

The State of Bihar Vs. Dr. Tripti Sinha

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Court : Patna

Decided On : Feb-04-2009

Judge : Dharnidhar Jha, J.

Acts : Evidence Act - Sections 45; Indian Penal Code (IPC) - Sections 192, 197 and 201

Appeal No. : Or. Cr. Misc No. 1 of 2008

Appellant : The State of Bihar

Respondent : Dr. Tripti Sinha

Advocate for Def. : Ashok Kumar Singh, Adv.

Advocate for Pet/Ap. : Prasoon Sinha, G.A. III

Disposition : Appeal allowed

Prior history : Dharnidhar Jha, J. Heard. 1. While hearing Cr. Misc. No. 35391 of 2008, in respect of prayer for bail of an accused in Patliputra P.S. Case No. 131 of 2008, the court could confront a situation which indicated definite manipulations in the medical report. The court, during hearing of the petition, perused one of the annexed documents in its photo stat copy form, at running page 23 of the brief, which was a report of the radiologist and that had a photograph, also in photo stat copy form and th

Judgement :

Dharnidhar Jha, J.

Heard.

1. While hearing Cr. Misc. No. 35391 of 2008, in respect of prayer for bail of an accused in Patliputra P.S. Case No. 131 of 2008, the court could confront a situation which indicated definite manipulations in the medical report. The court, during hearing of the petition, perused one of the annexed documents in its photo stat copy form, at running page 23 of the brief, which was a report of the radiologist and that had a photograph, also in photo stat copy form and that indicated as if the report related to a child. On contrasting the said radiological report and the photograph with the opinion, finally rendered by Dr. Tripti Sinha, respondent herein, the court was struck by the most important feature of the report under which the child had been reported below 14 years of age. The court had an opinion that the report was wrong and manipulated, probably created, so as to rendering benefit to the petitioner in the above noted Cr. Misc. petition in getting an order of bail in his favour and as such, the court was of the opinion that the act besides being an act of contempt, on account of meant to influencing the judgment of the court, was also an act which could be an offence committed by a public servant during discharge of his/her public duty in recording a report which could be utilized in a judicial proceeding and as such, directed issuance of notice to the respondent for her appearance, calling upon her to show her causes as to why the matter should not be referred for hearing for the act of contempt, prima facie, appearing committed by her as also for filing a complaint against her.

2. The respondent has appeared. She has filed her show cause and she has stated, inter alia, that the child was examined by a board of doctors consisting of two other members also and after assessing the child and examining her, she was sent to the radiologist for her radiological examinations and for obtaining his opinion. Accordingly, the radiologist made a report which is Annexure - C to the show cause filed by the respondent and which was also an annexure as indicated in main Cr. Misc. petition and the radiologist after radiological examinations,

furnished many opinions as regards the age of the victim and being influenced by that and in absence of the two members of the board of doctors, the respondent made the report on 11.7.2008 because the investigating agency was pressing hard upon the respondent to furnish the report. Many other facts have been stated in the show cause which are dependent upon radiological report of the victim, as may appear from paragraph 8 of the show cause and the respondent has submitted that it could be merely an opinion dependent upon the opinion of the radiologist and it could not be said to be an act intentionally done so as to influencing the result in a particular proceeding pending before the court.

3. It has been submitted by citing a judgment of the Apex Court in the case of Jaimala v. State of J & K reported in : 1982 CriLJ1777 , that while considering the age of a person, one must take judicial notice of the margin of error in age ascertaining by radiological examination which is two years on either sides. It was contended by referring to some parts of the text of Modi's Medico Legal Jurisprudence, specially page No. 282 to 285 of the text that the height of the child as also the number of teeth which a child could be having, could also be an indicator as to what could be the age of the child and there could be some error in assessment of the age also. Many other arguments appear made in the show cause on the radiological and other physiological aspects of assessing the age of a person and an attempt was made that the opinion that the victim was below 14 years of age, may not be an intentional act or an act which could be impinging upon the conduct of the respondent regarding the commission of an offence by her.

4. The above facts which are mentioned in the show cause have been pressed into service by the learned senior counsel for the respondent in a very nice manner and he has been rejoined by Mr. Prasoon Sinha, Government Advocate No. III, appearing for the State of Bihar. Besides, by referring to some of the annexures, specially Annexure A, which was the preliminary report made by the board of doctors, pointing out prima facie, by referring to the height of the child, it was contended that the child was aged in between 4-6 years and the report was made intentionally in such a way so as to justify that a child who could be of six years, could also be below 14 years. It was contended that it was an intentional

act done cleverly so as to benefitting an accused in a case of so serious a nature as was presented to the police by her mother.

5. After having heard learned Counsel for the parties and perused the record, I could, at the very outset, direct that the matter as regards the issue of commission of contempt of this Court by Dr. Tripti Sinha has to be referred to an appropriate bench which could be assigned with the duty of hearing contempt proceeding initiated suo motu or brought before the court.

6. One thing is very clear that the report which was made by the respondent was definitely designed in such a way as to influencing the final judgment of this Court in Cr. Misc. No. 35391 of 2008 and that could give rise to sufficient reasons for taking cognizance of an act of contempt committed by the respondent with an intent to influencing the judgment of this Court by making a false and wrong report. It is well known that an act which could be an act of contempt, if it is also a defined offence, it could not be bad that a person could be prosecuted for committing that offence also. There could be a series of decisions in support of the view, many of this Court also. The petitioner was heading a board of doctors which was constituted by two other members, namely, Dr. Sneh Lata and Dr. N. Sahay. The board of doctors referred the child to the radiologist and also for obtaining a report from him as also radiological data so as to finally giving its opinion. How was it that the respondent by-passed the two members and signed the report finally on 11.7.2008 unilaterally fixing her opinion about the age of the child? That opinion appears, prima facie, manipulated and given with a definite intent of benefiting the accused. Even an untrained mind in life science, by mere perusal of the photograph which was pasted on the radiological report, would have come to a conclusion that the child was not even aged six years. The respondent is a doctor. She is a trained person. She could be said to have specialized in that particular branch of science which trains a person to express opinion and who is rather authorized under law to render such opinion under Section 45 of the Evidence Act. Taking another ordinary view also raises the same inference that the respondent, being a public servant who is supposed to be conscious of her holding an office in public trust and in discharge of her duties, is expected to perform it with honesty and integrity and without any favour should have given her opinion honestly. The

opinion, unfortunately, was rendered definitely to help out an accused who was facing a charge of either out raising the modesty or attempting to commit rape upon a child. This could definitely be an offence of fabricating false evidence as defined and made punishable under Section 192 of the I.P.C. and further for issuing false certificate which is punishable under Section 197 of the Code besides an offence of giving false opinion in order to screening an offender which could be punishable under Section 201 of the Indian Penal Code and, therefore, I am of the opinion that it is required in the interest of justice as also for eradicating such offences to be committed in future to direct the Registrar General of the court to file a complaint against Dr. Tripti Sinha, Medical Officer, New Gardiner Road Hospital, Patna before the Chief Judicial Magistrate, Patna. The proceeding as regards commission of offence in the above behalf, is disposed of.

7. The matter is referred to the appropriate bench so far it relates to issue of notice on commission of contempt to the respondent.

The petition stands disposed of.

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