

**Basudeo Narain Sinha and anr. Vs. the State of Bihar and anr.**

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**Court :** Patna

**Decided On :** Mar-20-2007

**Judge :** Ghanshyam Prasad, J.

**Appellant :** Basudeo Narain Sinha and anr.

**Respondent :** The State of Bihar and anr.

**Judgement :**

**Ghanshyam Prasad, J.**

1. This application under Section 482 Cr.P.C.d has been filed to awash the order dated 21.1.2006 as well as dated 8.3.2006 passed by Fast Track Court No. 1, Sasaram in Sessions Trial No. 388 of 1990. Vide order dated 21.1.2006, the court below has allowed the petition dated 22.9.2004 of the prosecution and has marked report of the Director Police Laboratory, C.I.D., Patna as Ext.4. Vide order dated 8.3.2006. the lower court has rejected the petition of the petitioners filed under Sections 311 and 340 of the Cr.P.C. as well as petition for sending the letter (Ext.2/C) to Forensic Science Laboratory, Hyderabad for examination.

2. Heard.

3. On perusal of the order dated 21.1.2006, it appears that the court below has marked report of the Director. C.I.D., patna as Ext.4 holding it as public document. He has relied upon a decision of the apex court reported in 1975 S.C.905 (Phool

Kumar v. Delhi Administration).

4. Section 45 of the Evidence Act deals with the opinion of the expert. Section 74 deals with public document. Section 45 deals about the relevancy of opinion of the expert in order to form opinion by the court upon a point as to identity of handwriting or finger print. It does not deal with admissibility of the document. Section 74 defines the public document which is as follows:

74. Public documents.- The following documents are public documents: (1) Documents forming the acts, or records of the

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of (2) Public records kept in any State of private documents.

5. Apparently, the report of the expert does not fall within the category of public document. Therefore, the court below has erred to mark the report of C.I.D. as a public document. The decision of the apex court relied upon is also not applicable in this case. Report of the expert was taken into consideration without its proof as it was not objected to by the defence in the lower court. It was not admitted as a public document.

6. Accordingly, the order dated 21.1.2006 is hereby washed with observation that the prosecution may, if so advised, get the report proved in accordance with the provisions of the Evidence Act.

7. So far order dated 22.9.2006 is concerned. it is composite order through which three petitions in respect of three prayers have been rejected. The first petition was under Section 311 of the Cr.P.C. for examination of certain witnesses, the other under Section 340 Cr.P.C. for making enquiry on alleged forced document and the 3rd was for sending the letter in question to Forensic Science Laboratory, Hyderabad or obtaining expert's opinion.

8. The court below has rejected all the three petitions with reasoned order. The court below has rejected the petition filed under Section 311 Cr.P.C. with observation 'if the defence wants to examine any person it will be at the stage of the defence.' Thus. under the circumstances, I do not find any fault in the impugned order in this regard. It is open for the petitioners to examine relevant witness at the stage of defence.

9. The petition filed under Section 340 Cr.P.C. has also been rejected as not maintainable. I am also of the opinion that there is no ground or material to attract the provision of Section 340 Cr.P.C. Section 340(1) Cr.P.C. runs as follows:

340. Procedure in cases mentioned in Section 195(1) When. upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the Interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any as it thinks necessary,-

(a) record a finding to that effect:

(b) make a complaint thereof in writing:

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

10. In the above section, the words 'which appears to have been committed' are very significant. In order to make enquiry under this provision there must be some material to show that the offence mentioned under Section 195(1)(b) Cr.P.C. has been committed. In that case, there is nothing on the record to show that the letter

in question appears to be a forged document. On the other hand, there is a material on the record i.e. expert's opinion to show that the letter in question is not forged. Under the circumstances, the court below has rightly rejected the petition filed under Section 340 Cr.P.C.

11. The 3rd petition was for sending the letter in question to Forensic Science Laboratory Hyderabad for obtaining opinion of the expert. The court below has also rejected this application. This is a case of the year 1989. The defence ought to have made such prayer at early stage of the trial. At this stage it would not be proper to send the letter to Hyderabad for expert's opinion, it would further drag the disposal of the case which is pending since last 18 years. Apart from it, there is already one expert's opinion on the record and above all the court is expert of all expert. It will examine the genuineness of the document with its naked eye and in the light of the material available on the record. Under the circumstances, I am not inclined to interfere in the order of court below in this regard.

12. In the result, the prayer of the petitioner to quash the order dated 8.3.2006 is hereby rejected. The court below is directed to dispose of the case within six months without giving any adjournment to either parties. Both the parties are also directed to fully cooperate in early disposal of the case.

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