

***THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

+ Company Application No.1163 of 2013 in C.P.No.30 of 2012

% 25.03.2015

Quinn Logistics India Pvt. Ltd. Petitioner

AND

M/s. R.N. Marwah & Company, represented
by its Managing Partner Raghu Marwah and
2 others

.... Respondents

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! Counsel for petitioner: Sri S. Niranjan Reddy

^ Counsel for respondent: Sri S. Ravi

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> Head Note:

? Cases referred:

1. (2001) 5 Supreme Court Cases 289
- 2) (1978) 1 Supreme Court Cases 18
- 3) (2008) 8 Supreme Court Cases 34
- 4) AIR 1963 (Supreme Court) 816
- 5) 1982 Laws (SC) 31

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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Date: 25-03-2015

Between:

Quinn Logistics India Pvt. Ltd.,

.. Petitioner

AND

M/s. R.N. Marwah & Company, represented by its
Managing Partner Raghu Marwah and 2 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Company Application No.1163 of 2013 in C.P.No.30 of 2013

ORDER:

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The present Company Application is filed seeking a direction to register a complaint against Sri Samson Arthur and Sri N. Chandrasekhar Rao under Sections 191, 192, 193 and 209 of the Indian Penal Code, 1860.

2. The case of the applicant is that Company Petition 30 of 2012 was filed against the applicant seeking winding up of the applicant company on the basis of the amounts allegedly due for services purportedly rendered to the applicant and a winding up order was passed against the applicant company on 06-07-2012 on account of collusion between the petitioner in C.P.No.30 of 2012 (hereinafter known as petitioner) and Sri Samson Arthur and Sri N. Chandrasekhar Rao, who admitted the liability of the applicant towards the petitioner. It is stated that Quinn Logistics Sweden AB (in bankruptcy) (QLS) which is holding company of the applicant filed an application for recalling winding up order and this Court recalled the said winding up order on 13-08-2013. It is stated that Sri Samson Aruthur and Sri N. Chandrasekhar Rao have wrongfully admitted liability of the applicant towards the petitioner and the applicant contends that no dues are payable by it to the petitioner who colluded with Sri Samson Aruthur and Sri N. Chandrasekhar Rao and initiated proceedings against the applicant on the basis of false claims. The applicant, among other things, stated that on 13-06-2012 an affidavit has been purportedly filed in the company petition on behalf of the applicant by Sri N. Chandrasekhar Rao wherein he stated that the applicant company does not have any assets at all and is not operating for the last one and half years since January 2010, but the audit report, which has been accepted by Sri N. Chandrasekhar Rao, states that the applicant company has sufficient assets in terms of monies i.e. INR 62,91,40,790 owned to it by Mack Soft and acknowledged in the Audit Report. It is also stated that no mention has been made by Sri N. Chandrasekhar Rao before the Court of the dilution of shareholding of the applicant in Mack Soft, which is subject matter of challenge in O.S.No.21 of 2012 and on the contrary, in the affidavit before the Court sworn on 13-06-2012 stated that the applicant company is not operating from last more than one and half years and the above

material was suppressed by Sri N. Chandrasekhar Rao regarding dilution of shareholding constitutes suggestion of falsehood in terms of the maxim *suppression very suggestion falsi*. It is further stated that on 15-06-2012 in another affidavit filed in the Company Petition seeking extension of time for providing the books of accounts of the applicant to the Official Liquidator, Sri N. Chandrasekhar Rao stated that the records of the company are in bad shape and the applicant company is in the process of compiling the complete records in order to file the same before the Official Liquidator and the records of the applicant company have not been filed before the Official Liquidator. It is further stated that Sri N. Chandrasekhar Rao filed an application on behalf of Mack Soft in O.S.No.21 of 2012 under Section 446 of the Companies Act, 1956 seeking stay of further proceedings in O.S.No.21 of 2012 on account of passing of winding up order against the applicant company dated 06-07-2012. It is further stated that after falsely admitting the liability towards the petitioner and collusively obtaining a winding up order against the applicant, Sri N. Chandrasekhar Rao by filing the application under Section 446 of the Companies Act sought to utilize the order dated 06-07-2012 to prevent the bankruptcy receiver for QLS from further proceeding in its attempts from controlling the affairs of Mack Soft and thereby perpetrated the abuse of process of the court.

3. The applicant company further stated that in response to the company petition filed by the petitioner, Sri Samson Arthur filed counter affidavit purportedly acting on behalf of the applicant, wherein Sri Samson Arthur stated that in view of the fact that the applicant company was in financial difficulty, it could not make the payment to the petitioner and that in view of financial difficulty that the company was facing it was unable to make the payment. Sri Samson Arthur further stated that the reason for non-payment is the continued financial crunch that the respondent company as is presently facing and requested the petitioner to bear with the company in view of ongoing financial crunch and has been trying to clear the outstanding dues of the petitioner by trying to arrange funds from some other source. The applicant company further stated that Sri Samson Arthur stated the above facts falsely to his knowledge in contrast to the actual financial position of the applicant company. It is further stated that the averments made by Sri Samson Arthur in the counter affidavit are in contrast to the averments made by him in the caveat filed by him on 10-

02-2012 wherein he claimed that the dues of the petitioner has been paid and the contradictory statements made by him in the affidavit is an abuse of process of the court. Even as per the Audit Report, the applicant company has lent monies to a tune of INR 62,91,40,970 to its subsidiary, Mack Soft.

4. The petitioner further submits that the above facts clearly demonstrate that the proceedings in the company petition are collusive one and Sri Samson Arthur and Sri N. Chandrasekhar Rao have deliberately filed false affidavits before the Court and deliberately withheld material information from the Court and have concealed several relevant facts that were known to them and that the actions and conduct of Sri Samson Arthur and Sri N. Chandrasekhar Rao in making false statements, deliberately withholding relevant information and suppressing material facts from the Court, reflect their willingness to act in the interests of and at the instruction of the erstwhile management of the applicant company. As such, the present company application is filed seeking a direction to register a criminal case against Sri N. Chandrasekhar Rao and Sri Samson Arthur.

5. Respondents 1 and 2/Non-applicants 1 and 2 have filed their independent counter affidavits with similar and identical averments stating that the authority of Mr. Robert Dix to file the present application is defective in the absence of properly authorised and executed documents. It is stated that the dispute in the present application relates to non-payment of contractual dues by the applicant company under the agreement dated 04-05-2011 and the validity of the agreement dated

04-05-2011 has not been disputed even by the applicant company and the only allegation levelled against them is that they have not disclosed the correct financial condition of the applicant company by failing to mention that the applicant company has given a loan of INR 62,91,40,970 to Mack Soft Tech Pvt. Ltd., and thus falsely stated in the affidavits that the applicant is unable to pay dues to the petitioner and collusively got the wound up order. It is further stated that the bankruptcy receiver was allegedly appointed for Quinn Logistics, Sweden, AB by the District Court at Stockholm, Sweden on 06-07-2011 and subsequent thereto, on 28-12-2011 Quinn Logistics, Sweden, AB acting through the bankruptcy receiver issued to the applicant company a letter of requisition for calling an EGM of the applicant seeking removal of the existing directors of

the applicant company and for appointment of new directors in their place, pursuant to which, a notice of EGM dated 23-01-2012 was issued on behalf of the applicant company and the EGM was held on 18-02-2013, and therefore, it is clear that the entire proceedings by the bankruptcy receiver started only after 06-07-2011 i.e. the date on which he was allegedly appointed as the bankruptcy receiver of Quinn Logistics, Sweden, and the agreement between the petitioner and the applicant was signed on 04-05-2011 i.e. more than two months prior to the alleged appointment of the bankruptcy receiver. It is also stated that there is no averment in the application that the said agreement is sham or has been backdated and that no payment was made by the applicant company to the petitioner. The counter affidavit filed by Samson Arthur honestly mentioned the financial difficulties faced by the applicant and that the veracity of Samson Arthur regarding the financial difficulties faced by the applicant company and the consequent inability to pay the dues to the petitioner have been duly established by the bank statements annexed along with the affidavit filed by Sri N. Chandrasekhar Rao filed on 13-06-2012. As per the documents annexed, the applicant has two bank accounts viz., A/c.No.00210350003538 with HDFC bank and A/c. No.081-108896-001 with HSBC Bank and while there was an amount of Rs.9,99,150/- in HDFC bank, an amount of Rs.2,772/- was lying in HSBC account and that the veracity of the bank statements has not been disputed by the applicant company till date and that it is clearly evident that as on that date i.e.

07-06-2012, the applicant company was financially unable to meet its admitted liabilities and mere fact that it owed monies by Mack Soft is completely immaterial since the same would be a claim by the applicant against Mack Soft and cannot be a ground to deny payment of its admitted liabilities. It is further stated that on the date of agreement executed, there was no order appointing the bankruptcy receiver as receiver in bankruptcy of Quinn Logistics Sweden, AB, and it is conceivable as to on what basis the applicant has alleged that attempts are being made by the petitioner in collusion with the erstwhile management of the applicant company to obstruct the change in management of the applicant and prevent the court appointed receiver in bankruptcy of Quinn Logistics Sweden, AB from taking control of the assets of the applicant. It is further stated that the present application is preferred with the sole motive of intimidating the present ex-employees of the applicant company and that under

the agreement dated 04-05-2011 an amount of Rs.45,00,000/- was to be paid to the petitioner by the applicant on provision of satisfactory services by the petitioner and the same was admitted by the respondents 1 and 2/non-applicants 1 and 2 that although the amount was due to the petitioner by the applicant company, the applicant company was unable to pay dues on account of the present financial condition of the applicant company and that the question of action being initiated against the respondents for having committed the offence of perjury does not arise at all. It is further stated that the proceedings conducted at the EGM on 18-02-2012 are not within the knowledge of these respondents. It is denied that the documents filed by Mack Soft contained an audit report of Mack Soft dated 29-06-2011 issued by Sarath and Associates, Chartered Accounts for the year ending 31-03-2011 and stated that while the applicant company used to be holding Company of Mack Soft subsequent to issuance of fresh equity by Mack Soft in June, 2011 to Mecon FZC and the transfer of the applicant's share holding in August, 2011 to UCA Logvis AG., as on date the applicant is not a shareholder of Mack Soft and the dispute relating to the above transactions are pending before the District Court, Ranga Reddy in O.S.Nos.21 of 2012 and 1303 of 2013. It is further stated that as per the audit report, a balance loan of INR 62,91,40,790 is pending on the books of Mack Soft as payable to the applicant and this liability towards the applicant company is also reflected in the balance sheet of Mack Soft dated 31-03-2012. The respondents have denied that in accordance with the audit report, the applicant has sufficient assets in terms of monies owed to it by Mack Soft and acknowledged in the audit report. The respondents denied that they have falsely admitted liability towards the petitioner and collusively obtained a winding up order against the applicant company. The respondents further stated that the applicant is now under the management of Sri Robert Dix, Sri Paul Mc.Gowan, Sri Paul Mc. Gowan and Sri Bryan O' Neil, who were unanimously appointed as Directors at the EGM held on 18-02-2012, subsequently confirmed at EGM of the applicant convened on 29-07-2013 wherein the shareholders have also conferred authorities on them to institute legal proceedings on behalf of the applicant company. In view of the facts narrated above, it clearly shows that the affidavits dated 16-02-2012 and 13-06-2012 have truthfully and honestly mentioned the correct financial condition of the applicant company and there is no falsity in the averments made by them. The respondents 1 and 2

sought for dismissal of the present company application.

6. Sri S. Niranjan Reddy, learned counsel, representing the learned counsel for the applicant company, contends that sequence of events mentioned in support of the application leading to winding up order would go to show that non-applicants 1 and 2 played fraud and are responsible for winding up the applicant company. He also contends that the Court, while appointing provisional liquidator, observed that the counter filed was vague and non-applicants have not given the details of assets of the applicant company and that the non-applicants 1 and 2 are duty bound to place correct facts in the applications filed in C.P.No.30 of 2012 and suppressed the information relating to the applicant company, and thus, they are liable to be prosecuted. He further contends that the purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or 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. He further submits that the non-applicants 1 and 2 are legally bound to state truth in their affidavits but they failed to do so, as such, they are liable to be punished. He further contends that in an enquiry to be held by the Court under Section 340(1) of the Code of Criminal Procedure, irrespective of the result of the main case, the only question is whether *prima facie* case is made out, which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interests of justice to take such action. He further contends that the object of the legislature underlying enactment of the provisions is that the evil of perjury and fabrication of evidence has to be eradicated and can be better achieved as it is open to courts to take recourse to Section 340 (1) Cr.P.C. in cases in which they have failed to take action under Section 344 Cr.P.C. He further submits that in Section 344 Cr.P.C., only the Court of Session and the Magistrate of the First Class are mentioned unlike Section 340 Cr.P.C. as such, the application under Section 340 Cr.P.C. is maintainable. He further submits that even as per subsection (3) of Section 344 Cr.P.C., the power of Court to make a complaint under Section 340 Cr.P.C. is not affected. Section 344 Cr.P.C. empowers the

Court of Session and the Magistrate of First Class for trial of an offence for giving any false evidence in summary procedure. In the present case, since false evidence was placed before the Court, Section 340 Cr.P.C. can be invoked for registering a complaint against the non-applicants 1 and 2. He further submits that Section 340 Cr.P.C. is an independent Section and that it is always not necessary that the court should render the finding at the time of final judgment, but later also, the Court can invoke Section 340 (1) Cr.P.C. He further contends that the counter filed by the respondents in C.P.No.30 of 2012 along with petition for recalling winding up order shows that Sri Robert Dix is authorised to defend with the company and that the authorisation dated 22-05-2013 issued in favour of Robert Dix is filed along with the counter affidavit in the Company Petition No.30 of 2012 shows that Robert Dix was Director and singly or jointly authorised to file applications, representations, complaints on behalf of the applicant company. As such, it cannot be said that Robert Dix has no authority to represent the applicant company. In support of his contentions, he relied on **In Re: Suo Motu proceedings against R. Karuppan, Advocate, K. Karunakaran v. T.V. Eachara Warriar and another** and **Mahila Vinod Kumari v. State of Madhya Pradesh**.

7. On the other hand, Sri S. Ravi, learned senior counsel appearing on behalf of the non-applicants 1 and 2 submits that while recalling winding up order dated 06-07-2012 in C.A.No.127 of 2012, the Court has not recorded any finding regarding collusion or playing fraud by the non-applicants 1 and 2 in this Company Application. He submits that unless the court records any, *prima facie*, finding about involvement of non-applicants in the recall application in C.A.No.127 of 2012, the court cannot render a finding under Section 340 (1) Cr.P.C. He also submits that at the time of final disposal of the case itself, specific finding has to be recorded and when the Court has not done so, the present application under Section 340(1) Cr.P.C. is not maintainable and that Sections 340 (1) and 344 (1) Cr.P.C. have to be read harmoniously. He further contends that since the court has not rendered any finding in the recall order and has not taken any action as per Section 344 (1) Cr.P.C., the present application under Section 340 (1) Cr.P.C. is not maintainable. He further submits that only filing an affidavit does not amount to perjury and Sri Robert Dix, who filed the present application, is not a Director and no resolution is

passed authorising him to prosecute the present application. In support of his contentions, he relied on **Shabir Hussain Bholu v. State of Maharashtra** and **Chandrapal Singh v. Maharaj Singh**.

8. Before going into the merits of the case, it may be relevant to refer relevant provisions of the Indian Penal Code as well as the Code of Criminal Procedure, which are extracted hereunder:

Section 191 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.

Section 193: Punishment for false evidence:

Whoever intentionally gives false evidence in any state 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 description for a term which may extend to three years, and shall also be liable to fine.

Section 209: Dishonestly making false claim in Court:

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

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Section 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.
- (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;
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Section-195 (i) (b) (i) of Cr.P.C.

No Court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code, namely, Sections 193 to 196, 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.

Section-344: Summary procedure for trial for giving false evidence:

- (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.
- (2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.
- (3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this Section....."

Maharashtra (4 supra) and **Chandrapal Singh v. Maharaj Singh** (5 supra) has no application to the facts of the present case since it is rendered while interpreting the provisions of the old Code of Criminal Procedure, 1898, more so, the words "Court of Session or Magistrate of First Class" are used in Section 344 (1) Cr.P.C. and that sub-section (3) of Section 344 also states that it will not affect the power of the Court under Section 340 (1) Cr.P.C. As such, those judgments have no application to the facts of the present case.

10. A reading of Section 344 Cr.P.C. would go to show that a Court of Session or Magistrate of the First Class can take cognizance of an offence, if they form an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding and after giving a reasonable opportunity to the offender of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both. Sub-section (3) of Section 344 Cr.P.C. says that nothing in Section 344 shall affect the power of the Court to make a complaint under Section 340 for the offence, where it does not choose to proceed under Section 344 (1) Cr.P.C. Even if action is not initiated under Section 344 Cr.P.C., still it is open for the Court to deal with the offender under Section 340 Cr.P.C. after recording a finding that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195 Cr.P.C., 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. So, expression of opinion regarding giving false evidence at the time of final disposal of the main case under Section 344 Cr.P.C. is not condition precedent for invoking Section 340 Cr.P.C., and hence, the power under Section 340 Cr.P.C. can be invoked upon an application to the court or otherwise irrespective of power conferred under Section 344 Cr.P.C.

11. Only enquiry contemplated under Section 340(1) Cr.P.C., irrespective of the result of the main case, is whether a prima facie case is made out which, if rebutted, may have a reasonable likelihood to establish the specified offence

and whether it is also expedient in the interest of justice to take such action. **(See: K. Karunakaran v. T.V. Eachara Warriar and another (2 supra).** The purpose of enacting Section 340 (1) Cr.P.C. appears to be further arm the court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession. The object of the legislature underlying enactment of Section 340 (1) Cr.P.C. is that the evil of perjury and fabrication of evidence has to be eradicated and can be better achieved now as it is open to courts to take recourse to Section 340 (1) (corresponding to Section 476 of the Old Code) in cases in which they have failed to take action under Section 344 Cr.P.C. **(See: Mahila Vinod Kumari v. State of Madhya Pradesh (3 supra)** Hence, the present application is maintainable under Section 340 (1) Cr.P.C.

12. In the present case, the non-applicant 1-Sri N. Chandra Sekhar Rao stated in his affidavit dated 13-06-2012 in C.P.No.30 of 2012 as follows:

“1) The only reason for non-payment of the outstanding dues by respondent company was the prevailing financial condition of the respondent company” - But the audit report filed by Sri N. Chandrasekhar Rao as representative of Mack Soft before the Ranga Reddy Court shows that INR 62,91,40,790 (INR 62.91 crores) is due to the applicant from Mack Soft and the amounts due from Mack Soft to applicant are also admitted in the counter to the present application.

2) “I submit that the respondent company does not have any assets at all” - But the audit report filed by Sri N. Chandrasekhar Rao as representative of Mack Soft before the Ranga Reddy Court shows that INR 62,91,40,790 (INR 62.91 crores) is due to the applicant from Mack Soft and the amounts due from Mack Soft to applicant also admitted in the counter to the present application.

3) “The company is not operating for the last one and half year (i.e. January, 2011)” - But, Form FC-TRS dated 28-09-2011 shows that transfer of shares held by the applicant Mack Soft to Logvis AG at a price of INR 9,90,00 even though these shares were purchased by applicant for INR 126,73,23,427 in May, 2007.”

13. From the above, it is clear that the affidavit filed by Sri N. Chandrasekhar Rao, prima facie, goes to show that he has given false statement that the applicant company does not have assets at all and non-payment of outstanding amount due by the applicant company was due to prevailing financial conditions

of the applicant company. Even in the counter affidavit, it is not the case of Sri N. Chandrasekhar Rao that they are unable to get the amount from Mack Soft and Mack Soft is not paying the amounts by which the applicant company is disabled in paying the debts due to the petitioner.

14. Similarly, in the statement made by Samson Arthur in the counter affidavit dated 16-02-2012 in C.A.No.102 of 2012 filed for appointment of provisional liquidator, the only reason for non-payment of the outstanding dues by respondent company was the prevailing financial condition of the respondent company, which is contrary to the audit report filed by Sri M. Chandrasekhar Rao as representative of Mack Soft before Ranga Reddy Court in which it is shown that INR 62,91,40,970 (INR 62.91 Crores) is due to the applicant from Mack Soft and that the amount due from Mack Soft to applicant company is also admitted in the counter to the present application. The Company Court, while appointing provisional liquidator in C.P.No.30 of 2012 filed by the petitioner held that the Court passed the order for appointing of provisional liquidator since the counter affidavit filed by Sri Samson Arthur is vague and has not chosen to give details of its assets nor has it assured the Court that the assets would not be taken away beyond the jurisdiction of the Court. Admittedly, caveat petition is filed by the applicant company on 10-02-2012 and winding up petition in C.P.No.30 of 2012 is filed on 14-02-2012 by the petitioner and winding up order is passed on 06-07-2012. The sequence of events leading to winding up order in the company petition in quick succession would also give rise to a presumption that the non-applicants 1 and 2 have not placed correct facts before the Court before winding up order is passed. The respondents being legally bound by on oath to state the truth in their affidavits in C.P.No.30 of 2012 is *prima facie* held to have made a false statement which constitutes an offence of giving false evidence as defined under Section 191 punishable under Section 193 and 209 IPC.

15. In **In Re: Suo Motu proceedings against R. Karuppan, Advocate** (1 supra), the Apex Court held as follows:

“Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. 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. if the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or 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.....”

16. Hence, the Registrar (Judicial) to depute one officer not below the rank of Assistant Registrar or above the rank to file a complaint under Section 340 (1) Cr.P.C. read with Sections 191, 193 and 209 IPC against the respondents/non-applicants 1 and 2 herein before a Magistrate of competent jurisdiction at Hyderabad. Such officer is directed to file such complaint and take all steps necessary for prosecuting the complaint. The concerned Magistrate is directed to deal with the same as per law without being influenced by any of the observations made herein since they are made only for the purpose of preliminary enquiry under Section 340 (1) Cr.P.C.

A. RAJASHEKER REDDY, J

Date: 25-03-2015

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