

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42975 of 2017

Arising Out of PS.Case No. -23 Year- 2015 Thana -SAKRI District- MADHUBANI

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Tabassum Khatoon @ Bejni Khatoon, D/o Md. Haviv, R/o Village- Meghaul, P.S.-
Sakari, District- Madhubani.

.... Petitioner

Versus

1. The State of Bihar.
2. Vivek Jha @ Vivek Kumar Jha @ Vivek Kumar,
3. Vikash Jha @ Vikas Kumar Jha
Both Sons of Bhawan Jee Jha,
4. Bhawan Jee Jha Son of Shri Braj Kishore Jha,
All R/o Village @ P.O.- Meghaul, P.S.- Sakari, District- Madhubani.
5. Raman Kumar Mishra Son of Vinay Kant Mishra, R/o Village- P.O. & P.S.-
Andhara Tharhi, District- Madhubani.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani, Advocate
Mr. Ravindra Kumar, Advocate
Mr. Maruth Nath Rai, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-04-2018

This application under Section 482 read with Section
340 of the Code of Criminal Procedure (for short 'Cr. P.C.') has
been filed by the petitioner with a prayer to make an inquiry and
take action against the private opposite parties for the act of perjury



committed by them in course of the proceeding of Cr. Misc. No.2647 of 2016 disposed of on 04.03.2016 by this Court.

2. It is submitted by the learned counsel for the petitioner that in Cr. Misc. No.8488 of 2017 filed by Mr. Vivek Jha under Section 438 of the Cr. P.C. for grant of pre-arrest bail a copy of incomplete Station Diary Entry dated 26.09.2014 was annexed in order to mislead this Court. He submitted that the petitioner could come to know about the aforesaid perjury after he obtained a copy of the petition filed in the Court. His contention is that the alleged act of perjury committed by the private opposite parties in course of proceeding of Cr. Misc. No.2647 of 2016 warrants an inquiry to be made as the same was committed in relation to a proceeding in the Court and in respect of a document given by him in support of his defence. He submitted that as per Section 195(1)(b)(ii) of the Cr. P.C. no Court would take cognizance of the offence relating to perjury of a document when such offence is committed in respect of a document produced or given in a proceeding in any Court except on a complaint in writing of that Court and, thus, an inquiry is required to be made under the order of this Court to prosecute the private opposite parties.

3. On the other hand, learned counsel for the State submitted that Section 195(1)(b) (ii) of the Cr. P.C. creates a bar



against an order taking cognizance of an offence only in certain specified situation. Since the alleged offence is not committed in respect of a document which was in custody of the Court, there would be no legal bar for the petitioner to file a complaint. In support of his submission, he has placed reliance on the Constitution Bench judgment of the Supreme Court in **Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah & Anr. [(2005) 4 SCC 370]**.

4. I have heard learned counsel for the parties and perused the record.

5. There is no dispute to the fact that the alleged act of annexing a copy of incomplete Station Diary Entry is in respect of a document which was not in custody of the Court and was produced subsequently by the opposite party no.2.

6. In **Iqbal Singh Marwah (supra)**, the Constitution Bench of the Supreme Court held “that clause (b)(ii) of Section 195(1) Cr. P.C. contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court. Referring to the scheme of Clauses (a) and (b)(i) of Section 195(1) Cr. P.C. the Constitution Bench ruled “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”



occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document produced or given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr. P.C.” Having said so, the Supreme Court held “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*.”

7. In the present case, the submission is that the copy of Station Diary Entry was annexed to the petition filed by the opposite party no.2 in this Court. It is not the case of the petitioner that any offences as enumerated in Section 195(1)(b)(ii) of the Cr. P.C. was committed in respect to the said Station Diary Entry after it had been produced and/or filed in the Court. Therefore, the bar created by Section 195(1)(b)(ii) of the Cr. P.C. would not come into play and there would be no embargo on the power of the Court to proceed in the matter on the basis of a complaint filed by the petitioner.



8. In that view of the matter, the submission made by the petitioner that when such offence is committed in respect of a document given in a proceeding in any Court, a private complaint would not be maintainable is erroneous. I see no other justifiable reason for making inquiry under Section 340 of the Cr. P.C.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2018
Transmission Date	18.04.2018

