
(2016) 09 PAT CK 0030

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 681 of 2016 (Arising Out of PS.Case No. -null Year- null Thana -null District EAST CHAMPARAN (MOTIHARI))

Binod Thakur @ Tuntun Thakur

APPELLANT

Vs

State of Bihar through S.P. East Champaran

RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, Section 340

Citation : (2016) 3 BBCJ 493 : (2017) 1 BLJud 9 : (2017) 1 Crimes 247 : (2017) 1 ECrC 137 : (2017) 1 PLJR 36

Hon'ble Judges : I.A Ansari, CJ.

Bench : Single Bench

Advocate : Mr. Ramadhar Singh, G.P.-25, for the Respondents; Mr. Dhananjay Kumar, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

I.A Ansari, C.J. CAV - The petitioner, namely, Binod Thakur @ Tuntun Thakur, who is the informant of Turkauliya P.S. Case No. 632 of 2015, registered under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, has come to this Court seeking direction upon the respondents for holding enquiry under Section 340 of the Code of Criminal Procedure in respect of allegedly forged school transfer certificate and documents, said to have been produced in the Juvenile Justice Board, Motihari, by accused Prince Raj and Vishal Dubey projecting themselves as juvenile.

2. The facts, leading to the filing of the present writ petition, are, in brief, thus:

(i) On 28.08.2015, at about 5 PM, son of the informant, namely, Sidharth Raj @ Raja (deceased) was taken away by the friend of his son, namely, Sonu, from the room of the informant. At about 7.30 PM, Sidharth Raj @ Raja, and Sonu came back. Thereafter, at about 9.15 PM, Raja, came and took away informant's son, Sidharth Raj @ Raja, from his room. The son of the informant did not come back

through.

(ii) On 29.08.2015, in the morning, morning walkers called the informant and when informant came out of his house, he found the dead body of his son lying by the side of the road. The son of the informant had been shot dead.

(iii) The informant has alleged that Prince Kumar, Rajan Sahni, Prashant, Vishal, Raja and Mani, all were friends of his son, and his son had been shot dead by his friends. It has also been alleged by the informant that about two months prior to the occurrence, his son was threatened of being shot dead.

(iv) Based on the fard-e-beyan given, in writing, by the informant, Turkaulia Police Station Case No. 632 of 2015 came to be registered, under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against six named accused, namely, Prince Kumar, Rajan Sahni, Prashant, Vishal, Raja and Mani.

(v) It is the case of the writ petitioner that upon their arrest, accused Prince Raj and Vishal Dubey filed petitions, in the Court of learned Chief Judicial Magistrate, Motihari, claiming to be juvenile and the matter, was accordingly referred to the Juvenile Justice Board, for ascertaining their age.

(vi) According to the writ petitioner, in support of his claim to be a juvenile, accused Prince Raj produced a School Transfer Certificate of Class 5, issued, on 31.12.2009, by the Headmaster of Government Middle School, Turkaulia, and the co-accused, Vishal Kumar, also produced other documents in support of his claim of being juvenile, and the Juvenile Justice Board, Motihari, by its orders, dated 30.11.2015 and 07.12.2015, declared both the accused as juvenile.

(vii) The writ petitioner claims that on his petition under the Right to Information Act, the Headmaster, Government Middle School, Turkaulia, has informed that according to the admission register of 2007-2008, there is no entry, on 28.07.2007, regarding admission of Prince Raj, S/o Lakshman Pandey and Smt. Seema Pandey, Village Behrampur.

3. It transpires from the order of Juvenile Justice Board, dated 30.11.2015, that on consideration of the documents produced by the teacher of St. Xavier School, the evidence of parents of the accused, the date of birth of the accused was ascertained as 15.06.2000, which stands corroborated from the certificates of C.B.S.E. brought on record and the accused Prince Kumar was, accordingly, declared to be juvenile.

4. So far as accused Vishal Kumar Dubey is concerned, the Juvenile Justice Board, Motihari, has, upon taking into consideration the evidence and the documents produced before it, in support of his claim of being juvenile, declared him juvenile, too, by order, dated 07.12.2015.

5. The informant (i.e., the writ petitioner) preferred an appeal bearing Criminal Appeal No. 3 of 2016, in the Court of learned Sessions Judge, East Champaran, challenging the order of the Juvenile Justice Board, dated 30.11.2015,

aforementioned declaring accused Prince Kumar @ Prince Raj a juvenile, and the said appeal was dismissed as withdrawn at the instance of the appellant with liberty to approach the Juvenile Justice Board under Section 195 and 340(1) of the Code of Criminal Procedure since the order, dated 30.11.2015, had been allegedly obtained by the accused on a fake and forged document from the Juvenile Justice Board.

6. Following the order, dated 29.02.2016, passed by the learned Sessions Judge, Motihari, the informant petitioner moved an application in the Juvenile Justice Board, Motihari, on 30.03.2016, seeking an enquiry to be held under Section 340 of the Code of Criminal Procedure, so that a complaint can be made by the Juvenile Justice Board, Motihari, to the Chief Judicial Magistrate, Motihari, enabling the Chief Judicial Magistrate, Motihari, to take cognizance of the offence of commission of forgery in respect of the School Transfer Certificate/document produced by the accused Prince Raj and Vishal Dubey in Juvenile Justice Board, Motihari, claiming themselves to be juvenile.

7. With the grievance that the Juvenile Justice Board, Motihari, has been delaying the disposal of the application, which has been made by the informant-petitioner and, therefore, appropriate writ needs to be issued directing the Juvenile Justice Board, Motihari, to do the needful in accordance with law, this writ petition under Article 226 read with 227 of the Constitution of India has been filed.

8. Heard Mr. Dhananjay Kumar, learned Counsel, appearing on behalf of the petitioner, and Mr. Ramadhar Singh, learned GP 25, appearing on behalf of the State-respondents.

9. Now, coming to the petitioner's prayer for directing the learned Court below to hold an enquiry under Section 340 of the Code of Criminal Procedure and consequential follow-up action, it needs to be noted that the petitioner submits, as already indicated above, that the accused had filed application(s) for declaring them juvenile, wherein they had enclosed school transfer certificate(s)/documents with regard to their age. It is the submission of the present petitioner that the said documents are forged and, therefore, a complaint needs to be made by the Court concerned upon holding an enquiry in terms of Section 340 of the Code of Criminal Procedure.

10. The question, consequently, which, now, falls for consideration, is:

If a forged document is filed in a Court proceeding, whether an enquiry, under Section 340 of the Code of Criminal Procedure, would be warranted"

11. The question, posed above, bring us to yet another question and the question is:

Whether an enquiry, under Section 340 of the Code of Criminal Procedure, is warranted, when a forged document is filed in a Court or an enquiry under Section 340 of the Code of Criminal Procedure is warranted only when forgery is committed in respect of a document, which is already on the record of the Court

i.e., during the time, when the document is custodia legis?

12. The moot question, therefore, is this:

whether the bar in taking cognizance, created by Section 195(1)(b)(ii) of the Code of Criminal Procedure (in short, "the Code"), applies only when the offence has been committed with respect to a document after the document was already produced or given in evidence in a proceeding in any Court, i.e., during the time, when the document was in custodia legis, or the bar, so created by law, applies even to a document, which had been forged or alleged to have been forged before the document was introduced as evidence in any proceeding in a Court?

13. My quest for a correct answer to the above question brings me to Section 195 of the Code.

14. It is, therefore, necessary to take note of Section 195, which is reproduced herein 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 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 (1) or Sub clause (ii), except on the complaint in writing of that Court, or some other Court to which that Court is subordinate."

15. The relevant provisions of Section 195(1)(b)(i), thus, read, "No Court shall take cognizance - (a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) or 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 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."

16. In the light of the submissions, made before this Court on behalf of the petitioner, when the provisions of Section 195 of the Code are considered, what becomes transparent is that the real controversy, in the present application, revolves around the interpretation of the expression, "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", which occurs in Section 195(1)(b) (ii).

17. In *Surjit Singh v. Balbir Singh*, reported in 1996 CriLJ 2304, the Supreme Court had held to the effect that once a document is produced or given in evidence in a Court, taking of cognizance on the basis of a private complaint of forgery, having been committed in respect of such a document, is completely barred. In other words, irrespective of the fact as to whether a forgery in respect of a document is committed before or after the document is introduced in evidence, the bar, created by Section 195(1)(b)(ii), gets attracted.

18. However, in a subsequent case, namely, *Sachida Nand Singh v. State of Bihar*, the Supreme Court took the view that the bar, contained in Section 195(1)(b)(ii), would not apply, when forgery in respect of a document was committed before the document had been produced in the Court or introduced in evidence. The relevant observations, made, in this regard, in *Sachida Nand Singh* (supra), read thus:

"11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

* * *

24. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court."

19. The controversy, therefore, raised is as to whether the bar, created by Section 195(1)(b)(ii), applies to cases, where forgery of a document is committed before the same is produced in the Court or Section 195(1)(b)(ii) is attracted only when such forgery is committed after the document has already

been produced in the Court. This controversy has been authoritatively resolved by a Constitution Bench in *Iqbal Singh Marwah v. Meenakshi Marwah*, reported in 2005 CriLJ 2161, wherein, concurring with the views, expressed in *Sachida Nand Singh* (supra), the Constitution Bench has held that the bar, under Section 195(1) (b)(ii), would be attracted only when the offences enumerated therein have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court, when the document was in custodia legis. The relevant observations, made in this regard, read as under (Para 25 of Cri LJ):

"33. In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii), 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."

20. In the light of the authoritative pronouncement in *Iqbal Singh Marwah* case (supra), there can be no escape from the conclusion that when a document is forged and, then, produced in a Court, the complaint, as regards the offence of forgery, can be lodged by anyone and no formal complaint by the Court, where the forged document is filed or introduced, is necessary. However, a complaint by a Court is necessary only when forgery in respect of a document is committed after the document has already been produced in the Court or introduced in evidence, when the documents was custodia legis.

21. Section 195 is one of the exceptions to the general provisions of Section 190 inasmuch as Section 195 creates an embargo upon the Magistrate's power to take cognizance of certain specified offences. The procedure for filing of a complaint by a Court contemplated by Section 195(1) (b)(ii) is given in Section 340, Cr. P. C. This Section reads:

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) bring over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by Sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section (1) in, respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-section (4) of Section 195."

22. If the provisions of Section 340 of the Code are carefully analysed, it becomes clear that the Court is not bound to make a complaint as regards commission of an offence referred to in Section 195(1)(b)(ii), for, the Court has to be of the view that it is expedient, in the interest of justice, to make the complaint. The Court, in *Iqbal Singh Marwah* (supra), has held that the language of Section 340 shows that a Magistrate will lodge a complaint only if the interest of justice requires and not in every case. Before filing the complaint, observes the Supreme Court in *Iqbal Singh Marwah* (supra), the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b) (ii) and that this expediency will, normally, be judged by the Court by weighing not the magnitude of the injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, which the commission of offence may have upon administration of justice.

23. From the order, dated 29.02.2016, passed by the learned Sessions Judge, Motihari, in Criminal Appeal No.03 of 2015, I must hasten to point out, it becomes clear that the order of the learned Sessions Judge was misconceived in law inasmuch as no enquiry, under Section 340 (i) of the Code of Criminal Procedure, is envisaged in respect of a document, which has been forged before it is produced as a piece of evidence in a proceeding; rather, an enquiry, under Section 340 of the Code of Criminal Procedure, is warranted only when forgery is committed in respect of a document, which is custodia legis.

24. In the backdrop of the position of law discussed above, when I turn to the facts of the case at hand, what becomes glaringly noticeable to the eyes is that in the present case, the School Transfer Certificate, in question, was allegedly forged before the same was introduced into the record of the case. In such a situation, when the document was alleged to have already been forged before the same was introduced into the materials on record, the question of any formal complaint being lodged by the Court, wherein the alleged forged School Transfer Certificate was filed, does not arise at all.

25. The petitioner will, however, remain at liberty to either lodge a First Information Report or institute a complaint in a criminal Court of competent jurisdiction as regards the forgery, which is alleged to have been committed by the accused-respondents in respect of their age claiming themselves to be juvenile.

26. Because of what have been discussed and pointed out above, I do not find that the case at hand requires holding of any inquiry under Section 340 of the Code and/or making of complaint by the learned Court below. No direction can, therefore, be given for holding any enquiry under Section 340 of the Code of Criminal Procedure and/or for making a complaint as has been sought for.

27. With the above observations and directions, this petition is closed and shall, accordingly, stand disposed of.