

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.36831 of 2014**

Arising Out of PS. Case No.-25 Year-2014 Thana- ISHAKCHAK District- Bhagalpur

M/s Animesh Estates Pvt. Ltd. represented through one of its Directors Sri Himanshi Bhushan Narayan, Son of late Dr. Mahesh Narayan, Resident of flat No. 102, Pushpanjali Venkatesh, Budh Marg, Patna

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Pradeep kumar Yadav Son of late Bhaggu Yadav R/o Mohalla Ishakchak, Indraprasth Colony, Lichi Bagan, P.S. Ishakchak, District Bhagalpur

... .. Opposite Party/s

**Appearance :**

|                        |   |                                                            |
|------------------------|---|------------------------------------------------------------|
| For the Petitioner     | : | Mr.Arjun Kumar, Adv.<br>Mr. Alok Kumar, Adv.               |
| For the O.P.no.2       | : | Mr. Rajendra Narain, Sr. Adv.<br>Mr. Manoj Kumar Jha, Adv. |
| For the Opposite Party | : | Mr. Jharkhandi Upadhyay, APP                               |

**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**  
**ORAL ORDER**

10    02-07-2019                      This application has been been filed by the petitioner for lodging a complaint    against O.P.no.2    in respect of the offence committed by O.P.no.2 in view of Sub-Clause (II) of Clause (b) of Sub Section (1) of Section 195 of the Code of Criminal Procedure 1973 (hereinafter to be referred as ‘the Cr.P.C.’) for swearing false affidavit and producing forged document in Cr. Misc. No.20076 of 2014.

2. Facts giving rise to this application under Section 340 of the Cr.P.C. in short is that O.P.no.2 filed Cr. Misc. No.20076 of 2014 for grant of anticipatory bail in Ishakchak P.S.Case No.25 of 2014 dated 8.3.2014 registered for offences



under Sections 420, 406, 465, 467, 468, 471 and 120(B) of the Indian Penal Code (hereinafter to be referred as 'the I.P.C.'). It further appears that above Ishakchak P.S.Case No.25/14 was registered on the basis of written report filed by one Himanshu Bhushan Narayan, who is Director of M/S Animesh Estates Pvt. Ltd. The present application under Section 340 of the Cr.P.C. has been filed by M/S Animesh Estates Pvt. Ltd. through its Director, Himanshu Bhushan Narayan.

3. On perusal of the FIR, it appears that above Himanshu Bhushan Narayan, who claims himself to be Director of M/S Animesh Estates Pvt. Ltd., has lodged a written report alleging *inter alia* that one Deepak Kumar Srivastava owner of M/S Shrivastva Consultants and Manish Kumar was his partner. It also disclosed that an agreement has been reached between them and petitioner of the present case. According to which, they have to acquire 200 bighas of land in favour of his Company. It is also alleged that Deepak Kumar Shrivastava also made several persons as his partner and they approached the land owners. It is also his case that after paying a definite money to them, they used to take consent letter from them in favour of the Company of the informant and the deed of the agreement was prepared. The written report further discloses



that he came to know that they have prepared forged consent letters in the name of persons who have already died or no such person(s) are available on that address . It is also stated in the FIR that informant thorough enquired from several persons, details of which is given in the written report about preparation of forged consent letters, on the basis of which it transpired that accused persons defalcated Rs.87,101/- . The written report further discloses that Sanjay Kumar Singh, Tanveer Ahmad and Manish Yadav are partner of Deepak Kumar Shrivastava. It is also alleged that Deepak Kumar Shrivastava Jyoti Shrivastava, Jyotsana Shrivastava, Manish Yadav and Pradeep Kumar Yadav (petitioner) on the basis of forged power of attorney were selling the land and in spite of not sufficient money in their account, they had issued cheques worth Rs.01.40 crore, which bounced and as such another case has been lodged against them. Other allegations are also against the petitioner and other accused persons.

4. It further appears from perusal of record that an anticipatory bail application has been filed by O.P.No.2 before this Hon'ble Court annexing deed of agreement between Company of the petitioner and the Company of Deepak Kumar Shrivastava, which is Annexure-2 to that application in order to



show that the petitioner has no concern with the above transaction. In the above anticipatory bail application, the petitioner has filed Counter Affidavit and apart from other matters, he has stated that the present Opposite Party no.2 appeared in person and executed the documents as authorized representative in Banka and Bhagalpur Sub Registrar Office, then letter dated 30.12.2013 and another letter dated 24.2.2014, letters were issued by him, asking him as to why he has represented the Company.

5. It further appears that a rejoinder on behalf of the present petitioner was also filed and in para 6 it has been stated that the present petitioner received one letter dated 17.12.2013 through the Advocate Sri Abhay Kant Jha, whereby he has said that the present petitioner had written a letter to the Sub Registrar, Banka in connection with registration of land being purchased within the revenue Thana of Amarpur District Banka and the petitioner has been authorized to represent the Company though the petitioner has not written such letter. It is also stated that vide letter dated 19.12.2013, he sent a letter to Sri Abhay Kant Jha with respect to notice dated 17.12.2013 to send a copy of the letter dated 11.3.2013 in order to establish genuineness of the above statement and the letter dated 19.12.2013 was marked



as Annexure-I to the rejoinder filed by the present petitioner.

6. It further appears that thereafter Opposite Party no.2 has filed a reply to the above rejoinder filed by the present petitioner annexing copy of the letter dated 11.3.2013 issued by Himanshu B. Naryan, Director of M/S Animesh Estates Pvt. Ltd., who is present petitioner through the Company addressed to the Sub Registrar. It further appears that thereafter the present application has been filed under Section 340 Cr.P.C. by the Company of the petitioner represented by the petitioner for lodging complaint against the Opposite Party No.2 for offence committed by Opposite Party no.2 under Section 195 (1)(b)(II) of the IPC as Opposite Party No.2 has sworn false affidavit and produced forged document in Cr. Misc. No.20076 of 2014. It further appears that in this case this Court has directed the Sub Registrar, vide order dated 16.1.2019 to appear and file response on his behalf to show as to whether Annexure 4 has been received in his office and if so a copy of the same shall be brought on record. Further it is stated as to whether original copy of Annexure-4 is in the office of Opposite Party No.2.

7. It also appears that the learned Sub Registrar appeared in this Court and filed a Counter Affidavit and submitted in para 8 of the counter affidavit that he has recently



joined office in the year, 2017 and hence on the basis of available document in the office, which is being produced before him, it is submitted that letter dated 11.3.2013 (Annexure-4) is not found in the office.

8. So far Section 340 of the Cr.P.C. is concerned, it provides as follows : -

***“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 interest 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 authorise in writing in this behalf.***

***4. In this section, "Court" has the same meaning as in section 195."***

9. On mere perusal of Section, it appears that it is not so that in each and every case, inquiry has to be ordered rather only when it appears expedient to the Court in the interest of justice that inquiry should be made into an offence referred to in Clause (b) of Section (1) of Section 195 Cr.P.C., 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, ordered for enquiry.

10. Submission of the learned counsel for the petitioner is that in the present case, Annexure -4 which is a letter written by Himanshu Bhushan Narayan, Director of the Company to the Sub Registrar as claimed by Opposite Party No.2 was forged and there is no such document available in the office of the Sub Registrar as he has stated in his Counter Affidavit in this case and as such it is a fit case for holding inquiry and after inquiry lodging of the complaint against Opposite Party No.2.

11. It is settled principle that under Section 340 Cr.P.C., the person accused of using forged document does not have any right to be heard, however, Opposite Party No.2 has appeared voluntarily and drawn attention of this Court towards Supplementary Affidavit filed on behalf of Opposite Party No.2 in above Cr. Misc. No.20076 of 2014 and Para 2 as well as Annexure-5 clearly discloses that Himanshu B. Narayan who is Director of M/S Animesh Estates Pvt. Ltd. settled the dispute which will appear from the deed of settlement between Deepak Kumar Shrivastava proprietor of Shrivastava Consultants and



Himanshu B. Narayan for total amount of Rs.85 Lakh and out of that Rs.2.30 Lakh has already been paid to him on signing of the deed of settlement and rest was assured to be paid in 10 equal installments. So far FIR of Ishakchak P.S.Case No.25 of 2014 is concerned, main allegation is against Deepak Kumar Shrivastava and even according to FIR Opposite Party No.2 is only a silent partner of Deepak Kumar Shrivastava, in such a situation no fruitful purpose will be served by sending the present application for inquiry.

12. Having heard both sides and on perusal of the record, it appears that in Ishakchak P.S.Case No.25 of 2014, allegation is that accused persons including Opposite Party No.2 have committed fraud with the informant of that case and thus defalcated amount of Rs.87,000/- and the agreement was with Deepak Kumar Shrivastava, though Opposite Party No.2 has also named in the FIR that he is a silent partner to the company of Deepak Kumar Shrivastava. The record of Cr. Misc. No.20076 of 2014 disclosed that the informant of Ishakchak P.S.Case No.25 of 2014 has reached into agreement with main accused Deepak Kumar Shrivastava, vide Annexure-5 and resolved the dispute. The genuineness of Annexure 5 has not confronted during argument in the present application by the



petitioner.

13. It further appears that in main application, the Opposite Party No.2 has not produced the aforesaid letter (Annexure-4), which is said to be forged and not written by Himanshu B. Narayan rather in reply to the rejoinder of the Opposite Party No.2, the same has been produced. It further appears that the prayer for anticipatory bail application of Opposite Party No.2, on hearing along with case of several other accused persons, was dismissed, vide order dated 20.1.2015 passed in Cr. Misc. No.20076 of 2014 along with Cr. Misc. No.27864 of 2014, Cr. Misc. No.42057 of 2014, Cr. Misc. No.43844 of 2014, Cr. Misc. No.50891 of 2014.

14. FIR of Ishakchak P.S.Case No.25 of 2014 also disclosed that there was agreement between company of petitioner and of co-accused Deepak Kumar Shrivastava and Opposite Party No.2 was only said to be silent partner and petitioner has resolved dispute with the said Deepak Kumar Shrivastava. In the FIR also there is allegation against accused persons of falsely representing the petitioner and selling the land. The letter (Ext.4) purported to be forged is also with respect to the fact that Opposite Party No.2 was authorized by petitioner to represent the company before Sub Registrar, which



almost similar to that subject matter of F.I.R.

15. As I have discussed above, Section 340 of the Cr.P.C. does not provide that in each and every case the Court has to order for inquiry rather only when the Court thinks it expedient in the interest of justice inquiry may be made.

16. In the present case, this Court on consideration of materials available on record does not find expedient in the interest of justice to hold enquiry against Opposite Party No.2 under Section 340 of the Cr.P.C., as in FIR of the main case, allegation is also of misrepresentation by Opposite Party No.2 and other accused persons.

17. Accordingly, this application stands dismissed.

**(Vinod Kumar Sinha, J)**

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