
(1972) 04 PAT CK 0003
In the Patna High Court

Sukar Ahir

APPELLANT

Vs

Ganpat Kalwar

RESPONDENT

Date of Decision : 14-04-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 139, 140, 145, 350

Citation : (1972) CriLJ 1348

Hon'ble Judges : S. Anwar Ahmad, J;B.D. Singh, J

Bench : Division Bench

Judgement

1. This application by the first party to a proceeding u/s 140, Code of Criminal Procedure, is directed against the final order dated the 26th August, 1969. whereby the learned Magistrate has declared the possession of opposite party, second party to the proceeding. This case was in the first instance placed before" S. P. Singh J.. who by his order dated the 12th November. 1971 has referred it to a Division Bench and that is how it has been placed before us.

2. The only point canvassed before us is as to whether the affidavits of the second party which were sworn to before Shri N. Tiwary. Magistrate, but could not be filed before him. and were filed before Shri D. Chandra, who decided the proceeding, would be admissible in evidence u/s 145. Code of Criminal Procedure.

3. It was submitted on behalf of the petitioner that in view of the decisions of this Court in Mahendra Prasad Sinha v. Bhaairath Lal. ILR 1971 Pat 157 and in Mahesh Thakur v. Lakshman Prasad Thakur 1971 BLJR 727 it was not only obligatory that the affidavits should be sworn to before the Court which was in seisin of the proceeding but it was also necessary that the affidavits should have been filed before the Court before whom they were sworn. It is admitted by learned Counsel for the parties "that of the two affidavits filed on behalf of the opposite party (second party). one is of Ramnaresh Ahir and the other of Jaedeo Ahir and they were sworn to before Shri Tiwarv on 26-4-68, who was in seisin of the case from the 27th of March. 1968. to the 25th of June 1968. Mr. Jasdish Pandey for the petitioner, however, insists that it was obligatory that the said

affidavits should have been filed before Shri Tiwary: but as they had been filed before Shri D. Chandra, they cannot be regarded as evidence in the case.

4. It seems to us that the decisions upon which reliance has been placed by Mr. Pandey cannot be extended to that extent. In the case of Mahendra Prasad Sinha ILR 1971 Pat 157 it was decided that if the affidavits are sworn to before a Magistrate who is not in seisin of the proceeding, they are not admissible and cannot be read as evidence in that proceeding. Paragraph 20 of the judgment runs as follows:

Therefore, the affidavits, which were verified by a Magistrate, who was not in seisin of the proceeding at the time the affidavits were sworn were not admissible and they should not have been read as evidence in the instant proceedings.

The Division Bench decision of this Court in the case of Mahesh Thakur 1971 BLJR 727 affirmed the above view and held.

...the affidavits which are to be put in before a Magistrate who is dealing with the proceeding u/s 145 of the Code of Criminal Procedure must be sworn before him." These lines have to be read with reference to paragraph 14 of the judgment wherein paragraph 20 of the earlier decision ILR 1971 Pat 157 was specifically quoted and approved. It seems to us, as held in Criminal Revision No. 2061 of 1969 (decided on 9th February, 1972 DB) that the only requirement of an affidavit to become evidence in the proceeding is that it must be sworn to before the Magistrate who at the time the affidavit is sworn is in seisin of the case. We do not see our way to extend this principle any further and to hold, in agreement with the Counsel for the petitioner, that the affidavit must also be filed in the Court of the Magistrate before whom it is sworn. The mere fact that the affidavits were not filed immediately before that Court before whom they were sworn, will not in any way nullify their effect or their legal value. It is no doubt true that those affidavits, as they had not been filed in the proceeding could not form part of the records of the case and as such they are not covered by the provisions of Section 350, Code of Criminal Procedure: but all the same, they could have been filed before Shri D. Chandra who decided the 145 proceedings and Shri Chandra was fully competent to treat them as evidence in the case and base his finding on them. The law on affidavits as contained in the various provisions of the Code of Criminal Procedure, e. g., Sections 510A, 539A and 339AA, has no relevancy reference to their being filed in a particular Court. Similar is the case with regard to the CPC (vide Section 139 of that Code. No reference has been made in any of these sections to the affidavits being filed in one Court or the other. In the present case, as already stated, they were sworn to before Shri Tiwary before whom the proceeding was then pending. It was within the discretion of the opposite party to file them either before Shri Tiwary or before Shri Chandra "to whom the proceeding was later on transferred. The affidavits in the present case having been filed before Shri D. Chandra are admissible and the Court below was fully competent to rely upon them.