
(1999) 07 PAT CK 0131
In the Patna High Court
Case No : C.W.J.C. No. 2932/92 (R)

M.S. Chhabra

APPELLANT

Vs

Indian School of Mines and Others

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 195, 340, 340(i), 463
Penal Code, 1860 (IPC) — Section 193, 194, 195, 196, 199

Citation : (1999) 3 PLJR 799

Hon'ble Judges : B.N. Agrawal, Acting C.J.; S.K. Singh, J

Bench : Division Bench

Advocate : In Person, for the Appellant; Mihir Kumar Jha and Prafulla Kumar for M/s B.K. Rao, A.K. Ghosh, B.B. Dhar, A.N. Tripathi, S.C. Mallick and K. Paul, Dr. S.N. Jha for Indian School of Mines and M/s G.P. Sukla and K.N. Choubey for Mr. S.C. Das, for the Respondent

Judgement

Shiva Kirti Singh, J.—At the very out-set it is relevant to note and emphasise that this writ application was finally disallowed by a Division Bench of this Court vide Judgment and Order dated 5th April, 1994 against which the petitioner preferred SLP (Civil) No. 16793/94 before the Supreme Court and the same was also dismissed by the Apex Court vide order dated 7.2.1995 but while dismissing the SLP the Supreme Court went into an issue raised by the petitioner with regard to genuineness of a letter dated 9.6.1992 purported to have been written by one Vikash Prasad, the Assistant Inspector General of Registration, Patna to Professor M. Ramakrishna, Registrar of the Indian School of Mines, Dhanbad. After issuing notice to one Vikrama Prasad, the Assistant Inspector General of Registration and on the basis of his affidavit which disclosed this Court to take action under the provisions of Section 340 of the Criminal Procedure Code with respect to that letter since that letter had been used by the respondents in the case as an annexure in one of the counter affidavits filed by Shri M. Ramakrishna. It appears that the original letter in question along with the

envelop was produced before the Supreme Court and under the orders of the Supreme Court the same was also sent to this Court in a seal cover for taking necessary action. Thus, it is clear that the present proceeding in this case has been started only upon the aforesaid direction of the Supreme Court as contained in the order dated 7.2.1995 which is quoted hereunder:

Mr. A Sharan Learned Counsel is discharged from the petition. The petitioner appears in person. The SLP is dismissed. It appears that a letter dated 9.6.92 in Hindi was purported to have been written by one Vikas Prasad the Assistant Inspector General of Registration, Patna to Professor Mr. Ramkrishna Registrar of the Indian School of Mines, Dhanbad intimating therein that the amendments made to the rules and regulations was approved by the office of the Inspector General of Registration. In the affidavit filed in the court by one Vikrama Prasad the Assistant Inspector General of Registration in the present proceedings he has stated that no such letter was issued by him and that the letter appears to be forged. It is, however, necessary to clarify that he has not thrown any light in his affidavit as to who was Vikas Prasad who is alleged to have sent a letter in original which was produced before the High Court as annexure to the affidavit of the acting Registrars, in the Writ Proceedings.

In view of the denial by Vikrama Prasad that any such letter was sent by his office the matter assumes serious proportion and requires inspection. We, therefore, direct the High Court to take action under the provision of Section 340 of the Criminal Procedure Code with respect to this letter. The letter in question together with the envelope is taken on the file of this Court. The letter and the envelope should be sent by the Registry of this Court in a sealed cover to the High Court of Patna, for taking necessary action.

2. From the record of this case it appears that on receipt of the aforesaid order of the Supreme Court, on 21.2.95, Ranchi Bench of this Court issued notices to Mr. M. Ramakrishna as to why an enquiry be not made against him with a view to filing a complaint for swearing a false affidavit and for enclosing therewith fake document, as the author of the document has denied to have issued any such letter. On receipt of said notice Mr. M. Ramakrishna filed a show cause in which he alleged that the letter in question dated 9.6.1992 was brought from the office of the Inspector General of Registration, Patna by one Shri A.K. Singh, Estate-cum-Security Officer in Indian School of Mines. In view of such statement in the show cause of Mr. M. Ramakrishna a notice was also issued to Shri A.K. Singh, as per order dated 17.1.97 pursuant to which Shri A.K. Singh appeared and filed his show cause. Thereafter the petitioner, Mr. M.S. Chhabra also appeared and prayed for giving him an opportunity of hearing before passing any order. On 7.7.97 Ranchi Bench of this Court heard the matter and ordered the Inspector General of Registration, Patna to produce the original record/register kept in his office and those records were received and kept in a seal over. From the order dated 5.8.97 it appears that Mr. M.M. Banerjee appearing on behalf of Mr. Ramakrishna also filed sealed cover containing certain documents which were

also ordered to be kept on record. Subsequently, it appears that on the request of Mr. Chhabra, the petitioner who was appearing in person, by an Administrative Order dated 23.9.97 passed in accordance with proviso to Rule 3 of Chapter XXVI of the Patna High Court Rules the matter was directed to be heard at Patna and accordingly on 4.12.97 fresh notices were issued to Mr. M. Ramakrishna and to Mr. A.K. Singh intimating them that the proceeding of the case shall be conducted at Patna High Court, Patna. They were again asked to show cause as to why appropriate action may not be taken against them for filing forged document in the writ petition. On the request of petitioner, on 9.1.98 notice was issued to the Director, Indian School of Mines, Dhanbad. On 6.3.98 Mr. M.S. Chhabra appeared in person and submitted an application purporting to be u/s 340 of the Code of Criminal Procedure wherein he prayed for taking appropriate action against the following ten persons named by him in the said petitions?(1) Mr. B.K. Rao (2) Mr. A.K. Ghosh (3) Mr. M. Ramakrishna (4) Mr. A.K. Singh (5) Mr. A.N. Tripathi (6) Mr. S.C. Das (7) Mr. B.B. Dhar (8) Mr. K.S. Majumdar (9) Mr. S.C. Mallick and (10) Mr. K. Paul. Since Mr. M. Ramakrishna and Mr. A.K. Singh had already appeared through their respective counsels, notices were issued against the remaining eight persons pursuant to order dated 6.3.98 to this effect.

3. At the aforesaid juncture, against the order dated 6.3.98 whereby notices were ordered to be issued against the eight more persons, a SLP was preferred before the Supreme Court and further proceeding in this case were stayed as per interim order of the Apex Court dated 13.4.98. Subsequently the SLP was dismissed and stay order was vacated as per order of the Apex Court dated 21.1.99. Thereafter the respondents were granted time for filing counter affidavits and ultimately by order dated 22.4.99 the matter was directed to be placed for hearing as first case on 26th April, 1999.

4. When the case was taken for hearing by us on 17.5.99 on hearing both the sides and in view of stand taken by some of the respondents in their counter affidavits it was deemed necessary to give notice and hear Shri S.C. Das and Sri Bikrama Prasad since the former was a Section Officer in the office of Inspector General of Registration, Patna during the relevant time and the latter was an assistant Inspector General of Registration, Patna whose purported signature appeared on the letter in question dated 9.6.92. As noted in order dated 20.5.99 the aforesaid two persons also appeared in this case and they were given sufficient opportunity, as desired by them to obtain copies of necessary papers from the petitioner. Subsequently they have also filed their respective show causes/counter affidavits through their respective counsels. Further hearing was assumed on 25.6.99 after the annual vacation and all the parties were given sufficient opportunity to inspect the documents and files kept in the sealed covers. All the parties availed the said opportunities and were heard at length in the matter of enquiry u/s 340 of the Code of Criminal Procedure as directed by the Hon"ble Supreme court.

5. It is relevant to mention that through an affidavit dated 1.8.97 Mr. Chhabra

the petitioner not only alleged various omissions and commissions by the aforesaid ten persons against whom this Court issued notice on 6.3.98 in relation to the alleged forgery but also prayed that the judgment passed in this case on 5.4.94 may be declared a nullity and thereafter further reliefs as originally prayed in the writ application be also allowed. This prayer by Mr. Chhabra was in effect to recall the order dated 5.4.94 on the ground that the same was obtained by the respondents on the basis of fraud practised by the production of a forged letter dated 9.6.92 and writ application be heard afresh and the same was strongly pressed by Mr. Chhabra in course of the present proceeding and was equally vehemently opposed by the Learned Counsel appearing for the Indian School of Mines, Dhanbad.

6. For the purposes of this proceeding it is essential to keep in mind the provisions of clause (b) of sub-section (i) of Section 195 and Section 340(i) of the Code of Criminal Procedure (hereinafter referred to as the Code). Section 195 contains a provision with regard to prosecution for contempt of lawful authority of public servants, for the offences against public justice and for offences relating to documents given in evidences. With regard to offences enumerated or described therein a bar has been created against taking cognizance by any court except on the complaint in writing of the concerned court or of some other court to which that court is subordinate. Clause (b) of sub-section (i) of Section 195 contains 3 sub-clauses. Sub-clause (i) relates to offences punishable under sections 193 to 196, 199, 200, 205 to 211 and 228 of the Indian Penal Code when such offence is alleged to have been committed in, or in relation to, any proceeding in any court. The aforesaid offences of the I.P.C. relate to punishment for false evidence, using evidence knowing it to be false etc. Sub-clause (ii) refers to offences described in section 463 that defines forgery, or punishable under sections 471, 475 or 476 of the Indian Penal Code that issuing as genuine a forged document etc. When such offence is alleged to have been committed in respect of a document produced or (iii) refers to any criminal conspiracy to commit or attempt to commit, or the abetment of any offences specified in sub-clause (i) or sub-clause (ii).

7. Section 340 of the Code provides the procedure in cases mentioned in section 195 and empowers any court, when it is of opinion that it is expedient in the interest of justice that an enquiry should be made into any offence to record the required finding and make a complaint thereof in writing, after such preliminary enquiry if any, as it thinks necessary when any offences referred to in clause (b) of sub-section (i) of section 195 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.

8. As the subsequent discussions and stand of the parties in the matter would reveal, in this case the applicability of section 340 of the Code is not in much dispute. It is an admitted position that Mr. Ramakrishna, the then acting Registrar of Indian School of Mines, Dhanbad swore a counter affidavit dated

20.1.93 which was filed in this case on behalf of the respondent Indian School of Mines, Dhanbad on 21.1.93 and alongwith the said counter affidavit the letter in question dated 9.6.92 was annexed as a part of annexure-A. As appears from the affidavit of Mr. Vikrama Prasad, the then Assistant Inspector General of Registration the supposed author of the said letter, filed before the Supreme Court and also from his counter affidavit filed in this case, he has disowned the said letter. His stand is that the said letter bearing despatch number 1206 dated 9.6.92 was never issued from his office. In his affidavit before the Supreme Court he asserted that for several reasons the said letter appears to be a forgery but there he did not state in so many words that signature appearing on the said letter is not his own signature. Much later, through a supplementary counter affidavit filed in this case on the last date of hearing he has taken the stand that after inspecting the document in question in the High Court he is of the view that the signature appearing on the said letter is not his signature. The stand of the petitioner that the said letter is a forged document has not been controverted by any of the persons who were given notices of this enquiry. Some of them admit this letter to be a forged document while some of them have preferred to maintain silence on this issue. In the totality of the facts and circumstances appearing on the records, for the purposes of this enquiry u/s 340 of the Code, it can be safely held that offences referred to in clause (b) of sub-section (i) of Section 195 of the Code appear to have been committed in respect of the letter in question dated 9.6.92 which is a document produced in evidences in this writ proceeding as an annexure to the counter affidavit sworn by Shri M. Ramakrishna filed in this case on 21.1.93. this Court, accordingly, records a finding to that effect.

9. The aforesaid finding is not based merely on the stand of the parties but is warranted and clearly supported by various facts and circumstances appearing on record of the case. In this regard, Mr. Chhabra took great pains to point out the background in which the respondent, Indian School of Mines, Dhanbad and its concerned officials chose to take a clear stand through an affidavit sworn by Mr. A.N. Tripathi, an Assistant Registrar in the Indian School of Mines filed on 13.11.92 whereby they denied the petitioner's claim that 20 persons whose names were shown in annexure 30 to the writ petition as members of the General Council and participants in the special meeting of the general council dated 11.6.92 in which Mr. Chhabra's appeal was rejected included persons who were not legal and valid members of the general council on that date. Thus, by the affidavit of Mr. A.N. Tripathi dated 13.11.92 the respondent in the writ petition disputed and denied the case of Mr. Chhabra that 11 persons out of a total of 20 who participated in the special meeting on 11.6.92 were legally not the members of the general council and were not entitled to participate in the said proceeding. This stand of the respondent as per the said affidavit dated 13.11.92 was based upon and supported by a certificate said to have been issued by the Inspector General of Registration, Patna. However, the said certificate was not annexed with the affidavit filed on 13.11.92. Since the said issue was further

pressed and persued by Mr. Chhabra, this Court while admitting the writ application on 16.12.92 directed the respondents to file a counter affidavit on the said issue and thereafter the relevant counter affidavit sworn by Mr. M. Ramkrishna, the acting Registrar of the Indian School of Mines Dhanbad was filed on 21.1.93. A perusal of the said affidavit shows that the original para-1 in which name of Mr. A.K. Ghosh, the Director of Indian School of Mines appeared as the person swearing the said affidavit was penned through and was replaced by another paragraph-1 showing Mr. M. Ramakrishna as the person who was authorised to swear that affidavit on behalf of the respondent. Paragraph-6 of the said counter affidavit was also amended by hand with an insertion mentioning the letter in question dated 9.6.92 as a part of annexure-A while originally annexure A was confined to a certificate dated 18.6.92 issued from the office of Inspector General of Registration, Patna, to support the stand that all the participants in the special meeting of general council held on 11.6.92 were its valid members in accordance with amended rules duly registered with Inspector General of Registration, Patna.

10. The argument advanced by Mr. Chhabra was that all officials concerned with management of the Indian School of Mines were fully aware that the intial proposal for getting the amendment in the rules registered in the office of Inspector General of Registration, Patna was sent on 18.2.92 but the same was found to have some defects and therefore, it was returned on 29.5.92. Thereafter the said defects were removed and resent by the Indian School of Mines to the office of Inspector General of Registration on 6.6.92 and were received in the office only on 16.6.92 as per entry no. 1629 appearing in the receipt register of that office, a true copy whereof has been brought on record of this proceeding by Mr. Chhabra. Therefore, according to Mr. Chhabra all the concerned officials of Indian School of Mines knew that the alleged letter shown to have been issued by the then Assistant Inspector General of Registration, Patna dated 9.6.92 was a forged letter but still they not only connived and abeted with its forgery but also were parties to its being used in this case by way of evidence to show that the amended rules had been duly registered on 9.6.92 i.e. two days before the special meeting of the general council dated 11.6.92. The aforesaid circumstances were placed by Mr. Chhabra to show that there was motive for committing the offence in question.

11. The petitioner further submitted that true copies of despatch registers of the office of Inspector General of Registration which have been brought on record by him clearly show that no such letter with despatch no. 1206 was ever issued on 9.6.92 and that it could not have been issued because the reply of Indian School of Mines to the defects pointed out in letter dated 6.6.92 was received in the office of the Inspector General of Registration, Patna only on 16.6.92 and therefore a certificate showing registration of the amended rules was admittedly issued only on 18.6.92. Even the name of Assistant Inspector General of Registration was wrongly mentioned as Vikas Prasad in place of the correct name Vikrama Prasad. The original envelope of the said letter does not bear any

despatch number. It was further submitted that a perusal of the original records of the concerned file of the office of Inspector General of Registration, Patna which was called for by this Court and was kept in sealed cover would show that there is no notings in the file to show that the decision conveyed through letter dated 9.6.92 was actually taken in the files and there is nothing to show such letter having been authorised or actually issued. In fact the said submissions find full support from the original file which also shows that the Inspector General of Registration, Patna also got the genuineness of the letter in question dated 9.6.92 enquired departmentally and as per his notings dated 21.2.95 the said letter was found to be a forged and fabricated letter for various reasons some of which have been submitted above by Mr. Chhabra. The various grounds on which this letter has to be held a forged and fabricated one also find mentioned in detail in paragraph 7 of the counter affidavit filed by Mr. Vikrama Prasad in this Court, All these materials, thus, leave no scope but to come to a conclusion that offences referred to clause (b) of sub-clause (i) of section 195 appear to have been committed in respect of the letter in question dated 9.6.92 as already held earlier.

12. As a consequence of the aforesaid finding a complaint in writing has to be made and sent to a Magistrate having jurisdiction in the matter. Now the question arises as to who are the persons prima facie, involved in the commission of the offences in question. On this issue it is to be noted that initially notice was issued to Mr. M. Ramakrishna who has admittedly sworn a counter affidavit on behalf of respondent and filed in this case on 21.1.93 annexing therewith the letter in question dated 9.6.92 as part of annexure-A to support his plea that the rules and regulations were duly amended and registered in the office of inspector General of Registration, Patna before the special meeting dated 11.6.92. His involvement in the matter is therefore, quite apparent. In his counter affidavit Mr. M. Ramakrishna, the Acting Registrar of Indian School of Mines, Dhanbad has pleaded that he believed the said letter to be genuine and that it was brought from the office of Inspector General of Registration, Patna by Mr. A.K. Singh the Estate-cum-Security Officer of Indian School of Mines, Dhanbad by hand. At this stage it is difficult to accept the defence of Mr. M. Ramakrishna. So far as Mr. A.K. Singh is concerned he had filed an affidavit before the Supreme Court admitting the allegation of Mr. Ramakrishna that he had brought the letter in question from the office of Inspector General of Registration, Patna. In that affidavit before the Supreme Court he further disclosed that he was handed over the said letter by Mr. S.C. Das, a Section Officer in the office of Inspector General of Registration. In his counter affidavit filed before this Court also Mr. A.K. Singh has accepted the allegation of Mr. Ramakrishna but here in this Court he has left the matter vague and has not disclosed as to who was the person in the office of Inspector General of Registration, Patna who gave him the letter in question, it is relevant to note here that there is no corresponding entry in the despatch register of the office of Inspector General, Registration to show that Mr. A.K. Singh received any letter

either in his name or in the name of the Professor M. Ramakrishna, the Acting Registrar in whose name the letter dated 9.6.92 purports to have been issued. Prima facie, therefore, at this stage the materials disclose involvement of Mr. M. Ramakrishna and Mr. A.K. Singh in the matter of forgery of letter dated 9.6.92 and in its production and use in this Court.

13. As noticed earlier, at a subsequent stage notice in this matter was issued to ten persons including Mr. M. Ramakrishna, Mr. A.K. Singh, Mr. S.C. Das and Mr. A.S. Majumdar. this Court on the basis of materials appearing in the show cause of persons noticed further secured attendance of one person namely Mr. Bikrama Prasad who has also filed his counter affidavit. It is admitted at the bar that Mr. A.S. Majumdar is already dead. Therefore besides Mr. M. Ramakrishna and Mr. A.K. Singh there are eight more persons whose involvement in this case has been alleged and gone into by us. Out of these eight Mr. A.K. Ghosh was the then Director of Indian School of Mines, Dhanbad and Mr. A.N. Tripathi was the Assistant Registrar (Establishment). So far as Mr. A.K. Ghosh is concerned, being the Director of the institution as per its rules and regulations he was the person in whose name Dhanbad School of Mines was sued. In that capacity he was bound to be fully involved and in know of all the concerned materials. The counter affidavit filed in this Court on 21.1.93 was originally to be sworn by him as is clear from the original paragraph-1 of that counter affidavit which was later penned through. In his counter affidavit in this Court he has no doubt denied to have ever settled the said counter affidavit but at the same time in paragraph-3 thereof he has admitted that he very well recollects that such counter affidavit of Mr. M. Ramakrishna was filed in this case in consultation with the counsel, late Shri Majumdar. At this stage, this rather shows that he was well aware of the filing of such a counter affidavit in which a forged letter was used on behalf of the Indian School of Mines, Dhanbad, the respondent who was sued in this case through the Director. So far as Mr. A.N. Tripathi, the Assistant Registrar is concerned, his counter affidavit filed in this case on 31.11.92 contains a clear averment in paragraph 1 that as an Assistant Registrar (Establishment) in the respondent School he was dealing with the subject matter of the writ and as such he was well acquainted with the facts and circumstances of the case. Further in paragraph 12 of that counter affidavit a foundation was laid for the contentious issue by specific averment that the persons whose names appeared at serial nos. 9 to 19 of annexure-30 they were/are members of the general council on that date as would be evident from the certificate granted by the Inspector General of Registration, Bihar, Patna under the Societies Registration Act. Thereafter he did not annex the said certificate which was dated 18.6.92 and was not of any date prior to the holding of the special meeting on 11.6.92. Only a leave was sought to produce the said certificate at the time of hearing if necessary. Even the date of that certificate was not mentioned. Later on through the letter in question dated 9.6.92 brought on record through counter affidavit filed on 21.1.93, this very issue was dearly the foundation for raising such an issue was laid before this Court through the averments made by Mr. A.N.

Tripathi. Thus, in the light of materials in this proceeding prima facie, Mr. A.K. Ghosh and Mr. A.N. Tripathi both officials belonging to Indian School of Mines, Dhanbad at the relevant time, appear to be involved in the offences in question.

14. The other group of officials who have been noticed and belonged to the office of Inspector General of Registration Patna includes Mr. S.C. Das who was a Section Officer at the relevant time and Mr. Vikrama Prasad who was the then Assistant Inspector General of Registration. So far as Mr. S.C. Das is concerned it has already been noticed that his name was disclosed by Mr. A.K. Singh in his affidavit filed before the Supreme Court as the person who handed over the letter in question to Mr. A.K. Singh. The letter in question bears a despatch number which was actually used in the office of Inspector General of Registration, Patna in the month of June, 1992 itself but in relation to a different letter issued to a different person of a different place in connection with different matters. Hence, even if, the assertion of Mr. A.K. Singh to the extent that this letter was handed over to him by Mr. S.C. Das is not disputed at this stage, it is clear that the said letter prima facie being a forged letter, Mr. S.C. Das, at this stage, must be held to be involved in this matter like Mr. A.K. Singh. So far as Mr. Vikrama Prasad is concerned no doubt he as the maker of this letter disowned it before the Supreme Court as well as before this Court but as noticed earlier, until the last date of hearing he did not take a clear stand that the signature appearing on this letter was not his signature. On the other hand in paragraph 7(v) of his counter affidavit filed before this Court he took the stand that technically the letter in question is a routine type of a letter and as a practice in the office, for his signature on such routine type of letters fair copies of such letters are put up without file and the deponent in his official capacity had merely to put his signature on such routine letters. Such a stand in fact indicates that he considered the signature in question to be his own signature. In such circumstances the signature appearing on this letter dated 9.6.92 was compared by us with his admitted signatures appearing on page nos. 137, 140, 141, 187 and 224 of the original file received in this Court from the office of Inspector General of Registration, Patna. Such a comparison shows that the signature on the letter in question could very well be that of Mr. Vikrama Prasad and since we have prima facie found that letter to be forged and fabricated inasmuch as it was never issued from the office of the Inspector General of Registration, Bihar, Patna as it purports to be, hence, at this stage, the materials on record indicate the prima facie involvement of Mr. Vikrama Prasad also in the offences that appear to have been committed with respect to letter dated 9.6.92.

15. So far as the other four persons are concerned, Mr. B.K. Rao was the then Chairman of the Indian School of Mines Dhanbad and Mr. B.B. Dhar was allegedly one of the members of its general council and also of its Executive Board. Some official action by these two persons such as summoning of meeting or signature on official papers till the special meeting dated 11.6.92 were pointed out to us but nothing was brought to the notice of this Court to show that either of them had any concern with this particular writ application or the counter affidavits filed

in this case or with any paper showing that they had or even they could have any knowledge of the letter in question dated 9.6.92. In fact it is an admitted position that Mr. B.K. Rao had gone abroad between March 1992 to August 1992. So far as Mr. K. Paul is concerned as a Director General of Mines Safety he was also an ex-officio member of the general council and Executive Board. His position in this matter is same as that of Mr. B.K. Rao and Mr. B.B. Dhar and at this stage there does not appear any material to hold even prima facie that either Mr. B.K. Rao or Mr. B.B. Dhar or Mr. K. Paul were in any way involved in offences in respect of the letters in question dated 9.6.92.

16. The only remaining person who was noticed in this case in connection with this enquiry u/s 340 of the Code is Mr. S.C. Mallik an advocate of Dhanbad who has been retained counsel of Indian School of Mines, Dhanbad for several years. Only material pointed out against Mr. Mallik was that he as a counsel signed and presented the proposal for registration of amended rules in the office of Inspector General of Registration Patna in February, 1992. The said proposal, as required by rules was signed by three persons as members of the Executive Board which included Mr. B.B. Dhar and Mr. K. Paul. The act of a counsel in presenting such papers for registration in accordance with the instruction of his clients cannot make him a party to any illegality committed by his clients. Moreover, so far as this enquiry is concerned the signing or presentation of the proposal for registration of amended rules in the office of Inspector General, Registration in the month of February 92 is of no relevance. Thus, there is no material on record to show at this stage even prima facie involvement of Mr. Mallik with the offences in question. Summarising the aforesaid discussions with regard to the individual persons it has to be held that at this stage of enquiry u/s 340 of the Code there are materials to show that prima facie Mr. M. Ramakrishna, Mr. A.K. Singh, Mr. A.K. Ghosh, Mr. A.N. Tripathi, Mr. S.C. Das and Mr. Vikrama Prasad appear to be involved in various offences referred to in clause (b) of sub-clause (i) of Section 195 of the Code in relation to letter in question dated 9.6.92 which was produced before this Court as part of the Annexure-A to the counter affidavit filed in this case on 21.1.93.

17. It may be noted here that the petitioner, Mr. Chhabra had, in an affidavit dated 28.6.92 suggested the names of Mr. M.M. Sarkar, P.A. to Registrar, Indian School of Mines and Mr. Surendra Jha, the then dealing assistant in the office of the Inspector General of Registration, Patna for action u/s 340 of the Code but subsequently nothing was brought on record against them and through an affidavit filed by Mr. Chhabra on 5.5.99 the said names were sought to be withdrawn from this proceeding. It is made clear that so far as other persons who were noticed in this proceeding namely Mr. B.K. Rao, Mr. B.B. Dhar, Mr. S.C. Mallik and Mr. K. Paul are concerned, at this stage of preliminary inquiry we have not found materials to show their involvement in the offences concerned but it is made clear that in any consequent and subsequent proceeding based upon complaint to be filed by the Registrar General of this Court in pursuance of this order, it shall be open to the court concerned to take action against any one of

them or any other person besides them in accordance with law if further materials so warrant. This disposes of the inquiry u/s 340 of the Code which was directed to be made by the Supreme Court and which, in the facts of this case, this Court also found expedient in the interest of justice to hold.

18. It was noticed earlier that through an affidavit dated 1.8.97 Mr. Chhabra, the petitioner prayed for declaring the judgment of this Court passed in this case on 5.4.94 a nullity. At the hearing stage he strongly pressed the aforesaid prayer and tried to persuade us to recall that order by holding that the same has been obtained by practicing fraud due to introduction of the letter in question dated 9.6.92 in the records of this case and further prayed that in case the judgment of the Division Bench is found a nullity then his writ application should be heard afresh and he should be granted all the relief that he had prayed for in this writ application. In support of this contention Mr. Chhabra vehemently argued that in fact it should be inferred from the order of the Supreme Court dated 7.2.95 that the letter in question dated 9.6.92 had already been held to be a forged letter and that once this Court Come to the same conclusion, which according to him it is bound to, there was no other course left for this Court but to hold that the judgment dated 5.4.94 was obtained by the respondent on the strength of forgery and fraud and, therefore, the same had to be declared a nullity. For this purpose he relied upon a judgment of the Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, in which it has been laid down as a proposition of law that a judgment and decree obtained by playing fraud on the court is a nullity and non-est in the eye of law and that a person whose case is based on false-hood, has no right to approach the, court. He can be summarily thrown-out at any stage of litigation. The petitioner, was conscious of the fact that after dismissal of the writ petition by a lengthy judgment dated 5.4.94, his SLP had also been dismissed by the Supreme Court by the same very order dated 7.2.95 by which the order of inquiry u/s 340 of the Code was referred to this Court. Realising his difficulties on this count he relied upon judgment of the Supreme Court in the case of Indian Oil Corporation Limited vs. The State of Bihar & ors (AIR 1986 S.C. 1780) for the proposition of law that the dismissal of a SLP in limine by a non speaking order does not justify any inference that by necessary implication the contentions raised in the SLP on the merits of the case have been rejected by the Supreme Court.

19. On the other hand, Dr. S.N. Jha, learned Senior Advocate appearing on behalf of Indian School of Mines, Dhanbad raised a strong objection against the plea of Mr. Chhabra on the ground that a perusal of the order of Supreme Court dated 7.2.95 would show that even after coming to know of all the allegations regarding forgery etc. with regard to letter dated 9.6.92 the Supreme Court while remitting the matter to this Court only for the purpose of holding an enquiry u/s 340 of the Code chose to dismiss the SLP and found no case made out by the petitioner either to keep the matter pending before it or to set aside the order of the Division Bench and make an order for remand. According to Mr.

Jha after the dismissal of SLP against the Division Bench judgment in this case dated 5.4.94, it was not open to this Court to go into the validity of judgment dated 5.4.94 on any ground whatsoever. To substantiate this stand Dr. Jha relied upon judgment of Hon''ble Supreme Court in the case of Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, , in the case of Gopa Bandhu Hiswal vs. Krishna Chandra Mohanti (A.I.R. 1998 S.C. 1870) and in the case of U.H. Jadhav and Others Vs. Union of India and Others, .

20. Dr. Jha further argued on behalf of the respondent that in view of finding given in paragraph 39 of the judgment of this Court dated 5.4.94 it cannot be said that the said judgment was in any material way dependent upon the letter dated 9.6.92 which is alleged to be a forged letter. Elaborating this point it was submitted that the letter dated 9.6.92 was discussed and relied upon at the end of paragraph-39 of the said judgment to hold that the amendments were approved on or before 9th June 1992 by the Inspector General for Registration and therefore, the rules and regulations stood amended on 9th June, 1992. However, in the earlier part of paragraph 39 of the judgment the Division Bench had noticed rule 16 which provides that the general council or the Executive Board shall function notwithstanding any vacancy therein and notwithstanding any defect in the appointment/nomination, co-option or election of any member, and no act or proceeding of the general council or of the Executive Board shall be invalidated or nullified merely by raising only of the existence of any vacancy therein, or of any defect in the appointment, nomination, co-option or election of any member. After noticing the said rule it was further held that;

Rule 16, therefore, furnishes a complete answer to the submission urged by the petitioner. Even if it is assumed that the head of the departments who took part in the deliberations of the general council which resolved to dismiss the appeal of the petitioner, were not only nominated or appointed as members of the general council, the decision of the general council could not be invalidated or nullified for that reason alone.

21. On the aforesaid question as to whether the judgment of this Court dated 5.4.94 can be declared a nullity or not in this very case when the matter has been sent back to this Court by the Apex Court only for the purpose of holding an enquiry u/s 340 of the Code after expressed dismissing the SLP filed against the said judgment dated 5.4.94, there does not appear to be much difficulty in holding that in the facts of the case it will not be proper for this Court to go into merit and validity of the judgment dated 5.4.94 when the SLP against the same has already been dismissed by the Supreme Court. There can be no quarrel with the general proposition of law as laid down in the judgment of the Apex Court reported in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, but the crucial question which remains to be answered is whether it is proper for an inferior court, in this case the High Court, to embark upon an enquiry into the possible effect of an alleged fraud upon a judgment between the same parties when a higher court, in this case the Supreme Court,

has already heard the parties on the possible merits and demerits of the said judgment including the possibility of the alleged fraud affecting the said judgment and has thereafter allowed the judgment in question to attain finality. With regard to this question, in my view, the judgment of the Apex Court in the case of Indian Oil Corporation Limited (*supra*) is not of any help to the petitioner because in that case the earlier SLP before the Supreme Court had been filed directly against the award of a Labour Court and therefore, when the High Court, after the dismissal of the SLP treated its jurisdiction under Article 226 of the Constitution as having become barred by dismissal in limine of the special leave petition, the Supreme Court held such decision of the High Court to be erroneous in law. In this case the SLP was filed against a Division Bench Judgment rendered by this Court in exercise of jurisdiction under Article 226 of the Constitution and the Apex Court declined to interfere with the said judgment by dismissing the special leave petition. Admittedly the ground of fraud was also raised before the Supreme Court. In my view when the petitioner felt that the ground of fraud was available to him against the judgment of this Court dated 5.4.94 he had to elect between two remedies available to him. One was to approach the Supreme Court through SLP and the other was to apply before this Court for seeking review. Once he elected to file SLP before the Supreme Court and the same was rejected, he cannot be allowed to come to this Court and seek a review on any ground whatsoever. This view is supported by the judgment of the Supreme Court in the case of Gopa Bandhu Biswal (*supra*). In that case the Supreme Court held that where a SLP for leave to file an appeal preferred from the judgment of an Administrative Tribunal to Supreme Court was rejected, the rejection in effect amounts to declining to entertain appeal, thus, making the judgment and order appealed against final and binding and that once a SLP is filed and rejected, the party cannot go back to the Tribunal to apply for review. In my view, the other two case laws cited by Dr. Jha are not of much relevance for the matters in issue.

22. In view of the aforesaid discussions and finding the prayer of Mr. Chhabra to recall the judgment and order of this Court dated 5.4.94 has to be rejected because the said exercise would clearly amount to exercising a power of review which in my view, in the facts of the case no longer lies with this Court, once the SLP against the said judgment has been rejected by the Supreme Court even in limine. The said prayer is accordingly, rejected.

23. Reverting back to the matter of inquiry u/s 340 of the Code, in view of findings and discussions made earlier in this judgment, the Registrar General of this Court is directed to make a complaint in writing against six persons named in concluding part of paragraph-17 of this judgment namely : (1) Mr. M. Ramakrishna, (2) Mr. A.K. Singh, (3) Mr. A.K. Ghosh, (4) Mr. A.N. Tripathi, (5) Mr. S.C. Das and (5) Mr. Vikrama Prasad disclosing therein that they prima facie, appear to be involved in various offences referred to in clause (b) of sub-clause (i) of Section 195 of the Code in relation to letter in question dated 9.6.92 which was produced before this Court as part of Annexure-A to the counter affidavit

filed in this case on 21.4.93. Such complaint should be sent under his signature to a Magistrate having jurisdiction in the matter in accordance with law. All the aforesaid six accused persons who are appearing in this inquiry through their respective counsels are further directed to appear before such Magistrate as and when called upon to do so.

In the facts and circumstances of the case, there shall be no order as to costs.
B.N. Agrawal, A.C.J.

I agree.