

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.380 OF 2015

Pravin S. Tare ..Appellant
V/s.
Devanand Rupchand Thale & Anr. .. Respondents

Mr.Suresh D. Barne, for the applicant/appellant.
Mr.Indrajeet R. Kulkarni & Mr.Jayesh Gawde,
for respondent no.1.
Mrs.Anamika Malhotra, APP for the Respondent-State.

**CORAM : A. R. JOSHI, J.
DATE : 05th OCTOBER, 2015.**

P.C.

1. Heard rival submissions on this appeal preferred by the appellant-original complainant challenging the order passed by the Sessions Court rejecting the application preferred by him under section 340 of Cr.P.C.

2. The application under section 340 of Cr.P.C. was filed by the original complainant on 25th November 2013. The facts leading to filing of the such application are required to be mentioned in rather details inorder to appreciate the argument advanced on behalf of the applicant-original complainant.

3. Present appellant had filed the First Information Report with Narpoli Police at Taluka-Bhiwandi, District-Thane for taking action against the present respondent no.1 and also other accused persons for offences punishable under sections 141,143,147,148,149,323,452 and 427 of Indian Penal Code and also under sections 3 and 25 of the Arms Act. During pendency of the investigation present respondent no.1 filed an application for Anticipatory Bail. Said application was filed on 2nd February 2013 and on the same day ad-interim relief was granted and it was confirmed on 19th March 2013. It is a factual position that though according to the present appellant the anticipatory bail order was obtained on making a false statement, present appellant did not challenge the grant of the anticipatory bail to the respondent no.1. According to the present appellant one statement made by the respondent no.1 in his application for anticipatory bail which is bearing no.217/2013 is with the following effect and which is appearing in the para no.2 of the said application.

"The applicant/accused is the Director of the MMRDA and was Sarpanch of Village-Kasheli, Taluka-

Bhiwandi, District-Thane." According to the appellant the said statement of respondent no.1 that during the relevant period he was a Director of the MMRDA was pre-se false inasmuch as appellant obtained the information from MMRDA under Right to Information Act mentioning that said respondent no.1 was never a Director of MMRDA at any point of time. Two such letters were addressed by the office of MMRDA and these are dated 04th March 2013 and 14th March 2013. On the strength of these letters it was ascertained by the appellant that respondent no.1 had made a false statement that he was a Director of MMRDA whereas infact he was not so at any point of time. This was the main and sole ground for the present appellant to move an application on 25th November 2013 for taking action, against respondent no.1 then accused, under section 340 of Cr.P.C.

4. The said application was rejected by Additional Sessions Judge, Thane vide order dated 17th May 2014, by accepting the stand taken by the respondent no.1 that due to inadvertence the post of respondent no.1 was mentioned

as Director, by then Advocate. This order of rejection of the application no.336 of 2013 preferred under section 340 of Cr.P.C., is impugned in the present appeal.

5. Though factually speaking and it is also an admitted position that as on the date of making an application for anticipatory bail the respondent no.1 then accused was never a Director of MMRDA. However, still the Court came to the conclusion as to no dire legal necessity to initiated action against then accused, present respondent no.1 under section 340 of Cr.P.C.

6. Whether or not it is must for initiating action under section 340 of Cr.P.C. is for the trial Court to decide mainly considering whether the apparent wrong statement is made before the Court of law with malafide intention or not. In fact there is a certain difference between a wrong statement and false statement inasmuch as a false statement amply the knowledge of a person making it and obtaining some advantage by making this statement. Whereas a wrong

statement may be by way of inadvertence or by mistaking the factual position. On this context apparently the trial Court had accepted the defense of respondent no.1 as to making of inadvertent statement by then lawyer. Even before the trial Court also and even now at this stage there is nothing brought before the Court on behalf of the appellant that the mentioning in the application for anticipatory bail being a Director of MMRDA was per-say false statement made intentionally to obtained the order of anticipatory bail. Again on this aspect the trial Court had given a reasoning in the impugned order that the status of the respondent no.1 then accused apparently as a Director of MMRDA was not the sole criteria for grant of anticipatory bail. Whatever it may be the trial Court has observed that simplicitor making a statement which is apparently wrong and not depicting the correct factual position may not always warrant the Criminal action under section 340. In the considered view of this Court there is noting to come to the different conclusion than that arrived at by the trial Court in not initiating the action under section 340 against respondent no.1. Infact the action under section 340 of Cr.P.C.

is to be initiated in order to uphold the dignity of the Court of law and only in such grave situation recourse to section 340 can be taken. In other words for any unintentional wrong or even false statement action may not be initiated on the plea of the apparent aggrieved party, as in the present case on the prayer of the original complainant. Moreover, the factual position that no action taken by the appellant-original complainant to challenge the order of anticipatory bail speak otherwise. In any event in the opinion of this Court this is not an appeal which is required to be even admitted and the same is dismissed and disposed of at the admission stage itself.

(A. R. JOSHI, J)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/order.