

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.264 of 2016

Arising Out of PS.Case No. -143 Year- 2014 Thana -NARHAT District- NAWADA

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Krishna Yadav son of Lakhan Yadav, resident of village-Narhat, Tola- Madanpur,
Ward No.15, P.S.-Narhat, District- Nawada

.... Appellant/s

Versus

- 1.The State of Bihar
- 2.Anil Kumar Bharti, Assistant Electrical Engineer, Nawada
- 3.Ram Briksh Prasad, Junior Engineer, Rural Works Department, Works Division,
Nawada
- 4.Arbind Kumar, Junior Electrical Engineer, Hisua
- 5.Junior Electrical Engineer, Nawada, East
- 6.Junior Electrical Engineer, Nawada, Rural
- 7.Mantu Kumar son of Rajo Yadav, Village- Narhat, Tola- Madanpur, P.S.- Narhat,
District- Nawada, Electric Mistry, Electric Office, Khanwa
- 8.Surendera Paswan, Assistant Sub Inspector, Narhat, District- Nawada
- 9.Yogendra Jha, Assistant Sub Inspector, Narhat, District - Nawada

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Subodh Kumar, Advocate
For the B.S.E.B. : Ms. Narmata Mishra, Advocate
For the State : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 28-07-2016

The instant appeal under Section 341 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the appellant against the order dated 5.3.2016 passed by the learned Special Judge, Electricity, Magadh Area, Gaya in Narahat P.S. Case No.143 of 2014

whereby the application filed by the petitioner under Section 340 of the CrPC has been dismissed.

2. Narhat P.S. Case No.143 of 2014 was registered on 26.8.2014 on the basis of a written report submitted by one Anil Kumar Bharti, an Assistant Electrical Engineer, Nawada alleging therein that theft of electricity was being committed by six accused persons named in the FIR. In the said case, in course of investigation, the petitioner was remanded to judicial custody. Since the investigating agency failed to submit a report under Section 173(2) of the CrPC within the statutory period prescribed under Section 167 of the CrPC, as a result of which the petitioner was granted bail under the proviso to Section 167(2) CrPC for the default of the prosecution.

3. The petitioner filed an application under Section 340 of the CrPC in the court of Special Judge, Electricity alleging therein that the informant of the case and other officials of the Electricity Board, who were members of the raiding team, have falsely implicated him in the case and, hence, after conducting an enquiry into the matter a finding be given to that effect and a complaint be lodged against the persons involved in framing the petitioner as an accused in the aforesaid case. The learned Special Judge, Electricity, rejected the application filed by the petitioner vide impugned order dated 5.3.2016.

4. Assailing the aforesaid order dated 5.3.2016 learned counsel for the petitioner has submitted that it was expedient on the part of the court to have launched a complaint against the erring officials of the Electricity Department, who had deliberately and knowingly framed the petitioner in a false case.

5. Per contra, learned counsel for the State has submitted that the application filed under Section 340 of the CrPC has rightly been rejected by the court as the investigation of the case had not concluded. The aforesaid application under Section 340 of the CrPC was filed on 22.11.2014 and till the date of passing of the impugned order dated 5.3.2016 even cognizance of the offence was not taken. He has submitted that unless cognizance is taken against an accused, he has got no locus standi in the matter. Apart from the aforesaid preliminary objection taken by the learned counsel for the State, it has also been submitted that in view of the language used in Section 340 of the CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Clause (b) of Sub. Section (1) of Section 195 as the Section is conditioned by the words "court is of the opinion that it is expedient in the interests of justice". He has submitted that the aforesaid words would show that such a course will be adopted only if the "interests of justice" requires and not in every case.

6. I have heard respective counsel for the parties and perused the records.

7. I find substance in the second contention advanced on behalf of the State. The court is not bound to make a complaint as a matter of course. The “expediency” is to be judged by the court by weighing not the magnitude of injury suffered by the person affected, but having regard to the effect or impact of alleged forgery upon administration of justice.

8. In the present case, as would appear from the contention of the parties that the petitioner was apprehended in course of investigation of a criminal case and produced before the court which remanded him to judicial custody. The custody of the petitioner was extended from time to time and ultimately he was released on bail under the proviso to Section 167(2) of the CrPC as the report under Section 173(2) of the CrPC could not be filed by the police within the statutory period. Whether the arrest of the petitioner or his remand in connection with the aforesaid case was on a bona fide complaint or on a false accusation is yet to be determined by the court. Moreover, there is nothing on the record on the basis of which it can be said that any forgery was committed in a record which was in the custody of the court. In case there is no forgery in the record of the court, it is not incumbent upon the court to file a complaint in respect of any forgery

or fraud which might have been practiced out side the court. In that view of the matter, I find no merit in this appeal.

9. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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Uploading Date	
Transmission Date	