

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.300 of 2016

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

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1. Rajendra Sahay, S/o Late Bindeshwar Sahay, resident of Pathrahi, Post-Jhanjharpur R.S., P.S.- Lakhnaur, Dist- Madhubani, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Under Secretary, Department of Home (Special), Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Superintendent of Police, Madhubani.
6. The Deputy Superintendent of Police, Jhanjharpur, Madhubani.
7. The Inspector of Police, Jhanjharpur Police Station.
8. The Sub-Divisional Police Officer, Jhanjharpur, Madhubani.
9. The Circle Officer, Lakhnaur-cum-PIO, Jhanjharpur, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Nagendra Prasad Yadav, SC 23
Mr. Rohit Mishra, AC to SC 23

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 29-09-2016

By this writ application, made under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of *certiorari* for quashing the letter dated, 14.03.2012, issued by the respondent No.3, namely, Under Secretary, Home Department, Government of Bihar, Patna, annexing the letter, dated 03.03.2012, of the respondent No.5, namely, Superintendent of Police, Madhubani, whereby the request of the petitioner for initiation of criminal case against the accused persons has been



postponed on the ground of pendency of civil litigations between the parties as also for direction to the respondent Nos. 2 to 7 to ensure registration of a Police Case against the accused persons concerned, on the basis of the complaint filed by the petitioner, vide letter dated, 15.01.2011 and 10.09.2012, in the light of the report, dated 01.09.2008, of the respondent No.8. The petitioner further seeks declaration that the provisions of the Code of Criminal Procedure, 1973, do not bar initiation of criminal prosecution/investigation/trial during the pendency of civil litigation.

2. The facts, leading to the filing of the present writ petition, are, in brief, thus:

(i) The petitioner claimed that he has a big family and for partition of the ancestral assets of the family, there was a Partition Suit bearing No.258 of 1970, which was filed by the uncle of the petitioner, namely, Prof. Satya Narayan Sahay. The said suit was decreed and, accordingly, the parties to the suit got their respective shares in the ancestral property.

(ii) Thereafter, one Ugra Tara Devi, daughter of late Krishna Deo Jha, claimed some portion of the ancestral property of the petitioner saying the said property to have been purchased by her father, Late Krishna Deo Jha, who was also a party in the said



Partition Suit No.258 of 1970. She also claimed that due to omission to substitute, in the suit aforementioned, the legal heirs of late Krishna Deo Jha, who died in the year 1980, the final decree, passed in Partition Suit No.258 of 1970, was null and void. Accordingly, she and others filed Title Suit No.140 of 1993, in the Civil Court, Madhubani, seeking declaration that the final decree, passed in Partition Suit, was null and void and not binding upon the parties concerned.

(iii) The aforementioned Title Suit No.140 of 1993 came to be dismissed by the Sub-Judge III, Jhanjhapur, by judgment and decree, dated 14.02.2008.

(iv) For the first time, Ugra Tara Devi and others had produced, in Title Suit No.140 of 1993, aforementioned, death certificate of Krishna Deo Jha, which was purportedly issued by the Registrar, Lakhnaur Block, mentioning therein the date of death of Krishna Deo Jha as 23.11.1980.

(v) Having learnt about the said forged document i.e. with regard to the death of Krishna Deo Jha, the petitioner herein, filed an application, under the Right to Information Act, 2005, before the Sub-Divisional Police Officer, Jhanjharpur, seeking information as regards the veracity of the said forged certificate. Though, initially, no information was given, yet when the petitioner approached the

State Information Commission, respondent No.8 herein provided the said information by letter, dated 01.09.2008, accompanied by a report dated 21.07.2008, which was forwarded by the Panchayat Secretary, Bihat.

(vi) Against the dismissal of Title Suit No. 140 of 1993, the said Ugra Tara Devi and others filed Title Appeal No.39/45 of 2008 in the Court of the District Judge, Madhubani. The appeal was, eventually, allowed by the Additional District Judge, II, Madhubani, by judgment and decree, dated 27.08.2009.

(vii) The petitioner, then, challenged the judgment and decree, dated 27.08.2009, of the Additional District Judge, Madhubani, passed in Title Appeal No.39/45 of 2008, in the High Court by filing Second Appeal No.459 of 2009, which is still pending adjudication.

(viii) The petitioner, once again, approached the Sub-Divisional Police Officer, Jhanjharpur, for providing information about the correctness of the death certificate filed, in the said suit, by Ugra Tara Devi and others about the death of Late Krishna Deo Jha, claiming that Krishna Deo Jha had died on 23.11.1980 and the certificate, in this regard, was claimed to have been issued by the Lakhnaur Block Officer on 10.12.1980.

(ix) In response to the petitioner's request, the petitioner



was provided detailed and concrete information, vide letter, dated 07.12.2010, that the death certificate of late Krishna Deo Jha was never issued by the Lakhnaur Block Office inasmuch as the date of issuance of the certificate is 10.12.1980, whereas, the Lakhanur Block Office was established in the year 1985. It was also clarified that no records, with regard to registration of birth and death of the year 1980, was available in the Lakhnaur Block Office.

(x) The petitioner, having come to know about the alleged forgery and fabrication of the death certificate, addressed a representation to the Inspector of Police, Jhanjharpur Police Station, on 15.01.2011, requesting the latter to take appropriate action against the person concerned under the relevant penal provisions of law.

(xi) When no action was taken from the end of the Inspector of Police, Jhanjharpur Police Station, on the petitioner's said representation, the petitioner approached the Inspector to apprise the petitioner of the status of the complaint made by him against Ugra Tara Devi and others. In response thereto, the Inspector of Police, Jhanjharpur Police Station, merely forwarded the said representation of the petitioner by letter, dated 09.02.2011, addressed to the Sub-Divisional Police Officer, Jhanjharpur, and the petitioner was, accordingly, informed.



(xii) Being dissatisfied with the reply of the Inspector of Police, Jhanjharpur Police Station, and his inaction to take any action on the said complaint, the petitioner requested the Sub-Divisional Police Officer, Jhanjharpur, to take appropriate action in the matter. The petitioner, in the meanwhile, also approached the Principal Secretary, Department of Home, Government of Bihar, Patna, about the inaction on the part of the Inspector of Police, Jhanjharpur Police Station. Later on, the Under Secretary, Department of Home, Government of Bihar, Patna, vide his letter, dated 14.03.2012, forwarded the report of the Superintendent of Police, Madhubani, whereby it was communicated to the petitioner that civil litigations were pending between the parties and the petitioner and his uncle were in the habit of filing representations from time to time.

(xiii) The petitioner came to know that the Sub-Divisional Police Officer, Jhanjharpur, vide his letter, dated 05.08.2011, addressed to the Superintendent of Police, Madhubani, admitted that the Inspector, Jhanjharpur Police Station, was directed by him to initiate proper proceeding against Ugra Tara Devi and others under the appropriate penal provisions.

(xiv) The uncle of the petitioner, namely, Prof. Satya Narayan Sahay, being one of the aggrieved parties, too, requested

the respondents vide letter, dated 13.03.2012, and, especially, the Sub-Divisional Police Officer, Jhanjharpur, vide letter, dated 10.09.2012, to take appropriate action against the concerned accused persons but no steps have been taken as yet.

3. With the help of the writ petition made under Article 226 of the Constitution of India, the petitioner submits that the letter dated, 14.03.2012, issued by the respondent No.3, and the letter, dated 03.03.2012, issued by the respondent No.5 as well as the letter, dated 09.02.2011, issued by the respondent No.7, were not only misconceived in law but also bad and not tenable in the eye of law since no bar has been prescribed, under the Code of Criminal Procedure, for initiation of prosecution/investigation/trial during the pendency of civil litigation.

4. We have heard Mr. Gautam Kumar Kejriwal, learned Counsel, appearing on behalf of the petitioner, and Mr. Nagendra Prasad Yadav, SC 23, appearing on behalf of the State-respondents.

5. Now, coming to the petitioner's prayer for directing the learned Court below to hold an enquiry under Section 340 of the Code of Criminal Procedure and consequential follow-up action, it needs to be noted that the petitioner submits, as already indicated above, that the petitioner had filed application(s) for initiating



criminal prosecution against Ugra Tara Devi for having forged the death certificate of late Krishna Deo Jha. It is the submission of the present petitioner that the said documents are *forged* and, therefore, a complaint needs to be made by the Court concerned upon holding an enquiry in terms of Section 340 of the Code of Criminal Procedure.

6. The question, consequently, which, now, falls for consideration, is: *If a forged document is filed in a Court proceeding, whether an enquiry, under Section 340 of the Code of Criminal Procedure, would be warranted?*

7. The question, posed above, bring us to yet another question and the question is: *Whether an enquiry, under Section 340 of the Code of Criminal Procedure, is warranted, when a forged document is filed in a Court or an enquiry under Section 340 of the Code of Criminal Procedure is warranted only when forgery is committed in respect of a document, which is already on the record of the Court i.e., during the time, when the document is custodia legis?*

8. The moot question, therefore, is this: whether the bar in taking cognizance, created by Section 195(1)(b)(ii) of the Code of Criminal Procedure (in short, 'the Code'), applies only when the offence has been committed with respect to a document after the

document was already produced or given in evidence in a proceeding in any Court, i.e., during the time, when the document was in *custodia legis*, or the bar, so created by law, applies even to a document, which had been forged or alleged to have been forged before the document was introduced as evidence in any proceeding in a Court?

9. My quest for a correct answer to the above question brings me to Section 195 of the Code of Criminal Procedure.

10. It is, therefore, necessary to take note of Section 195, which is reproduced hereinbelow:

“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 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 (1) or Sub clause (ii), except on the complaint in writing of that Court, or some other Court to which that Court is subordinate.”

11. The relevant provisions of Section 195(1)(b)(i), thus, read, *"No Court shall take cognizance - (a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) or 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 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."

12. In the light of the submissions, made before this Court on behalf of the petitioner, when the provisions of Section 195 of the Code of Criminal Procedure are considered, what becomes transparent is that the real controversy, in the present application, revolves around the interpretation of the expression, "*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*", which occurs in Section 195(1)(b) (ii).

13. In **Surjit Singh v. Balbir Singh**, reported in **1996 CriLJ 2304**, the Supreme Court had held to the effect that once a document is produced or given in evidence in a Court, taking of cognizance on the basis of a private complaint of forgery, having been committed in respect of such a document, is completely barred. In other words, irrespective of the fact as to whether a forgery in respect of a document is committed before or after the document is introduced in evidence, the bar, created by Section

195(1)(b)(ii), gets attracted.

14. However, in a subsequent case, namely, **Sachida Nand Singh V. State of Bihar**, reported in **MANU/SC//0077/1998**, the Supreme Court took the view that the bar, contained in Section 195(1)(b)(ii), would not apply, when forgery in respect of a document was committed before the document had been produced in the Court or introduced in evidence. The relevant observations, made, in this regard, in **Sachida Nand Singh** (supra), read thus:

“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. * * **

24. 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.”

15. The controversy, therefore, raised is as to *whether the bar, created by Section 195(1)(b)(ii), applies to cases, where forgery of a document is committed before the same is produced in the Court or Section 195(1)(b)(ii) is attracted only when such forgery is committed after the document has already been produced in the Court.* This controversy has been authoritatively resolved by a Constitution Bench in **Iqbal Singh Marwah v. Meenakshi Marwah**, reported in **2005 CriLJ 2161**, wherein, concurring with the views, expressed in **Sachida Nand Singh** (supra), the Constitution Bench has held that the bar, under Section 195(1)(b)(ii), would be attracted only when the offences enumerated therein have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court, when the document was in *custodia legis*. The relevant observations, made in this regard, read as under (Para 25 of Cri LJ):

“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.”

16. In the light of the authoritative pronouncement in **Iqbal Singh Marwah** case (supra), there can be no escape from the conclusion that when a document is forged and, then, produced in a Court, the complaint, as regards the offence of forgery, can be lodged by anyone and no formal complaint by the Court, where the forged document is filed or introduced, is necessary. However, a complaint by a Court is necessary only when forgery in respect of a document is committed after the document has already been produced in the Court or introduced in evidence, when the documents was *custodia legis*.

17. Section 195 is one of the exceptions to the general provisions of Section 190 inasmuch as Section 195 creates an embargo upon the Magistrate's power to take cognizance of certain specified offences. The procedure for filing of a complaint by a Court contemplated by Section 195(1) (b)(ii) is given in

Section 340, Cr. P. C. This Section reads:

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 of 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.”

18. If the provisions of Section 340 of the Code are carefully analyzed, it becomes clear that the Court is not bound to make a complaint as regards commission of an offence referred to in Section 195(1)(b)(ii), for, the Court has to be of the view that it is expedient, in the interest of justice, to make the complaint. The Court, in **Iqbal Singh Marwah** (supra), has held that the language of Section 340 shows that a Magistrate will lodge a complaint only if the interest of justice requires and not in every case. Before filing the complaint, observes the Supreme Court in **Iqbal Singh Marwah** (supra), the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b) (ii) and that this expediency will, normally, be judged by the Court by weighing not the magnitude of the injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, which the commission of offence may have upon

administration of justice.

19. Section 340 (i) of the Code of Criminal Procedure, is in respect of a document, which has been forged before it is produced as a piece of evidence in a proceeding; rather, an enquiry, under Section 340 of the Code of Criminal Procedure, is warranted only when forgery is committed in respect of a document, which is *custodia legis*.

20. In the backdrop of the position of law discussed above, when I turn to the facts of the case at hand, what becomes glaringly noticeable to the eyes is that in the present case, the Death Certificate of Krishna Deo Jha, in question, was allegedly forged before the same was introduced into the record of the case. In such a situation, when the document was alleged to have already been forged before the same was introduced into the materials on record, the question of any formal complaint being lodged by the Court, wherein the alleged forged death certificate was filed, does not arise at all.

21. The petitioner will, however, remain at liberty to either lodge a First Information Report or institute a complaint in a criminal Court of competent jurisdiction as regards the forgery, which is alleged to have been committed by the accused in the said death certificate.

22. Situated thus, I hereby direct that the complaint, dated 15.01.2011, lodged by the petitioner herein, with the Inspector, Jhanjharpur Police Station, be treated as First Information Report and a case be registered accordingly and the same shall be taken to its logical conclusion in accordance with law, even if, Second Appeal, as indicated hereinbefore, is still pending for adjudication

23. With the above observations and directions, this petition is closed and shall, accordingly, stand disposed of.

(I. A. Ansari, CJ)

J.Alam/-

AFR/NAFR	NAFR
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