

Court No. - 58

Case :- WRIT - C No. - 54826 of 2016

Petitioner :- Smt. Dipanshi And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ashutosh

Counsel for Respondent :- C.S.C.

Hon'ble Suneet Kumar,J.

Sri Mahendra Kumar Singh Chauhan, Advocate, has put in appearance on behalf of the fourth respondent, Sri Sandeep Tyagi, who happens to be father of the first petitioner, Dipanshi.

The parties have put in appearance before this Court, who have been identified by the counsels.

In para-8 of the petition, it has been stated that this is the first marriage of the second petitioner Jai Bhagwan Rana with the first petitioner.

Learned counsel appearing for the fourth respondent would submit that this is second marriage of the second petitioner and he has a living spouse viz. Gomti which is reflected from the extract of the electoral roll of constituency No. 111, Gunnaur (General), village Sirsa, Sambhal, U.P. published on 26 March 2014, which is taken on record. The house number of both of them is 56. On specific query to the second petitioner, as to whether this is his second marriage he would submit in affirmative, contending that he was earlier married to Gomti, however, the second marriage was contracted with the first petitioner after obtaining the consent of Gomti as she is unable to bear his child. The learned counsel appearing for the petitioner would submit that the averment made in para-8 of the petition is on the instruction received from the second respondent.

Section 191 and 192 IPC deal with perjury and filing of false affidavit in pleadings would be covered under Section 191. Section 191 deals with evidence on oath and Section 192 with fabricating false affidavits; the offence under Section 191 IPC is constituted by swearing falsely when one is bound by oath to state the truth because a declaration made under an oath. The definition of the offence of giving false evidence thus applies to the affidavits. The offence may also fall within Section 192 which, inter alia, lays down that a person is said to fabricate false evidence if he makes a document containing a false statement intending that such false statement may appear in evidence in a judicial proceeding and so appearing in evidence may cause any person who, in such proceedings is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material

to the result of such proceedings. Therefore, where declarations in affidavits which were tendered in the Court to be taken into consideration, the authors of the affidavit clearly intended the statement to appear in evidence in a judicial proceedings and so appearing, to cause the Court to entertain an erroneous opinion regarding the compromise, therefore, the offence would fall within Section 191, 192 which is punishable under Section 193 IPC, therefore, it was held that the authors of the affidavits were guilty of offence of giving false evidence or fabricating false evidence for the purpose of being used in judicial proceedings. (Refer: **Baban Singh and another vs. Jagdish Singh and others (AIR 1967 68)**).

Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. But it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the courts and thus produce mischievous consequences to the administration of justice. A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law. Consequently, there cannot be any doubt that if a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 IPC. It is not necessary that a person should have appeared in the witness box. The offence stands committed and completed by the filing of such pleading.

The making of a false statement, without knowledge as to whether the subject matter of the statement is false or not is giving of false evidence. A witness falsely deposing in another's name, and a persons falsely verifying his plaint, and an official making a false statement upon the service of summons were held guilty of giving false evidence under this Section. (Refer: **S.P. Kohli (Dr.) vs. High Court of Punjab and Haryana AIR 1978 SC 1753.**)

Section 191 contemplates declarations which a person is bound by law to make. The most familiar instances of such declarations are plaints and pleadings in suits. A person being under a legal obligation to verify facts in plaints and pleadings is liable to be punished under Section 193 for perjury, if he verifies falsely. (**Asgar Ali Mulla Ibrahimji vs. Emperor AIR 1943 Nag 17(18)**).

Where a person falsely verifies a written statement he will be liable for perjury. Where as person falsely verifies an execution application he will be liable for perjury. (**Emperor vs. Padam Singh AIR 1930 All 490**).

An affidavit is 'evidence' within the meaning of Section 191 IPC and a person swearing to a false affidavit is guilty of perjury. The definition of the offence of giving false

evidence applies to the affidavits. (**Parag Dutt vs. Emperor AIR 1930 Oudh 62 (63)**).

The facts would reveal that the second petitioner is aged about 32 years and the first petitioner is merely 18 years, second petitioner despite fully being aware that he has a living spouse, he duped the first petitioner and convinced her to elope with him under a false assurance of second marriage. Thereafter, the second petitioner had audacity to swear a false affidavit before the Court stating that this is his first marriage, thus, indulging in fraud and misrepresentation, both with the first petitioner and with the Constitutional Court. Such conduct cannot be ignored, law has to take its own course.

In regard thereto, false affidavit on oath has been filed by the second petitioner to misrepresent before the Court, which is wilful and deliberate, thus, exposing himself for prosecution under Section 193 IPC. No further enquiry or explanation is required.

Registrar General is directed to lodge a complaint before the competent Magistrate at Allahabad against the second petitioner for filing false affidavit to mislead the Court. Second petitioner shall be taken into custody forthwith. The first petitioner being adult is let free.

With the aforesaid direction, the writ petition stands **disposed of**.

Order Date :- 21.11.2016

Mukesh Kr.