
(1998) 03 PAT CK 0031
In the Patna High Court
Case No : Criminal Reven. No. 414 of 1991

Uma Shankar Sahay

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Bihar Tenancy Act, 1885 — Section 106
Criminal Procedure Code, 1973 (CrPC) — Section 167, 190, 191, 195, 195(1)
Penal Code, 1860 (IPC) — Section 120(B), 147, 323, 325, 336

Citation : (1998) 3 BLJR 1682 : (1998) CriLJ 2807

Hon'ble Judges : Indu Prabha Singh, J

Bench : Single Bench

Advocate : R. Griyaghey, for the Appellant; Hare Krishan Kumar and Sidhendra Narayan Singh, for the Respondent

Final Decision : Allowed

Judgement

Indu Prabha Singh, J.—This application, u/s 397 of the Code of Criminal Procedure, 1973 (in short the "Code") is directed against the order dated 27-5-1991 passed by Shri D.R. Roy, Judicial Magistrate 1st Class, Nawadah in Complaint Case No. 14/88/Tr. No. 554/91 by which the learned Judicial Magistrate; on a petition filed u/s 319 of the Code; ordered for the issue of process against the petitioner for the alleged offences under Sections 465, 467, 468, 471 and 120B of the Indian Penal Code.

2. It appears that the complainant, Janki Devi (O.P. No. 2) filed a complaint petition before the Chief Judicial Magistrate on 11-1-1988 alleging therein that the accused persons including the present petitioner entered into a criminal conspiracy and created a forged and fabricated document purported to be the certified copy of the order passed by the Settlement Officer u/s 106 of the Bihar Tenancy Act in T.S. Nos. 58/80 and 58(A)/80 to the effect that Khata Nos. 91 and 263 were entered into the Khatiyan of Kunti Devi who was also named as an accused in the complaint petition. The allegation against the petitioner was that;

he, in the capacity of Head Assistant in the record room of the Collectorate, Nawadah; issued the purported certified copy of the aforesaid forged order certifying it to be genuine. It was further alleged that the accused persons of the said case were using the aforesaid document as a genuine document. They produced it before Anchal Adhikari, Warsaliganj, who, on its basis, issued rent receipts for R.S. Khata Nos. 263 and 91 in the name of accused No. 2, Kunti Devi.

3. On the basis of this complaint petition (Annexure 1) Complaint Case No. 14/88 was instituted in which an enquiry u/s 202 of the Code was held by the learned Chief Judicial Magistrate. On the conclusion of the enquiry the learned Magistrate took cognizance of the offence against two of the accused, namely, Suresh Singh and Kunti Devi for the offences mentioned above but did not take cognizance against the present petitioner. He, thereafter, transferred the case to the file of Shri P. Kashyap, Judicial Magistrate, Nawadah for trial.

4. In this petition the petitioner has contended that by virtue of his post, as the Head Assistant of the record room he was duty bound to sign on the certified copies prepared by the copyist and checked and compared by the comparing clerk as well as by the head comparing clerk who are required to properly check every certified copy with the original and also to certify that the certified copy is the true and correct copy of the original. The petitioner being an old man suffering from heart disease was required to sign a large number of certified copies every day and it was not physically possible for him to check and compare each and every copy with the original. He had to act on the certificate granted by the Head Comparing Clerk as well as the Comparing Clerk to the effect that the copy prepared was the true copy of the original. While issuing the certified copy, in course of his duty, it would be futile to say that the petitioner had obtained any gain in giving the certificate on the aforesaid document. Even the alleged certified copy was not annexed with the complaint petition and the Court below did not get an opportunity to scrutinise and to find out whether any fraud or fabrication was committed in the preparation of the aforesaid document. The learned Court below did not even call for the same. In its absence it was not fair and proper for the Court below to pass the impugned order against the petitioner u/s 319 of the Code, as no prima facie case was made out against him.

5. Under the aforesaid facts and circumstances the case of the petitioner will be out of reach of Section 319 of the Code since as per the complaint petition he figured as one of the accused in the case and also since by the order dated 27-5-1988 taking cognizance of the offence no cognizance was taken against the petitioner as will appear from the aforesaid order (Annexure 3). It is well settled that if a public servant is accused of an offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty no cognizance against him could have been taken except with the previous sanction of the State Government. Since no such sanction had been taken the impugned order issuing summons to him in this case to stand trial is also bad in law and hit by Section 197 of the Code. The impugned order will be an abuse of the process

of Court and against the interest of justice. Moreover the alleged offences are said to have taken place between 22-12-1979 to 20-11-1987 in the course of which so many Head Assistants were posted in the Collectorate, Nawadah. On these grounds, amongst others, it has been contended that after hearing the parties the impugned order dated 27-5-1991 be quashed.

6. The parties have been heard at length on the questions of law raised in this petition. I will deal with the same in detail at the appropriate places. Firstly, however, I would like to briefly state the facts of the case.

7. From the record it appears that the complaint petition in Complaint Case No. 14/88 was filed on 11-1-1988 in the Court of Chief Judicial Magistrate, Nawadah. In this complaint petition the present petitioner was named as accused No. 3 and has been described as head clerk record room, Nawadah, Collectorate. Three persons have been named as witnesses. On the same day, the complainant Janki Devi (OP No. 2), was examined on solemn affirmation and the Chief Judicial Magistrate decided to hold an enquiry u/s 202 of the Code, in course of which he examined three witnesses, namely, Ram Shanker Singh, Shyain Singh and Subash Chandra. On the conclusion of the enquiry u/s 202 of the Code the learned Magistrate passed the order dated 27-5-1988 taking cognizance of the offence only against two of the accused persons, namely, Suresh Singh and Kunti Devi under various sections of the Indian Penal Code. Thereafter he transferred the case for disposal to the Court of Judicial Magistrate.

8. Before the trial Court a petition (Annexure 2) u/s 319 of the Code was filed on behalf of the complainant for issuing process against the present petitioner. From the impugned order it appears that the learned Judicial Magistrate was conscious of the fact that the learned Chief Judicial Magistrate had not taken cognizance against the present petitioner. It further appears that the learned Judicial Magistrate had examined three witnesses, namely, Subash Chandra, Shyam Singh and Janki Devi u/s 244 of the Code. Thereafter he perused the record of the case and concluded that there were sufficient materials against the present petitioner for proceeding against him. He, accordingly, passed the impugned order dated 27-5-91 u/s 319 of the Code for the issue of the process against the present petitioner. It is against this order that the present revision petition has been filed.

9. The impugned order appears to have been passed under the provision of Section 319 of the Code which runs as follows :-

319. Power to proceed against other persons appearing to be guilty of offence -

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purposes aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under Sub-section (1) then -

(a) The proceedings in respect of such person shall be commenced afresh, and the witness reheard;

(b) subject to the provisions of Clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

(Emphasis supplied)

10. From perusal of this section it would appear that at the time when the Court decides to proceed against any other person under the provisions of this section he does not figure as an accused till the date of passing of the order u/s 319 of the Code. In Sub-section (1) it has clearly been stated that "it appears from the evidence that any person not being the accused has committed any offence." From this it would become clear that till the date on which the order u/s 319 of the Code is passed the person to be proceeded against does not figure as an accused in the case. Again in Sub-section (2) it has been stated that where "such person" is not attending the Court which will mean that till then he does not figure as an accused and has been described as "such person". Sub-section (3) provides that "any such person" may be detained by the Court if he is attending the Court. Here also he has not been described as an accused. In sub-section (4) (a) that person has been described as "such person" against whom the proceeding is required to be commenced afresh. Sub-section (4) (b) also describes the person to be proceeded against u/s 319 of the Code as "such person". From all this it becomes clear that till the stage of passing of the order u/s 319 of the Code or even till his arrest the said person has not been described as an accused and is not treated as such.

11. The present case has been started on the basis of the cognizance taken in a complaint case. The procedure for taking of cognizance has been given in Section 190 of the Code. In Section 190 of the Code the word "accused" has not been used. However, this word has been mentioned in Section 191 of the Code which relates to a stage when the cognizance has already been taken by the Magistrate. Section 202 of the Code provides for the postponement of issue of process after taking the cognizance. In this section also the word "accused" has been used and it has been provided that the Magistrate on the receipt of the complaint; if he thinks fit; may postpone the issue of process against the "accused" and may enquire into the case himself or direct an investigation to be

made. Similarly this word has been used in Section 204 of the Code which deals with the issue of the process. Section 204(1) provides that if in the opinion of the Magistrate taking cognizance of the offence there is sufficient ground for proceeding and the case appears to be (a) a summons case he shall issue his summons for the attendance of the "accused", or (b) a warrant case, he may issue a warrant or, if he thinks fit, a summons, for causing the "accused" to be brought.... " I have referred to the aforesaid sections to show that a person against whom a complaint petition is filed is stated to be an accused under the provisions pointed out above, namely, u/s 191, Section 202 and Section 204 of the Code.

12. As against it the position is somewhat different in the cases instituted on the basis of the First Information Report lodged before the police. In this connection I will firstly refer to Chapter V of the Code which deals with the arrest of a person. In Sections 41, 42 and 43 a reference has been made to "any person". In Section 44 a reference has been made to the arrest of the offender if the offence is committed in presence of the Magistrate. In Section 44 (2) again a reference is made to "any person". The same is case in Section 46. In Section 47 also there is a reference to "any person". In short in none of the sections of this Chapter any reference has been made to the "accused persons". Coming to Section 57 it clearly provides that no Police Officers shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not; in the absence of a special order of a Magistrate u/s 167; exceed twenty four hours. Here also the expression "a person" has been used and such person has not been described as an accused.

13. Coming to Section 167 in its Sub-section also it has been stated that whenever any person is arrested and detained in custody, and it appears that there are grounds for believing that the accusation or information is well founded, the Officer Incharge of the police station shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the "accused" to such Magistrate. It is only at this stage for the first time the word "accused" has been used for a person who has been arrested or detained by the police and produced before a Magistrate. From Sub-section of Section 167 onwards "such a person" has been described as the accused person. Now where is the dividing line? When a person arrested and detained by the police becomes an accused person? As has been stated above, any person does not become an accused simply because an F.I.R. is lodged against him, or he is arrested and detained by the police. Nor he becomes an accused person even when he is produced before the Magistrate by the police under the provisions of Section 167 of the Code. For the first time such a person has been described as an accused person only after the officer-in-charge of a police station finds that there are ground for believing that the accusation or information against him is well founded. Thus, there is a clear line of demarcation in the stage in which any person arrested by the police

becomes "an accused person". It may be, however, pointed out here that the discussion of this point namely when a person arrested by the police in a case instituted on F.I.R. becomes an accused person was not necessary under the facts and circumstances of the present case but simply for the purposes of comparison and contrast I have made the aforesaid discussions.

14. As far as the present case is concerned it is clear that the present petitioner was named as accused No. 3 in the complaint petition. He also figured as an accused in the enquiry u/s 202 of the Code. The evidence against him was adduced in the aforesaid enquiry on the conclusion of which the learned Chief Judicial Magistrate proceeded to take cognizance of the offence against two accused but not against the present petitioner. Under the aforesaid circumstances what would be the law on the subject.

15. As pointed out above, in a case instituted upon a complaint, a person becomes an accused even in the course of inquiry held against him u/s 202 of the Code. As a matter of fact he becomes an accused even at the stage of Section 191 before which the cognizance is already taken in a case. As against it in a case instituted on the basis of F.I.R. a person does not become an accused till the officer-in-charge finds that there are grounds for believing that the accusation or information against him is well founded. It is in this background that the ratio of the various; decisions of the Hon''ble Supreme Court has to be applied because the findings of the apex Court in cases instituted on police report will not apply to the cases instituted on complaint because in the former case the stage at which a person becomes an accused is differing from the stage as envisaged in the latter case and I have, already noted this difference in the earlier part of this judgment. The determination of this question is vital in as much as; as per Section 319 of the Code a person can be proceeded against only when it appears from the evidence that any person not being the accused has committed any offence. From this it becomes clear that if a person had figured as an accused in the case at any stage he goes out of the reach of Section 319.

(Emphasis supplied)

16. In the present case, however, three persons were named as accused in the case and enquiry u/s 202 of the Code was held by the learned Chief Judicial Magistrate in course of which three witnesses were examined. On the examination of the statements made by the three witnesses as also on the perusal of the necessary papers the learned Chief Judicial Magistrate was pleased to take cognizance of the offence only against two persons and not against the third accused, namely, the present petitioner. Now a question that may arise in this connection would be what would the effect of this order. It is not one of those cases in which it has been alleged that the offences were committed by some persons who were not known at the time of filing of the complaint petition. Here in the complaint petition three persons have been clearly named but cognizance was taken only against two persons and not against the third. In a situation like this what would be intention of the Magistrate taking cognizance of

the offence? It would be clear from the aforesaid fact that the learned Chief Judicial Magistrate applied his judicial mind to the facts and circumstances of the case, to the facts alleged in the complaint petition, and also to statements made by the witnesses u/s 202 of the Code. On the strength of the aforesaid the learned Magistrate proceeded to take cognizance of offence only against two persons and not against the present petitioner. The question is what would be the effect of this order? Can the transferee Magistrate to whom the case has been sent for trial proceed to issue process against the present petitioner in exercise of powers vested in him u/s 319 of the Code?

17. I have already analysed above the provisions of Section 319 of the Code. A perusal of this section clearly shows that a person can be proceeded against under its provision if he figures as "any person not being an accused". If, however, the person concerned had figured as an accused from the very beginning of the case on account of the fact that he was named as an accused in the complaint petition itself, can it be said that he fits in the description given in Section 319 of the Code namely "any person not being the accused"? Obviously he was an accused from the very beginning of the institution of the case and as pointed out above the procedure for holding enquiry u/s 202 of the Code clearly describes the person being proceeded against as an accused since the cognizance against him had already been taken. As such under the facts and circumstances of this case it cannot be said that the present petitioner can be described as "any person not being an accused" so as to warrant application of Section 319 of the Code.

18. In this connection a reference may be made to the case of Sohan Lal and others Vs. State of Rajasthan, . In the said case the F.I.R. was lodged alleging that the appellants and two others were pelting stones on the informant's house causing damage to it, in course of which three persons were injured. The police submitted charge-sheet under Sections 147, 323, 325, 336 and 427 of the Indian Penal Code. After taking cognizance and after hearing the parties the Judicial Magistrate by his order discharged appellants 4 and 5, namely, Bijya Bai and Jiya Bai of all the charges levelled against them while appellants Nos. 1, 2 and 3, namely, Sohan Lal, Padam Chand and Vishu" were ordered to be charged only u/s 427 of the Indian Penal Code. As against this order the A.P.P. filed an application to the Magistrate u/s 216 of the Code in which a prayer was made that the accused may also be charged under Sections 147, 323 and 336 of the Indian Penal Code. In support of the petition four P.Ws. were examined by the learned Magistrate after which the learned Magistrate passed the order that if any accused was discharged of any charge under any section then there would be no bar for taking fresh cognizance on reconsideration against him according to Section 216 of the Code of Criminal Procedure and that the provision of Section 319 of the Code of Criminal Procedure was also clear in that connection. The following order was recorded by him.

Hence cognizance for offences under Sections 147, 427, 336, 323, 325, I.P.C. is

taken against accused, Sohan Lal, Padam Chand, Smt. Vijya Bai, Jiya Bai, Vishu", Hanuman Chand and Uttam Chand. Orders for framing the charges against accused Sohan Lal, Padam Chand, Vishnu under the aforesaid sections are passed and accused Smt. Jiya Bai, Vijya Bai, Uttam Chand and Hanuman Chand be summoned through bailable warrants in the sum of Rs. 500/- each. File to come on 20-10-1982 for framing the amended charges against the accused present. Exemption from appearance of accused Vishnu Chand and Padam Chand is cancelled until further order. The Advocate for the accused shall present the said accused in the Court in future.

19. The aforesaid order was challenged in two criminal revision petitions before the High Court of Rajasthan but they were dismissed. Before the High Court in the two revision petitions the question that arose for consideration whether a Magistrate was competent to take cognizance of the offence after recording some evidence against accused persons who had been earlier discharged of those offences. It was urged before the High Court by the revision petitioners that having once discharged them it was not open to the Magistrate to proceed against them and only remedy was to go in revision and the Magistrate can not review his own order. The learned Judge dismissed the petitions taking the view that it was not a case for reviewing the order of discharge passed by the Magistrate but was a case of taking the cognizance of the offence on the basis of the evidence recorded by the Magistrate himself which was not in any way prohibited in law and that under the provision of Section 319 of the Code the Magistrate was fully competent to take cognizance of the offence on the basis of the evidence recorded by him, though for the same offence order of discharge was passed by him earlier.

20. In this case the Hon'ble Supreme Court took into consideration the various submissions made before it from both sides- It also took into consideration the provisions of law as contained in Sections 216 and 319 of the Code. In paragraph 14 of the judgment the Hon'ble Supreme Court took notice of the crucial words in the Section 319 namely "any person not being the accused". The question that arose before their Lordships of the Supreme Court was whether appellant Nos. 4 and 5, namely, Vijya Bai and Jiya Bai who were discharged by the Magistrate of all the charges against them can be described as accused in the case so as to bring them within the sweep of Section 319 of the Code. After taking into consideration the ratio of the decisions in the cases of Joginder Singh and Another Vs. State of Punjab and Another, , Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another, the Hon'ble Supreme Court in paragraph 33 of the judgment has observed as follows :-

33. The above views have to yield to what is laid down by this Court in the decisions above referred to. The provisions of Section 319 had to be read in consonance with the provisions of Section 398 of the Code. Once a person is

found to have been the accused in the case he goes out of the reach of Section 319. Whether he can be dealt with under any other provisions of the Code is a different question. In the case of the accused who has been discharged under the relevant provisions of the Code, the nature of finality to such order and the resultant protection of the persons discharged subject to revision u/s 398 of the Code may not be lost sight of. This should be so because the complainant's desire for vengeance has to be tampered with though it may be, as Sir James Stephen says: "The Criminal Law stands to the passing of revenge in much the same relation as marriage to the sexual appetite...."

21. From the aforesaid authoritative pronouncement of the Hon"ble Supreme Court it becomes perfectly clear that once a person figured as an accused in a case and is discharged subsequently he cannot be proceeded against u/s 319 of the Code. In this decision the Hon"ble Supreme Court has also decided the stages at which any person becomes an accused in a complaint case and also in a case instituted on the basis of F.I.R.

22. The next ground taken on behalf of the petitioner is that he cannot be prosecuted for the offences under the various sections mentioned above in view of the fact he happens to be the Head Assistant serving the, record room, Collectorate Nawadah and by virtue of this post he was duty bound to sign on the certified copies produced by the subordinate staff, namely copyset, comparing clerk or Head Comparing Clerk, of course after due comparison of the copies with the original. It has further been contended that the petitioner was duty bound to sign a very large number of copies and it was in no way possible for him to check and compare each and every copy acting as the Head Assistant, also that function was to be performed by the Head Comparing Clerk who used to certify those copies as true copies prepared from the original. However, the main thrust of this argument was that since the petitioner was acting as a public servant acting or purporting to act in discharge of his official duty no Court could have taken cognizance of such an offence without the previous sanction of the State Government. In this way the learned Counsel appearing on behalf of the petitioner has sought the protection of Sections 197 of the Code. In my considered view, however, this protection will not be available to the petitioner for the reasons mentioned below.

23. It is no denying the fact that at the relevant time the petitioner was acting as Head Assistant of the record room of the Collectorate, Nawadah. It is also clear that while acting as such he was duty bound to sign on the certified copies to be issued to various persons in proof of the fact that the same were true copies of the original. Under the aforesaid circumstances it cannot be denied that while discharging this duty the petitioner was acting purporting to act in discharge of his official duty. Now the question that would arise for consideration is that whether under the aforesaid circumstances the petitioner can seek the protection of Section 197 of the Code. In this connection a reference may be made to Section 197(1)(a) and Section 197(1)(b) of the Code. It runs as follows :-

197. Prosecution of Judges and public servants -

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -

(a) In the case of a person who is employed or, as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.

(b) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

24. From the aforesaid provisions it becomes clear that in order to attract the provisions of this section the petitioner has to show that he is a public servant "not removable from his office save by or with the sanction of the Government." In the present case the petitioner at the relevant time was the Head Assistant in the Record Room of the Collectorate, Nawadah. In other words he was the staff of the Collectorate, Nawadah and not a public servant not removable from his office save by or with the sanction of the Government. It is not in dispute that the staff of the Collectorate are appointed by the District Magistrate and the Collector of the District. They are, therefore, removable from their office under the order of the District Magistrate and the Collector. In a case of such public servant the State Government; not being the appointing authority; does (sic) come in the picture and the sanction of the State Government is not required for the removal of such an employee from his office. This position appears to be clear.

25. The learned Counsel appearing on behalf of the State has submitted that in a situation like this the protection of Section 197 of the Code shall not be available to the petitioner. In this connection he has drawn my attention to the fact that the petitioner not being a public servant not removable from his office save by or with the sanction of the Government the protection of Section 197 cannot be made available to him. Under the circumstances of the present case I find force in this contention of the learned Counsel for the State. In a large number of cases it has been held that in the case of a public servant being a person who can be removed without the sanction of the Government the provision of this section will not apply. In this connection a reference may be made to the case of *Nagraj Vs. State of Mysore*, . This was a case of a Police Officer and a constable removable by the Inspector General of Police and by the Superintendent of Police respectively. In such a situation it was held that no sanction was necessary. In the present case also the District Magistrate and Collector happens to be the appointing authority of the petitioner could be removed from his office by them. As such it is clear that the protection of Section 197 shall not be available to him.

26. Before concluding I would like to briefly discuss a question of law raised in course of the argument on behalf of the petitioner relating to Section 195 of the Code though in the petition no such plea has been taken. Since, however, this is a question of law and since the determination of this question will have an impact on the final outcome of this revision application I would like to briefly discuss the same.

27. As stated above the petitioner was functioning as the Head Assistant of the record room of the Collectorate, Nawadah. In this capacity he was duty bound to sign the certified copies of the documents issued to the parties. In the present case it has been alleged that on the strength of the forged and fabricated copy of the order passed by the Settlement Officer u/s 106 of the Bihar Tenancy Act, accused No. 2, Kunti Devi, managed to get her name mutated in revenue records under the order of the Anchal Adhikari who also issued rent receipts in her for R.S. Khata Nos. 263 and 91. From this it would appear that on the strength of this alleged forgery the Anchal Adhikary who is a Revenue Officer not only mutated the name of accused No. 2 Kunti Devi in the revenue records over R.S. Khata Nos. 263 and 91 and also issued the rent receipts to her for the same. Under the aforesaid circumstances it has been contended that no cognizance could be taken against the petitioner for the offence described in Section 463 (forgery) or punishable u/s 471 and other sections of the Indian Penal 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 except on the complaint in writing of that Court. In other words, the protection of Section 195 of the Code has been pleaded on behalf of the petitioner. A perusal of Section 195 under its Sub-section (1) (b) (ii) and (iii) show that no Court shall take cognizance of an offence described in Section 463 committed in respect of a document produced or given in evidence in any proceeding in any Court or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of commission of any offence specified in Sub-clause (i) or Sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

28. In the present case, the allegation of the forgery and fabrication of false document has been made against the petitioner. He is said to have conspired in committing forgery of the orders passed by the Settlement Officer u/s 106 of the Bihar Tenancy Act to the effect that Khata Nos. 91 and 263 were entered in the Khatiyani of Kunti Devi (accused No. 2). From the facts of this case it appears that the aforesaid forged and fabricated Khatiyani was filed before the Anchal Adhikari who happens to be a Revenue Officer and on their basis rent receipts for those two Khata were issued in "the name of accused No. 2, Kunti Devi after mutating her name in the revenue records. Under the aforesaid circumstances the question that would arise for consideration is whether the protection of Section 195 of the Code will be available to the petitioner or not? In this connection it may be stated here that Sub-section (iii) of Section 195 provides that in Clause (b) of Sub-section (i) the term "Court" will also mean a revenue

Court. From this it would appear that the Court of the Anchal Adhikari while ordering for the mutation of the name of accused No. 2 and also for the issue of the rent receipts in her favour will obviously be described as a revenue Court as to attract the provision of this law. In the case of Har Prasad Vs. Hans Ram and Others, , it has been held that a Tahsildar dealing with mutation proceeding is a revenue Court. Under the aforesaid circumstances there is, no denying the fact that the Anchal Adhikari while mutating the name of accused No. 2 in the revenue records of two Khatas mentioned above was acting as a revenue Court within the meaning of Section 195 of the Code. From this it would become clear that the case of the present petitioner will clearly come within; the mischief of Section 195(1) (b) (ii) and (iii). As such no cognizance against him could have been taken without a complaint in writing of that revenue Court or of some other Court to which that Court is subordinate. In the present case no such thing has been done. From the prosecution case it appears that there is allegation of conspiracy u/s 120B also against the present petitioner for committing the alleged offence. The criminal conspiracy is covered by Clause (iii) of Section 195(i)(b). From this it becomes obvious that the prosecution of the present petitioner is also hit by the provisions of Section 195 of the Code and since no complaint in writing of the Anchal Adhikari, being the revenue Court in question; has been produced the impugned order could not have been passed.

29. From the detailed discussions made above it becomes perfectly clear to me that the petition filed u/s 319 of the Code (Annexure 2) on 15-5-1991 by the complainant-opposite party No. 2 is devoid of any merit and the same could not have been allowed by passing of the impugned order which also has no merit and is liable to be quashed.

30. In the result, this application is allowed and the impugned order is quashed.