

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 830 of 2013.

1. VITORIA,
A Partnership Firm, formed and
registered under the provisions of
the Indian Partnership Act, 1932
and having its office at Office Nos. 1 to 5,
Millennium Star,
Dhole Patil Road,
Pune-411 001.
2. Mr Ravindra Naupatlal Sakla,
Age 50 years, occupation business,
Office at : Office Nos. 1 to 5,
Millennium Star,
Dhole Patil Road, Pune 411 001.
3. Mr Anil Shivajirao Bhosale,
age 47 years, occupation business,
4. Mr Nitin Shivajirao Bhosale,
age 42 years, Occupation business,
5. Mrs Reshma Anil Bhosale,
age 39 years, occupation business,
6. Mrs Lavina Nitin Bhosale,
age 39 yrs, occupation business,
Appellant Nos. 3 to 6, residing at
Suyash Plaza, Bhandarkar Road,
Deccan Gymkhana, Pune 411 004.

..APPELLANTS/ORIG. DEFT. NOS. 8 to 13.

VERSUS.

1. Mr Rajendra Vitthal Bahirat,
Age adult, occupation Agriculture
and business,
address: 128, “Ameya Apartments”
Flat No.403, 3rd Floor,
Opposite Fani Ali Talim,
Near Kasba Ganpati,
Kasba Peth, Pune 411 011.
..(ORIGINAL PLAINTIFF.)
2. M/s Kering Patil Associates.
A Partnership firm, formed and
registered under the provisions of
the Indian Partnership Act, 1932
having its office at Building No.2,
First Floor, Kering Hospital
Compound, 289/2,
Mahatma Phule Peth, Pune. ..(ORIG. DEFT.NO.1)
3. Mr Anand Ramesh Kering
Age adult, Occupation business.
(ORIG. DEFT NO.2.)
4. Shri Arun Sampatrao Patil,
Age adult, occupation business,
residing at 1206/42A,
Lokmat Bhavan,
J.M.Road, Pune – 411 004. (ORIG.DEFT. No.3)
5. Smt.Sita Vitthal Bahirat,
Age adult, occupation household,
residing at 128, “Ameya Apartments”,
Flat No. 403, 3rd Floor,
Opp. Fani Ali Talim, Near Kasba Ganpati,
Kasba Peth, Pune 411 011. (ORIG. DEFT. No.4)

6. Sou. Sujata Ashok Kale,
Age adult, occupation household,
residing at New Adgaon Naka,
Vijaynagar Colony,
Bungalow No. 64, Panchavati Nashik.
.. (ORIG.DEFT.No.5)
7. Sou. Rekha Vikas Chorge,
Age adult, Occup. Household,
Residing at Vitthal Bahirat Chawl,
Near Shankar Mandir, Bopodi,
Pune 411 003. ..(ORIG. DEFT. No.6).
8. Sou. Swati Jalindar Karpe,
Age Adult, Occupation Household,
residing at 35/273, Laxminagar,
Parvati, Pune 411 009. ..(ORIG. DEFT.No.7).
9. The State of Maharashtra ..RESPONDENTS.

Mr Ashok Mundargi, Senior Advocate with Tejesh Dande with Bharti Gadghani, for the Appellants.
Mr A.R. Patil, APP for the State.
Shri Vijay D. Patil i/by Advocate Nikhil Chavan for respondent no.1.

CORAM :- A.R.JOSHI,J
RESERVED FOR ORDER:- 31.7.2015
DATE :- 25th AUGUST, 2015

JUDGMENT :

1. Heard rival arguments on this criminal appeal preferred under section 341 of Cr.PC. What is impugned in the -present appeal is the order passed by the learned Additional

Judge, Small Causes Court, Pune in Special Civil Suit No. 702 of 2012 on 6th March, 2013. Said impugned order was passed on Exhibit 33 in the said special civil suit. Said Exhibit 33 was the application under section 193 of IPC read with section 195 of Cr.P.C and it was preferred by the original defendant nos. 8 to 13 for taking action against the plaintiff in the said suit.

2. Prior to discussing the rival arguments, certain factual position leading to filing of the application Exhibit 33 is required to be mentioned in order to have proper perspective of the matter :-

The application Exhibit 33 was preferred by original defendant nos. 8 to 13 for initiating the prosecution for contempt of lawful authority of the public servant and also for the offence against the public justice and offence relating to the documents given in evidence. According to those defendants, who are the present appellants, then plaintiff i.e. present respondent no.1 had made false averments in the Special Civil Suit No. 702/2012. According to the appellants, falsehood of the averments made by the plaintiff therein is required to be accepted in view of his evidence as witness in another Special

Civil Suit No. 2152/2007. In short, according to the present appellants, in the said Special Civil Suit No. 2152/2007 the present respondent had taken a particular stand with respect to certain immovable property and contrary to that stand he had made averments in his plaint in Special Civil Suit No. 702/2012. Respondent no.1 herein i.e. plaintiff in Special Civil Suit No. 702/2012, filed said suit for declaration that the development agreement dated 25th February, 2005 and the power of attorney of the same date and both registered with Sub-Registrar of Assurances, stand terminated and cancelled. He further sought relief that the further development agreement and power of attorneys dated 14th April, 2007 and 14th May, 2007 respectively were not valid and binding on him. He further sought declaration that the sale deed dated 24th October, 2011 in between then defendant nos. 1 to 3 and present appellants i.e. then defendant nos. 8 to 13 is not legal and not binding on him.

3. The dispute between the parties to the suit No. 702/2012 is regarding the land admeasuring 1 Hectare 81.57 Ares in survey no. 2A, Hissa no.7/1/1, situate at village Bopodi,

taluka Haveli, District Pune. Said property came to the share of the father of then plaintiff/present respondent no.1 and other heirs as an ancestral property. Defendant nos. 5 to 7 in the said suit no. 2152/2007 are sisters of the present respondent, then plaintiff and they had relinquished their share in favour of their father.

4. According to present respondent no.1, plaintiff in Suit No. 702/2012, though the development agreement and power of attorney were executed in the year 2005 in favour of defendant nos. 1 to 3 in Suit No. 702/2012, the development activities were remained to be carried out. In between, there was dispute among the family members of said Vitthal Bahirat i.e. the father of the present respondent no.1, plaintiff in Suit No. 702/2012. Thereafter, defendant nos. 1 to 3 in that suit called upon the mother and three sisters of the plaintiff to execute a consent deed on development agreement and power of attorney dated 25/2/2005. Accordingly, said consent deed was executed on 29/2/2007 and registered with Sub-Registrar of Assurances but defendant nos. 1 to 3 failed and neglected to perform their part of obligation as mentioned in the original

development agreement and power of attorney of 25/2/2005. It is further averred by the plaintiff, present respondent no.1 that he subsequently came to know in December,2011 that defendant nos. 1 to 3 in Suit No. 702/2012 had executed a sale deed dated 24/10/2005 in favour of present appellants, defendant nos. 8 to 13 in Suit No. 702/2012 and as such the plaintiff/respondent no.1 filed a suit for declaration etc.

5. As mentioned earlier, this averment of respondent no.1/ plaintiff as to his knowledge in December, 2011 that defendant no. 1 to 3 had executed the documents in favour of defendant no. 8 to 13, is a false statement and liable for action contemplated under section 193 of IPC read with section 195 of Cr.PC.

6. According to the present appellants / defendant Nos. 8 to 13, present respondent no.1/plaintiff was knowing about execution of the documents and particularly the development agreement dated 14th April, 2007 much earlier to December, 2011. He was knowing so when he gave his evidence in Special Civil Suit No.2152/2007.

7. On these rival submissions, it is to be ascertained whether the conduct of present respondent no.1/plaintiff in Suit No. 2152/2007 is of such a nature so as to warrant action under section 193 of IPC. For this purpose, the role of present respondent no.1 in the said earlier Special Civil Suit No. 2152/2007 is required to be construed. Said civil suit was filed by one Prakash Girme against the present plaintiff /respondent no.1. Present respondent no.1 was defendant no.1 and the present appellant nos. 2 and 4 were defendant nos. 2 and 3 in the said suit. Said suit No.2152/2007 was filed for restoration of possession under section 6 of the Specific Relief Act with respect to survey no.2/A, Hissa No. 8/1. Present respondent no.1, then defendant no.1 in the said suit had given his evidence and deposed to the following extent;

“I say that development rights of property survey no. 2A/7/1/1 are given to defendant nos. 2 and 3 by me and my father. Said defendants are required to construct a building in view of said development rights in the property survey no.2A/7/1/1 and in that agreement survey no. 2A/8/1 is not included.”

8. Now, the question is - Which stand taken by the present respondent no.1 is correct? Firstly, that in the said earlier suit No. 2152/2007 he had given evidence on oath that he and his father had given development rights of the property survey no.2A/7/1/1 to then defendant Nos. 2 and 3 in the said suit i.e. present appellant nos. 2 and 4, or the second one as to whatever stated by the present respondent no.1 i.e. the plaintiff in Suit No. 702/2012 in his plaint that for the first time in the year 2011 he knew regarding execution of sale deed in October, 2005 by defendant nos. 1 to 3 in the said suit in favour of defendant no. 8 to 13. In order to pinpoint present respondent no.1 for making a false statement and interfering in the administration of justice, thus, liable to be held guilty for the offence under section 193 of IPC, it is to be conclusively established that either of the above submissions of present respondent no.1 is wrong. In other words, in order to falsify the contents of the plaint in Suit No. 702/2012 it must be established by the present appellants that earlier evidence of present respondent no.1 in Special Civil Suit No. 2152/2007 is

true and correct then and then only the present contents of the plaint can be taken as a false statement before the Court in Suit No. 702/2012. Not only the establishment of this factual position is the only thing to be proved by the present appellants but also it was must that allegedly false statement made by the present respondent no.1 was intentionally made so, in order to interfere with the administration of justice.

9. On the above, this Court has carefully gone through the reasoning given by the trial Court while passing the impugned order, thus, rejecting the application Exhibit-33 for initiating action against present respondent no.1, then plaintiff, under section 193 of IPC read with section 195 of Cr.P.C.

10. During the arguments, learned counsel for respondent no.1 took shelter of the following authority which was also produced before the trial Court during the hearing on the application Exhibit 33 preferred by the present appellants. Said authority is **Thomman Vs. II Additional Sessions Judge, Ernakulam and ors** reported in **1994 Cri.L.J. 48**. In the said decision, the following paragraphs are relevant and which are reproduced hereunder;

“3. No doubt, what, the appellant said before the magistrate and what he deposed before the Sessions Court are diametrically opposite to each other. At least, one of them must, therefore, be necessarily false. According to the appellant, what he told the magistrate was false. It is not the law that every false testimony should be put through the procedure prescribed in Section 340 of the Code. To attract the procedure, the person concerned should have intentionally given false evidence for the purpose of being used in a judicial procedure and the court should have been of opinion that it was expedient in the interest of justice to take action against him. Merely because a person gave false evidence, it is inadvisable or inexpedient to take action against him. It is not any and every statement made by a witness that the court would wish to examine. If the court is to notice every falsehood that is sworn to by parties in courts there would be very little time for courts for any serious work other than directing prosecution for perjury. Again the edge of such weapon would become blunted by indiscriminate use. The gravity of the

false statement, the circumstances under which such statement is made, the object of making such statement and its tendency to impede and impair the normal flow of the course of justice are matters for consideration when the court decides on the propriety of instituting a complaint for perjury (vide Muraleekrishna Das v. I.G. of Police, 1978 Ker LT 292).

4. When a person resiles from his earlier statement, whether such statement was given on oath or not, the court has to decide whether it was the earlier statement that was false. If the earlier statement was false, no witness is expected to stick to it just to escape from a prosecution for perjury.”

11) Now, the provisions of Section 193 of IPC are required to be reproduced with advantage:-

“193. Punishment for false evidence.—

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,
and whoever intentionally gives or
fabricates false evidence in any other case, shall
be punished with imprisonment of either de-
scription for a term which may extend to three
years, and shall also be liable to fine.”*

12. The gist of the offence lies in the word “intentionally”. As such, it is necessary to find out whether any such statement, which is false, was made intentionally and this necessary ingredient of the offence is must to be established for initiating action against a person against whom allegations are made for the commission of offence under section 193 of IPC. In the considered view of this Court, it was not possible at that stage when Exhibit-33 was filed by the present appellants, then defendant nos. 8 to 13 in Special Civil Suit No. 702/2012 for taking action against the then plaintiff, for the said trial Court to ascertain that the statement, alleged to be false, was made “intentionally” by the then plaintiff/present respondent no.1. Under those circumstances, rightly the trial Court came to the conclusion as to no legal necessity to initiate proceeding

against the then plaintiff for action contemplated under section 193 of IPC read with section 193 of Cr.P.C. Consequently, there is nothing to take a different view than that is taken by the trial Court and to come to a different conclusion in the present appeal. In other words, there was no acceptable material evidence before the trial Court to come to the specific conclusion that either of the statements one given on oath in Suit No.2152/2007 or the contents of the plaint in Suit No. 702/2012, was false and such statement was made intentionally or there was a creation of the fabricated evidence.

13. In the result, there is no substance in the present appeal and same is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)