

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37391 of 2015

Arising out of P. S. Case No. - 105 Year - 2014 Thana - EAST CHAMPARAN COMPLAINT District - EASTCHAMPARAN (MOTIHARI)

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Mahanth Bidya Nand Rai, Son of Late Mahanth Ganga Das, Resident of Village – Chak - Nasiba, P.S. - Phenhara, District - East Champaran

.... Petitioner

Versus

1. The State of Bihar
2. Sona Lal Rai, Son of Jai Shree Rai
3. Shyam Deo Rai, Son of Baiju Rai
4. Baiju Rai, Son of Late Jai Shree Rai
5. Siya Ram Rai, Son of Late Sukhlal Rai, All are Resident of Village – Chak - Nasiba, P.S. - Phenhara, District - East Champaran
6. Surendra Pd. Yadav, the then Panchayat Sachiv, Gram Panchayat Raj, Bara Paraswani, P.S. - Phenhara Block Phenhara, District - East Champaran

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tondon, Advocate

For the Opposite Party/s : Mr. Parmeshwar Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 09-05-2016

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

This is a petition for quashing the order dated 31.03.2015 passed by Sri Raj Kishore Rai, the learned Additional Sessions Judge-XI, West Champaran, Motihari in Cr. Revision Case No. 123 of 2014 by which he confirmed the order dated 12.06.2014 passed by Sri S.K. Jha, the learned Judicial Magistrate, Sikrahana at Motihari in Enquiry Case No. 241 of 2014 arising out of Complaint Case No. 105 of 2014 by which he has dismissed the complaint filed by petitioner under Section 203 of the Code of Criminal Procedure.

The prosecution case, as alleged in the complaint petition is that opposite party no. 2 in conspiracy with other opposite parties obtained a forged death certificate of Late Ram Khelawan Das from opposite party no. 6 and produced stating that he is Chela of Late Ram Khelawan Das showing his death on 10.02.1981.

However, the trial Court dismissed the complaint on two grounds that the allegations made is of civil in nature and further the place from where the death certificate has been obtained is not within the jurisdiction of this Court. After dismissal of the complaint, a revision was preferred before the Revisional Court and the Revisional Court also dismissed the complaint on the same ground.

Learned counsel for the petitioner submits that the dismissal of the complaint is on the ground that the Court has no jurisdiction regarding the place from where the death certificate has been issued and hence, did not go into the question regarding the merits.

However, taking into consideration the allegations made, the complaint has been filed under Sections 420, 466, 467, 468, 471, 474 and 120B/34 of the Indian Penal Code. The allegation is that opposite party no. 2 in conspiracy with other opposite parties obtained a forged death certificate of Late Ram Khelawan Das from opposite party no. 6 stating that he is Chela of Late Ram Khelawan Das

showing his death on 10.02.1981, alleging that statement is false.

Now the question arises for consideration is whether the allegation made constitutes an offence of forgery. Forgery has been defined as whoever makes a false document with intent to cause, damage or injury to a person.

However, forgery has been defined under Section 464 of the Indian Penal Code and now the question arises for consideration is whether the allegation made makes out an offence under Section 464 of the Indian Penal Code. However, Section 464 of the Indian Penal Code is in three parts. The first part provides that a document is forged if it is signed, sealed, executed, transmitted or affixed by the authority of a person by whom or by whose authority he knows that it was not made or signed. It is only attracted when a document has been executed by an authority, who is not an authority who sealed or signed. However, it is not a case that the death certificate has been issued by a person not authorized to issue the death certificate. The second part provides any alteration in public document or any document without any lawful authority. However, it is not a case that some interpolation has been made in a document but there is no allegation of any interpolation. The third part provides that a signature has been obtained of a person without intimating him of the contents or his signature taken without the knowledge of contents due to

unsoundness of mind or intoxication or by reason of deception practiced upon him without knowing the contents of the document. It is also not the case that the signature of a person was taken when the person was intoxicated or due to his unsound mind or by deception and hence, the allegation made out does not come under the definition of making a false document and held that death certificate has been taken out by committing forgery. Particularly the further offence under Section 420 of the IPC is also not made as to constitute an offence under Section 420 of the Indian Penal Code. There must be a deception and on the basis of deception the property having been delivered by the person, there is neither case of any deception nor a case that property delivered on said deception. Hence, neither the forgery nor cheating is made out and further whatever fraud on the basis of which certificate is taken only have a civil consequence and hence, I do not find any merit to interfere with the order and the same is dismissed.

(Gopal Prasad, J)

Kundan

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