

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.477 of 2016

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

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1. Chandrakala Kumari Wife of Ashok Kumar, resident of Mohalla - Panchsheel Nagar, Khagri Road, P.S. - Danapur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Investigating Officer, Danapur P.S. Case No. 80/2016, P.S. - Danapur, District - Patna.
5. Bishwanath Prasad Son of Rampravesh Prasad, resident of Sultanpur Math, P.S. - Danapur, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Advocate

For the Respondent/s : Mr. Sunil Kumar Karn, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL JUDGMENT

Date: 05-07-2016

Heard Mr. Bhola Prasad, learned Counsel, appearing on behalf of the petitioner, and Mr. Sunil Kumar Karn, learned Assistant Counsel to Standing Counsel No.1, appearing on behalf of the State-respondents.

2. The case, as unfolded by the First Information Report, lodged by the petitioner, Chandrakala Kumari, against respondent No.5 herein, i.e., Bishwanath Prasad, is that accused Bishwanath Prasad deals in land and, in the year 2015, she negotiated with the accused to purchase a piece of land, which came to be sold to her by the accused on consideration of Rs.17,01,000/- through cheques and

Rs.74,000/- in cash; but on an enquiry, she came to know that the said plot had already been sold to another person and when she asked the accused to return the amount she had paid, the accused threatened her and, therefore, the petitioner lodged a *fardbeyan* with Danapur Police Station.

3. Based on the said *fardbeyan* and treating the same as First Information Report, Danapur Police Station Case No.80 of 2016, under Section 406/420 of the Indian Penal Code, was registered against the accused, whereupon, the accused filed, under Section 438 of the Code of Criminal Procedure, an application, bearing A.B.P. No.1671 of 2016, in the Court of learned Sessions Judge, Patna, seeking anticipatory bail, wherein the accused attached a receipt contending that he had already made payment of Rs.11.25 lacs to the informant, though the said receipt was, according to the informant, a forged one inasmuch as the signature of the petitioner had been forged on the said receipt and, therefore, a complaint, contends the petitioner, needed to be made by the learned Court below after holding an enquiry in terms of Section 340 of the Code of Criminal Procedure.

4. In view of the fact that on completion of investigation, police has submitted *charge sheet*, under Section 173(2)(i) of the Code of Criminal Procedure, having found, according to the Investigating Officer, materials against the petitioner, it is hereby directed that the Additional Chief Judicial Magistrate, Danapur,



Patna, shall, upon giving notice to the informant, hear the informant on the *police report*, which has been submitted by the police, and, then, pass appropriate order(s) accepting the report or rejecting the same or directing further investigation. The learned Court below shall also remain at liberty to take cognizance of the offence or offences, which may be disclosed by the *police report*.

5. 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 accused had filed an application for anticipatory bail, wherein he had submitted a receipt of payment of Rs.11.25 lacs claimed to have been made to the informant by the accused. It is the submission of the present petitioner that the said receipt is *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.

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

8. 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*?

9. 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 was forged or alleged to be forged before the document was introduced as evidence in any proceeding in a Court?

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

11. It is, therefore, necessary to take note of the provisions of Section 195. This Section (Section 195) 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 Subclause (ii), except on the complaint in writing of that Court, or some other Court to which that Court is subordinate.”

12. The relevant provisions of Section 195(1)(b)(i), thus, reads, *"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."

13. In the light of the submissions, made before this Court on behalf of the petitioner, when the provisions of Section 195 of the Code 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).

14. In **Surjit Singh v. Balbir Singh**, reported in **1996 CriLJ 2304**, the Apex 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.

15. However, in a subsequent case, namely, **Sachida Nand Singh V. State of Bihar**, reported in **MANU/SC//0077/1998**,

the Apex 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 as under:

“In Sachida Nand Singh (supra), upon analysis of the relevant provisions and noticing a number of earlier decisions (but not Surjit Singh), the Court recorded its conclusions in paras 11,12 and 23, which are being reproduced below:

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. * * **

23. 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.”



16. The controversy, thus, 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 **2005CriLJ2161**, 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.”

17. 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.

18. 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) bring 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.”

19. 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 Apex 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.

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 receipt, 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 receipt 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-respondent in respect of the receipt of money claimed to have been paid by the accused-respondent to the present petitioner.

22. Because of what have been discussed and pointed out above, I do not find that the case at hand requires holding of any

inquiry under Section 340 of the Code and/or making of the complaint by the learned Court below. No direction can, therefore, be given for holding any enquiry under Section 340 of the Code of Criminal Procedure and/or for making a complaint as has been sought for.

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

(I. A. Ansari, ACJ)

Mkr./-

AFR/NAFR	AFR
CAV DATE	
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