

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48002 of 2016

Arising Out of PS. Case No.-1050 Year-2011 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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Ramesh Kumar Singh S/o Late Suraj Singh, resident of Mohalla Janaki
Asthan Ward No. 8, P.S.- Sitamarhi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Gopal Krishna S/o Chandra Kishore Singh. Resident of Village Parbhama
P.S. Supaul, District Supaul at present Vijit Computer near- Ring Bandh in
the Campus of Pili Kuti Math, P.S. Sitamarhi, District Sitamarhi.
3. Ganesh Singh Rathaur S/o Shyamandan Singh
4. Srita Singh Rathaur W/o Ganesh Singh Rathaur. Both are resident of Village
Jogiyara, P.S. Jale, District Darbhanga, at present Vijit Computer near Ring
Bandh in the campus of Pilli Kuti Math, P.S. Sitamarhi, District Sitamarhi.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Uday Kumar, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, A.P.P.-138

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 07-08-2019

Heard learned counsel for the parties.

2. The petitioner had filed Criminal Miscellaneous Case No.23 of 2016 before the learned Sessions Judge, Sitamarhi, under Section 340 of the Code of Criminal Procedure, stating therein that in the affidavit sworn by the accused-opposite party No.2, in respect of the anticipatory bail application No.99 of 2012, arising out of Complaint Case No.C-1/1050/11, wrong statement was made that *Sarita Singh Rathaur* was suffering from cancer and she was hospitalized in the Tata Memorial Hospital, Mumbai. The affidavit



was filed on 24.02.2012, whereas the said *Sarita Singh Rathaur* appeared and filed complaint case No.319 of 2012 on 27.02.2012 in the court of learned Chief Judicial Magistrate, Sitamarhi, which belies the claim that she was ill and hospitalized at Mumbai.

3. By the impugned order dated 20.05.2016, the learned Sessions Judge, Sitamarhi dismissed the petition as not maintainable on the ground that the petitioner did not challenge the correctness of the aforesaid statement during hearing of the anticipatory bail application, rather a petition has been filed vide Criminal Miscellaneous No.23 of 2016, after delay of more than four years.

4. After hearing the parties, the issue before this Court is whether the nature of the complaint made before the learned Sessions Judge could have been inquired under Section 340 of the Code of Criminal Procedure.

5. Section 340 of the Code of Criminal Procedure reads 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 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) bind over any person to appear and give evidence before such Magistrate.*

6. Thus, the satisfaction of the court below that an inquiry should be made shall be at following three points:-

- (I) Whether offence referred to in Clause (b) of sub Section (1) of Section 195 of the Code of Criminal Procedure appears to have been committed in.*
- (ii) Or in relation to a proceeding in that Court.*
- (iii) Or in respect of a document produced or given in evidence in a proceeding in that Court.*

7. Apparently, point No.2 is not a case in hand because no document was produced or given in evidence in the anticipatory bail application, rather allegedly false affidavit was made just to procure order of anticipatory bail.

8. Now the matter to be examined is whether the claim of the petitioner is covered under Section 195 (1) (b) of the Code of Criminal Procedure.

9. Section 195 (1) of the Code of Criminal Procedure is being reproduced below:-



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 is 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 (i) or sub- clause (ii), except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

10. Learned counsel for the petitioner submits that the case is covered under Section 195 of the Indian Penal Code. Section 195 of the Indian Penal Code reads as follows:-



195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [by the law for the time being in force in [India] is not capital, but punishable with [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

11. Apparently, this case is not covered under Section 195 of the Indian Penal Code because there is no allegation that false evidence was fabricated to ensure that any person be convicted of an offence which is not capital but punishable for life or imprisonment for a term of seven years or upwards.

12. For the aforesaid reason, I do not find that the learned Sessions Judge, Sitamarhi while passing the impugned order has misconstrued the requirement of law. Hence, this application has got no merit. Accordingly, it stands ***dismissed***.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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