
(2023) 03 PAT CK 0013

Patna High Court

Case No: Criminal Appeal (SJ) No. 542 Of 2022

Sohan Kumar Das @
Chhote

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: March 1, 2023

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 164, 195, 195(1), 195(1)(b), 221(1), 340, 340(1),
- Indian Penal Code, 1860 - Section 172, 188, 193, 199, 205, 211, 228, 363, 366A

Citation: (2023) 03 PAT CK 0013

Hon'ble Judges: Shailendra Singh, J

Bench: Single Bench

Advocate: Kedar Jha, Binod Bihari Singh, Brij Bihari Tiwary

Final Decision: Dismissed

Judgement

1. The instant Criminal Appeal has been filed against the order dated 01.02.2020, passed by learned Vth Additional District and Sessions Judge

Darbhanga, in Sessions Case No. 437 of 2014 whereby and where under the petition of appellant filed under Section 340 read with Section 195 of

Criminal Procedure Code (in short Cr.P.C.) was rejected from which being aggrieved and dissatisfied the present appeal has been brought.

2. It is submitted by learned counsel for the appellant that on a written report submitted by one namely, Md. Suleman about kidnapping of his daughter

an FIR of Bahadurpur P.S. Case No. 277 of 2010 under Sections 363/366 (A) of Indian Penal Code (in short I.P.C.) was registered against the

appellant and others and during the investigation in the said criminal case the so-called victim girl was recovered and she recorded her statement under

Section 164 of Cr.P.C. before the Judicial Magistrate on 28.09.2010 of which a copy has been filed as Annexure No. 1. Further submission is that the

said victim stated in her statement under Section 164 of Cr.P.C. that she left her house because of her mother used to abuse and assault her and

asked her to go with the appellant and she further stated that she wanted to live with the appellant. But when the said victim was examined during the

trial as PW-2 she stated that she had given false statement before the Magistrate knowingly and therefore the appellant made the prayer before the

Trial Court that victim (PW-2) of appellant's case was liable to be prosecuted for the offence punishable under Section 193 of I.P.C. as she had

given false evidence in judicial proceeding before Judicial Magistrate and the copy of his petition submitted under Section 340 read with Section 195 of

Cr.P.C. has been filed as Annexure 2. Further submission is that the learned Trial Court without considering the materials available on the record and

valid documentary evidence which were sufficient to substantiate the alleged offence of 193 of I.P.C having been committed by the so-called victim

of Bahadurpur P.S. Case No. 277 of 2010, arbitrarily rejected the prayer of the appellant. Further argument is that the said victim made two

contradictory statements in two judicial proceedings before different courts and in the instant matter one statement of the so-called victim made before

the Judicial Magistrate is admittedly false and moreover when two contradictory statements are made in two Judicial proceedings then definitely one

should be deemed to be false however, in such a situation it is difficult to decide which of such two statements is false but in such a situation the

person making such statements can be charged alternatively under Section 221 (1) of Cr.P.C. but in the instant matter the so-called victim who made

two contradictory statements, herself accepted that her previous statement made before the Judicial Magistrate was false.

3. On the contrary, the learned counsel appearing for the informant of Bahadurpur P.S. Case No. 277 of 2010 submits that though two contradictory

statements were made by informant's daughter (so-called victim) but the statement made by victim before the Judicial Magistrate under Section

164 of Cr.P.C. was not recorded freely by her and the same was recorded under pressure and threat and just after four days from the recording of

her statement she filed an application before the Chief Judicial Magistrate Darbhanga, wherein she narrated that she was forcefully taken to village

Harpatti, where she was subjected to rape and further narrated that her statement under Section 164 Cr.P.C. was recorded on 28.09.2010 under

threat and copy of the said application has been filed as Annexure-1 before this Court and moreover the prayer made by the appellant under Section

195/340 of Cr.P.C. before the trial court was not maintainable as the alleged offence, if presumed, to have been committed, then a written complaint

must be filed by the Court concerned before which in the judicial proceeding such offence was committed but in this regard the concerned Judicial

Magistrate did not file any written complaint under Section 195/340 of Cr.P.C.

4. I have heard both the sides and perused the order impugned dated 01.02.2020 and LCR.

5. In this matter the provisions of Section 195 and 340 of Cr.P.C. and the provisions of Section 193 of Indian Penal Code (in short I.P.C.) are

relevant.

6. The Provisions of section 195 of Cr.P.C. deal with the cognizance of the offences punishable under Sections 193 to 196 (both inclusive), 199, 205 to

211 and 228 of I.P.C. when any of such offences is alleged to have been committed in relation to any proceeding in any Court. The provisions of this

section also apply to the offences punishable under Sections 172 to 188 (both inclusive) of I.P.C. when such offence or offences is/are committed

against the lawful authority of public servant.

7. In the instant matter the provision of Section 195(b) (1) is more relevant as the allegation of the appellant is that the so-called victim of Bhadurpur

P.S. Case No. 277 of 2010 gave false evidence by recording her wrong statement under Section 164 of Cr.P.C. before the Judicial Magistrate.

According to Section 195 of Cr.P.C. when an offence of giving false evidence before the Court in Court's proceeding has been committed then

as per the provisions of Section 195 of Cr.P.C. it is mandatory to file a written complaint by the Court concerned or by any officer of such Court to

which the alleged offence has been committed and hence it is mandatory to file a written complaint regarding the commission of the offence of giving

false evidence and in the absence of such complaint no Court shall take cognizance of the alleged offence.

8. The Section 340 of Cr.P.C. deals with the procedure when a Court forms the opinion that it is expedient in the interest of justice that an enquiry

should be made into an offence referred to in Clause b of Sub Section (1) of Section 195 of Cr.P.C. which appears to have been committed in relation

to a proceeding in the Court. From the conjoint reading of provisions of Section 195 and 340 of Cr.P.C. the important condition which is to be

completed before proceeding in respect of an offence which is alleged to have been committed in respect of a Court proceeding is that the Court

concerned to which such offence is alleged to have been committed forms the opinion that in the interest of justice an enquiry should be made into the

offence alleged. For drawing the attention of the Court concerned in respect of such offence either the Court concerned forms the said opinion

according to its own knowledge of commission of the alleged offence or upon an application made to it in this behalf and accordingly if one has got the

knowledge of commission of any of the offences mentioned in Section 195(b)(1) of Cr.P.C then he has a liberty to file an application before the Court

concerned to bring the commission of such offence into the knowledge of the Court concerned. But when it is alleged that such offence has been

committed then the Court concerned is not bound to hold a preliminary enquiry to find out whether the alleged offence of giving false evidence has

been committed or not as firstly the Court concerned has to be satisfied with regard to availability of the prima-facie material to attract the alleged

offence of giving false evidence or any other offence mentioned in Section 195(b)(1) of Cr.P.C. and in this regard the Court concerned should keep in

its mind that the alleged offence of giving false evidence was intentional or not and there is a sufficient prima-facie material to show that such alleged

offence has been committed intentionally and it is expedient in the interest of justice to hold a preliminary enquiry into the matter.

9. In the instant matter the victim of Bahadurpur P.S. Case No. 277 of 2010 firstly recorded her statement before Judicial Magistrate under Section

164 of Cr.P.C. and thereafter recorded her evidence before the Trial Court and during the course of recording her evidence she fairly accepted that

her statement given before the Judicial Magistrate was false. At the time of argument learned counsel for the informant of Bahadurpur P.S. Case No.

277 of 2010 submitted that the informant's statement before the Judicial Magistrate was not intentional and the same was recorded by her under

the compelling situation of threat given by the accused persons and after recording of that statement a petition was also filed by the victim before the

Chief Judicial Magistrate disclosing the said threat and compelling situation and the copy of the said petition has been filed before this Court vide

Annexure No.1 In the impugned order the learned Trial Court mainly took into consideration the said defence made by the victim and in the light of

said defence the Trial Court rejected the prayer of the appellant without holding a preliminary enquiry into the alleged offence of giving false evidence.

In view of the materials appearing from the case record of Trial Court, I am of the opinion that the discretionary power as to making a decision about

the necessity to hold preliminary enquiry conferred by Section 340(1) of Cr.P.C. was rightly exercised by the learned Court below while rejecting the

prayer of the appellant as in the light of the facts mentioned in the order impugned sufficient materials are not available to show prima-facie

commission of the offence of giving false evidence intentionally before the Judicial Magistrate by the victim of Bahadurpur P.S. Case No. 277 of

2010.

10. Learned counsel appearing for the appellant has placed reliance on the following Judgments of the Hon'ble Apex Court:- (i) Mohan Singh vs.

Late Amer Singh, through the LRS. date of judgment on 01 September, 1998.

(ii) M/S Bandekar Borthers Pvt. Ltd. vs. Prasad Vassudev Keni passed in Criminal Appeal Nos. 546-550 of 2017.

(iii) M.S. Ahlawat vs. State of Haryana and Anr. passed in writ petition (crl.) 353 of 1997.

(iv) Iqbal Singh Narang & Ors. vs. Veeran Narang passed in Criminal Appeal No. 2225 of 2011.

11. The principles laid down by the Hon'ble Apex Court in the above-mentioned judgments are not helpful to the appellant as the facts and

circumstances of these cases are quite different to the instant matter and the said judgments were passed in different context holding different

principles which are not relevant in the present matter and moreover, it has not been ruled in any of these judgments that a Court is bound to make a

complaint under Section 340 read with Section 195(1)(b) of Cr.P.C. if an offence of giving false evidence in the Court proceeding is alleged and I

think there is no need to discuss the principles laid down in the said judgments. Here it is important to mention that the Constitution Bench of the

Hon'ble Apex Court observed in the case of Iqbal Singh Merwah and another v. Minakshi Merwah and another reported in S.C.C. 2005 (4) page

370 that a Court is not bound to make a complaint in respect of commission of an offence referred in Section 195(1)(b) of Cr.P.C. and such complaint

will be made only if it is expedient in the interest of justice and not in every case and this expediency will normally be judged by the Court by weighing

not the magnitude of injury suffered by the person affected by the offence but having regard to the effect or impact of that offence upon

administration of justice. In the instant matter the learned Trial Court while rejecting the prayer of the appellant mainly took into account the fact that

while recording the statement before the Judicial Magistrate by the victim under Section 164 Cr.P.C. she was threatened by the accused and during

the Trial the said victim deposed that she was afraid during her examination before the Magistrate and considering this fact as well as other materials

the learned Trial Court rejected the prayer of the appellant and by these facts as well as other facts mentioned in the order impugned it can safely be

deemed that the learned Trial Court did not think necessary to file a complaint under Section 340 of Cr.P.C. in respect of the alleged offence of giving

false statement before the Court and in the opinion of this Court the discretionary power conferred upon the Trial Court by virtue of Section 340 of

Cr.P.C. was properly exercised.

12. Accordingly, in the result I find no merit in this appeal and the order impugned rejecting the prayer of the appellant made under Section 340 and

195 of Cr.P.C. before the Trial Court, appears to be proper and lawful and there is no need to interfere in the order impugned and hence the instant

appeal stands rejected.