

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42866 of 2015

Arising Out of PS. Case No.-1302 Year-2009 Thana- PATNA COMPLAINT CASE District-
Patna

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Surendra Rai Son of Satyanand Rai, Resident of Mohalla - Magistrate Colony,
Road No. A, P.O. - Ashiana Nagar, P.S. - Rajvee Nagar, District - Patna.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Shashi Kant Ojha, Son of Sri Dina Nath Ojha, resident of Ram Nagri, Sector
- 3, Behind Sapna Apartment, P.O. - Ashiana Nagar, District - Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate

For the Opposite Party/s : Md. Ansural Haque Sahara, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

4 22-08-2023 This application has been filed for quashing of the

impugned judgment dated 12.03.2015 passed in Cr. Appeal No.

180/ 2011/350/14 passed by learned Additional Sessions Judge-

14, Patna by which the refusal of instituting fresh complaint

against complainant-petitioner vide order dated 21.05.2011

passed by learned Judicial Magistrate, 1st Class on a petition

under Section 340(1) of the Cr.P.C. filed by accused-opposite

party no.2 has been set aside and appeal has been allowed with

direction to the learned Magistrate to make enquiry under

Section 340 of the Cr.P.C. before entering into trial of the main

complaint case bearing Complaint Case No. 1302© of 2009.

As per the prosecution case, the opposite party no.2



had taken Rs. 50,000/- from the complainant in February 2007 to meet the expenses of contract work and assumed that the same will be returned within six months and started lingering the matter till 2009. Since the complainant was in need of money and under pressure the opposite party no.2 issued a cheque of Rs. 50,000/- and assured that it shall be encashed and accordingly complainant presented the said cheque in his account which was returned being dishonoured with bank endorsement about insufficiency of fund.

Learned counsel for the petitioner has submitted that after perusing the complaint petition, conducting enquiry under Section 202 of the Cr.P.C. and after being prima facie satisfied learned Judicial Magistrate 1st Class, Patna has taken cognizance under Section 406 of the Indian Penal Code as well as Section 138 of the Negotiable Instrument Act.

Learned counsel for the petitioner has further submitted that the accused with oblique motive filed a petition under Section 340(1) of the Cr.P.C. before the Court below alleging that the complainant has committed fraud.

The learned Magistrate after going through the materials available on record and after hearing the parties came to a conclusion that the cheque bounced on account of



insufficient fund, therefore, the petition against the complainant was rejected.

Learned counsel for the petitioner has further submitted that the opposite party no.2 preferred an Appeal under Section 341 of Cr.P.C. before the learned Court of learned Additional Sessions Judge-14, Patna assailing the order dated 21.5.2011 passed by learned Judicial Magistrate 1st Class, Patna in Complaint Case No.1302C/2009 which has illegally been allowed ignoring the well settled proposition of law reported in **(2005) 2 P.L.J.R. (SC) 236 (Iqbal Singh Marwah Vs Meenakshi Marwah)** rather relying upon unreported judgment of Allahabad High Court, Lucknow Bench that the Court should dispose the application under Section 340/344 of the Cr.P.C. first before proceeding any further or before recording of further evidence in case in which said application under Section 340 of the Cr.P.C. was filed and relying upon that virtually set aside the order dated 21.5.2011 passed by learned Judicial Magistrate directing the learned court below to make an enquiry under Section 340 of the Cr.P.C. before entering into trial of the aforesaid complaint case and proceed further accordingly to result of such inquiry and allowed the appeal vide impugned order dated 12.3.2015.



Learned counsel for the petitioner has further submitted that provision under Section 340 regarding conducting an enquiry has been properly discussed and settled that proceeding under Section 340 read with Section 195 Cr.P.C. could only be initiated if forgery was committed during the time when the documents were custodia legis and not when the forgery was committed outside the court i.e. before the documents had been produced or given in evidence in a proceeding in any court and as such there could not be any initiation of proceedings under Section 340 much less for the offences under Section 195 Cr.P.C. an admittedly the alleged forgery was not committed in respect of document dated 27.3.2009 when the same was in custody of the court and as such the impugned judgment passed by learned Additional Sessions Judge-14, Patna in Criminal Appeal No. 180/2011/350/14 is bad in eye of law and the same is fit to be quashed.

Learned counsel for the petitioner has further submitted the opposite party no.2 who has admittedly issued cheque of Rs.50,000/- in favour of Complainant-petitioner which has dishonoured by both the reasons for insufficient fund as well as due to closure of Account as Complainant-petitioner



was not aware that whether the Opposite Party No.2 has issued cheque related to his bank Account which was closed at his instance with intention to commit fraud with the petitioner and concerned Bank has reported the dishonour of cheque with endorsement in both the columns and as such petitioner is not responsible of that endorsement.

Learned counsel for the petitioner has further submitted that learned Magistrate in its order dated 21.5.2011 rightly observed that under both circumstance the accused- Opposite Party No.2 is liable for dishonour of cheque as Hon'ble Apex Court has also settled this issue that offence under Section 138 of N.I. Act is applicable even in case of stop payment and as such order passed by learned Judicial Magistrate is based upon settled principle of law, which has illegally been set aside by learned Additional District & Sessions Judge-14, Patna in Appeal under Section 341 Cr.P.C. directing to proceed for enquiry under Section 340 Cr.P.C. contrary to well settled proposition of law on this point.

Learned counsel for the State and the opposite party no.2 have opposed the application.

In my view, the order passed by the learned Magistrate should have been sustained and during trial the



Magistrate would have come to a finding that the allegation under Section 340 of the Cr.P.C. are made out then the learned Magistrate would have directed for initiating a proceeding under Section 340 but before proceeding with the case this application under Section 340 should not have been allowed.

Paragraph 9 of the judgment of the Hon'ble Supreme Court in the case of ***Iqbal Singh Marwah Vs Meenakshi Marwah*** reported in ***(2005) 2 P.L.J.R. (SC) 236*** as held as follows:

9. The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidences. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur the Chapter X of the IPC and the heading of the Chapter is-Of contempts Of the Lawful Authority Of Public Servants. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as-Of False Evidence And Offences Against Public Justice. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the



proceedings in a Court of Justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression “when such offences is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a 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 is produced or is 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. This indicates that clause (b)(ii) 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.

Moreover, the complaint under Section 340 cannot be initiated by a private person. It can only be initiated by the Court in which the proceeding is pending.

Considering the above, the impugned order dated 12.03.2015 passed in Cr. Appeal No. 180/ 2011/350/14 passed by learned Additional Sessions Judge-14, Patna, is hereby quashed.

The trial Court is directed to proceed in the case



and conclude the case within three months from the date of communication of this order.

(Sandeep Kumar, J)

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