

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.557 of 2018

Arising Out of PS. Case No.-7 Year-1990 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

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Shivji Prasad Gupta, son of Late Vishnu Sah, Maya Mahal, Karimchak, Sahebganj Chhapra, Jems Jewelers Chapra, Present Address-C/o Savitri Devi, Mohalla Mathiya Jirat Chowk, Post-Motihari, P.S. Chhatauni, District-Motihari, East Champaran-845401

... .. Appellant/s

Versus

1. The Union of India through the Chief Commissioner (Custom), Eastern Central Revenue Building, Birchand Patel Path, Patna, P.S. Kotwali, District-Patna and others.
2. The Commissioner Custom, Central Revenue Building, Birchand Patel Path, Patna, P.S.-Kotwali, Distt. Patna.
3. The Joint Commissioner Custom, Central Revenue Building, Birchand Patel Path, Patna, P.S.-Kotwali, Distt. Patna.
4. The Deputy Commissioner Custom, Muzaffarpur.
5. The Deputy Commissioner Custom, Custom House, Raxaul, East Champaran.
6. The Assistant Collector Custom, Land Custom Station Raxaul, East Champaran.
7. The Commissioner, Appeal, Custom & Excise Revenue Building, Patna.
8. The Custom Inspector-cum-Seizing Officer, Land Custom Station, Raxaul, East Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shivji Prasad Gupta-In person
For the Respondent/s	:	Mr. Anjani Kumar Sharan, Sr. Advocate Mr. Akshansh Ankit-J.C. to S.C.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

10 20-02-2019 Appellant in person is prosecuting this appeal
purported to be under Section 341 of the Cr.P.c.

2. Heard appellant himself as well as learned counsel
representing the custom.

3. As is evident from contents of petition, irrespective
of the fact that the last page of the petition contains



“Shodhkarta-Indradev Prasad, Advocate”, but the language so used and the manner whereunder it has been used, looks unadorned, but on account of personal appearance of the appellant, the same is ignored.

4. On refusal of prayer having on behalf of appellant by the Additional District & Sessions Judge, Muzaffarpur-14th in Cr. Appeal No.35 of 2011 vide order dated 31.10.2017, for initiation of an inquiry in accordance with Section 340 of the Cr.P.C., the present appeal has been filed in accordance with Section 341 of the Cr.P.C.

5. From different Annexures as well as contents of memo of appeal, it is evident that on account of search and seizure of gold from the possession of employees of the appellant, case and counter-case cropped up. It is further evident that appellant has been convicted and Cr. Appeal No.35 of 2011 is pending at the instance of appellant before the lower Appellate Court, challenging the same.

6. Annexure-11 happens to be the petition under Section 340 of the Cr.P.C. filed before the lower Appellate Court. In Para-6 thereof, there happens to be specific disclosure that the points whatever been prepared at the end of his counsel are the points attracting an inquiry in accordance with Section



340 of the Cr.P.C. After going through the same, it is evident that all relates with the inconsistencies having amongst the evidence of the witnesses as well as for certain lapses having at the end of the prosecution during course of conduction of trial.

7. Annexure-10 is the order dated 31.08.2016 passed in Cr.W.J.C. No.392 of 2015. After perusal of the same, it is evident that the order of confiscation has attained finality in the background of dismissal of Miscellaneous Appeal by the Division Bench and that happens to be reason behind that at Page No.4, it has been incorporated *“By this writ petition, petitioner wants to know as to what happened to his gold. The simple answer is that there is no gold left. The gold has vested in the government which order has attained finality.”* The Bench had considered the other submission having at the end of the petitioner in following way:- *“From the affidavit filed on record, it appears that gold had since been deposited in the Government mint and has been melted. Petitioner submits that this will cause him great prejudice, inasmuch as his whole case is that it was not gold with foreign marking.”* In the aforesaid background, the Hon’ble Court had further observed:- *“Having considered the matter, in my opinion, whether gold was of foreign marking or not, whether it was being legitimately*



brought in India or not, are all questions of facts which are sub-judice in Criminal Appeal as filed by the petitioner. It will be open to the petitioner to move the said criminal court for whatever relief he wants in respect thereof either to discredit or impeach the prosecution evidence. This Court, in a collateral proceeding, cannot preempt the criminal court from doing its duty. The criminal court has the necessary jurisdiction to pass all orders that are required in the facts of the case. Therefore, it will not be appropriate for this Court to interfere in the matter at this stage.”

8. Because of the fact that learned lower Court was sluggish in passing order over a petition under Section 340 of the Cr.P.C. (Annexure-11), on account thereof, petitioner had filed Cr.W.J.C. No.93 of 2017 (Annexure-12), which was disposed of on 18.07.2017, directing the learned 14th Additional Sessions Judge, Muzaffarpur or successor in office to pass an appropriate order over petition under Section 340 of the Cr.P.C. preferably within two months from the date of receipt/production of a copy of this order and under the aforesaid direction, the order impugned has been passed, subject matter of instant appeal.

9. At the present stage, a query has been made from



the appellant/ petitioner with regard to status of the Criminal Appeal having filed by him (Cr. Appeal No.35 of 2011), whereupon the petitioner/ appellant has said “*Humko Pata Nahi Hai, Custom Ke Adhiwakta Ki Taraf Ishara Karte Hue Kaha Inhe Pata Hoga.*”

10. Two events are pertinent to be taken note of during course of sailing with the trial. The first one regarding the inconsistency prevailing in the evidence of respective PWs and secondly, whether the inconsistency could be seen as an intentional act in order to drag under malicious prosecution by way of creating, fabricating evidence, more particularly in the background of ingredients having prescribed under Section 195 of the Cr.P.C. and that could be only perceived, during course of appreciation of the evidence while finally adjudicating upon the same. That being so, conceding with the prayer of the appellant at the present moment, would be nothing, but prejudging the appeal and further, identifying the witnesses to be influenced with illegal motivation in order to secure conviction of the appellant and for that, prepared and produced false and fabricated evidence, which the Court is not at all competent enough as the same happens to be subject to subjudication before the Appellate Court.



11. Consequent thereupon, the prayer of the appellant is found premature and is rejected.

12. However, it will be opened to the learned Appellate Court during course of scrutiny of the evidence to consider whether there happens to be fabrication of evidence at the end of the prosecution and if so, will proceed in accordance with law, which the appellant may show during course of arguments.

(Aditya Kumar Trivedi, J)

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