

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.709 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- GAYA

1. Tarkeshwar Singh Son of Late Sudama Singh Resident of Mohalla- Chand Chaura, Police Station- Civil Lines, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Director General of Police
 2. The State of Bihar through the Government Pleader Patna Civil Court, Patna.
 3. The Government Pleader Patna Civil Court, Patna
 4. The Senior Superintendent of Police Patna
 5. The Principal Judge Family Court, Patna
 6. Sri Binay Kumar Sinha Advocate District Bar Association, Behind Shiv Mandir Civil Court, Patna
 7. Pramila Devi Daughter of Late Ram Chandra Prasad Resident of mohalla- Park Road, Police Station- Kadam Kuan, District- Patna
 8. Nand Kumar Son of Late Ram Chandra Prasad Resident of mohalla- Park Road, Police Station- Kadam Kuan, District- Patna
- Rajesh Kumar, son of Tarkeshwar Singh, resident of mohalla Chand Chaura, P.S. Civil Lines, District- Gaya.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Adv.

For the Respondent/s : Mr. Shilpi Keshri, A.C. to AAG-XI

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-03-2015

One Pramila Devi (Respondent No.7) filed a maintenance case bearing Maintenance Case No.100(M) of 2009 in the court of Principal Judge, Family Court, Patna on 22.05.2009 under section 125 of the Code of Criminal Procedure praying for monthly allowance of Rs.10,000/- from the petitioner. Her case is that the petitioner happens to be her husband, who is employed as Circle Inspector in Chandauti Block in the district of Gaya. Her marriage



was held in 1976 and out of wedlock, one son and two daughters were born. The two daughters have already been married and the son is being maintained by her husband. In due course of time, the petitioner subjected her to cruelty due to various reasons. Ultimately, she was compelled to leave her matrimonial house in 1993 and since then she is living separately with her younger brother and family members. Thereafter, the petitioner has married another lady and has completely neglected her. Her further case is that the petitioner has sufficient means as he is in government service whereas she being an unemployed lady has no means to support herself.

It has been contended that after filing of the aforesaid maintenance case, the petitioner received a legal notice sent on 24.02.2010 by respondent no.6 apprising the petitioner of filing of the maintenance case against him for monthly allowance of Rs.10,000/-. After receiving the legal notice, the petitioner went to the civil court, Patna and entrusted vakalatnama to his lawyer. On perusal of the record of the case by the petitioner's counsel, it came to the knowledge of the petitioner that one Binay Kumar Sinha (Respondent No.6) has already filed a vakalatnama, alleged to be executed by the petitioner, with a petition on 13th December, 2010, seeking time for filing of written statement.

Learned counsel for the petitioner has submitted that



the said Binay Kumar Sinha (Respondent no.6) has himself sent the legal notice to the petitioner on behalf of respondent no.7 and forged signature of the petitioner on the vakalatnama and filed the same in order to appear on behalf of the petitioner. It has been contended that on 10th January, 2011 the petitioner filed an application in the court of Principal Judge, Family Court, Patna praying therein to dismiss the aforesaid maintenance case and also to take legal action against respondent no.7 and her advocate respondent no.6 but the learned Principal Judge, Family Court has not taken any action against respondent nos.6 and 7. In this background, the petitioner has filed this application under Articles 226 and 227 of the Constitution of India with the following prayers :-

“1. That the present criminal writ petition is being filed for grant of following relief/reliefs :-

- (a) For issuance of an appropriate writ/order/direction directing the Respondent No.5 to pass an order upon the petition dated 10.1.11 filed by the petitioner in Maintenance Case No.100(M) of 2009 whereby the petitioner has prayed to the Family Court Patna to seize the licence of Respondent No.6 for indulging in an act which comes under the category of professional misconduct.
- (b) For issuance of writ of mandamus directing the Respondent No.4 to register FIR against Respondent No.6 to 9 for making forgery in connivance with one another in court's proceeding by filing forged document in the Maintenance Case No.100(M) of 2009 running at present in the court of Principal Judge Family Court, Patna.
- (C) Any other relief/reliefs to which the petitioner

be deemed entitled to.”

Learned counsel for the petitioner has submitted that the court below ought to have proceeded against respondent nos.6 and 7 in exercise of powers conferred under sections 195 and 340 of the Code of Criminal Procedure in order to maintain purity in the administration of justice as the vakalatnama bore forged signature of the petitioner. He seeks a direction from this Court that a mandamus be issued by this Court upon respondent no.4 to register F.I.R. against respondent nos.6 to 9 for the alleged fraud.

In my view, the application is misconceived. The petitioner does not allege that any forgery was made while the document was in the custody of the court. He alleges that someone forged his signature on vakalatnama filed in the court in the aforesaid maintenance case and the same was received by respondent no.6, who filed the same in the court. It would, thus, mean that the forgery, if any, was committed while the document was outside the custody of the court. In such eventuality, if the petitioner is aggrieved, he can file a complaint before the court of competent jurisdiction under sections 190 and 200 of the Code of Criminal Procedure.

As per section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, no court shall take cognizance of an offence relating to forgery of a document, when such offence is alleged to have been

committed in respect of a document produced or given in evidence in a proceeding in any court, except on the complaint in writing of that court, or of some other court to which that court is subordinate.

In the case of Surjit Singh Vs. Balbir Singh [(1996)3 SCC 533], following observations were made in paragraph 10 by the Hon'ble Supreme Court :-

“10. It would thus be clear that for taking cognizance of an offence, the document, the foundation for forgery, if produced before the court or given in evidence, the bar of taking cognizance under Section 195(1)(b)(ii) gets attracted and the criminal court is prohibited from taking cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offence covered thereunder.”

Thus, it is apparent that the Hon'ble Supreme Court in the case of Surjit Singh (Supra) was of the view that once the document is produced or given in evidence in court, taking of cognizance on the basis of private complaint is completely barred.

However, in a subsequent decision in the case of Sachida Nand Singh Vs. State of Bihar [(1998)2 SCC 493], after analysis of relevant provisions and noticing a number of earlier

decisions (but not Surjit Singh Supra), the Hon'ble Supreme Court recorded its conclusion in paragraphs 11, 12 and 23, which are as under :-

“11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that court. In other words, the offence should have been committed during the time when the document was in *custodia legis*.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the court and long before its production in the court, could also be treated as one affecting administration of justice merely because that document later reached the court records.

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23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court.”

Thus, it would be apparent that the Hon'ble Supreme Court in Sachida Nand Singh's case (Supra) took a contrary view. It categorically held that the bar contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure would not be applicable to a case where forgery of the document was committed before the document was produced in the court.

In view of conflict of opinion between two decisions of

the Hon'ble Supreme Court, each rendered by a Bench of three learned Judges in Surjit Singh (Supra) and Sachida Nand Singh (Supra) regarding interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, in a subsequent case in Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. [(2005)4 SCC 370], the matter was referred to a Bench of five learned Judges.

In the case of Iqbal Singh Marwah (Supra), after noticing the previous judgments rendered by the Hon'ble Supreme Court and the relevant provisions of the Code of Criminal Procedure, a Bench of five learned Judges of the Hon'ble Supreme Court in paragraphs 33 observed as follows :-

“33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in *custodia legis*.”

In view of the binding precedent of the Hon'ble Supreme Court in the matter of Iqbal Singh Marwah (Supra), I am of the considered opinion that in case the petitioner is aggrieved by any action of the private respondents, it would be open for him to take appropriate steps in accordance with law and the Principal Judge,

Family Court, Patna is not supposed to institute an F.I.R. in the matter. So far as the prayer of the petitioner to seize the licence of respondent no.6 for indulging in an act which comes under the category of professional misconduct is concerned, he has an equally efficacious remedy in terms of section 35 of the Advocates Act, 1961.

For the aforesaid reasons, I find no merit in the application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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