
(2006) 09 PAT CK 0043

In the Patna High Court

Case No : Criminal Miscellaneous No. 22768 of 2004

Sheo Prasad Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 195, 482

Penal Code, 1860 (IPC) — Section 195, 195(1)(b)(ii), 195(3), 195(i)(b)(ii), 340

Citation : (2006) 4 PLJR 412

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This application filed u/s 482 of the Code of Criminal Procedure, 1973 (in short the Code) is directed against the entire proceeding of Complaint Case No. 586(C) of 2003 (Annexure-1) pending in the court of Shri Ram Binod Singh, Judicial Magistrate, 1st Class, Danapur as also for quashing the order of cognizance taken against the petitioners and others on 22.9.2003 for the offences under sections 420 and 468 of the Indian Penal Code. From the facts of this case it appears that opposite party No. 2, Shailendra Kumar, had filed a complaint petition against the present petitioners as also against one Ram Binoy Sharma (presently out of Bihar). In this complaint petition he had alleged that his father had died on 1.6.2002 and taking advantage of his death his uncle Sheo Prasad Singh (petitioner No. 1) got his name recorded over some of the properties of the joint family in the revisional survey on the basis of a forged Panchnama which was created by the petitioners to grab the property of opposite party No. 2. Admittedly, petitioner No. 1 is the Uncle of opposite party No. 2. The other petitioners happen to be the Ranches in the Panchnama convened to partition the joint family property. A Panchnama dated 15.5.1985 was prepared and signed by petitioner No. 1 and the father of opposite party No. 2.

2. After this partition both the brothers got separate revenue receipts issued by

the Government of Bihar. They also separately dealt with the property allotted to their shares as per this Panchnama. However, in the year 1999 the matter was reported to the police which recommended action u/s 107 of the Code against the parties. The petitioners are respectable villagers and not criminals. Petitioner, Sugrivha Sharma is the ex-Mukhiya of the Gram Panchayat. The Panchnama will show that the father of the complainant got Pucca dwelling house in his share. If the complainant opposite party No. 2 had any grievance he could have got the matter settled by the Civil Court. Under the aforesaid circumstances it has been prayed for quashing the order as mentioned above.

3. Opposite Party No. 2 has filed a counter affidavit. He has contended that neither any Panchayati was held for the partition of joint family property nor any Panchnama was prepared. His father never put his signature on any such Panchnama. Granting of revenue receipts does not create any title. The alleged Panchnama is a forged and fabricated document created by petitioner No. 1 and others to grab the land of this opposite party. On these ground it has been contended that the application be rejected.

4. A supplementary counter affidavit has also been filed on behalf of opposite party No. 2 in which he has contended that when the matter was raised before the Assistant Settlement Officer Camp, Paliganj on his objection, the Panchnama was declared to be a forged document by the court by the order dated 2.3.2003 in Case No. 27 of 2002 (Annexure-D). The alleged Panchnama is said to be executed on 15.5.1985 whereas in the written statement dated 11.4.1989 filed by the petitioner No. 1 in T.S. No. 596 of 1987 he has admitted that he along with his brother Ram Prasad Singh the father of opposite party No. 2 constituted a joint Hindu family. This statement was made in the year 1989 by nobody else then petitioner No. 1. As such it cannot be believed that there was a partition of the joint family property amongst the two brothers on 15.5.1985 on the basis of any Panchnama. On these grounds also it has been contended that this application be dismissed.

5. The parties have been heard at length on the various questions raised by them in this case. Written notes of argument have also been filed by them. In the written notes of argument on behalf of the petitioners it has been submitted that the cognizance in this case could not have been taken on a private complaint in respect of the offence covered u/s 195 of the Code, inasmuch as the bar as contained in Section 195(1)(b)(ii) is attracted because the alleged offence of forgery was committed before the Assistant Settlement Officer who is a court within the meantime of Rule 40 Part II of the Bihar Tenancy Act. Also reliance has been placed on the case of Surjit Singh and others Vs. Balbir Singh, . The other ground taken by the petitioners is that the allegations are absurd and improbable only to wreck vengeance on them.

6. I will firstly take up for consideration the legal bar in filing a private complaint petition by opposite party No. 2 under the facts and circumstances of this case. If really there is any legal bar obviously the complaint petition will have to be

dismissed and no cognizance of the offence could have been taken. In this connection I will firstly refer to Section 195 of the Code which deals with the prosecution for offences against public justice and offences relating to the documents given in evidence. In particular Section 195(1)(b)(ii) of the Code reads as follows:-

(1) No Court shall take cognizance

(b)(ii) of any offence described in Section 463, or punishable u/s 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

(emphasis supplied).

except on the complaint in writing of that court or some other court to which that court is sub-ordinate.

7. In the present case it has been contended that the Assistant Settlement Officer while hearing this matter was functioning as a court. The document in question, namely, the Panchnama which was forged and fabricated document was filed before him while he was hearing the matter as a court. Under this circumstance relying on Section 195(1)(b)(ii) of the Code it has been contended that since the forged document is alleged to have been produced before the Court of Assistant Settlement Officer it is only that court which could have filed the complaint petition in this case. In this connection reference has also been made to Section 340 of the Code which provides for the procedure in cases mentioned in Section 195 of the Code. According to Section 340 of the Code if any Court is of the opinion that it is expedient in the interest of justice that an injury 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 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 record a finding to that effect and make a complaint thereof in writing. Relying on this provision of law it has been submitted that the forged Panchnama was filed before the Assistant Settlement Officer while he was acting as a court and, therefore, it was for that Court to hold a preliminary inquiry in the matter, record a finding to that effect and then to make a complaint thereof in writing. Since in the present case the complaint in question has been filed by opposite party No. 2 who is a private individual the same is hit by Section 195(1)(b)(ii) as also Section 340 of the Code. On this ground it has seriously been argued that the entire proceeding as also the impugned order should be quashed.

8. In this connection I will firstly refer to Annexure-D filed along with the supplementary counter affidavit on behalf of opposite party No. 2. This appears to be the photocopy of the order dated 2.3.2003 passed by the Assistant Settlement Officer in Case No. 27 of 2002. As per the allegations of opposite

party No. 2 it is in this proceeding that the forged Panchnama was filed and the provision of Section 340 as also of Section 195(1)(b)(ii) of the Code were attracted.

9. On this point the law appears to be well settled. Considering the true scope of Section 195 of the Code the Hon"ble Supreme Court in the case of Budhu Ram Vs. State of Rajasthan, has held as follows:-

It will be seen on a plain grammatical construction of this provision that a complaint by the court is required where the offence is of forging or of using as genuine any document which is known or believed to be a forged document when such document is produced or given in evidence in court. It is clear therefore that it is only when the lodged document is produced in Court that a complaint by the Court is required. Where, however, what is produced before the court is not the forged document itself, S. 195(1)(c)(Old) will not apply on its terms. The reason for this, as stated by the Judicial Committee, "is the practical common sense of the matter, for the court before which a copy of a document is produced is not really in a position to express any opinion on the genuineness of the original". Therefore, even if the Assistant Settlement Officer is assumed to be a court within the meaning of S. 195(1)(c)(Old) no complaint was necessary because the forged document itself was not produced before the Assistant Settlement Officer in this case but only a copy thereof.

In this case it was held that since the copy of the document was produced Section 195 of the Code was not a bar to lodge a private complaint.

10. Reliance on this case has been placed by the Hon"ble Supreme Court in the case of Surjit Singh (supra). In this case the facts were, however, somewhat deficient. The Magistrate had already taken cognizance on a private complaint before the filing of the alleged forged document in the Civil Court. Under this circumstance it was held that the bar of Section 195(i)(b)(ii) of the Code will not be attracted and the High Court was right in granting liberty to the Magistrate to proceed with the trial of the criminal case. It further appears from the facts of this case that the Magistrate has taken cognizance on 27.9.1903 and the original agreement was filed in the Civil Court on 9.2.1984 long after the cognizance was taken. It was held that it is the settled law that once cognizance is taken two courses are open to the Magistrate. namely, either to discharge the accused if any evidence does not disclose the offence or to acquit the accused after full trial. Unless either of the two courses is taken and orders passed, the cognizance duly taken cannot be set at naught. Since in this case cognizance was already taken before filing of the document alleged to be forged and original was not filed before cognizance was taken it was held that the High Court was right in directing that the Magistrate is at liberty to proceed with the trial of the criminal case.

11. The position of law in this connection has clearly been laid down in the case of Budhu Ram (supra) as mentioned above. From this decision it becomes clear

that unless the original document is produced before the court which is alleged to be forged the provisions of Section 195(1)(c)(Old) as also of Section 476(1) (Old) will not be attracted.

12. In this view of the law I will now proceed to examine the facts of this case. Even presuming for a moment that the Assistant Settlement Officer was a court within the meaning of Section 195 of the Code. It has to be seen whether the original forged Panchnama was produced or not. Before proceeding further I would, however, refer to Section 195(3) of the Code which lays down that the term "Court" will include also the revenue court which the Court of Assistant Settlement Officer can be said to be.

13. In this connection a reference may be made to Annexure-D which is the order passed by the learned Assistant Settlement Officer. The paragraphs have not been numbered in this order. However, the following paragraph appears to be almost in the middle of this order:-

14. From this paragraph it is clear that what was produced before the learned Assistant Settlement Officer was not the original Panchnama but its photocopy. As per the decision in the case of Budhu Ram (supra) it is only when the original document alleged to be forged is produced in the court. That the provisions of Section 195(1)(c)(Old) will be attracted. If the original document is not produced its provisions will not be attracted. The reason for this is quite clear. If the original document with respect to which forgery is alleged to have been "committed is not produced in the court how could a court come to the conclusions that such forgery was really committed? It is clear from the order of the Assistant Settlement Officer that the original Panchnama alleged to have been forged was not produced before the Assistant Settlement Officer. Hence as per the decision in the case of Budhu Ram (supra) unless the forged document itself is produced in the court the provisions of Section 195(1)(c)(Old) will not be attracted and the bar of this section will also not apply. It was clearly held in this decision that since the copy of the document was produced Section 195 of the Code was not a bar to lay the private complaint.

15. From the detailed discussions made above it is clear that in the present case also the original document alleged to have been forged was not produced before the learned Assistant Settlement Officer. As such under the facts and circumstances of this case there is no bar to lay a private complaint since not the original but the copy of the document was produced before the court. From the detailed discussions made above it becomes perfectly clear to me that there is no merit in this application. I do not find any defect in the impugned order. This application is, accordingly, dismissed.