

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 16890 of 2012

Arising out of P.S. Case No. - 0 Year - null Thana - null District - PATNA

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Ram Lakhan Sahni, Son of Late Chhatu Sahni, Resident of Village Banghara,
Police Station Siwaipatti, District Muzaffarpur at present Secretary State S.P.C.A.
Bihar Daya Mandir Patliputra Colony, Police Station Patliputra, District Patna

.... Petitioner

Versus

1. The State of Bihar
2. Ratneshwar Prasad Singh, Son of Braj Kishore Singh, Resident of Village Sekhopur, Police Station Warish Nagar, District Samastipur. At present alleged acting Secretary of S.P.C.A. Bihar Daya Mandir Patliputra Colony, Police Station Patliputra, District Patna

.... Opposite Parties

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Appearance :

For the Petitioner	: Mr. Rajendra Narayan, Sr. Advocate Mr. Dr. Manoj Kumar, Advocate
For the O.P. No. 2	: Mr. Sandeep Shahi, Advocate Mr. Rajesh Kumar Singh, Advocate
For the State	: Mr. Shyam Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date:01-11-2017

The petitioner is accused in Complaint Case No. 647(C) of 1996 filed by the State Society for Prevention of Cruelty to Animals, Bihar a registered society through its Secretary Raj Kishore Singh in the Court of learned Chief Judicial Magistrate, Patna. A copy of the complaint petition is at Annexure-1.

2. By the impugned order dated 11.10.1996 cognizance has been taken against the petitioner in the aforesaid complaint case for the



offence under Section 465 of the Indian Penal Code.

3. The challenge is on the ground that the offence for which cognizance has been taken is not made out on bare perusal of the complaint petition and secondly on the ground that criminal proceeding is manifestly attended with mala fide and has maliciously been instituted with an ulterior motive to wreak vengeance due to private and personal grudge between the complainant Raj Kishore Singh and the petitioner as both claimed to be the Secretary of the Complainant-Society.

4. It is worth to mention here that after death of Raj Kishore Singh (the original complainant) opposite party no. 2 Ratneshwar Prasad Singh was substituted as complainant in the complaint case aforesaid.

5. Learned counsel for the opposite party no. 2 resisted the prayer of the petitioner on the ground that the petitioner has deliberately and knowingly approached this Court under Section 482 Cr.P.C. after a long delay of about 18 years. There is no genuine claim of the petitioner to be Secretary of the Complainant-Society after recall of Annexure-2, dated 24.08.1995, by Annexure-3, dated 06.09.1995. The petitioner dishonestly and fraudulently pretended himself to be Secretary, used a



false letter pad posing himself to be the Secretary of the Society and passed some transfer orders as alleged in the complaint petition. Learned counsel further submits that this Court should not interfere in the summoning order unless there is strong material to justify that the continuance of criminal proceeding would amount to an abuse of process of the court and shall cause failure of justice which is not available herein.

6. According to the complaint petition, the complainant is a registered Society and its Secretary is Late Raj Kishore Singh. The Society has got its own rules and regulations and it functions according to its Rules. There is an Executive Committee of the Society under Rule 8 for three years consisting of an Ex-officio Chairman, a Vice-Chairman, a Secretary, a Treasurer, five members amongst life members. It is admitted that the petitioner was a life member of the Society. Raj Kishore Singh is said to be elected in the general meeting of the Society on 01.01.1995 as Secretary for three years.

Allegation is that the petitioner was desirous to intervene with the functioning of the Society. However, could not succeed.



Though the petitioner was never an office-bearer of the Society, however, the petitioner created a forged and fabricated letter pad of the Society showing himself as Secretary of the Society. The petitioner issued a transfer order, in respect of Jitendra Narayan Singh an Inspector for Protection of Cruelty against animals, Khagaria, posing himself as a Secretary of the Society. The transfer orders issued by the petitioner are Annexure-2A and 2B to the complaint petition.

7. Submission of the petitioner is that the State of Bihar vide his letter dated 24.08.1995 at Annexure-2 recognized Mr. K. N. Sahay as Chairman of the Society and the petitioner as Secretary of the Society. When the complainant Raj Kishore Singh raised objection on recognition of the petitioner as Secretary, the letter at Annexure-2 was recalled by letter at Annexure-3 dated 06.09.1995 and the matter was referred to the Inspector General of Registration for deciding the claim of the complainant and the petitioner on the post of Secretary. Thereafter, the petitioner challenged the aforesaid Annexure-3 in C.W.J.C. No. 10891 of 1995. The said writ application was disposed of on 13.07.2010 observing that in the writ application the issue is only



academic because the dispute is to be decided either by the Inspector General of Registration or by a competent Civil Court vide Annexure-4. In the meantime, on 21.05.2010, the opposite party no. 2 was substituted in the complaint case aforesaid in place of deceased-complainant Raj Kishore Singh. The petitioner challenged the same in Cr. Misc. No. 1828 of 2011. The said application was disposed of with liberty to the petitioner to move before appropriate forum to get the matter adjudicated vide order dated 29.02.2012 at Annexure-6.

8. On the basis of aforesaid factual position submission of the petitioner is that he was bona fide pursuing the matter of dispute of the claim on the post of the Secretary. Therefore, it cannot be said that the petitioner has approached this Court deliberately after a lapse of decade. Contention is that if opposite party no. 2 would have not been substituted in the complaint case after death of the complainant, the complaint petition would have lost its fork. Moreover, there is no limitation for exercise of jurisdiction under Section 482 Cr.P.C. to secure the ends of justice or to prevent the abuse of process of the court. Therefore, there is no merit in the submission of the learned counsel for the opposite party



no. 2 that this application should be thrown out merely for delay in invoking the jurisdiction of this case.

9. I find substance in the submission of learned counsel for the petitioner that the petitioner was bona fide pursuing the matter before other forum in respect of the same dispute for which criminal complaint was filed as discussed above and, as such, cannot be said to be deliberately and consciously approaching this Court after inordinate delay.

10. The material discussed above would further establish that the petitioner was also recognized as Secretary in the year 1995 itself by the State Government. Withdrawal of recognition in September, 1995 by Annexure-3 and reference of the dispute for adjudication before the Inspector General, Registration by the State Government would clearly show that there was bona fide claim of the petitioner on the post of Secretary. Further that dispute has not been resolved as yet either by the Inspector General, Registration or the competent Civil Court. Hence, the bona fide claim of the petitioner is still there for the purpose of this application and it cannot be said that the petitioner at any point of time



was acting with dishonest and mala fide intention.

11. In **Mohammed Ibrahim & Others Versus State of Bihar & Another** report in (2009) 8 SCC 751, the Hon'ble Apex Court held that the condition precedent for an offence of forgery is making of a false document (or false electronic record or part thereof). This case does not relate to any false electronic record.

12. The Hon'ble Apex Court in para 14 of the judgment analyzed the provisions of Section 464 of the Indian Penal Code and held that it divides false document in the following three categories:-

“14. 1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could



not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.”

13. In the present case, there is no allegation that the petitioner altered or tampered a document or he obtained a document by practising deception from a person not in control of his senses nor there is any allegation that the petitioner made or executed a document claiming to be of someone else or authorized by someone else.

14. The petitioner signed the transfer order claiming himself to be Secretary of the Society. Therefore, apparently ingredients of offence under Section 465 of the Indian Penal Code are wholly not made out. Moreover, claim of the petitioner as discussed above, to be Secretary of the Society is a bona fide disputed claim which is yet to be resolved by a competent authority and for that reason, the petitioner cannot be



criminally prosecuted.

15. While discussing the scope of interference with the criminal prosecution at the initial stage, the Hon'ble Apex Court in para 7 of the judgment in **Madhavrao Jiwaji Rao Scindia & another etc. v. Sambhajirao Chandrojirao Angre** and others, etc. reported in AIR 1988 S.C. 709 observed as follows:-

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

16. To conclude, in my view, ingredients, of the offence under



Section 465 of the Indian Penal Code for which cognizance has been taken, are prima facie not disclosed even if whole complaint is accepted as true. Further there is personal dispute between the complainant/opposite party no. 2 and the petitioner for the post of Secretary of the Complainant-Society which dispute is still persisting. The present criminal proceeding has been manifestly instituted with mala fide and ulterior motive which are grounds for quashing the FIR as held by the Hon’ble Apex Court in the **State of Haryana v. Bhajan Lal** reported in **AIR 1992 S.C. 605**.

17. In the result, the impugned order is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

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AFR/NAFR	N.A.
CAV DATE	12.10.2017
Uploading Date	02.11.2017
Transmission Date	02.11.2017

