

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3209 of 2023

Arising Out of PS. Case No.-102 Year-2019 Thana- PARBATTI District- Bhagalpur

Purshotam Yadav @ Chottu Yadav, S/O - Ram Rati Yadav, R/O Village- Latra,
P.S. -Gopalpur, Dist. -Bhagalpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Sri Narayan Pandey, S/O Late Bahadur Pandey, R/O Village- Darmaha, P.S. Kesariya, Dist. Motihari (East Champaran)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vikram Singh, Adv.
For the State	:	Mr. Ramchandra Singh, APP
For the Informant	:	Mr. Umesh Prasad Singh, Sr. Adv. Mr. Rajni Kant Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 29-01-2024 1. Heard learned counsel for the Appellant, learned
APP for the State and learned counsel for the informant.

2. The instant appeal has been preferred under Section 341 of Code of Criminal Procedure (in short Cr.P.C.) against the Order dated 24.05.2023 passed by the Court of learned 1st Additional Sessions Judge, Bhagalpur, in connection with Sessions Trial Case No. 348/2022 (earlier S.Tr. Case No. 82/2020), arising out of Parbatta P.S. Case No. 102/2019, registered for the offences punishable under Section(s) 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, whereby and whereunder the prayer of the appellant to make an inquiry under Section 340 of Cr.P.C. has been



rejected.

3. Learned counsel for the appellant submits that the respondent no. 2, who was investigating officer in present matter, made interpolation and anti-timing entries in the first information report concerned to Parbatta P.S. Case No. 102 of 2019 and thereafter produced the same before the trial court, for which the attention of the said court was drawn at the time of examination of respondent no. 2 who was examined as prosecution witness P.W. 5 but without considering the gravity of the wrong which was committed by the police officer concerned (respondent no. 2/P.W. 5), the prayer of the appellant was rejected mainly on these grounds that it was neither expedient nor in the interest of justice to initiate proceeding under Section 340 of Cr.P.C. and the alleged forgery, if any, had been committed out of the court. But the said grounds are not proper, as admittedly, the FIR, in which the alleged interpolation was committed by the respondent no. 2, was produced before the trial court and the same was used by the prosecution and on the prayer of the appellant, the trial court ought to have conducted a preliminary inquiry to find out whether offences punishable under Section 193 and other relevant penal Sections of IPC had been committed or not but without resorting to the



said inquiry the learned trial court arbitrarily rejected the appellant's prayer.

Learned counsel for the appellant has placed reliance upon the following judgments of Hon'ble Apex Court passed in the case of **Bhima Razu Prasad vs. State represented by Deputy Superintendent of Police CBI/ACU-II**, reported in (2021) 19 SCC 25, **Narendra Kumar Srivastava vs. State of Bihar & Ors.**, reported in (2019) 3 SCC 318 and **Suresh Chandra Sharma vs. State of M.P.**, reported in (2011) 11 SCC 173.

4. On the contrary, learned senior counsel appearing for the informant has vehemently opposed the instant appeal and submitted that admittedly, the alleged offence of forgery, if any, was committed outside of the court concerned, so it was not mandatory for the concerned trial court to initiate an inquiry under Section 340 of Cr.P.C. and furthermore, the appellant raised his grievance in oral form while as per provisions of Section 340 of Cr.P.C., there must be a written complaint before the court concerned by one who alleges the commission of an offence or offences detailed in Section 195 of Cr.P.C. in the court proceeding and mainly on this legal aspect, the appellant's prayer was not maintainable before the trial court and



furthermore, the learned trial court, considering the stage of appellant's case, rightly exercised its discretion while rejecting the appellant's prayer. Learned senior counsel has placed reliance upon the judgment of **Hon'ble Apex Court passed in Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah and Anr.**, reported in (2005) 4 SCC 370 as well as on this Court's judgments passed in **Sudhir Kumar vs. The State of Bihar & Ors.** in C.W.J.C. Case No. 1002/2021 and **Shridhar Das & Anr. vs. The State of Bihar & Ors.** in C.W.J.C. Case No. 11492/2023.

5. Heard both the sides and perused the order impugned. As per the spirit of the provisions of Section 340 of Cr.P.C., there are two pre-conditions to initiate a proceeding under Section 340 of Cr.P.C., firstly, material produced before the court must make a prima facie case in a complaint for the purpose of inquiry into an offence referred to in **clause (b) of sub-section (1) of Section 195** and secondly, it is expedient in the interest of justice that an inquiry should be made into the alleged offence. In the instant matter, as per the allegation, the concerned police officer made an interpolation in the formal FIR of Parbatta P.S. Case No. 102/2019 in respect of the time when the first information was registered at the police station and



while rejecting the appellant's prayer, the learned trial court observed that it is neither expedient nor in the interest of justice to initiate proceeding under Section 340 of Cr.P.C. in respect of the alleged forgery, if any. The appellant brought the alleged wrong in the knowledge of the trial court when his trial was at advanced stage and during the course of argument, it is submitted by learned counsel for the informant that in the present time, the case of the appellant is at final stage and admittedly, the alleged wrong, if any, was committed outside of the trial court and the Hon'ble Constitution Bench of Apex Court in the case of **Iqbal Singh** (supra) observed in paragraph no. 23 of the said judgment that *"the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) as the Section is conditioned by the words "**Court is of the opinion that it is expedient in the interest of the Justice**", this shows that such a course will be adopted only if the interest of justice is required and not in every case."* It was further observed in paragraph no. 33 of the said judgment that *"in view of the discussion made above, we are of the opinion that **Sachida Nand Singh** had been correctly decided and the view taken therein is the correct view, Section 195(1)(b)(ii) of 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.” In the light of above principle of Hon’ble Apex Court, it is clearly evident that the recourse and power conferred upon a court will be generally exercised only when such court thinks that it is expedient in the interest of justice and the alleged wrong/offence has been committed in respect of a document which was in the custody of the court at the time of the commission of the offence.

In the instant matter, firstly, the alleged wrong with regard to interpolation in the time in the formal FIR was committed outside the proceedings of the court concerned and secondly, when the alleged wrong was brought into the knowledge of the trial court, the trial of the appellant was at an advanced stage and thirdly, from the perusal of the case diary any material giving a benefit to the prosecution or causing an adverse effect to the accused on account of the said alleged interpolation does not appear.

Learned counsel for the appellant has placed reliance upon the judgment of Hon’ble Apex Court passed in the case of Suresh Chandra Sharma (supra). The facts of the cited case are



completely different as in that matter, the Sessions Judge concerned came to prima facie conclusion that the appellant, who was investigating officer in that case, in the course of trial fabricated false evidence by surreptitiously inserting the timing in various documents prepared during investigation while in the present matter, there is no allegation of fabricating a false evidence by the police officer concerned in course of trial in respect of a document which was under the custody of the trial court, hence the principle laid down in the above referred judgment of Hon'ble Apex Court does not help the appellant.

The law laid down by Hon'ble Apex Court in the case of *Bhima Raza Prasad (supra)* upon which the appellant's counsel has placed reliance is also not helpful to the appellant as the offence complained did not have a reasonably close nexus with the court proceedings of court concerned and for attracting the provision of section 340 of Cr.P.C., it must be shown that there is reasonable nexus between the offence detailed in section 195(1)(b) and the proceeding before the court and on this aspect, learned counsel appearing for the appellant has not satisfied this Court.

The law laid down by Hon'ble Apex Court in the case of *Narendar Kumar Srivastava (supra)* upon which the



appellant’s counsel has placed reliance is also not helpful to the appellant as the said case was decided in different context.

6. Accordingly, in the opinion of this Court, the learned trial court has rightly rejected the appellant’s prayer and there is no merit in the instant appeal, so it stands dismissed.

(Shailendra Singh, J)

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