

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 31ST DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.19448 OF 2015 (GM-FC)

BETWEEN:

...PETITIONER

AND:

...RESPONDENT

(BY SRI. C.H. JADHAV, SENIOR COUNSEL
FOR SMT. RASHMI JADHAV, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 6.2.2015 PASSED IN I.A. VIII IN M.C. NO. 1607/2013 BY THE LEARNED I ADDL. PRINCIPAL JUDGE, FAMILY COURT, BANGALORE AND PLEASSED TO ALLOW THE APPLICATION OF I.A. VIII M.C. NO. 1607/2013 VIDE ANN-C.

THIS WRIT PETITION COMING ON FOR **ORDERS**, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The tone for this judgment may be set by what **Shakespeare** said in **Richard III** about perjury; the relevant stanza runs as under:

*"My conscience hath a thousand several tongues,
And every tongue brings in a several tale,
and ever tale condemns me for a villain.
Perjury, Perjury in the highest degree;
Murther, in the direst degree;
All several sins, all us'd in each degree.
throng to the bar, crying all "Guilty, guilty!"*

The following anguish expressed by the Hon'ble Supreme Court in **Swarna Singh vs. State of Punjab (2000) 5 SCC 668** about rampant perjury in courts merit a mention:

"Perjury has also become a way of life in the Law Courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him..."

2. Facts in brief:

(i) Petitioner & respondent are an estranged couple; both they are medical practitioners apparently of some standing in the profession; petitioner-husband has instituted M.C.No.1607/2013 in the Court below seeking a decree for annulment of marriage with the respondent; that proceeding is pending; respondent had filed an application u/s. 24 of the Hindu Marriage Act, 1955, seeking **Rs.1,00,000/-** as monthly maintenance and for a lump

sum of **Rs.75,000/-** as litigation expenses; the same having been rejected vide order dated 06.02.2015, her challenge thereto is pending in W.P.No.8248/2015.

(ii) Petitioner had filed an application in IA No.8 u/s. 151 of CPC, 1908 r/w Section 301, etc. of Cr.P.C. 1973 requesting the Court below to initiate proceedings for the offence of perjury contending that the respondent-wife in her affidavit dated 07.11.2013 supporting the application for maintenance had falsely stated as to her **unemployment & lack of income**; learned judge of the Court below vide order dated 06.02.2015, a copy whereof is at Annexure-A has rejected the application holding it to be premature; of course, liberty is reserved to the petitioner to move such an application subsequently; aggrieved thereby, he is knocking at the doors of Writ Court.

3. After service of notice, the respondent - wife having entered appearance through her counsel vehemently opposes the writ petition making submission in justification of the impugned order and the reasons on which it has been constructed; learned Sr. Advocate Mr.C.H.Jhadhav appearing for the respondent contends that in a complaint filed by the respondent-wife in relation to petitioner allegedly producing come Tax Returns & other documents of the respondent, the police are still investigating the

matter and therefore the question of perjury is premature; that whether in a case of alleging perjury, action needs to be taken or not, is a matter left to the discretion of the Court concerned before whom the substantive proceedings are pending and therefore, discretionary orders of the kind cannot be subjected to a deeper scrutiny in writ jurisdiction; in support of his case, he banks upon Apex Court decision in **B.K. GUPTA VS. DAMODAR H. BAJAJ AND ORS., (2001) 9 SCC 742**; so contending he seeks dismissal of writ petition.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant a limited indulgence in the matter as under and for the following reasons:

a) Petitioner's matrimonial cause for annulment of his marriage with the respondent, is pending before the Court below; respondent-wife who is a medical practitioner with Post Graduation, was then doing her 'Doctorate of Medicines' (ie., DM), is not in dispute; in the narrative affidavit filed by her in support of application for maintenance, she had claimed to be unemployed & incomeless; the said application came to be rejected by the Court below vide order dated 06.02.2015 and the same is put in challenge; in the said order, the learned trial Judge at para no.13 has observed as under:

"... In the application she has stated that she is unemployed having no income of her own though she is having a Degree of Medicine and it is not enough to procure appropriate employment... A copy of the Income Tax Returns for the Assessment Year 2012-2013 & 2013-14 pertaining to the respondent is also produced along with other documents. According to these two Income Returns, the gross total income of the respondent is mentioned as Rs.2,62,490/0 and 2,63,240/- respectively for the said Assessment Years... If these IT Returns are taken into consideration, the respondent is having income and she is also earning income... She has not filed any counter to the objections filed by the petitioner and also with respect to these IT Returns. In fact, by filing a complaint she has admitted that she has filed Income Tax Returns... Under such circumstances, she has suppressed the fact that she was earning income..."

Thus there is a specific finding as to falsity of statement made on oath by the respondent.

(b) Even before this Court, it is not the case of respondent that the copies of Income Tax Returns produced by the petitioner for opposing the claim for maintenance, do not pertain to her or that their contents are untrue/incorrect; when the Court below has recorded a specific finding as to the income of the respondent from the medical profession that too on the basis of undisputed IT Returns for the relevant period; when it has also recorded a specific finding that the respondent has suppressed the fact that she was earning income; that being the position, the application of petitioner for initiating action for the offence of perjury, could not have been turned down as being premature merely because main matter is still pending; consideration of such an application has

nothing to do with the outcome of the main matter at all. The Apex Court in *Mahila Vinod Kumari vs. State of Madhya Pradesh*, **(2008) 8 SCC 34** has observed as under:

"... The evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively, it is desirable for the Courts to use the provision more effectively and frequently, than it is presently done..."

The inner voice of this decision appears to have fallen on the deaf ears of the learned Judge of the court below.

c) The vehement contention of Mr. Jhadhav, learned Sr. Adv. that a Police investigation is launched against the petitioner-husband for producing copies of IT Returns and other documents of the respondent and therefore, till after its completion, no action for the commission of alleged perjury can be initiated, is bit difficult to countenance, more particularly, when the authenticity of these documents is not disputed even before this Court; in fact the Court below too has recorded a specific finding to this effect; the said Police investigation has nothing to do with perjury allegedly committed by the respondent; act of perjury is treated as a heinous offence in all civilized societies; consideration of complaints with regard to the same cannot be deferred or delayed; otherwise there is all possibility of the fountain of justice being polluted.

d) Under the Indian Penal Code, offences relating to false evidence and against administration of justice are dealt with in Chapter XI; **Lord Macaulay** as the first Chairman of Law Commission of India in his report has stated:

"Giving of false evidence must always be a grave offence. But few points in penal legislation seems to us clearer than that the law ought to make a distinction between that kind of false evidence which produces great evils and that kind of false evidence which produces comparatively slight evils.... As the ordinary punishment for false evidence, we propose imprisonment for a term of not more than seven years, nor less than one year..."

The Privy Council about a century ago had criticized that perjury was being committed in Indian Courts day in & day out; the Apex Court too echoed the same concern in *Re Suo moto Proceedings (2001) 5 SCC 289*, by making the following observations:

"The Courts are ... expected to do justice quickly ... 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 the false evidence particularly in cases, the adjudication of which is depended upon the statement of facts... the purity of proceedings of the Court cannot be permitted to be sullied by a party on ...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..."

In India law relating to the offence of perjury is given a statutory definition u/s.191 and Chapter XI of the Indian Penal Code... The offences incorporated under this Chapter are based upon recognition of the decline of moral values and erosion of sanctity of oath.

Unscrupulous litigants are found daily resorting to utter blatant falsehood in the courts which has to some extent resulted in polluting the judicial system... Effective and stern action is required to be taken for preventing the evil of perjury ... The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI.. If the system is to service, effective action is the need of the time ...".

That being the position, the learned trial Judge ought to have considered petitioner's subject application with due seriousness and at the earliest point of time, there being no justification for deferring its consideration since it touched purity of judicial proceedings.

e) Lastly, heavy reliance placed by Mr. Jhadhav on the decision of Apex Court in V.K.Gupta's case *supra*, does not much come to his rescue; there are some observations in the said ruling that recognize greater degree of discretion with the Courts in deciding application of the kind, is true; however, that cannot be construed as a discretion of the Moguls; the sages of law like Lord Halsbury have said that *discretion means according to rules of reason & justice*; the reason assigned by the Court below for holding petitioner's subject application to be premature, is unsustainable to say the least; the view of the learned trial Judge that petitioner can move similar application subsequently offends sense of justice; applications of the kind need to be considered on

merits at the earliest point of time so that a loud message goes to the unscrupulous section of the litigant public as to what would befall the perjuring parties.

In the above circumstances, this writ petition succeeds; impugned order is set at naught; matter is remitted for consideration afresh; till such consideration takes place, the main matter shall be parked at a bay.

All contentions are kept open.

Costs made easy.

**Sd/-
JUDGE**

MDS