IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56818 of 2018

CNR No. BRHC010659032018

Arising Out of PS. Case No.-136 Year-2017 Thana- BEGUSARAI COMPLAINT CASE District- Begusarai

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Sanjay Kumar @ Dr. Sanjay Kumar S/o Late Chandra Bhushan Ishwar, R/o Vill.- Maranchi, P.S.- Bachhwara, District- Begusarai, Presently residing at Ishwar Hospital , Near Bus Stand N.H. -31 Mohalla- Gachhi Tola, P.S.- Town, District- Begusarai.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Ataur Rashid, Assistant , Civil Court Begusarai, Presently posted as Bench Clerk, Addl. CJM-6, Begu S/o Late Noor Mohammad, R/o Mohalla- Pokharia, P.S.- Town, Distt.- Begusarai.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Saket Tiwary
Mr. Saket Gupta
Mr. Shivam Gupta
Mr. Vivek Raj
Mr. Aditya Prakash
For the Opposite Party/s : Sri Anil Kumar
For the O.P. No. 02 : Mr. Baua Jee Jha

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

3 27-10-2026 Heard the parties.

2. This application has been filed for quashing the order dated 31.07.2018 passed by the Additional Sessions Judge-II, Begusarai-cum-Special Judge, Bihar Prohibition and Excise Act, 2016 in Complaint Case No. 136 C2 of 2017 (Sessions Trial No. 554 of 2017).

3. The prosecution case, in brief, is that Complaint Case No. 136 C-2/2017 was instituted through Ataur Rashid, Assistant, Civil Court, Begusarai, pursuant to the order dated 04.05.2017 passed by the learned A.C.J.M.-VI, Begusarai. The complaint alleges that during the hearing of the bail petition of

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accused Priyanshu Anand in Bachhwara P.S. Case No. 05/2017, the petitioner's injury report regarding the informant, Rajni Kumari, recorded a closed lacerated wound on her scalp, measuring 3 cm, and opined that the injury was grievous and dangerous to life. However, upon comparison with the injury report prepared by Dr. Manoj Kumar at P.H.C., Bachhwara, on 02.01.2017, the Court found that no such head injury had been recorded in the later report giving rise to suspicion that the petitioner had falsely recorded the injury and its nature. Following an inquiry in Cr. Misc. No. 03/2017, the learned A.C.J.M.-VI, Begusarai, directed the Bench Clerk to institute a criminal complaint against the petitioner under Section 195 of the Indian Penal Code.

4. The main contention advanced by learned counsel for the petitioner is that the complaint was instituted at the instance of the learned Magistrate in respect of an alleged act of forgery committed outside the Court. It is further submitted that in view of the interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973, as laid down by the Hon'ble Supreme Court, the bar under the said provision would not apply to an offence of forgery allegedly committed outside the Court and independently of any proceeding before it.

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Accordingly, the learned Magistrate could not have initiated the complaint in the present case.

5. In support of the above contention, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr.*** reported in ***(2005) 4 SCC 370***.

6. Learned A.P.P. for the State and learned counsel for Opposite Party No. 2 have vehemently opposed the application filed by the petitioner and submitted that the complaint was lawfully instituted by the learned Magistrate in accordance with the provisions of law. They further submit that the impugned order suffers from no illegality or infirmity warranting interference by this Court.

7. Having considered the rival submissions advanced on behalf of the parties and upon perusal of the materials available on record, this Court finds that the principal issue for consideration is whether the complaint instituted at the instance of the learned Magistrate is maintainable in view of the provisions of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973. In ***Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr.*, (*supra*)**, the Hon'ble Supreme Court in paragraph no. 33 has held as under:-

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> *33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC 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.*

8. From the facts and circumstances of the case, it is evident that the alleged offence does not pertain to any document which was in *custodia legis*, i.e., in the custody of the Court. Accordingly, in view of the foregoing discussions and the law laid down by the Hon'ble Supreme Court in ***Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another (supra)***, this Court finds merit in the application filed on behalf of the petitioner. Consequently, the complaint is not maintainable and the application is allowed.

9. Accordingly, the impugned order dated 31.07.2018 passed by the learned Additional Sessions Judge-II, Begusarai-cum-Special Judge, Bihar Prohibition and Excise Act, 2016, in Complaint Case No. 136 C-2 of 2017 and all the consequential

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criminal proceedings arising therefrom, is hereby quashed.

(Sandeep Kumar, J)

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