
(2016) 08 PAT CK 0020
In the Patna High Court
Case No : Criminal Revision No.437 of 2014

Subodh Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Citation : (2016) 3 BBCJ 189 : (2016) 4 BLJud 86

Hon'ble Judges : Mr. Aditya Kumar Trivedi, J.

Bench : Single Bench

Advocate : Mr. Manoranjan Kumar, Advocate, for the Petitioner; Mr. Satyavrat Verma, (APP), for the O.P. No.1; Mr. Rama Kant Sharma, Sr. Advocate, for the O.P. No.2

Final Decision : Allowed

Judgement

Mr. Aditya Kumar Trivedi (CAV) - Petitioner is the informant of Ram Krishna Nagar P.S. Case No. 122/2009. Petitioner is aggrieved by concurrent order dated 06.11.2013 passed by Juvenile Justice Board declaring the Opposite Party No.2 to be juvenile as well as order dated 30.01.2014 passed by the District Judge (Special Judge), Vigilance, 1st Patna in Cr. Appeal No. 204/2013, dismissing the same.

2. For proper appreciation of the controversy persisting over the present episode, facts of the case is to be seen first.

3. On the Fard-e-beyan of the petitioner/informant relating to commission of murder of Binod on a trivial issue, the instant case has been registered against three accused persons namely, Om Prakash, Jai Prakash and Vijay Prakash (O.P. No.2). Accordingly, investigation commenced and after concluding the same, charge-sheet was submitted followed with order of cognizance. On account of having the offence triable by the court of sessions, Session Trial No. 494/2010 was registered after commitment wherein after appearance of all the accused, a petition was filed on 10.08.2011 on behalf of Vijay Prakash (O.P. No.2) stating

therein that on the alleged date of occurrence i.e., on 01.12.2009, he was aged about 16 years 7 months and 17 days and so he was a juvenile.

4. After hearing over the aforesaid plea, the then Presiding Officer had directed vide order dated 13.10.2011 to examine the witnesses in support of his plea. Two witnesses were examined being AW-1, Shakuntala Devi, mother of Vijay Prakash (O.P. No.2) as well as AW-2, Anuj Kumar. However, during course thereof, the Headmaster remained absent and on account thereof, having been so directed, admission register of the relevant period has not been produced and so, School Leaving Certificate was disbelieved.

5. Vide order dated 24.05.2013 the learned lower court rejected the prayer but during course thereof, it has been incorporated in the order that " Mere perusal of letter no. 4344 dated 10.08.2012, it is also clear that according to Medical Board petitioner was aged about 22 years on 09.08.2012".

6. The aforesaid order was challenged under Cr. Revision No. 560/2013 wherein at para-7 of the petition, the aforesaid finding of the learned lower court was referred and further under ground no.IV it has been incorporated:-

IV. "For that even according to Medical Board, though the age of the petitioner was assessed as 22 years on 9.8.2012 and if one year benefit is given to the petitioner then also he is juvenile and this aspect of the matter has also not been considered and trial court erred in rejecting the claim of the petitioner of being juvenile".

7. While making submission with regard to Cr. Revision No. 560/2013, the learned counsel for Vijay Prakash (O.P. No.2) submitted that even rejecting the School Leaving Certificate, the learned lower court should have considered with regard to presence of Medical Certificate issued by Medical Board after examining the petitioner, Vijay Prakash (O.P. No.2) which happens to be perceptible in terms of Rules 12(4) of the Juvenile Justice (Care and Protection of Children) Rules whereupon considering the discloser having been made by the learned lower court in his order dated 24.05.2013 as well as granting one year privilege in terms of aforesaid Rule, the status of Vijay Prakash (O.P. No.2) has been found to be that of juvenile as a result of which the order impugned was set aside and revision petition no. 560/2013 was allowed vide order dated 27/06/2013.

8. Subsequently thereof, petitioner/informant filed Cr.Misc. No. 33563/2013 where under apart from others, it was also averred that the finding recorded by the learned lower court under order dated 24.05.2013 that the Medical Board was constituted for ascertainment of age which submitted its report vide Letter No. 4344 dated 10.08.2012 happens to be wrong, incorrect whereupon vide order dated 07.08.2013, petitioner was directed to seek remedy by filing appropriate petition before learned court below and having been filed in pursuance thereof, as well as having been rejected by successive courts, petitioner/informant filed the instant petition in order to challenge the successive orders as indicated above.

9. After hearing the parties, first of all, genuineness of Letter No. 4344 dated 11.08.2012 has been tested and for that, the learned lower court was directed to transmit the copy of the same along with fact whether Medical Board was ever constituted for ascertainment of the age of the Vijay Prakash (O.P. No.2). From the relevant documents having been transmitted by the Juvenile Justice Board, it is evident that Letter no. 4344 dated 11.08.2012 relates with asking for permission from the Court concerned by the Jail Superintendent for transmitting the accused Vijay Prakash (O.P. No.2) who was under custody, to PMCH for treatment. Apart from this, relevant papers also show that neither the Court had directed for constitution of Medical Board nor age of Vijay Prakash (O.P. No.2) was ever directed to be ascertained. That means to say, the reason best known to the learned P.O., he had acted in careless manner and under such irresponsible activity he had incorporated the facts which never ordered nor procured and on account of such lapse at the end of learned lower court Vijay Prakash (O.P. No.2) succeeded in obtaining order on 27.06.2013 by this Court under Cr. Revision No. 560/2013 in the background of identification of acceptability of the Medical Report in terms of Rule 12(4) of the Juvenile Justice (Care and Protection of Children) Rules.

10. In likewise manner, O.P. No.2 while filing Cr.Revision No. 560/2013 was well aware since before that no Medical Board was ordered to be constituted for ascertainment of his age, even then, referred the same under para-7 of his petition as well as under IV of the grounds stick over the same. Had there been proper conduct of the Vijay Prakash (O.P. No.2) petitioner of Cr.Revision No. 560/2013, the aforesaid eventualities, that means to say, allowing of Cr. Revision 560/2013 would not have occurred.

11. That means to say, the order dated 27.06.2013 passed in Cr. Revision No. 560/2013 has been obtained by way of deception as well as fraud.

12. It is needless to say that order obtained by practicing fraud vitiates the same. In the State of U.P. v. Ravindra Kumar Sharma as reported in AIR 2016 SC 690, it has been held:-

7. In Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors. (2005) 7 SCC 605, it was observed :

"16. In Lazarus Estates Ltd. v. Beasley (1956) 1 All ER 341, Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

"No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p.722) These aspects were recently highlighted in State of A.P. v. T. Suryachandra Rao (2005) 6 SCC 149."

8. In Ram Chandra Singh v. Savitri Devi (2003) 8 SCC 319 it was held thus:

"15. x x x Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

x x x x x

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

x x x x x

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.

26. In *Shrisht Dhawan v. Shaw Bros.* (1992) 1 SCC 534, it has been held that: (SCC p. 553, para 20)

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

x x x x x

29. In *Chittaranjan Das v. Durgapore Project Ltd.* (1995) 99 CWN 897, it has been held: (Cal LJ p. 402, paras 57-58)

"57. Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation.

58. It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby."

9. This Court in *Express Newspapers (P) Ltd.& Ors. v. Union of India & Ors.* (1986) 1 SCC 133 at para 119 has held thus:

"119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Partap Singh v. State of Punjab* AIR 1964 SC 72. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtoun* (1904) AC 515, "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in *Short v. Poole Corpn.* (1926) Ch 66, that:

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.""

13. In *United India Insurance Company Limited v. Rejendra Singh with United India Insurance Company Limited v. Sanjay Singh* reported in AIR 2000 SC 1165, it has been held:-

14. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagnnath (dead) by Lrs.*, (1994) 2 SCC 1 : (1994 AIR SCW 243 : AIR 1994 SC 853) the two Judges Bench of this Court held:

"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court-has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.."

15. In *Indian Bank v. Satyam fibres (India) Pvt. Ltd.*, (1996) 5 SCC 550 : (1996 AIR SCW 3281 AIR 1996 SC 2592) another two Judges bench, after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus:

"Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts

have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

16. * * * *

17. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

14. In the background of the aforesaid legal proposition as the order dated 27.06.2013 passed in Cr. Revision No. 560/2013 is found deeply soaked with the fragrance of fraud and is recalled. Whereupon all subsequent events taken up by the lower court in obedience of the order dated 27.06.2013 passed in Cr. Revision No. 560/2013 declaring the O.P. No.2, Vijay Prakash is found vitiated and held so. In the aforesaid facts and circumstances, the successive orders passed by the learned lower court are set aside also.

15. Consequent thereupon, the instant petition is allowed. It is further ordered that the trial of the Vijay Prakash (O.P. No.2) will proceed along with other co-accused relating to original Sessions Trial No. 494/2010 pending before court of sessions.

16. Let a show-cause be issued to the concerned P.O. of the court of Additional Sessions Judge,14, Patna, through District & Sessions Judge, Patna, as to why not he be held accountable for judicial impropriety. The aforesaid show-cause must be placed within a fortnight which the office will insist and procure and then thereafter, the matter be immediately placed.