(256) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1771-2018
Date of decision : 28.07.2022

Nachhattar Singh

... Petitioner

Versus

Rai Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kashish Garg, Advocate for the petitioner.

Mr. Sidakmeet Singh Sandhu, Asstt. A.G., Punjab.

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JASJIT SINGH BEDI, J. (ORAL)

The present petition under Section 482 Cr.P.C. has been filed for quashing of the order dated 09.10.2015 (Annexure P-1) and the order dated 08.02.2017 (Annexure P-2) vide which the application and appeal (respectively) of the petitioner under Section 340 Cr.P.C. read with Section 195 Cr.P.C. for registering the complaint against the respondent-accused under Section 191, 192, 193, 199, 200, 209, 120-B of the IPC has been dismissed.

2. The brief facts of the case as emanating from the petition are that the petitioner and respondent Nos.1 and 2 are real brothers. The petitioner filed a civil suit for possession by way of partition and permanent injunction against the respondents in the year 2012. During the course of the said proceedings, the respondents filed their written statement, reply to the application under Order 39 Rules 1 and 2 and an affidavit, wherein they are said to have willfully/intentionally denied the

ownership of the petitioner of the land in question. A true translated copy of the affidavit of respondent-Rai Singh was attached as Annexure P-4.

3. The said civil suit was decreed and decided in favour of the petitioner on 15.03.2014 (Annexure P-3). The petitioner thereafter, filed an application under Section 340 read with Section 195 Cr.P.C. for registering a complaint against the respondents under Sections under Section 191, 192, 193, 199, 200, 209, 120-B of the IPC for making a false complaint in the Court knowing the same to be false before the Court of Sub Divisional Judicial Magistrate, Phul. The said Court dismissed the application of the petitioner vide order dated 09.10.2015 (Annexure P-1).

4. The petitioner thereafter, preferred an appeal against the said order before the learned Additional Sessions Judge, Bathinda. The said Court also dismissed the appeal of the petitioner vide order dated 08.02.2017 (Annexure P-2).

5. The petitioner has sought quashing of the aforementioned two orders in the present petition.

6. The learned counsel for the petitioner firstly contends that the impugned orders are against the settled proposition of law. He contends that by filing the affidavit (Annexure P-4), wherein, the respondents had willfully and intentionally denied the ownership of the petitioner, they knowingly gave a false declaration on oath in the witness-box and therefore, had clearly committed an offence for which they ought to have been proceeded against. He also contends that the learned Courts committed a grave error by concluding that the

respondents were not legally bound to state the truth on oath by any specific provision of law. It was contended that as per the Code of Civil Procedure, 1908, a legal duty was cast upon the persons filing plaints etc. to speak the truth and a person is under a legal obligation to verify the facts stated in the plaints and pleadings. If a false verification was made, he was liable for action under the provisions of the IPC. It was contended that the sworn affidavits of the witnesses amounted to sworn statements, where, the witness was under an obligation to state the truth and therefore, the impugned orders ought to be set aside and appropriate proceedings be initiated against the respondents.

7. Before proceeding in the matter, it would be necessary to examine the relevant provisions of law:

Section 195 Cr.P.C., reads as under:-

> *"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.*
>
> *(1) No Court shall take cognizance-*
>
> *(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*
>
> *(ii) of any abetment of, or attempt to commit, such offence, or*
>
> *(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;*
>
> *(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive),*

199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or by such officer of the court as that court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the

case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

Section 340 Cr.P.C., 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 interests 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 having 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.*
>
> *(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.*
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> *(3) A complaint made under this section shall be signed,-*
>
> *(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;*
>
> *(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.*
>
> *(4) In this section," Court" has the same meaning as in section 195.*

8. The Hon'ble Supreme Court has dealt with the issue in hand in a number of judgments and some of these are referred to hereinbelow:-

In **Aarish Asgar Qureshi Versus Fareed Ahmed Qureshi & another, 2019(2) R.C.R. (Criminal), 321**, held as under:-

> *"8) Similarly in Chandrapal Singh and Others vs. Maharaj Singh and Another, (1982) 1 SCC 466, this Court, in para 14, stated:*
>
> *"14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a*

declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. ***Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199, I.P.C. To illustrate the point, appellant 1 Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. 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,I.P.C. 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. *The learned Counsel for the respondents told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482, Cr. P.C."*

9) Both these judgments were referred to and relied upon with approval in R.S. Sujatha vs. State of Karnataka and Others, (2011) 5 SCC 689 (at paras 15 & 16). This Court, after setting down the law laid down in these two judgments concluded:

"18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be

> ***grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."***

[Emphasis supplied]

In **State of Goa Versus Jose Maria Albert Vales, (2018) 11 Supreme Court Cases 659,** held as under:-

> *"29. We next turn to Chapter XXVI on the "Provisions as to offences affecting the administration of justice", the centrepiece of scrutiny. As per Section 340 of the Code, captioned as "Procedure in cases mentioned in Section 195", when upon an application made to it in this behalf or otherwise, any court is of the opinion that it is expedient in the interests 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 enquiry, if any, as it thinks necessary:*
>
> *" 340.(1) (a) record a finding to that effect;*
>
> *(b) make a complaint thereof in writing;*
>
> *(c) send it to a Magistrate of the First Class having 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."*
>
> *30. This power in the eventualities, as enumerated in sub-section (2), can be exercised by the court to which the former court is subordinate within the meaning of Section 195 (4). Sub-section (3) requires that such a complaint has to be signed by the authorities as mentioned therein. The two essential pre-requisites, as predicated by this provision, are formation of an opinion (1) even if prima facie, that an offence referred to Section 195 (1)(b) appears to have been committed in or in relation to a proceeding of the court or as the case may be in respect of any document produced or given in evidence in a proceeding in that court, and* ***(2) it is expedient in the interests of justice that an enquiry b should be made into such offence."***
>
> [Emphasis supplied]

In **Amarsang Nathaji as Himself and as Karta and Manager Versus Hardik Harshadbhai Patel and others, 2017(1) R.C.R. (Criminal) 92**, held as under:-

> ***"7. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion***

that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. *(See K.T.M.S. Mohd. and Another v. Union of India, 1992(2) R.C.R. (Criminal) 398: (1992) 3 SCC 178). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.*

8. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 of the CrPC has been committed, the court may dispense with the preliminary inquiry. ***Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course****. (See Pritish v. State of Maharashtra and Others, 2002(1) RCR (Criminal) 92: (2002) 1 SCC 253).*

9. In Iqbal Singh Marwah and Another v. Meenakshi Marwah and another, 2005(2) RCR (Criminal) 178: (2005) 4 SCC 370 a Constitution Bench of this Court has gone into the scope of Section 340 of the CrPC. Paragraph-23 deals with the relevant consideration:

"23. In view of the language used in Section 340 CrPC 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. "*
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> [Emphasize supplied]

In **R.S. Sujatha Versus State of Karnataka and others, <u>(2011) 5 Supreme Court cases 689,</u>** held as under:-

> ***"18.Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court****. There must be grounds*

of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

In **Iqbal Singh Marwah & another Versus Meenakshi Marwah & another,** **2005(4) SCC 370**, held as under:-

"18. In view of the language used in Section 340 CrPC 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.*** *The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."*
>
> [Emphasis supplied]

In **Chandrapal Singh & others Versus Mahraj Singh, 1982 AIR (Supreme Court) 1238**, held as under:-

> *"14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false.* ***Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199, I.P.C. To illustrate the point, appellant 1***

Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. 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, I.P.C. 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. *The learned Counsel for the respondent told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482,*

Cr. P.C."

[Emphasis supplied]

The High Court of Madhya Pradesh, Gwalior Bench in **Smt. Kamla Sharma and others Versus Sukhdevlal and others, M. Cr.C. No.8770/2016**, held as under:-

> ***"18. Therefore, before proceeding further with the matter, the Court must form an opinion as to whether it is expedient in the interest of justice or not. One of the criteria for proceeding under Section 340 of CrPC may be that only due to false statement one party has succeeded in getting favourable order which otherwise he would not have got, therefore, if the false statement affects the very nature of the order passed by the Court, then that can be one of the circumstance where the proceedings under Section 340 of CrPC can be initiated. If the facts of the present case are considered, then it is clear that the respondents had moved an application for comparison of the disputed signatures/thumb impressions of Late Smt. Raksha Devi with her admitted thumb impressions / signatures."***

9. I have heard the learned counsel for the parties at length.

10. In the present case, undoubtedly, the Civil Suit in which allegedly the false affidavit had been filed has been decreed in favour of the petitioner. However, the said Court nowhere gave a finding that the respondents had deliberately committed any offence in question or had taken a false plea in the written statement or filed any wrong sworn affidavit while appearing in the witness box thereby initiating proceedings under Section 340 Cr.P.C. In fact, no such reference was also made by the said Court while decreeing the suit. Further, the

petitioner himself did not make any such application under Section 340 Cr.P.C. read with Section 195 Cr.P.C. before the said Court in order to initiate proceedings. Therefore, the filing of this complaint before another Court after the civil proceedings had culminated, is nothing but an attempt to brow-beat the respondents, who are his real brothers.

11. As per the settled proposition of law as enumerated hereinabove, proceedings under Section 340 Cr.P.C. are not to be initiated in every case where offences are purportedly made out. In fact, the said proceedings are to be initiated only in a situation, where the Court considers it expedient in the interest of justice to make a complaint. This shows that such a course of filing a complaint will only be adopted, if the interest of justice requires and not in every case. In the present case, no such finding has been recorded, as has already been mentioned above and even otherwise, the dispute is between the parties, who are closely related being brothers.

12. In fact, one of the criteria for proceeding under Section 340 of the Cr.P.C. would be where due to the false statement, one party has succeeded in getting a favourable order, which otherwise, he would not have got. Therefore, if the false statement affects the very nature of the order passed by the Court, then, that itself can be one of the circumstances, where proceedings under Section 340 Cr.P.C. ought to be initiated. In the present case, assuming that a false statement had been made either in the written statement or by virtue of filing of affidavits, those pleadings/averments did not affect the fate of the case. In fact the petitioner did obtain a decree in his favour. Therefore, there is no

apparent illegality in the orders dated 09.10.2015 (Annexure P-1) and 08.02.2017 (Annexure P-2).

13. Having examined the matter in its entirety, I also find that the dispute in question is between close relatives. Certain pleadings are filed in civil/criminal proceedings and the defendants in a civil proceeding take their defence, which in the present case was denying the right of ownership of the petitioner-complainant. Every person has a right to defend his case and he can take many defence pleas. Taking up a plea by itself would not amount to giving false evidence. Further, in the present case, in view of the discussion above, it would certainly not be expedient in the interest of justice to proceed against the respondents.

14. In view of the facts and circumstances mentioned hereinabove as also the relationship between the parties and the civil proceedings having culminated in favour of the petitioner, as such no advantage has been taken by the respondents by virtue of their allegedly false pleadings/affidavits. Therefore, it would certainly not be expedient in the interest of justice to initiate proceedings under Section 340 Cr.P.C.

15. Therefore, I find no merit in the present petition and hence, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

28.07.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No