

IN THE HIGH COURT OF JUDICATURE AT PATNA

Mendar Singh @ Vijay Singh

vs.

The State of Bihar

Criminal Appeal (SJ) No.2307 of 2023

25 August, 2023

(Hon'ble Mr. Arun Kumar Jha)

Issue for Consideration

Whether deponent of the case intentionally and knowingly suppressed the criminal antecedents of the appellant or not?

Headnotes

Practice and Procedure—filing a false or misleading affidavit in Court—
Fraud on Court—to get bail, deponent of the case intentionally and
knowingly suppressed the criminal antecedents of the appellant.

Held: since everything was being done for the benefit of the appellant, so the appellant cannot escape from the liability of the concealment of his criminal antecedent from this Court, which is also nothing but fraud on the Court—Court has found a clear case of concealment of criminal antecedents of the appellant by the deponent which was being done for the benefit of the appellant, a cost of Rs.1,00,000/- (One lac) is imposed upon the deponent and the appellant for swearing false affidavit and trying to mislead the Court by suppressing facts—cost shall be paid by the deponent in the coffer of Patna High Court Legal Services Committee—appeal dismissed as withdrawn.

(Paras 17, 20, 21)

Case Law Cited

Mukesh Kumar and Anr. vs. The State of Bihar, (**Cr. Misc.No.61989 of 2022**); Kishore Samrite vs. State of U.P. & Ors., (**2013**) 2 SCC 398; Dalip Singh vs. State of Uttar Pradesh and Ors., (**2010**) 2 SCC 114; Sciemed Overseas Inc vs. BOC India Limited and Ors., (**2016**) 3 SCC 70—**Relied Upon.**

List of Acts

Practice and Procedure.

List of Keywords

Fraud to Court, suppression of material fact, cost imposed on deponent and appellant, criminal antecedents.

Case Arising From

From order dated 15.02.2023 passed in Cr. Misc. No.8947 of 2023, arising out of Cr. Appeal (SJ) no.2445 of 2022.

Appearances for Parties

For the Appellant: Mr. Y.C. Verma, Sr. Advocate; Kumari Anupam, Advocate.

For the Respondents: Mr. Sadanand Paswan.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

Judgment/Order of the Hon'ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2307 of 2023**

Arising Out of PS. Case No.-136 Year-2016 Thana- BASANTPUR District- Siwan

Mendar Singh @ Vijay Singh, Son of Lallan Singh, Resident of Village-
Bithuna, P.S.- Basantpur, District- Siwan

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Y.C. Verma, Sr. Advocate

Kumari Anupam, Advocate

For the Respondent/s : Mr.Sadanand Paswan,

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER**

5 25-08-2023 Earlier vide order dated 15.02.2023 passed in Cr.

Misc. No.8947 of 2023, arising out of Cr. Appeal (SJ) no.2445
of 2022, the Registrar General was directed to enquire into the
matter and fix the responsibility of the person(s), who
committed fraud upon this Court with regard to concealment of
the criminal antecedent of the petitioner-appellant herein.

2. Pursuant to the aforesaid order dated 15.02.2023,
an enquiry report dated 02.08.2023 has been submitted by the
learned Registrar General in a sealed cover, which has been
opened in presence of the parties in open Court.

3. Relevant paragraphs of the enquiry report are
quoted hereunder :

*“On careful examination of the facts
and statements mentioned above, it appears that
Mr. Ashok Kumar, learned Counsel for the
Appellant/Petitioner has filed Cr. Appeal (SJ) No.*



2445/2022 and Cr. Misc. NO. 8947/2023 MOD (S.J) on the basis of information supplied to him by Sri Rajeev Kumar and Sri Narsingh Singh, Deponent in Cr. Appeal (S.J) No. 2445/2022 and Cr. Misc. No. 8947/2023 MOD (S.J) respectively. Both the Deponents had not come to Patna High Court at the time of preparation of Affidavit in the aforesaid cases and the both had given all documents along with a plain paper with their signature at different occasions to learned Counsel Mr. Ashok Kumar at his residence, Village Shankarpur, District. Siwan, for filing of the aforesaid cases in this Hon'ble High Court. Sri Binod Kumar Sinha, Advocate Clerk in both cases, who had identified the both Deponents, Sri Rajeev Kumar and Sri Narsingh Singh, has accepted in his Show Cause Reply and Deposition that both the Deponents had not come to the Hon'ble Patna High Court at the time of preparation of affidavits in Cr. Appeal (S.J) no. 2445/2022 and Cr. Misc. No. 8947/2023 Modification (SJ), and previously prepared Petitions of the both cases containing signature of both Deponents had been given to him by the learned Counsel Mr. Ashok Kumar for preparation of affidavit and for filing of both cases in this Hon'ble High Court.

Sri Rajeev Kumar, brother-in-law of the Appellant and Deponent in Cr. Appeal (SJ) No. 2445/2022, has submitted in his Show Cause Reply that he had given all document along with a plain paper with his signature therein to learned Counsel Mr. Ashok Kumar at his residence, Village



Shankarapur, District- Siwan, but the learned Counsel did not tell him that the blank paper with his signature would be used for the purpose of preparation of affidavit in Cr. Appeal (S.J) no. 2445/2022. He has also submitted that the learned Counsel did not ask him about the Criminal Antecedent of the Appellant and without asking so, he himself made a statement in the aforesaid appeal that the Appellant has no Criminal Antecedent. Deponent Sri Rajeev Kumar has also submitted in his Show Cause Reply that learned Counsel Mr. Ashok Kumar has also been conducting case for the family of the Appellant on earlier occasion in this Hon'ble Court, prior to filing of Cr. Appeal (S.J) No. 2445/2022. Deponent Sri Rajeev Kumar in Cr. Appeal No. 2445/2022 has also accepted in his Deposition that he already knew about five to six cases lodged against Appellant Mendor Singh @ Vijay Singh except this case but he did not disclose the cases to the learned Counsel Mr. Ashok Kumar. Sri Rajeev Kumar, Deponent in Cr. Appeal (S.J) No. 2445/2022, has also deposed that he is Intermediate passed and working as a Postman (Dakia) at Baniyapur, District- Siwan, inspite of that, he put his signature on the plain paper and gave it to the learned Counsel Mr. Ashok Kumar; and ironically, he has taken a plea that he was not aware the technicalities of filing Bail/Appeal before this Hon'ble Court and the learned Counsel did not tell him that the blank paper with his signature would be used for the purpose of preparation of affidavit. The aforesaid plea taken by the Deponent Sri



Rajeev Kumar in Cr. Appeal (53) No. 2445/2022 is not acceptable.

From the aforesaid discussion, it is apparent that Sri Rajeev Kumar, Deponent in Cr. Appeal (SJ) No. 2445/2022, despite having the knowledge of all Criminal Antecedents of his brother-in-law (Sala), Appellant Mendar Singh @ Vijay Singh, did not bring this fact deliberately to the knowledge of the Hon'ble Court. As such, it prima facie appears to be a case of suppression of fact by Rajeev Kumar, Deponent in Cr. Appeal (SJ) No. 2445/2022, in order to get Bail for his brother-in-law Mendar Singh @ Vijay Singh (Appellant) anyhow from this Hon'ble which is punishable under Indian Penal Code.

Having arrived at the conclusion as aforesaid, the Enquiry is concluded and report thereof is being placed before Your Lordship for kind perusal and necessary Orders”.

4. Mr. Yogesh Chandra Verma, learned senior counsel submits that the lawyer engaged in this case has no occasion to verify the fact regarding criminal antecedent of the appellant and he has been duped by giving wrong instruction. He has also pointed out about prevailing practice in this Court with regard to filing of the petitions and swearing of the affidavits till the date it has been made mandatory that the affidavits are to be sworn personally by the person before the Oath Commissioner. However, he prays for withdrawal of the present appeal.



5. Perused the record.

6. The report of learned Registrar General indicates that both the deponents had not come to Patna High Court at the time of preparation of affidavits in the aforesaid cases and both had given all documents along with a plain paper with their signature at different occasions to learned counsel Mr. Ashok Kumar at his residence, Village Shankarpur, District. Siwan, for filing of the aforesaid cases in this Court. Sri Binod Kumar Sinha, Advocate Clerk in both cases, who had identified both the deponents, Sri Rajeev Kumar and Sri Narsingh Singh, has accepted in his show cause reply and deposition that both the deponents had not come to the Patna High Court at the time of preparation of affidavits in Cr. Appeal (S.J) no. 2445/2022 and Cr. Misc. No. 8947/2023 Modification (SJ), and previously prepared petitions of the both cases containing signature of both deponents had been given to him by the learned Counsel Mr. Ashok Kumar for preparation of affidavit and for filing both the cases in this Court.

7. A bare perusal of concluding paragraphs of the enquiry report makes it clear that Sri Rajeev Kumar, deponent in Cr. Appeal (SJ) No. 2445/2022, despite having the knowledge of all criminal antecedents of his brother-in-law (Sala), appellant



Mendar Singh @ Vijay Singh, did not bring this fact deliberately to the knowledge of the this Court which appears to be a case of suppression of fact by Rajeev Kumar, deponent in Cr. Appeal (SJ) No. 2445/2022, in order to get bail for his brother-in-law Mendar Singh @ Vijay Singh (Appellant) anyhow from this Court.

8. However, the learned Registrar General failed to take notice that everything was done by the deponent for the benefit of the appellant and from events which started with filing of Cr. Appeal (SJ) No.2445 of 2022 lead to inescapable conclusion about the complicity of the appellant along with others. It was the appeal of the appellant Medan Singh @ Vijay Singh and any submission made in the appeal and modification petition would be treated as his submission and not only of 'Pairvikar'.

9. It appears from the report of learned Registrar General, the conduct of learned counsel, Mr. Ashok Kumar, is certainly reproachable. The manner in which he conducted himself leaves much to desire. The learned counsel is first and foremost an officer of this Court and such type of behaviour and the manner of conduct of his business is at least not expected from him. Still, the learned counsel for the appellant, Mr. Ashok



Kumar could be given the benefit of doubt that, perhaps, he was not having the information about the criminal antecedent of the appellant. I am making this observation in the light of the report of learned Registrar General wherein he has mentioned the fact that Mr. Ashok Kumar, learned counsel for the appellant/petitioner in Cr. Appeal (SJ) No.2445/2022 as well as Cr. Misc. No.8947/2023 (Modification) filed the cases on the basis of information supplied to him by Sri Rajeev Kumar and Sri Narsingh Singh, deponents in Cr. Appeal (SJ) No.2445/2022 and Cr. Misc. No.8947/2023 (Mod), respectively.

10. Further, the learned Registrar General has failed to observe anything regarding functioning and conduct of the Advocate Oath Commissioner, namely, Mrs. Supriya Rani, Registration No.BR/1344/2019 as in her show cause reply, she has stated that Cr. Appeal (SJ) No.2445/2022 was affidavited by her vide Oath No.1611 dated 15.07.2022. She has deposed that she asked the Advocate Clerk Sri B.K. Sinha, registration no.408/2021 to inform the deponent Sri Rajeev Kumar to put his signature on Oath Register and the Advocate Clerk Sri B.K. Sinha assured her that he called the deponent to put his signature on the Oath Registrar. She trusted him and on his words, affidavited the petition of Cr. Appeal (SJ) No.2445/2022



without knowing the facts and circumstances of the petition. She has tendered unqualified apology for the mistake and has given full assurance that such type of conduct would not be repeated in future.

11. Such type of conduct has been frowned upon by a Coordinate Bench in the matter of **Mukesh Kumar and anr. Vs. The State of Bihar (Cr. Misc.No.61989 of 2022)** and the Coordinate Bench has issued certain directions to the Oath Commissioner regarding their conduct of business. However, the apology of the learned Oath Commissioner is accepted and she is warned to remain careful in future. It is expected that the learned Oath Commissioner would adhere to the directions issued by the Coordinate Bench.

12. This Court has taken note of some relevant facts of this case which are as under :

(i) The appellant Mendar Singh @ Vijay Singh was allowed bail by this Court vide judgment dated 08.12.2022 passed in Cr. Appeal (SJ) No.2445 of 2022 having regard to the facts and circumstances and submission made on behalf of the parties and further considering the fact that the allegation against the appellant is on suspicion of the informant and there is possibility of false implication and further considering the



submission of charge sheet against him and his clean antecedent, subject to certain conditions. One of the conditions was that the bail bond of the appellant will be accepted subject to verification of the claim that he is having no criminal antecedent.

(ii) Thereafter, the petitioner/appellant Mendar Singh @ Vijay Singh filed Cr. Misc. No.8947 of 2023 for modification of the judgment dated 08.12.2022 passed in Cr. Appeal (SJ) No.2445 of 2022 on the ground that at the time of hearing of the Cr. Appeal (SJ) No.2445 of 2022, criminal antecedent of the appellant could not be brought on record due to some miscommunication and he prayed for waiver of the aforesaid condition. This Court vide order dated 15.02.2023 dismissed the modification petition observing that it appears to be a case of active concealment to get a bail order in favour of the appellant. The appellant was duty bound to mention his criminal antecedent which he failed to bring to the notice of this Court. It amounts to playing fraud with the Court. Hence, the Registrar General was directed to enquire into the matter and after due enquiry fix the responsibility of the person, who committed fraud upon this Court.

(iii) During course of enquiry, on 11.05.2023, the



appellant Mendar Singh has filed the instant Cr. Appeal (SJ) No.2307 of 2023 for grant of bail to the appellant.

13. This Court would like to discuss some of the judgments of the Hon'ble Apex Court on the conduct of the seekers of justice, committed fraud on the Court.

14. The Apex Court in the case of ***Kishore Samrite v. State of U.P. & Ors.*** reported in **(2013) 2 SCC 398** held in paragraph 32 with regard to practice and procedure, abuse of process of court/law/fraud on the Court. It will be apposite to reproduce the principles governing the obligations of a litigant while approaching the Court and the consequences of abuse of process enumerated in this judgment.

“32. The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings



without full disclosure of facts and came to the courts with “unclean hands”. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to



impose heavy costs.

32.7. Wherever a public interest is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of process of court and ordinarily meddling bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the lis well justifies it”.

15. Further, the Hon’ble Apex Court in the case of ***Dalip Singh Vs. State of Uttar Pradesh and Ors.*** reported in ***(2010) 2 SCC 114*** taking note of abuse of process regarding new creed of dishonest litigants, noticed and strongly deprecated the tendency and held in paragraph 1 and 2 as under :

“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel



proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final”.

16. In another case, i.e., ***Sciemed Overseas Inc Vs. BOC India Limited and Ors.*** reported in ***(2016) 3 SCC 70***, the Hon’ble Apex Court made observation with regard to imposition of exemplary costs for filing of false or misleading affidavit, imposition of cost fully justified of Rs.10 lacs on the petitioner for filing a false or misleading affidavit in court. It is relevant to quote paragraphs 2, 3, 28 & 29 from the said judgment :

“2. A global search of cases pertaining



to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This “trend” is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair.

3. The petitioner is aggrieved by the judgment and order dated 22-9-2008 passed by the Division Bench of the High Court of Jharkhand in BOC India Ltd. v. State of Jharkhand [BOC India Ltd. v. State of Jharkhand, 2008 SCC OnLine Jhar 279 : (2009) 1 AIR Jhar R 26] only to the extent of imposition of costs. In our opinion, there is no merit in this petition and it deserves to be dismissed.

28. In Suo Motu Proceedings against R. Karuppan, Advocate, In re [Suo Motu Proceedings against R. Karuppan, Advocate, In re, (2001) 5 SCC 289 : 2001 SCC (Cri) 876] this Court had observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged. It was observed by this Court as follows: (SCC p. 293, para 13)

“13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders



for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.”

29. *Similarly, in Muthu Karuppan v. Parithi Ilamvazhuthi [Muthu Karuppan v. Parithi Ilamvazhuthi, (2011) 5 SCC 496 : (2011) 2 SCC (Cri) 709] this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said: (SCC p. 501, para 15)*

“15. Giving false evidence by filing false



affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of 'deliberate falsehood' on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge."

17. Having considered the principles laid down in the judgment referred supra as well as facts and circumstances of the case, it appears that the deponent Sri Rajeev Kumar in Cr. Appeal (SJ) No. 2445/2022, despite having the knowledge of all criminal antecedents of his brother-in-law (Sala), appellant Mendar Singh @ Vijay Singh, did not bring this fact deliberately to the knowledge of this Court which appears to be a case of suppression of fact by the deponent in order to get bail for his brother-in-law anyhow from this Court which is nothing but fraud upon the Court.

18. Further, it appears that since everything was being done for the benefit of the appellant, so the appellant cannot escape from the liability of the concealment of his criminal antecedent from this Court, which is also nothing but fraud on the Court.

19. From the aforesaid discussions, I am of the considered view that these are the matters which are to be taken seriously otherwise anybody may endeavour to play a fraud



upon Court by concealment of material facts, such as, criminal antecedents of an accused and this Court finds that these attempts are being made now regularly and the Court has come across several circumstances in which concealment of criminal antecedents have been noticed.

20. Since this Court has found a clear case of concealment of criminal antecedents of the appellant by the deponent which was being done for the benefit of the appellant, a cost of Rs.1,00,000/- (One lac) is imposed upon the deponent, namely, Rajeev Kumar and the appellant, Mendar Singh @ Vijay Singh for swearing false affidavit and trying to mislead the Court by suppressing facts. The aforesaid cost shall be paid by the deponent in the coffer of Patna High Court Legal Services Committee within a period of eight weeks from the date of uploading of this order. If not paid, the Registry is directed to recover the same by taking appropriate action against the deponent and the appellant in accordance with law.

21. With the aforementioned observations and directions, this appeal is dismissed as withdrawn.

(Arun Kumar Jha, J)

V.K.Pandey/-

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