

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.755 of 2015**

Arising Out of PS.Case No. -134 Year- 1991 Thana -Nawadah District- Nawadah

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1. Shailendra Kumar son of Ram Kumar Prasad Singh resident of village Gonawan,  
Police Station - Harnaut, District - Nalanda.

.... .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Nawada.  
2. Ajay Krishna son of Late Surendra Prasad Singh resident of Mohalla - New Area  
Gopalpur House, Police Station & District - Nawada.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.

Mr. Anil Singh, Adv.

For the Respondent/s : Mr. H.S.Sundaram, A.C. to SC-10

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 08-02-2016**

By way of the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioner seeks a direction to be issued to the learned Additional District & Sessions Judge, FTC-IV, Nawada for finally disposing of the petition dated 31.03.2006 filed on behalf of the petitioner in Misc. Case No.01 of 2004/01 of 2006, arising out of Sessions Trial No. 36 of 1992/ 84 of 2004, which has been filed under Section 340 of the Code of Criminal Procedure (for short 'CrPC').

2. In the aforesaid petition, dated 31.03.2006, filed before the learned Additional District & Sessions Judge, Nawada, the petitioner has prayed for institution of a complaint against the person

involved in impersonating P.W.2 Subhash Sharma.

3. The facts of the case, in short, is that the petitioner was made an accused in Sessions Trial No. 36 of 1992/84 of 2004 arising out of Naubatpur P.S.Case No. 71 of 1991. He was charged in the said case for the offences under Sections 364, 302 and 201 of the Indian Penal Code (for short 'IPC'). Altogether 18 witnesses were examined on behalf of the prosecution and in support of defence one witness was examined during trial. After examining the witnesses and hearing the arguments advanced on behalf of the parties, the trial court held the petitioner guilty for the charges under Sections 364, 201 and 302 of the IPC, vide judgment dated 28.05.2005. He was sentenced to undergo R.I. for life and a fine of Rs.5,000/- under Section 302 of the IPC, R.I. for ten years under Section 364 of the IPC and R.I. for seven years under Section 201 of the IPC. The sentences were ordered to run concurrently. The judgment of conviction and order of sentence was challenged by the petitioner in appeal, which is pending before this Court.

4. In course of trial, one Subhash Sharma was examined as P.W.2 on 24.05.2000 on behalf of the prosecution. However, on 25.09.2001, a petition was filed along with an affidavit by another person claiming himself to be the real Subhash Sharma stating therein that he did not depose in the case and P.W.2, who was examined

during trial in the court on 24.05.2000, was an imposter. The trial court, vide order dated 05.02.2004, directed to register a separate miscellaneous case so that an enquiry into the complaint made by the said Subhash Sharma may proceed separately.

5. On 15.04.2004, the petitioner filed an application before the trial court to stay the proceeding till conclusion of the enquiry as per order dated 05.02.2004, but the trial court, vide its order dated 15.04.2004, rejected the petition. The petitioner challenged the aforesaid order dated 15.04.2004 before this Court in revision, vide Cr.Revision No. 231 of 2004, which was allowed, vide order dated 12.05.2004, with a direction to the trial court to conclude the enquiry initiated vide aforesaid order dated 05.02.2004 and not to pronounce judgment till the enquiry is concluded. However, liberty was granted to the trial court to proceed with the trial.

6. The trial court, which was in seisin of the enquiry being conducted, vide Misc. Case No. 1 of 2004, with regard to the genuineness of the P.W.2, passed its final order on 26/27.11.2004. It held that the man, who had deposed as Subhash Sharma (P.W.2), in Sessions Trial No. 84 of 2004, was an imposter and not the real Subhash Sharma, who was required to depose in the said case. By the said final order, the trial court concluded the enquiry proceeding with a direction to append the order with the original Sessions Trial No. 84

of 2004 for the needful and consigned the enquiry record.

7. Mr. Akhileshwar Prasad Singh, learned Senior Counsel for the petitioner, has contended that the trial court did not follow the procedure laid down under Section 340 of the CrPC by filing a complaint after recording a finding in the enquiry held by it that the witness, who was examined as P.W.2, was an imposter. He has contended that since the trial court failed in its duty in lodging the complaint after concluding the proceeding and consigning Misc. Case No.01 of 2004, the petitioner filed an application before it, vide Misc. Case No.01 of 2004/01 of 2006, on 31.03.2004, requesting therein for filing a complaint against the person involved in respect of the offence committed in course of trial. It has been further contended that the said miscellaneous case is being adjourned by the trial court for one reason or the other, but final order is not being passed.

8. Per contra, Mr. H.S.Sundaram, learned Assistant Counsel to SC-10, appearing for the State, has submitted that the application dated 31.03.2006 filed by the petitioner in the court below is unwarranted and amounts to an abuse of the process of the Court. He has contended that by order dated 26/27.11.2004 the trial court had concluded the enquiry by holding P.W.2 examined in the Sessions Trial as an imposter and had directed the record of the enquiry proceeding initiated under Section 340 of the CrPC to be



consigned. In case, the petitioner was aggrieved by the aforesaid order dated 26/27.11.2004, he ought to have challenged the said order before the higher Court. Having not done so, it was not permissible for the petitioner to file another miscellaneous application after disposal of the main enquiry proceeding for issuance of fresh direction. He has also contended that from the records of Cr. Appeal (DB) No.411 of 2005 summoned by this Court, vide order dated 04.02.2016, it would appear that the deposition of the imposter P.W.2 was discarded by the trial court while delivering the judgment of the case.

9. Learned Senior Counsel for the petitioner fairly conceded that the deposition of P.W.2 Subhash Sharma, who was declared as an imposter during enquiry under Section 340 of the CrPC, was ignored by the trial Court.

10. I have heard respective counsel for the parties and carefully perused the record. Before dealing with the issue raised in the present application, I think it appropriate to take note of relevant provisions of the IPC and CrPC.

11. Section 193 of the IPC prescribes punishment for false evidence. It reads as under :-

**“193. Punishment for false evidence —**

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of

a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.”

12. Section 195 of the CrPC deals with prosecution for contempt of lawful authority of public servants for offence against public justice and for offences related to documents given in evidence. It reads as under :-

**“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –**

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or

section 476, of the said Code, 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, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

13. Section 340 of the CrPC deals with the procedure in cases mentioned in Clause (b) of sub-section (1) of Section 195. It reads as under :-

**“340. Procedure in cases mentioned in section 195.**

(1) When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorize in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195.”

14. From a bare reading of Section 340 of the CrPC, it would be evident that when an enquiry for having committed offence under Section 195 of the CrPC is proposed to be launched, Section 340 provides for the procedure. One of the requirements in sub-section (1) of Section 340 is that if the Court is of the opinion that it is expedient in the interest of justice, it may after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing. Be it noted that after holding preliminary enquiry and after forming an opinion that an offence has been committed in relation to a proceeding in that court, it is not mandatory that the court must lodge a complaint. The power has been given to the court to do so but that does not mean that in all cases the court must make a complaint. The power conferred upon the court under Section 340 of the CrPC is purely discretionary in nature.

15. In the present case, vide order dated 26/27.11.2004, the learned Additional Sessions Judge had recorded his finding and



passed final order by concluding and consigning Misc. Case No.01 of 2004. The said order was appealable one under Section 341(1) of the CrPC. Admittedly, no appeal was filed by the petitioner against the aforesaid order dated 26/27.11.2004. Hence, it attained finality. The subsequent petition by the petitioner in the disposed of Misc. Case No.01 of 2004 wherein a preliminary enquiry was conducted under Section 340 of the CrPC by the learned Additional Sessions Judge was not maintainable in law and hence the court below ought to have dismissed the same *in limine*.

16. Furthermore, the trial court ought to have taken into consideration that there is no provision in the Code of Criminal Procedure for review of an earlier order passed by the court in view of express bar contained under Section 362 of the CrPC.

17. The provisions prescribed under Section 362 of the CrPC reads as under :-

**“362. Court not to alter judgment.**

Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

18. A perusal of the above Section would lead to a conclusion that no criminal court has jurisdiction to alter or review its judgment or order except to the extent of correcting any clerical or

arithmetical error. It has rightly been submitted by the learned counsel for the State that filing of criminal miscellaneous petition after disposal of the main enquiry proceeding conducted under Section 340 of the CrPC seeking fresh direction is unwarranted and amounts to an abuse of the process of the Court.

19. In the matter of *Hari Singh Mann Vs. vs Harbhajan Singh Bajwa & Ors [(2001)1 scc 169]*, the Hon'ble Supreme Court has clearly held that Section 362 of the CrPC is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a competent court in the manner prescribed by law. It has held that the court becomes functus officio the moment the order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error.

20. In view of the discussions made, hereinabove, I find no merit in the present application. Accordingly, the application is dismissed. I am also of the considered opinion that since the entire proceeding of Misc. Case No. 01 of 2004/01 of 2006, arising out of Sessions Trial No. 36 of 1992/84 of 2004, pending in the court of Additional District & Sessions Judge, FTC-IV, Nawada, is an abuse

of the process of the Court, it also deserves to be set aside. Accordingly, the entire proceeding of Misc. Case No. 01 of 2004/01 of 2006, arising out of Sessions Trial No. 36 of 1992/84 of 2004, pending in the court of Additional District & Sessions Judge, FTC-IV, Nawada is quashed.

21. Before parting, with some amount of anguish, regret and anxiety, I must record that there was no justification for the learned Additional Sessions Judge, FTC-IV, Nawada to keep such a frivolous application pending for about a decade. Such an irresponsible and casual approach of the trial Judge in granting frequent adjournments without applying mind to the facts and law involved in a case tantamounts to violation of rule of law and is legally impermissible.

22. Let a copy of the order be communicated to the learned Additional District & Sessions Judge, FTC-IV, Nawada forthwith.

**(Ashwani Kumar Singh, J)**

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