

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, MANJHAUL,
BEGUSARAI (BIHAR)**

District- Begusarai, (Bihar)

Criminal Appeal No. 32/2016

Reg. No. 312/2015

This appeal arises against the order dated 16.02.2016, passed by Sri Uma Shankar Narayan, the then J.M.-1st Class, Manjhaul, Begusarai, Bihar in Cheriabariyarpur P.S. case no. 116/2005, GR Case No. 2350/2005, State Vs. Mrityunjay Kumar @ Sardar, whereby the Id. lower court dismissed the petition dt.12.02.2007 filed under section 340 Cr.P.C. by the appellant/accused.

IN THE MATTER OF :

Mrityunjay Kumar @ Sardar, S/o Late Ram Narayan Singh.

Residents of Village- Chhaurahi, P.S.-Khodwandpur, Dist-Begusarai (Bihar).

.....Appellant.

Versus

1. State of Bihar

2. Asutosh Chandra Gyani, S/o- Sri P.N. Singh

R/o- Vill- Alauli, District- Khagaria(then SHO Manjhaul O.P.)

.....Respondents.

Ld. Counsel for Appellants – Sri Shyam Nandan Singh, Ld. Counsel.

Ld. Counsel for Opposite Party- Sri Rakesh Kumar, Ld. Add. P.P.

Date of Judgement- 18th day of April 2026

Present:-

**Sanjay Kumar Singh
Addl Sessions Judge,
Subdivisional Civil Court,
Manjhaul, Begusarai**

J U D G M E N T

The memorandum of appeal under section 341 of the Cr.P.C. has been preferred by the appellant Mrityunjay Kumar @ Sardar against the Order dated 16.02.2016, passed by Sri Uma Shankar Narayan, the then Ld. J.M. 1st Class, Manjhaul, Begusarai, in Cheriabariyarpur P.S. case no. 116/2005, GR Case No. 2350/2005, State Vs. Mrityunjay Kumar @ Sardar whereby and whereunder the then Learned J.M. 1st class, Manjhaul, Begusarai, dismissed the petition dt. 12.02.2007 filed under section 340 Cr.P.C. by appellant/accused. Henceforth, the above named appellant is contesting this appeal.

PROSECUTION CASE

1. The brief fact of the prosecution case, as per LCR, the case of the appellant is that a Cheriabariyarpur P.S case no. 116/2005 dt. 12.10.2005 was registered u/s 414 IPC & 25(1-B)a, 26, 35 Arms Act against the appellant on the basis of self statement of informant Ashutosh Chandra Gyani officer in-charge of Manjhaul O.P. and in the course of trial the said Ashutosh Chandra Gyani deposed before the court as PW-2 on 21.02.2006, in which he stated in para 3 to 4 of his deposition that he had lodged only one case against the appellant as an informant. But during trial the present appellant filed a copy of FIR of Cheriabariyarpur P.S. case no. 11/2006 which was exhibited as Ext. E, in which said Ashutosh Chandra Gyani was also an informant. Since the informant Ashutosh Chandra Gyani gave a false statement before the court which is an offence punishable u/s 193 IPC and also tried to conceal the fact which is also punishable u/s 201 IPC. Since, section 195 of Cr.P.C. clearly says that no court shall take cognizance except on the complaint in writing of that court or some other court to which that court is subordinate under any offence punishable u/s 193 to 196, 199, 200, 205 to 211 and 228 IPC. So, the petitioner has not right to file complaint directly against such witness regarding such offences. Hence, appellant filed a petition u/s-340 Crpc on 12.02.2007 before Sri A. K. Sinha, J.M.

1st class, Begusarai to start an enquiry u/s 340 Cr. P.C. but said petition was pending since long in want of rejoinder and lastly on 16.02.2016 the said petition was rejected with finding that said witness Ashutosh Chandra Gyani is an officer in-charge of Manjhaul O.P. also. So, it is not possible that a police officer to remember in day to day working that how many cases he has conducted against which of the accused, so it is not a deliberate statement made for the purpose of securing conviction of the accused/appellant in this case. Hence, being aggrieved and dissatisfied with the impugned order dt.16.02.2016 the appellant has preferred this appeal.

TRIAL PROCEDURE

2. On the basis of the written report of the informant, a criminal case bearing Cheriabariyarpur P.S case no. 116/2005, dated 12.10.2005, for the offence under sections- u/s 414 IPC & 25(1-B)a, 26, 35 Arms Act, was registered against the aforesaid accused/appellant and one other. After investigation, the charge sheet was submitted against both the accused persons leading to cognizance taken by the then Learned C.J.M., Begusarai and as such trial was held. The substance of charge was explained to the accused on 02.02.2006 for the offence under sections- 414 IPC & 25(1-B)a, 26, 35 Arms Act. The accused denied the charges and claimed to be tried. On the basis of aforesaid charges, the trial was taken up and four prosecution witnesses have been examined. In the meantime, the appellant/accused filed a petition to initiate proceeding under section 340 Cr.P.C. against informant Ashutosh Chandra Gyani of the case, which was rejected by the Ld. Lower Court vide order dated 16.02.2016.

ARGUMENTS ADDUCED AT BAR

3. Being aggrieved by the above said order the appellant/accused preferred this appeal on following grounds:-
- (i) That the learned Magistrate has erred both on law and on facts at the time of passing order.

(ii) That from the perusal of the order it is clear that the said order is full of partiality and against the law.

(iii) That the learned Magistrate should have thought that the law is above all and there is a rule of law, it never vary from person to person and it is general principle of law that no person can be freed or give any preference to misuse the provision of law rather he must be punished for which he has committed.

(iv) That the learned Magistrate should have thought that a witness in his deposition stated everything which are mentioned in the F.I.R. and it is in the memory of the witness then how it is expected that an offence just after three months committed by the same accused in presence of him in which he was also informant.

(v) That the learned Magistrate should have thought that section 193 of the I.P.C is concern with a false statement given by witness intentionally in a judicial proceeding and it has been proved that the said witness has given false statement before the court, so, offence has been completed, but he passed order against the spirit of law.

(vi) That our own High Court, clearly gave guide line in a case of Sri Urmila Devi Vs. Ajeet Kumar Roy reported in 2000(3) PLJR, page 112" the lordship says that it is bounded duty of the court to enquire into the matter and proceed against the concerned person who had made false statement before the court. The apex court also says reported in 2005(3) East Cr. Cases page no.117" when the witness stated false statement and it is proved satisfactory the court take serious action against such witness but learned court below ignored the such view of the Hon'ble Court also.

(vii) That the learned Magistrate in one side freed the culprit and on other side he blamed upon appellant that such petition has been filed with a view to create delay in trial such act shows his partiality.

(viii) For that the impugned order is fit to be set aside.

4. Learned counsel for the appellant has sought initiation of proceedings against the informant of Cheriabariyarpur P.S. case no.116/2005 namely Asutosh Chandra Gyani(officer in-charge of Manjhaul O.P.), alleging that during the trial of the said case the

informant Asutosh Chandra Gyani was examined as PW-2 on 21.02.2006, and deposed falsely before the court by stating in para 3 & 4 of his deposition that he lodged only one case i.e.- Cheriabariyarpur P.S. case no.116/2005 against the appellant as an informant. Whereas, the appellant produced the copy of Cheriabariyarpur P.S. Case no. 11/2006 which is exhibited as Ext.- E. The appellant contended that such false deposition attracts penal liability u/s 193 & 201 of IPC. The appellant further submits that the said Asutosh Chandra Gyani deliberately suppressed material facts that he has lodged only one case against the appellant and gave false evidence before the court. Whereas the lower court erred in rejecting the petition filed u/s- 340 of Cr.P.C. by appellant vide order dt. 16.02.2016 with a finding that the said witness Asutosh Chandra Gyani is officer in-charge of Manjhaul O.P. and it is not possible for the police officer, in day to day working, to remember that how many cases he has conducted against which of the accused, so it cannot be said that it is a false statement, despite prima facie evidence of perjury. The act of giving false testimony, amounts to offences punishable u/s 193 & 201 of IPC. Hence, prayed to allow this appeal and set-aside the order dated 16.02.2016, passed by the then Learned J.M.- 1st Class, Manjhaul, Begusarai in Cheriabariyarpur P.S. case no.116/2005(GR Case No. 2350/2005).

5. On the other hand, the Learned A.P.P. has vehemently countered the submissions advanced on behalf of the learned counsel of appellant and submitted that the impugned order is based on the facts and circumstances and material brought on record. The order is reasoned and well discussed. The credibility of the impugned order is unassailable, because while writing the order the learned court below has not overlooked even a minuscule fact. So, the impugned order does not warrant interference by this appellant court. He has further submitted that the points raised by the defence is without any basis and if a person while deposing as witness misses or forgets some facts while answering during cross-examination, the defence cannot take advantage thereof. He has further submitted that this case is of the year 2005 and the accused/appellant was booked for the offence under sections- 414 IPC &

25(1-B)a, 26, 35 Arms Act and by filing this petition the appellant has lingered this case for more than 20 years. Accordingly, he prays to dismiss the instant appeal.

6. Now, the facts and circumstances available on record are subject to strict scrutiny in this appeal as per legal parameter so prescribed, and this court is required to analyse.

POINT FOR DETERMINATION

Whether the impugned order is just, proper, within jurisdiction and based on facts & law or it warrants interference by this appellate court ?

7. Now, before coming to test the merit of the impugn order, the relevant provisions of sections-340 & 341 Cr.P.C./379 & 380 BNSS are reproduced herein below for easy reference-

340 Cr.P.C/379 BNSS. *Procedure in cases mentioned in section 215.-*
(1) *When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 215, 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.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 215.

(3) A complaint made under this section shall be signed-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 215.

340 Cr.P.C/380 BNSS. Appeal. (1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 379, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 215, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 379, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 379, shall be final, and shall not be subject to revision.

DECISION AND REASONS THEREOF

8. Now, I have carefully examined the impugned order dated 16.02.2016; the memorandum of appeal; the material available on the record. After hearing the learned counsels of both the parties and upon

perusal of the record this court finds that the lower court has observed that the said witness Asutosh Chandra Gyani is officer in-charge of Manjhaul O.P. and it is beyond expectation from a police officer to remember, how many cases he has conducted against which of the accused in day to day working, so it is not a deliberate statement made for the purpose of securing conviction of the accused/appellant. As the accused can only be convicted on the basis of cogent and reliable material available on judicial record not on a frivolous statement that how many cases has been filed by the informant against the accused. As such mere contradictions or discrepancies in testimony do not automatically warrant prosecution u/s 193 and 201 of IPC unless there is clear and deliberate intent to mislead the court. The power u/s 340 Cr.P.C. is discretionary and is to be exercised sparingly, only when it is expedient in the interest of justice to prosecute for perjury. Here, it would be useful to quote the relevant legal proposition on the subject as summed up in a case **K. Karunakaran Vs. T.V. Eachara Warriar 1978 AIR 290** the Supreme Court held that prosecution for perjury should be ordered only when it is expedient in the interests of justice, not merely because a statement appears false. Section-193 IPC contemplates that making of a false statement is not enough. It has to be made intentionally. In **Chajoo Ram Vs. Radhey Shyam (AIR 1971 SC1367)** it was emphasized that courts must consider whether false evidence has materially affected the outcome of the case before invoking section 340 Cr.P.C. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In **Hukum Singh Verma Vs. Km. Shanti Devi Jain (Alld. High Court 2023)** has reiterated that mere contradictions or inaccuracies in testimony do not automatically justify prosecution under section 340 Cr.P.C. In the present case, the alleged false statement of the informant Asutosh Chandra Gyani pertains to the number of cases registered against the appellant. Although the statement of the said witness informant may have been inaccurate, but

the alleged falsehood did not materially affect the decision in this case. So, such issue can be tested during cross examination and weighed by the trial court while appreciating evidence, rather than following the basis for separate prosecution against the said witness. Now, from perusal of the materials available on the judicial record, this court is of the opinion that the Ld. Lower Court has rightly rejected the petition filed u.s.-340 Cr.P.C. by accused/appellant. The appeal is based on mere contradiction in deposition, which by itself is insufficient to warrant interference under section 341 Cr.P.C. The learned Trial Court has also come at the right conclusion that the petition filed by the appellant/accused is for serious cause delay to the proceeding of this case only as this case was registered for the offence under sections- 414 IPC & 25(1-B)a, 26, 35 Arms Act against the accused and four prosecution witnesses have already been examined in the case.

9. Thus, having gone through all the facts, circumstances and circumspect so attended, I come to an irresistible conclusion to hold and find that the impugned order does not suffer from any sort of illegality and irregularity and as such the impugned order does not warrant any interference by this Appellate Court. Hence, on the basis of above discussion, considering all the materials available on the record and the arguments put forward at bar, in view of the facts and circumstances of the case, this court is of the opinion that the impugned order of the Learned Trial court is liable to be upheld and this Criminal Appeal is liable to be dismissed as devoid of any merit.

Accordingly, it is hereby,

ORDERED

That the instant Criminal Appeal is hereby stands **dismissed**, as devoid of any merit. The order dt. 16.02.2016 passed by Sri Uma Shankar Narayan, the then Learned J.M. 1st Class, Manjhaul, Begusarai, in Cheriabariyarpur P.S. case no. 116/2005, GR Case No. 2350/2005, State Vs. Mrityunjay Kumar @ Sardar, is hereby **upheld** in toto.

Let the Trial Court record of Cheriabariyarpur P.S. case no.

116/2005, GR Case No. 2350/2005, of the Court of Sri Uma Shankar Narayan, the then Learned J.M. 1st Class, Begusarai, be sent back along with a copy of this order for needful.

Dictated & corrected

(Sanjay Kumar Singh)
Additional Sessions Judge,
Manjhaul, Begusarai, Bihar

This Judgment is pronounced in presence of both the parties. Judgment is given under the hand and seal of this court on this 18th day of April, 2026 at Begusarai, Bihar. This judgment contains 10 [Ten] pages and all the pages bear my signature.

(Sanjay Kumar Singh)
Additional Sessions Judge,
Manjhaul, Begusarai, Bihar

Date of Judgment / Order	18.04.2026
Date of Reserving Judgment / Order	18.04.2026
Uploading Date	22.04.2026
Uploaded by	Md. Zeeshan Ali Ahmad