

(1999) 04 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 2854 of 1997-R

Baleshwar Yadav

APPELLANT

Vs

Union of India(UOI) and Others

RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 340
Penal Code, 1860 (IPC) — Section 463, 471, 475, 476

Citation : (1999) 47 BLJR 1957 : (1999) CriLJ 3827 : (1999) 3 PLJR 81

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner seeks indulgence of this Court for issuance of an appropriate writ commanding upon the respondent, Central Bureau of Investigation to institute and investigate the case for preparing a forged and fabricated order of this Court in Second Appeal No. 180/80R and for using the same in connivance with the Circle Officer, respondent No. 4 who wrongly and illegally stopped issuance of rent receipts in favour of the petitioner and has passed an order for issuance of rent receipts in favour of respondent Nos. 5 and 6 on the basis of the forged and fabricate order in Misc. case No. 31/95-96.

2. The relevant facts for the purpose of deciding this writ application are as follows :-

One Bhawan Mahto had two sons, namely, Kheman Mahto and Neman Mahto. Kheman had a son, namely, Bandhan Mahto whereas Neman Mahto had one daughter, namely, Daulti. Both brothers, Kheman and Neman inherited 28.9 acres of land and partitioned the same in equal shares. Neman Mahto had no male child. His daughter Daulti inherited the property of Neman Mahto. She sold 4.62 acres of land in favour of one Satyanand Singh by a registered sale deed dated 30-12-1943. Said Satyanand Singh filed a title suit No. 140/1944 against Barhan Mahto and others with respect to the said purchased land. The said suit

was decreed in favour of Satyanand Singh. Satyanand Singh then transferred the land in favour of Meghu Mahto, father of the petitioner who got his name mutated in the sherista of the State of Bihar with respect to the purchased land measuring 4.62 acres. Subsequently Meghu, father of the petitioner, filed a title suit No. 12/76 in the Court of Munsif, Giridih against Most. Murti and others. The said suit was decreed in terms of the judgments dated 23-6-79. Aggrieved by the said judgment and decree the defendant preferred a title appeal being T.A.No. 28.79 which was dismissed on 25-2-80 by the District Judge, Giridih. It appears that Murti and others then filed Second Appeal in this Court being S.A.No. 102/80R and the same was dismissed on 13-5-85. A copy of the order dated 13-5-85 passed in said S.A.No. 102/80 has been filed and marked annexure 4 to this application.

3. Petitioner's case is that he came to know from reliable sources that the Circle Officer, Halka Karamchari, respondent Nos. 5 and 6 have connived together and the Halka Karmachari submitted a false report on the basis of some forged order passed by this Court in S. A.No. 102/80R and on the basis of the said order the respondent No. 4, the Circle Officer has cancelled his zamabandi without giving any opportunity of hearing to him. It is stated that the petitioner immediately obtained the certified copy of the order dated 21-11-96 passed by respondent No. 4 in Misc. Case No. 31/95-96 as also the report of the Halka Karmachari and found that the certified copy of the ordersheet of this Court was tagged with the record on the basis of which the zamabandi of the petitioner was cancelled. The petitioner inspected the records of Misc. Case No. 31/95-96 and found the photo copy of the certified copy of the order passed by this Court in S.A.No. 102/80R tagged with the same. A photo copy of the said order has been annexed as annexure 7 to this writ application.

4. I have heard Mr. Ramautar Sharma, learned counsel appearing on behalf of the petitioner and Mr. A. Sahay, learned Govt. Advocate. Mr. Sharma mainly submitted that admittedly the photo copy of the order said to have been passed by the Deputy Registrar of the Ranchi Bench of the Patna High Court is forged and fabricated document and the same has been used in a planned manner by the respondents in connivance with each other and, therefore, an intrinsic investigation is necessary in the interest of justice.

5. On the other hand, the learned Govt. Advocate submitted that it is not necessary to get the matter investigated by the C.B.I, rather, it would be proper if the Superintendent of Police is directed to register a case and investigate the same either by himself or by a competent officer so that the forgery and conspiracy may come to light.

6. In order to find out the correctness of the assertions made by the petitioner I have called for the original record of S.A.No. 120/80R. On perusal of the said record it appears that the same was dismissed by a Bench of this Court on 7-1-87. The order dt. 7-1-87 reads as under :-

When the appeal was called out, Mr. Burnwal S. Lal who had filed power on behalf of the appellant submitted that in spite of the repeated reminders he has received no instruction. The appeal stood dismissed against respondent No. 2. The decree, therefore, so far respondent No. 2 is concerned, has become final. If the appeal is allowed to proceed against the other respondent, there may be conflict in its disposal. The appeal is, therefore, not maintainable. It is, accordingly, dismissed.

7. There are some orders passed by Mr. B.P. Jaiswal, the then Addl. Registrar by holding lawazima Board. From perusal of annexure 7 it appears that it is photo copy of an order alleged to have been passed by the then Addl. Registrar. The order reads as under :-

Megh Mahto H/O Bandnani at Ratbad, widow Chauli w/o Tipan Mahto. Jagdish Mahto s/o Meghu Mahto, Goberdhan Mahto s/o Meghu Mahto, Tulsi Mahto s/o Meghu Mahto. Satyanand Singh s/o Magho Singh was present/wife of Fagu Mahto at Gurhu tola-Dangodhi, was remarried by Neman Mahto who became third wife of Neman Mahto widow Daulti was the daughter of Faghu Mahto. She was not a daughter of Neman Mahto. Due to this matter this land was bought or registered. Neman Mahto s/o Bhawan Matho had no son. Bhawan Mahto s/o Kheman Mahto has right for this land whose khata No. 12, Domi Mahto s/o Barhan Mahto and Mangal Mahto s/o Barhan Mahto are the owners of this land. They have right for 28 acres and 9 decimal, land.

Anchal Adhikari and Karmachari are ordered to clear the rasid and other paper ment.

Sd/- B. P. Jaiswal, JJ.

8. As noticed above, some orders were passed by the Joint Registrar/Addl. Registrar by holding Lawazima Board but the order as contained in annexure 7 was never passed by the lawazima Board. From a perusal of the records of Second Appeal No. 120/80R it does not appear that such order was ever passed by the Lawazima Board. It is, therefore, clear that no forgery or interpolation has been committed in the file of Second Appeal No. 120/80R. It is a case where a fabricated and forged order purported to have been passed in the second appeal has been created and the same has been used in a Miscellaneous proceedings pending before the Circle Officer. In such circumstance, the remedy available to the person who is aggrieved by such forged order is to file a complaint against the persons concerned who are, allegedly involved in the creation of that forged and fabricated document.

9. In this connection I must take notice of the principle laid down by the Apex Court in the case of Sachida Nand Singh and Another Vs. State of Bihar and Another, where the scope of Sections 195 and 340 of the Code of Criminal Procedure has been discussed. Their Lordships held :

A reading of the clause reveals two main postulates for operation of the bar

mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463, or any other offence punishable under Sections 471 475 476, IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any Court. There is no dispute before us that if forgery has been committed while the document was in the custody of a Court, then prosecution can be launched only with a complaint made by that Court. There is also no dispute that if forgery was committed with a document which has not been produced in a Court then the prosecution would lie at the instance of any person. If so, will its production in a Court make all the difference.

10. Having regard to the facts and circumstances of the case I dispose of this writ application with a direction to the petitioner to lodge a complaint, if he is so advised, against the person/(s) alleged to have been involved in the commission of forgery by creating forged and fabricated documents and using the same in a proceeding.