

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****911 CRIMINAL REVISION APPLICATION NO. 180 OF 2015****CHANDRAKANT S/O VITHALRAO MULE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA****...****Advocate for Applicants : Mr. Ajinkya Reddy
APP for Respondents State: Mr. S. N. Kendre****CORAM : V. K. JADHAV, J.****DATE : 22nd January, 2016****PER COURT :**

1. Applicant No.2 Chintaman who is original complainant in R.C.C. No. 28/2013 and Applicant No.1 Chandrakant who is witness in the said case, by this application, are challenging the legality and correctness of the order dated 13.03.2014 passed by the learned Judicial Magistrate, First Class, Purna thereby directing Tahsildar Purna to file complaint against the the present applicants for perjury before the Court.

2. Learned counsel for the applicants submits that the inquiry as contemplated under section 340 of the Criminal Procedure Code, is not an empty formality. The learned counsel submits that as per provisions of Section 340(1) of Cr.P.C., if any court is of opinion that

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, after such preliminary inquiry, record a finding to that effect and further make a complaint thereof in writing and send it to a Magistrate of the First class having jurisdiction. The learned counsel, submits that in the case in hand, the Judicial Magistrate, First Class, Purna, without holding any inquiry as contemplated under section 340(1) of the Cr.P.C., directed the Tahsildar, Purna to file complaint against the applicants. The learned counsel further submits that the order to that extent is incorrect, illegal and improper.

3. The learned counsel for the applicants further submits that against the said order dated 13.03.2014 passed by the Judicial Magistrate, First Class, Purna in R.C.C. No. 28/2013, the present applicants preferred Criminal Appeal No.51/2014 before the Sessions Court, Parbhani. The learned Extra Joint Adhoc Addl. Sessions Judge, Parbhani, by order dated 31.08.2015, though dismissed the criminal appeal, in Para 18 of the judgment has observed that the observations of the

Magistrate and direction to the Tahsildar, Purna to file complaint against the present applicant for such alleged false evidence was absolutely uncalled for, in the facts and law. The learned counsel submits that even in the light of this observation made by the learned Sessions Judge, the impugned order dated 13.03.2014 passed by the Judicial magistrate, First Class, Purna in RCC No. 28./2013 to the extent of Clause 3 of operative part does not stand and the same is liable to be quashed and set aside. Learned counsel, in order to substantiate his submissions, placed reliance on the decision of Division Bench of this court in the case of **Dr. Dilip Shankar Burte Vs. The State of Maharashtra**, reported in **2015(1) Mh.L.J. (Cri.)491**.

4. I have also heard the learned APP.

5. It appears from the order passed by the Magistrate that the learned Magistrate has not followed the procedure as contemplated under section 340(1) of the Cr.P.C. In view of section 340(1) of the Cr.P.C. the Magistrate, after making such preliminary inquiry into any offence referred to in clause (b) of sub-section (1) of Section 195, that includes offence of perjury which is the subject matter of the present application,

has to record a finding to that effect and further to make complaint thereof in writing and send it to a Magistrate of the First Class having jurisdiction. In any case, Tahsildar cannot be directed to file complaint of perjury against the applicants in view of the mandatory provisions of Section 340 of the Cr.P.C.

6. In the case of **Dr. Dilip Shankar Burte (Supra)**, the Hon'ble Division Bench of this Court, in para 8 of the judgment, has made following observations:

"8. Upon a minute perusal of the said provision, it is abundantly clear that the legislature in its wisdom has thought it fit that before initiation of proceedings for perjury or for forgery of documents, the Court has to apply its mind and has to record the finding whether further probe into the matter was necessary in the interest of justice, and apart from that, whether it was expedient and necessary. The formality of inquiry, as contemplated under Section 340 Cr. P.C. is not an empty formality. The learned Sessions Judge is expected to apply his mind and see whether further inquiry has to be carried on by the Magistrate. The reason is obvious that distinction has to be made between evidence which is not believed to be true and not accepted, and / or relied upon by the Court,

and the evidence which is proved as false evidence, given on oath. The procedure which is prescribed under Section 340 is therefore, in the nature of safeguard, which has been imposed upon filing of frivolous and unwarranted prosecution for giving false evidence or producing fabricated documents. In large number of cases, evidence is given by witnesses in cross-examination. An attempt is made by the otherside either to impeach the credibility of the witness or to show that the evidence given in examination-in-chief is neither probable nor reliable. In all such cases, where the prosecution / opponent succeeds in shaking credibility of the witness, it cannot be said that said witness has given false evidence. Whenever the creditworthiness of the witness is shaken, in all such cases complaint for the offence punishable under Section 193 IPC is not filed. It is abundantly clear that the Court should examine this issue from that angle and accordingly record the finding."

7. Even in the light of the observations made by the the learned Extra Joint Adhoc Additional Sessions Judge, Parbhani, in para 18 of the judgment in Criminal Appeal No. 51/2014, the impugned order does not stand. In fact the learned Extra Joint Adhoc Addl. Sessions Judge should have taken care to set aside the said directions given by the learned Magistrate, while

disposing of the criminal appeal.

8. In view of the above discussions, criminal revision application is allowed in terms of prayer clause (C). The impugned order dated 13.03.3014 in RCC No. 28 of 2013 passed by the learned J.M.F.C. Purna, Taluka Purna Dist. Parbhani, to the extent of clause (3) of the final operative order directing the Tahsildar Purna to register Criminal Case against the applicants, is hereby quashed and set aside.

9. Criminal application is disposed of accordingly.

(V. K. JADHAV, J.)

JPC