

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Single Bench : **Hon'ble Shri Rajeev Kumar Dubey, J.**

Misc. Criminal Case No.8545/2016

Rajkumar Pathak

vs.

Ghanshyam Tiwari & Ors.

Shri Niranjan Pathak, counsel for the applicant.

Shri Arpit Kumar Tiwari, counsel for the respondents.

ORDER

Reserved on : 11/07/2018

Delivered on : 17/07/2018

This petition has been filed by the applicant under Section 482 r/w 340 of CrPC for taking action against respondents for stating false facts and filing false affidavit before this Court in M.Cr.C.No.94/2016.

2. Brief facts of the petition are that on the report of applicant police registered Crime No.1322/2015 for the offence punishable under Section 3 & 4 of Dowry Prohibition Act against respondents No.1 & 2 and other co-accused persons. The respondent No.1 & 2 filed bail application under Section 438 of CrPC for grant of anticipatory bail before this court which was registered as M.Cr.C.No.94/2016 and disposed of by this Court by order dated 27.01.2016. In para 6.2, 6.3 and 6.4 of the bail application respondents No.1 & 2 stated that they are innocent and after the engagement ceremony the applicant's daughter herself informed and requested to the respondents No.1 & 2's son namely Ajay Tiwari, to break the engagement as she wanted to marry someone else and that she had agreed to marry with Ajay Tiwari under compulsion of her family. Respondents No.1 & 2's son Ajay Tiwari

after coming to know about the above fact came under serious depression and informed his maternal uncle Laxman Tiwari, who also informed the respondents no. 1 and 2 and thereafter went to the applicant's home with family and informed about the above fact and requested him that when his daughter wanted to marry someone else by canceling engagement why did he want to get her married forcibly. But the applicant assured them to convince his daughter and asked them to continue with the preparation for marriage. It is further stated that just a few days before the marriage on 08/11/2015, complainant Niranjan Pathak called the son of the respondent No.1 & 2 at his home and after returning from there their son was seriously depressed and left home the very same day and is missing since then. The respondents No.1 & 2 lodged complaint about missing of their son in the concerned police station, and the respondents No.1 & 2 are seriously tensed about him.

3. Learned counsel for the applicant submitted that all the above allegations are false and respondent no.3 also filed false affidavit in support of above contention. He further submitted that respondent no.3 also wrote his address wrong in the affidavit. So the cognizance for the offence punishable under Sections 191, 192, 193 & 420 of IPC be taken against them. In this regard, learned counsel for the applicant also placed reliance on the Apex Court judgment passed in the case of **Sciemed Overseas Inc. v. BOC India Limited and Others** reported in (2016) 3 SCC 70 and the judgment passed by this Court in the case of **Delton Impex Pvt. Ltd. Katni v. Sanjay Dang and others** reported in 2009 (2) MPLJ (Cri.) 13.

4. Learned counsel for the applicant also submitted that earlier respondent no.1 and 2 had also filed bail application before Sessions Court in which they did not state the aforesaid facts. Krishna Datt Tiwari also did not state that facts in his bail application and is neither mentioned in letter allegedly written by Ajay Tiwari before leaving house of respondent no.1 and 2 which shows that respondents no.1 and 2 to take a favour from this court deliberately stated above mentioned facts in their application which are false and respondent no.3 filed false affidavit in support of bail application filed by the respondents no.1 and 2. He further submitted that from the

report of the notice sent to the respondent No.3, it appears that respondent No.3 did not reside on that address so it also appears that respondent No.3 filed false affidavit giving his false address and did fraud with the court.

5. Learned counsel for the respondents opposed the prayer and submitted that respondents no.1 and 2 have not stated any false facts in their bail application and they had mentioned that facts in the bail application on the basis of information given by their son Ajay Tiwari, who is still missing. They also filed complaint regarding his missing on 10.11.2015 so it cannot be said that respondents No.1 & 2 stated false facts in their bail application. On 15/02/18 respondent no.3 personally appeared before this court and also filed document voter I.D. etc for showing the facts that he resided on given address. Applicant filed a false application against respondents to harass them. So it may be rejected.

6. This Court has gone through the record and arguments put forth by the learned counsel for both the parties. Only on the basis that the facts which are alleged to be false were not stated by the respondents no.1 and 2 in their earlier bail application filed before Sessions Court or not stated by Krishan Dattu Tiwari in his bail application and also not mentioned in the letter written by Ajay Tiwari, it cannot be assumed that these facts is totally false. Ajay Tiwari is still missing as stated by the learned counsel of the respondents. Applicant did not file affidavit of his daughter in this regard. So, at this stage, without any reliable evidence it can not be said that the alleged facts are totally false. Likewise on 15/02/18 respondent no.3 personally appeared before this court and also filed document voter I.D. etc for showing the fact that he resided on the given address. So only on the basis that the notice of the respondent no. 3 was returned with the endorsement that he did not reside at given address, it cannot be said that respondent no. 3 mentioned his wrong address in his affidavit.

7. Even otherwise Section 340 of the Code of criminal Procedure reads as under:-

“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 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.

8. On reading the provisions of Section 340 Cr.P.C. it is clear that before a direction either for an inquiry or for prosecution the Court has to form an opinion that it is "expedient in the interest of justice" that an inquiry should be made into any such offence. The meaning of the word "expedient in the interest of justice" is that forming of the opinion is a sine qua non for proceedings to launch a prosecution for perjury.

9. The facts of the cases **M/s Sciemed Overseas Inc Vs BOC India Limited & Ors (supra)** and **Delton Impex Pvt. Ltd. Katni v. Sanjay Dang and others (supra)** relied by the learned counsel of the applicant do not match with the present case. In the first case appellant knowingly filed false affidavit regarding completion of work which was not completed and on that basis high court rejected the petition and in second case respondent no. 1 to 4 in collusion with respondent no.5, obtained interim injunction from court in the suit filed by them by playing fraud with the court. While in this case respondent did not get any relief from the court on the basis of false information. So that judgement do not help applicant much.

10. On the other hand in the case of **Chandrapal Singh And Ors. vs Maharaj Singh And Anr.** reported in **AIR 1982 SC 1238**, the Apex Court observed. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under Section

199 of IPC are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court.

11. In the case of **K.T.M.S. Mohd. And Anr vs Union Of India** reported in **AIR 1992 SC 1831** the Apex Court has also held that it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice.

12. In the case of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another** reported in **(2005) 4 SCC 370**, the Supreme Court in para-23 of the judgement observed as under:-

“In view of the language used in Section 340 Cr.P.C. the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice”. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1) (b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint.”

13. From the aforesaid observations of the Supreme Court in various decisions, it emerged that every incorrect or false statement does not make it incumbent upon the Court to order prosecution, but requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of the justice. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false

statement. Prosecution for perjury can be directed in the larger interest of the administration of justice only in case of deliberate falsehood.

14. If we consider the facts of the case which are alleged to be false, in the light of above pronouncement of the Apex Court it does not appear that respondent has deliberately and knowingly mentioned such false fact in his reply or that fact is such a nature that in the larger interest of the administration of the justice prosecution for perjury should be directed. No prima facie case of deliberate falsehood appears. In the considered opinion of this court, it would not be expedient in the interest of justice to invoke the provisions of Section 340 of Cr.P.C. for this purpose.

15. Hence, the petition is **rejected**.

(Rajeev Kumar Dubey)
Judge

(ra)/as