

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1312 of 2015

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

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Madhu Sudan Bhagat son of Gyan Bhagat, resident of village- Mirjapur Chand,
P.S.- Barauni, District- Begusarai

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Begusarai
2. Sri Manoj Kumar Singh @ Karu son of Ram Naresh Singh, resident of village-
Binodpur, P.S. Muffasil, District- Begusarai
3. Sri Bhola Bhagat son of- Asarfi Bhagat, resident of village- Mirjapur Chand,
P.S.- Barauni, District- Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudhansu Kumar Lal, Advocate
Mr. Pritish Kumar Lal, Advocate

For the Respondent/s : Mr. Md. Shahid Siddiqui, AC to AG-9

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-04-2016

In the present application preferred under Articles 226 and
227 of the Constitution of India, the reliefs sought for by the petitioner
in para-1 is as under:

“1. That the petitioner craves indulgence of this
Hon’ble Court for the following reliefs :-

- (a) An appropriate writ(s), order(s), direction(s)
directing the Court of Additional Sessions
Judge-VII, Begusarai, for filing a criminal
complaint in relation to a forged bail-bond
furnished by accused Manoj Kumar Singh, the
Respondent no.2 falsely disclosing therein the
petitioner to be his one of the bailors and
forging his signature as well as Respondent no.3
under criminal conspiracy with him appeared in
the said bail-bond as the informant and
subscribing false certificate about the
correctness and genuineness of bailors i.e. the

petitioner.

- (b) Any other relief(s) to which the petitioner is found entitled for giving complete justice to him.”

2. It is contended by Mr. Sudhansu Kumar Lal, learned counsel for the petitioner that some time in the year 2014 the petitioner was shocked on coming to know that the sessions court, Begusarai has issued a notice directing him to produce an accused, namely, Manoj Kumar Singh, an absconder in relation to Sessions Trial No.227 of 2002 on the ground that he had stood as surety for the said Manoj Kumar Singh. The petitioner, thereafter, collected information in the matter and came to know that Manoj Kumar Singh @ Karu is an accused in a case giving rise to Sessions Trial No.227 of 2002 for the offences punishable under sections 447, 323 and 307/34 of the Indian Penal Code and section 27 of the Arms Act. The said case was pending in the court of learned Additional Sessions Judge-V, Begusarai and while the trial was pending the said Manoj Kumar Singh @ Karu had been granted bail on 19.8.2004 with a direction to furnish bail bond of Rs.10,000/- with two sureties of the like amount. To comply with the direction of the court bail bond was furnished on behalf of the accused on 19.8.2004 purportedly signed by the petitioner as one of the sureties. In the said bail bond one Bhola Bhagat son of Asarfi Bhagat had certified that the sureties of the bail

bond, their particular and address as given in the bail bond and the certificate granted by them are correct as well as said Bhola Bhagat had put his signature in support of his certificate as aforesaid.

3. Mr. Lal has further contended that the said Bhola Bhagat is the next door neighbour and his son Pankaj Kumar is also one of the accused in the said Sessions Trial No.227 of 2002 and on 19.8.2004, he had also been granted bail and had furnished bail bond for release of Pankaj Kumar. In the case of Pankaj Kumar, Bhola Bhagat stood as one of the sureties. Subsequently, the accused Manoj Kumar Singh @ Karu misused the privilege of bail in result whereof his bail bond was cancelled and the sureties were forfeited. It is further contended that in 2011, while Sessions Trial No.227 of 2002 was pending in the court of Additional Sessions Judge, Fast Track Court No.-II, Begusarai, the court called upon the petitioner to procure surrender of the accused Manoj Kumar Singh @ Karu failing which appropriate action was ordered to be taken against the petitioner.

4. It has been contended by Mr. Lal that on collecting the aforesaid information, the petitioner made an application before the learned Additional Sessions Judge-VII, Begusarai stating the facts as aforesaid. In the petition the petitioner specifically asserted that he had never signed the bail bond and with the bail bond neither his

identity card nor photo is there. He also brought it to the notice of the court that Bhola Bhagat, the respondent no.3 had appeared as the informant for the sureties and his certificate is quite fake and forged.

5. Mr. Lal has contended that in spite of bringing facts of forgery having committed upon the court in furnishing bail bond of Manoj Kumar Singh @ Karu, the Additional Sessions Judge-VII, Begusarai simply exempted the petitioner from producing Manoj Kumar Singh @ Karu by order dated 13.4.2015 but it did not take any action in relation to forgery perpetrated upon the court.

6. It has been contended that the materials on record shows criminal conspiracy between Manoj Kumar Singh @ Karu and Bhola Bhagat in pursuance whereof commission of offence described in sections 463 and 471 of the Indian Penal Code has been committed relating to execution of bail bond in a proceeding in the court and in that view of the matter the court below ought to have lodged a complaint in writing in terms of section 195 of the Code of Criminal Procedure (for short "CrPC"). It has been further contended that since provision of section 195 of the CrPC is attracted, silence on the part of the court shows that in not making any complaint as referred to in section 195 of the CrPC, the court has failed in its duty.

7. Mr. Lal has further contended that the petitioner's right to lead a life with dignity and honour has seriously been affected due

to the fraudulent act of Respondents No.2 and 3 and the court in spite of having the exclusive jurisdiction in the matter kept mum and did not proceed in accordance with the procedure provided under the Law. The silence on the part of the court in not taking any action in the matter has denied the petitioner his right to have a dignified life and thus has visited the petitioner with infringement of right to life as guaranteed under Article 21 of the Constitution of India.

8. Based upon the aforesaid arguments, learned counsel for the petitioner has sought for a direction to be issued to the learned Additional Sessions Judge, VII, Begusarai for filing a criminal complaint in relation to forged bail bond furnished by the accused Manoj Kumar Singh @ Karu.

9. Per contra, learned counsel for the State has contended that the present application preferred under Articles 226 and 227 of the Constitution of India is not maintainable in law. He has submitted that the application filed by the petitioner is quite vague. Neither the order dated 13.4.2015 by which the petitioner has been exempted from producing the accused Manoj Kumar Singh @ Karu before the court nor the application filed before the court below for initiating a proceeding under section 340 of the CrPC nor the orders passed by the court below on such petition has been brought on record. It has been further contended that in case the court refuses to file complaint,

the party aggrieved may file appeal under section 341 of the CrPC and filing of a writ petition in such matter is erroneous in law.

10. I have heard learned counsel for the petitioner and learned counsel for the State and carefully perused the record.

11. Before rival contentions of the parties are taken up for consideration, it would be necessary to examine the relevant provisions of the CrPC.

12. Section 340 of the CrPC, upon a plain reading, would indicate that it provides for the procedure in cases mentioned in section 195 of the CrPC. Therefore, section 340 of the CrPC cannot be read in isolation without reading and examining the provisions of section 195 of the CrPC.

13. Section 195 of the CrPC 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, or 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.”

14. Section 340 of the CrPC 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."

15. Upon reading of the provisions prescribed under sections 195 and 340 of the CrPC, it would be evident that when the bar under section 195(1)(b)(ii) of the CrPC operates, the procedure prescribed under section 340 of the CrPC gets attracted.

16. The issue as to when the bar under section 195 of the CrPC would operate has been settled by the Constitution Bench of the Supreme Court in the matter of *Iqbal Singh Marwah and Another vs. Meenakshi Marwah and Another*, reported in (2005)4 SCC 370, wherein it has clearly been held that the bar under section

195(1)(b)(ii) of the CrPC 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*.

17. The ratio laid down by the Constitution Bench of the Supreme Court in the case of *Iqbal Singh Marwah* (supra), therefore, sets at rest any controversy with regard to the scope and applicability of the bar contained under section 195(1)(b)(ii) of the CrPC. It is clear that when the forgery is said to have been committed outside the court and before the forged document is produced in the court, then the bar under section 195(1)(b)(ii) of the CrPC would not operate and the Magistrate can take cognizance of a complaint filed by an aggrieved party and it would not be necessary to adopt the procedure laid down under section 340 of the CrPC.

18. In the present case, it is alleged that the bail bond, which is said to be forged, was allegedly forged and fabricated prior to its production and filing in the court of Additional Sessions Judge-VII, Begusarai. Therefore, the bar created under section 195(1)(b)(ii) CrPC would not come into play and there is no embargo in filing a complaint by a party who is aggrieved in respect of a forgery committed in a document which was not even in custody of the court.

19. Thus, no fault can be found if the sessions court has chosen not to adopt the procedure laid down under section 340 of the CrPC.

20. Moreover, a reading of sub-section (1) of section 340 of the CrPC makes it clear that the course of initiating an enquiry is adopted only if it is expedient in the interest of justice. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. Sub section (1)(b) of section 340 of the CrPC has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint.

21. Before parting with the case, I must record that the petitioner has suppressed relevant documents for deciding the present case from the Court. The application and orders filed by the petitioner before the court below for initiating a proceeding under section 340 CrPC and the order passed thereupon have not been brought on record. Thus, it is not known to this Court the nature of the order passed by the court below.

22. In fairness to the counsel for the State, I must also record that he has rightly submitted that section 341 of the CrPC confers a power on the party on whose application the court has decided or not decided to make such complaint to file an appeal to the

court to which the former court is subordinate. He has rightly submitted that in view of a statutory remedy of appeal being available to the petitioner and there being no case of gross injustice having been done to the petitioner, the present writ application is not maintainable.

23. In view of the above conditions and factual and legal position, indicated above, this Court is satisfied that the application is devoid of any merit. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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