



Serial No. 07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(EP) No. 16 of 2024
In El. Pet. No. 1 of 2023

Date of Decision: 08.04.2025

Shri. Kartush R. Marak
S/o (L) Soilendro S. Momin
R/o Gasuapara, PS & PO Gauapara,
South Garo Hills District, Meghalaya

:::Petitioner

-Vs-

Shri. John Marak
S/o Sh. Raphael Sangma
R/o H No. 21, Dangsubil (Dimapara)
South Garo Hills District, Meghalaya

:::Respondent

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Applicant(s) : Ms. Y. Pallavi, Adv. with
Mr. A.M. Pala, Adv.

For the Respondent/Opp. Party(s): Mr. S. Jindal, Adv. with
Mr. S. Deb, Adv.
Mr. I. Kharmujai, Adv.
Ms. T. Pohlong, Adv.



i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER (ORAL)

1. This is an application under Section 379 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 read with Section 229 Bharatiya Nyaya Sanhita (BNS) and Section 528 of BNSS, 2023.

2. The instant application has been filed alleging that the respondent has given a false statement by way of an affidavit, and committed perjury by making false statements regarding presentation of the Election Petition before the Stamp Reporter of this Court in accordance with Section 81 of the Representation of People's Act, 1951.

3. The point in contention is whether contradictory statements made in a show cause reply filed in an earlier application under Order 7 Rule 11 of the CPC, and Section 86 of the RP Act 1951, and the Evidence on Affidavit filed by the Election Petitioner, with regard to the identity and name of the official/person before whom the Election Petition was allegedly presented, would amount to tendering false evidence, and therefore, liable for prosecution under the law.



4. Ms. Y. Pallavi, learned counsel appearing for the applicant has submitted that Section 227 and 229 of the BNS 2023 are the provisions that deal with giving false evidence and punishment for the same. She submits that prima facie the ingredients of Section 227 of the BNS are satisfied, inasmuch as, the petitioner has deposed in the show cause reply dated 04.07.2023, that the presentation of the Election Petition was made before Smti. S. Lanong. However, she submits contrary to the said statement, the Election Petitioner in his Evidence on Affidavit dated 11.09.2024, claims to have made a personal presentation before Smti. Sunita Lyngksor. She thus submits that the same being blatant, demonstrates the fact that false evidence has been led to mislead this Court and abuse the process of law. In support of her submissions, the learned counsel has relied upon series of judgments, which are noted hereinbelow:

- (i) *State of Punjab vs. Jasbir Singh, 2022 SCC OnLine SC 1240*
- (ii) *Umrao Lal vs. State, AIR 1954 Allahabad 424*
- (iii) *Amarsang Nathaji vs. Hardik Harshadbhai Patel & Ors., (2017) 1 SCC 113*
- (iv) *Rasiklal Manikchand Dhariwal & Anr. vs. M.S.S. Food Products (2012) 2 SCC 196*



(v) *Bhagwan Singh vs. State of UP & Ors., 2024 SCC*
OnLine SC 2599

5. The learned counsel submits that in the light of the aforesaid judgments, this Court may in accordance with Section 379 of the BNSS, pass necessary orders for lodging an appropriate complaint before the Jurisdictional Magistrate against the Election Petitioner.

6. In reply, Mr. S. Jindal, learned counsel for the respondent/Opp. Party (Election Petitioner in the main case) has firstly submitted that the instant application is not in conformity with the High Court Rules, inasmuch as, no leave was sought from this Court which is violative of Rule 10 of Chapter 8A of the Gauhati High Court Rules, as adapted by this Court, which mandates that prior permission and/or leave from this Court be taken before filing of any miscellaneous application in the Election Petition. The application it is submitted, being an offshoot of the main Election Petition, notwithstanding the fact that various provisions of the BNS and BNSS have been invoked, the High Court Rules as applicable, will necessarily have to be complied with.

7. It is further submitted that the applicant is seeking prosecution of the Election Petitioner under Section 229 of the BNS, which requires that the evidence has to be shown or proved to be false, and false evidence should have been intentionally submitted by the accused person. It is further



submitted that the definition of the word ‘evidence’ as contained in Section 2(1)(e) of the Bharatiya Sakshya Adhiniyam (BSA) 2023, has defined evidence as to mean and include or statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. In this context he submits, this Court would have to determine as to whether the statements made in the show cause affidavit and an Affidavit on Evidence filed can be constituted as evidence. In support of his contention, the learned counsel has placed reliance on the case of *Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors.* reported in *(2013) 4 SCC 465*, which he submits held that, an affidavit is not evidence within the meaning of Section 3 of the Evidence Act, 1872. As such, he contends, this judgment makes it clear that as on date there is no evidence on record.

8. It is then submitted that contradiction does not amount to perjury, and if the two affidavits filed contradict each other, it cannot amount to perjury, and at best is a contradiction that has arisen between a previously made statement and a recent statement, which can be resolved by cross-examination to determine the truth. The contradiction he submits, is only in the surname of the Stamp Reporter, which is inadvertent and not intentional, and as such, an examination of the concerned Stamp Reporter will clarify the issue. Further he submits, the material aspect of the



affidavits is the assertion that the Election Petition had been presented to the Stamp Reporter, which has remained unchanged in both the affidavits, except for the name mentioned therein. Learned counsel has also referred to a recent judgment of the Supreme Court in the case of ***James Kunjwal vs. State of Uttarakhand & Anr., 2024 SCC OnLine SC 1943***, wherein it has been held that the prosecution for perjury should be sanctioned by Courts only in those cases, where the perjury appears to be deliberate and conscious and conviction is reasonably probable or likely. In conclusion he submits that, there is no question of any perjury having been made or committed by the Election Petitioner, as there is nothing in the application filed by the applicant to dispel the fact that the Election Petitioner had personally presented the Election Petition, before the Stamp Reporter.

9. Having heard the learned counsel for the parties, without alluding to the details, the only question to be decided is whether the contradiction that has appeared in the show cause and affidavit of the Election Petitioner, as to the name of the Stamp Reporter, will amount to an offence under Section 229 of the BNS, 2023. At this juncture, it would be expedient to reproduce hereinbelow Section 227 and Section 229 of the BNS 2023.

“227. Giving false evidence.- Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any



subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

229. Punishment for false evidence.- (1) Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine which may extend to ten thousand rupees.

(2) Whoever intentionally gives or fabricates false evidence in any case other than that referred to in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine which may extend to five thousand rupees.”

10. A perusal of the above noted Sections, shows that the statement made must be false, and also that the same must be intentional for the purpose of being used in any stage of a judicial proceeding. As held in the



case of *Chajoo Ram vs. Radhey Shyam & Anr.* reported in (1971) 1 SCC 774, the prosecution for perjury should be sanctioned by Courts, only in those cases where the perjury appears to be deliberate and conscious, and further prosecution should be ordered, when it is considered expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement, which may be innocent or immaterial. Further, in the case of *Bhima Razu Prasad vs. State represented by Deputy Supdt. of Police, CBI/SPE/ACU-II* reported in (2021) 19 SCC 25, three essential factors which can be said to be *sine qua non* for the application of Section 193 IPC have been illustrated, which are (i) false statement made On Oath or in affidavits (ii) such statements be made in a judicial proceeding or (iii) such statement be made before an authority that has been expressly deemed to be a ‘Court’. These above noted judgments have been referred to in a recent judgment of the Supreme Court in the case of *James Kunjwal(supra)*, wherein the three judge bench at Para 16 thereof, had crystalized the law on this aspect.

“16. What we may conclude from a perusal of the above-noticed judicial pronouncements is that:-

(i) The Court should be of the prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);



- (ii) Such proceedings should be initiated when doing the same is “expedient in the interests of justice to punish the delinquent” and not merely because of inaccuracy in statements that may be innocent/immaterial;*
- (iii) There should be “deliberate falsehood on a matter of substance”;*
- (iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;*
- (v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.”*

11. In the instant case, the counsel for the applicant has been at pains to impress upon the fact that the statements made on affidavit will amount to tendering of evidence, as held in the case of ***Rasiklal Manikchand Dhariwal(supra)***, which has pronounced that an Examination-in-Chief in the form of an affidavit, which is always sworn before the Oath Commissioner or a Notary or Judicial Officer, the same is thus an oath already. In the instant case, what has been maintained by the Election Petitioner is that the evidence has to be shown that it is false, but however, as to which of the two statements is correct, that is the name of the Stamp Reporter, the same is yet to be established or determined. Further, is the



contention that the statements have never been made intentionally knowing them to be false, and at the most, will amount to a contradiction, and an inaccuracy, brought about by a bonafide mistake.

12. In the face of these circumstances, and in the light of the conditions as illustrated in the case of *James Kunjwal(supra)*, this Court finds force in the contentions of the Election Petitioner, and it is held that the ingredients of Section 229 BNS, are not met, moreover, as the substantial facts are yet to be determined. The instant application therefore is not entertained and is dismissed.

Judge

Meghalaya
08.04.2025
"D.Thabab-PS"