

COURT OF ADDITIONAL SESSIONS JUDGE-III, BIHARSHARIF (NALANDA)

Criminal Appeal No. 18/2017

1. Nand Kishore Prasad, S/O.- Late Brahma Deo Prasad

..... Appellant

Vs.

1. Shri Sukhdeo Prasad @ Sukhdeo Das, S/o.- Late Bhagwat Narayan Das

2. Shri Parmanand Das, S/o.- Late Bhagwat Narayan Das

3. Shri Shatrughna Das, S/o.- Late Bhagwat Narayan Das

..... Opposite Parties

Learned Counsel for appellant: Sri Bipin Kumar Sharma, Learned Advocate

Learned Counsel for O.Ps: Kumari Snehlata Sujal, Learned A.P.P.

[Judgment Dated - 4th day of July, 2026]

::::: J U D G M E N T :::::

Introduction

1. This criminal appeal has been preferred under Section 341 of the Code of Criminal Procedure by the appellants/applicants against the order dated 23.12.2016 passed by the learned Sub-Judge-V, Biharsharif, Nalanda, whereby Misc. Application No. 09 of 2016 filed under Section 340 Cr.P.C. was rejected.

Factual Matrix & Proceedings before Learned Lower Court

2. The appellants had filed the aforesaid application u/s 340 CrPC before the learned Lower Court praying, in substance, that proceedings be initiated against the respondents for offences relating to false evidence, false verification, forgery, use of forged document and criminal contempt. The appellants further prayed that the alleged disputed signatures be sent for examination by a Forensic Science Laboratory and that appropriate complaint be made to the Court of the Chief Judicial Magistrate.

3. The main allegation of the appellants is that T.S. No. 138 of 1989 was filed on 23.09.1989 by Chittaranjan Das, Sukhdeo Das, Samarjit Das, Parmanand Das and Shatrughna Das, sons of Late Bhagwat Narayan Das. According to the appellants, respondent Shatrughna Das impersonated Sukhdeo Das/Sukhdeo Prasad and Late Samarjit Das and forged their signatures on the plaint. It is further alleged that respondent Parmanand Das falsely verified the plaint and also swore and verified a false affidavit in support thereof. It is also alleged that Sukhdeo Das, while appearing as plaintiff's witness in T.S. No. 138 of 1989, falsely stated on solemn affirmation on 18.06.2003 that the signature appearing on the plaint was his own.

4. The learned Lower Court, after perusing the application, the written submissions and the

record, rejected the application mainly on the grounds that the suit had been filed in the year 1989; the defendants had appeared and filed written statements long back; Sukhdeo Das had been examined and cross-examined in the year 2003; and the application under Section 340 Cr.P.C. had been filed only in the year 2016. The learned Lower Court also observed that the application appeared to be an attempt to convert the civil litigation into criminal proceedings and that the applicants were free to pursue independent criminal proceedings in accordance with law.

Grounds of Appeal

5. Being aggrieved by the said order, the present appeal has been filed on the following main grounds:

- I. That the order under challenge is bad on facts as well as in law.
- II. That the order is unfounded and has not been properly discussed.
- III. That the learned Lower Court did not appreciate the scope of Section 340 Cr.P.C. correctly and misconstrued Section 195 Cr.P.C. Section 340 Cr.P.C. lays down the procedure in respect of offences enumerated in Section 195 Cr.P.C. Section 195 Cr.P.C. provides that no Court shall take cognizance of the offences enumerated therein except on the complaint in writing of that Court, or by such officer of that Court as the Court may authorise in writing in that behalf, or of some other Court to which that Court is subordinate. In view of the aforesaid legal position, the appellants are not in a position to initiate criminal action for the offence of perjury and criminal conspiracy, as laid down under Sections 191 and 193 IPC and Sections 120-B/34 IPC, against respondent no. 1, Sukhdeo Das @ Sukhdeo Prasad, for the offence of perjury allegedly committed by him on 18.06.2003, and against respondent nos. 1 to 3 for the offence of criminal conspiracy in submitting the plaint of Title Suit No. 138 of 1989 with forged signatures, false verification and false affidavit. It is further submitted that the appellants/applicants themselves are not in a position to get the original signature of respondent no. 1, Sukhdeo Das @ Sukhdeo Prasad, compared with the signature allegedly forged by his youngest brother, respondent no. 3, Shatrughna Das.
- IV. That the learned Lower Court erred in not appreciating that Sections 195 and 340 Cr.P.C. apply equally to offences of perjury, fabrication, forgery and criminal conspiracy committed in civil suits as well as in criminal proceedings. As such, the observation of the learned Lower Court that the miscellaneous application appeared to be an attempt to convert a civil suit into a criminal case is not based on sound legal grounds.
- V. That the appellants have further submitted that the forgery was committed before the document was presented in Court and, therefore, the bar of Section 195 Cr.P.C. would not be attracted to the offence of forgery committed by respondent no. 3, Shatrughna Das, in accordance with the decision of the Hon'ble Supreme Court in *Iqbal Singh Marwah and another v. Meenakshi Marwah*. Accordingly, the appellants had lodged a complaint with Bihar Police Station on

15.09.2016, which was duly received. However, the learned Lower Court failed to consider that, by submitting the plaint of Title Suit No. 138 of 1989 with forged signatures, false verification and false affidavit before the learned Court of the Munsif, Bihar Sharif, Nalanda, respondent nos. 1 to 3 rendered themselves liable for proceedings under the Contempt of Courts Act, 1971, which could be initiated only by the learned Lower Court. The learned Lower Court erred in not referring the matter to the learned Court of the Munsif, Bihar Sharif, Nalanda. It is further submitted that the learned Lower Court erred in not considering Misc. Application No. 09 of 2016 on merits and decided it on the basis of conjectures and surmises.

- VI. That the learned Lower Court erred in not appreciating that the offences committed by respondent nos. 1 to 3 are of a continuing nature and are punishable even after disposal of Title Suit No. 138 of 1989.
- VII. That the learned Lower Court erred in not fulfilling its responsibility by ordering comparison of the disputed signatures of respondent no. 1, Sukhdeo Das @ Sukhdeo Prasad, with his admitted handwriting and signatures available on the record of Misc. Case No. 05 of 1989 and Title Suit No. 138 of 1989 by sending them to a Forensic Science Laboratory. The learned Lower Court also erred in not directing respondent nos. 1 and 3, namely Sukhdeo Das @ Sukhdeo Prasad and Shatrughna Das, to remain personally present before the Court and submit their specimen handwriting and signatures for being sent to the Forensic Science Laboratory.
- VIII. That the learned Lower Court erred in not appreciating that, in reply to a specific question in his cross-examination, respondent no. 1, Sukhdeo Das @ Sukhdeo Prasad, deposed falsely on solemn affirmation on 18.06.2003 that the signature on the plaint of Title Suit No. 138 of 1989 was his own, though he knew that the signature had been forged by his youngest brother.
- IX. That the learned Lower Court erred in not perusing and considering the original record of Misc. Case No. 05 of 1989, which had been received from the record room in the office of the then learned Sub-Judge-VII, Bihar Sharif, Nalanda on 09.05.2005, and in which the original signature of respondent no. 1, Sukhdeo Das @ Sukhdeo Prasad, is available.
- X. That the learned Lower Court erred in arriving at the conclusion that Misc. Application No. 09 of 2016 had been filed at a belated stage. An application under Section 340 Cr.P.C. can be filed even after disposal of Title Suit No. 138 of 1989.
- XI. That the learned Lower Court failed to appreciate that the proceeding of Misc. Application No. 09 of 2016 could have been taken up separately from the trial of Title Suit No. 138 of 1989 without hampering its progress. Therefore, the learned Lower Court wrongly came to the conclusion that the appellants intended to delay the disposal of Title Suit No. 138 of 1989.
- XII. That the learned Lower Court erred in not appreciating that Misc. Application No. 09 of 2016 was filed by the appellants to draw the attention of the Court to offences which interfere with the administration of justice.

Points for determination

6. On the basis of the pleadings, submissions and the record, the following points arise for determination:

- (i) Whether the learned Lower Court committed any illegality in rejecting the application under Section 340 Cr.P.C.?
- (ii) Whether the alleged forged plaint/signatures were in *custodia legis* at the time when the alleged forgery was committed so as to require action only through Section 340 Cr.P.C.?
- (iii) Whether, in the facts of the case, it is expedient in the interest of justice to direct filing of a complaint against the respondents?
- (iv) Whether the order of the Learned lower Court deserves to be set aside?

Findings

7. Section 195 Cr.P.C. creates a bar on taking cognizance of certain offences except upon a complaint in writing by the concerned Court. Section 340 Cr.P.C. provides the procedure to be followed when the Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Section 195(1)(b) Cr.P.C.

8. The power under Section 340 Cr.P.C. is not meant to be exercised merely because one party alleges that the other party has made a false statement or relied upon a disputed document. The Court must be satisfied that there is a prima facie case of deliberate falsehood and, more importantly, that prosecution is expedient in the interest of justice. The emphasis is on the impact of the alleged act on the administration of justice, and not merely on the private grievance of the party. The Supreme Court has explained that expediency is normally judged by considering the effect of the alleged offence on the administration of justice.

9. So far as offences relating to forgery of documents are concerned, the law is well settled. Section 195(1)(b)(ii) Cr.P.C. is attracted only when the offence relating to the document is committed after the document has been produced or given in evidence in a proceeding in any Court, that is, when the document is in *custodia legis*. If the document was allegedly forged before it was filed in Court and was merely produced later in a judicial proceeding, the bar under Section 195(1)(b)(ii) Cr.P.C. is not attracted. This principle was settled by the Constitution Bench in *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370, and has been reiterated thereafter.

10. In the present case, the main allegation is that the signatures of Sukhdeo Das/Sukhdeo Prasad and Late Samarjit Das were forged on the plaint of T.S. No. 138 of 1989 before the plaint was presented in Court on 23.09.1989. Thus, even according to the appellants, the alleged act of forgery had taken place before the plaint was filed in Court.

11. Therefore, at the time of the alleged forgery, the plaint was not in the custody of the Court. It became part of the Court record only after its presentation and registration. The document may have become *custodia legis* after filing, but the crucial question is whether the

alleged offence of forgery was committed during the period when the document was in Court custody. On the appellants' own admission, the answer is in the negative.

12. Consequently, the allegation relating to forgery of signatures on the plaint does not attract the bar under Section 195(1)(b)(ii) Cr.P.C. The appellants themselves appear to have taken this stand by relying upon *Iqbal Singh Marwah* and by stating that a complaint was lodged before Bihar Police Station. Therefore, for the alleged pre-filing forgery of the plaint, the proper course is not necessarily a complaint by the civil Court under Section 340 Cr.P.C. The appellants may pursue such independent remedy as may be available to them in law.

13. The next allegation is that respondent Parmanand Das falsely verified the plaint and affidavit and that respondent Sukhdeo Das falsely deposed on 18.06.2003 that the signature on the plaint was his own. This part of the allegation may fall within the zone of Section 195(1)(b) (i) Cr.P.C. if the Court is satisfied that false evidence was deliberately given in or in relation to a judicial proceeding. But even in such a case, the Court is not bound to file a complaint merely because an allegation is made. The Court must further consider whether such prosecution is expedient in the interest of justice.

14. On this aspect, the record reveals important circumstances. T.S. No. 138 of 1989 was filed in the year 1989. The parties had appeared and filed their written statements long before the application under Section 340 Cr.P.C. was filed. Sukhdeo Das was examined and cross-examined in June 2003. Despite this, the application under Section 340 Cr.P.C. was filed only on 30.08.2016, i.e., after about thirteen years from the deposition.

15. This long delay is material. It is not a case where the alleged falsehood suddenly came to the notice of the Court or the appellants in the year 2016. The appellants were parties to the suit. They had the opportunity to cross-examine Sukhdeo Das in 2003. They were aware of the record of Misc. Case No. 05 of 1989 at least from the stage when it was called for and received. If the signatures were so evidently forged as alleged, there is no satisfactory explanation why an application for action under Section 340 Cr.P.C. was not moved within reasonable time.

16. Further, the allegation of perjury is founded mainly upon comparison of signatures and upon the assertion that the signature appearing on the plaint is not that of Sukhdeo Das. At this stage, the Court is not called upon to conduct a roving inquiry or to collect evidence for one of the parties in a pending civil suit. The question whether the signature is genuine or forged, whether the plaint was validly instituted, and what effect such allegation has on the civil rights of the parties are matters which can be examined in the suit in accordance with law.

17. Section 340 Cr.P.C. cannot be used as a parallel mechanism for discovery of evidence or as a pressure tactic during civil litigation. It is meant to protect the purity of judicial proceedings in cases where deliberate falsehood is *prima facie* clear and where prosecution is necessary in the larger interest of justice.

18. In the present case, the appellants have not produced any expert report or conclusive material before the learned Lower Court showing that the statement of Sukhdeo Das was deliberately false. The prayer itself was that the Court should summon the parties, obtain specimen signatures and send the documents to the Forensic Science Laboratory. Such a prayer indicates that the appellants wanted the Court to first collect material to find out whether an offence was committed. This is beyond the proper scope of Section 340 Cr.P.C. in the facts of the present case.

19. It is true that a preliminary inquiry under Section 340 Cr.P.C. may be held by the Court where necessary. But such inquiry is discretionary.

In the case of Binod Thakur Vs State of Bihar 2017(1) PLJR 36, the Hon'ble Patna High Court has observed as under :

“ If the provisions of Section 340 of the Code are carefully analyzed, it becomes clear that the Court is not bound to make a complaint as regards commission of an offence referred to in Section 195(1)(b)(ii), for, the Court has to be of the view that it is expedient, in the interest of justice, to make the complaint. The Court, in Iqbal Singh Marwah, has held that the language of Section 340 shows that a Magistrate will lodge a complaint only if the interest of justice requires and not in every case. Before filing the complaint, observes the Supreme Court in Iqbal Singh Marwah, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b) (ii) and that this expediency will, normally, be judged by the Court by weighing not the magnitude of the injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, which the commission of offence may have upon administration of justice.”

20. In the light of the above case law, I find that the Court is not bound to embark upon a forensic investigation at the instance of a private party, particularly when the allegation relates to a very old document, the parties had knowledge of the relevant facts for years, and the civil suit itself was pending for adjudication.

21. As regards the allegation of false deposition by Sukhdeo Das in the year 2003, the delay, the pendency of the civil suit, the absence of any clear and conclusive material at this stage, and the fact that the issue can be considered by the Trial Court while appreciating evidence in the main suit, are sufficient reasons for holding that it is not expedient in the interest of justice to direct prosecution at this stage.

22. In view of the foregoing discussion, this Court finds that the alleged forgery of signatures on the plaint, as pleaded by the appellants, was allegedly committed before the plaint was presented in Court. Therefore, the document was not in *custodia legis* at the time of the alleged forgery. The bar under Section 195(1)(b)(ii) Cr.P.C. is not attracted to such alleged

pre-filing forgery. For that grievance, the appellants may pursue independent remedy permissible in law. As regards the allegation of false deposition/false verification, the circumstances of the case do not make it expedient in the interest of justice to direct filing of a complaint under Section 340 Cr.P.C. at this stage.

23. Thus I find that no ground is made out for interference with the impugned order dated 23.12.2016. Accordingly, the appeal is **dismissed**. The order dated 23.12.2016 passed by the learned Sub-Judge-V, Biharsharif, Nalanda in Misc. Application No. 09 of 2016 is hereby affirmed.

24. Let the lower Court record be returned forthwith along with a copy of this judgment.

(Dictated & corrected by me)

Additional Sessions Judge-III,
Biharsharif, Nalanda
04.07.2026

Addl. Sessions Judge-III,
Biharsharif, Nalanda
04.07.2026.