to initiate prosecution against the Assistant Sub Inspector of Police Ganesh Jha as, according to the appellants, he had given false evidence in the court. The contention of the appellants in the court below was that another Assistant Sub Inspector of Police Ehtasam Alam Khan had sent an information vide D.R. No. 512/14 dated 03.03.2014 to the court which would show that the seized material exhibits of the case were not available in the Malkhana of the Police Station but after receipt of the aforesaid report, P.W.9 Ganesh Jha has produced the material exhibits, i.e., two bricks and a piece of wood. It was contended that since P.W.9 Ganesh Jha had already retired from service and had settled in his village,

there was no occasion for him to possess the aforesaid material exhibits and produce the same before the court.

The State had contested the matter. It has been argued on behalf of the State that the material exhibits were produced before the court by P.W.9 on 19th May, 2014 and he has been extensively cross-examined by the defence. The seized materials were kept in the Malkhana by the Sub Inspector of Police Sri Nath Singh, who was incharge of the Malkhana of Bihpur Police Station and due to lack of information the ASI Ehtesam Alam Khan had sent an information on 3rd March, 2014 that the said seized material exhibits of the case is not available in the Malkhana of Bihpur Police Station. The case of the prosecution is that on the requisition of the State counsel Chaukidar of the concerned Police Station had produced the material exhibits before the court, which was proved by P.W.9 Ganesh Jha and there is no truth behind the allegation that P.W.9 had produced the seized material exhibits illegally. It was further contended that the allegation of cheating, forgery, interpolation etc. made against P.W.9 is not only false but mischievous too.

Having heard the parties, the court below opined that regard being had to the facts and circumstances of the case, without appreciation of evidence, it cannot be held that the evidence produced by P.W.9 is false and fabricated one. It also concluded that the expression of any opinion regarding quality of the evidence led

before the court prior to the final judgment would not be proper. Hence, the court below kept the application dated 9th July, 2014 pending in order to decide the same at the time of final judgment, vide order dated 11th September, 2014.

Learned counsel for the appellants has contended that the aforesaid order dated 11th September, 2014 passed by the court below is bad in law in view of the fact that the court below failed to appreciate the fact that the issue raised by the appellants had to be decided first prior to proceeding further in the case as per the provisions contained in the Evidence Act relating to admissibility of evidence. He has contended that the issues raised by the appellants goes to the root of the prosecution case and the prosecution cannot be allowed to create false and fabricated evidence and produce the same in the court to cover up the lacuna in the prosecution case.

Learned counsel for the State has contested the matter. He has submitted that there is no substance in the submission made by the learned counsel for the appellants. He has submitted that in view of language used in Section 340 of the Code, the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) of the Code as the Section is conditioned by the words “court is of the opinion that it is expedient in the interest of justice”. He further contended that sub-section (1) of Section 340 of the Code contemplates holding of a preliminary

enquiry and the court below has rightly kept the application pending when the trial is already in progress. According to him, normally, a direction for filing of complaint is not made during pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and final judgment is rendered.

I have heard the respective counsels for the parties and perused the record. I am in complete agreement with the submission made by the learned counsel appearing for the State. In Section 340 of the Code, the procedure for offences enumerated in Section 195(1)(b) of the Code is provided. That Section is one of the exceptions to the general rule that any person can lodge complaint of an offence. When the offence is in relation to a court, the sanction of the court should be obtained first. The object of Section 340 of the Code is not to ascertain as to whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or the evidence was in *custodia legis* and whether it is also expedient in the interest of justice to take such action as required under Section 340 of the Code. The words “it is expedient in the interest of justice that an enquiry should be made” are the key-note to the Section to prosecute a witness on the charge that he has given false evidence or produced fabricated material exhibits. Merely on the basis of a report sent by a police officer, who may not be

acquainted with the true facts of the case would be a very dangerous procedure. Under Section 340 of the Code, the prosecution is not to be launched merely because the accused, against whom evidence has been led, intends that the witness, who had deposed against him, be prosecuted. The court would exercise such power only if it is expedient in the interest of justice and not on mere allegations or to satisfy personal vendetta. The court is not bound to make a complaint regarding commission of an offence under Section 195(1)(b) of the Code in each and every case. In the present case, I find no error in the impugned order passed by the court below whereby it has kept the application filed by the appellants seeking an enquiry in terms of clause (b) of sub-section (1) of Section 195 of the Code till the date of final judgment, as expression of any opinion regarding quality of the evidence led before the court prior to final judgment would certainly not be proper in the interest of justice.

For the reasons stated, herein above, I find no merit in this appeal. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

U		T	
---	--	---	--