

\$~57

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 172/2015 & CrI.M.A. No.1184/2015

PRAVEEN SHARMA

..... Petitioner

Through: Counsel for the petitioner.
(Appearance not given)

versus

STATE & ANR

..... Respondents

Through: Mr.Kranti Bhandari, Advocate for
Mr.R.S.Kundu, A.S.C. for the
State/R-1 and R-2 with SI Brajveer
Singh & HC Anand Kumar (R-2), PS
Seelampur.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

12.05.2016

1. The petitioner has invoked the writ jurisdiction of this Court with the following prayers:-

(a) to set aside the order dated 29.11.2014 passed by learned ASJ, KKD Courts whereby the order of the learned Trial Court dismissing the application under Section 340 Cr.P.C. filed by the petitioner against the respondent has been upheld and the appeal u/s 341 Cr.P.C. filed by the petitioner has been dismissed.

(b) to set aside the order dated 22.05.2014 passed by learned Trial Court dismissing the application u/s 340 Cr.P.C. filed by the petitioner.

(c) to pass an order for preliminary inquiry into the offence under Section 191 read with Section 193/211 of the Indian Penal Code, 1860 which appears to have been committed in respect of the said false statements of HC Anand Kumar in the proceedings of the case instituted on the kalandra under Section 175 IPC filed by the police.

2. The facts, in brief, are that in respect of a vehicular accident, case FIR No.569/2013 under Section 279/338 IPC was registered at PS Seelampur on 22.12.2013. During investigation of the said case, to trace the offending vehicle, notice under Section 133 MV Act was sent to the registered owner who disclosed that he had already sold the vehicle to Praveen Sharma i.e. the present petitioner. Thereafter notice under Section 133 MV Act (initially on the notice Section 133 Cr.P.C. has been written instead of Section 133 MV Act), was served on the present petitioner. On his alleged failure to reply the said notice, a Kalandra under Section 175 IPC was filed against him.

3. During hearing of Kalandra under Section 175 IPC registered vide DD No.74B/14, the present petitioner filed an application under Section 340 Cr.P.C. for initiating proceedings against HC Anand Kumar for not mentioning about the reply sent by him to the notices dated 20.03.2014 and 28.03.2014.

4. The learned MM, after considering the contentions, was of the view that there was no wilful intention of the IO to state wrong facts before the Court and it appeared to be an inadvertent mistake especially when the petitioner himself had admitted that the reply was not sent on the date mentioned in the notice.

5. Reply dated 06.04.2014 is addressed to Station House Officer and not to the Investigating Officer and was received in the Police Station on

09.04.2014. Thus, the application under Section 340 Cr.P.C. was dismissed.

6. Aggrieved by the order of dismissal of his application under Section 340 Cr.P.C., the petitioner preferred appeal bearing CA No.13/2014 which was dismissed by the learned ASJ observing as under:-

'17. Sh.Akashdeep Arya, Advocate for the respondent no.2/HC Anand Kumar submitted that the appellant did not produce the offending vehicle and his driver despite repeated notices. He submitted that respondent no.2 issued a fresh notice under Section 160 Cr.P.C. dated 24.08.2013 to the appellant but he again appeared on 28.05.2014 without his car. He submitted that the application was filed to avoid production of the car and his driver. He prayed for dismissal of the appeal.

18. On careful examination of the material on record, this Court is of the opinion that the appellant was not co-operating in the investigation of the case. He was deliberately creating hurdles in the investigation of the case. He has not given any explanation for non-production of the offending vehicle and its driver before the respondent No.2/HC Anand Kumar. His replies were mere tools to avoid production of the offending vehicle.

19. On careful perusal of kalandra in the light of the averments made in the application under Section 340 Cr.P.C., it is clear that the respondent No.2/HC Anand Kumar has not concealed anything from the Court. He has not made any false statement in his kalandra. Mere non-mentioning of replies given by the appellant after the date of his appearance and production of the offending vehicle and his driver would not amount to concealment of material facts.

20. The core of the prosecution case remained intact. The appellant deliberately not given requisite information to the respondent No.2/HC Anand Kumar who was investigating the

case FIR No.569/13 under Section 279/338 IP PS Seelam Pur. The appellant did not produce the driver or the offending vehicle despite issuance of three notices in that regard.

21. *This Court is of the opinion that the Ld. Trial Court was not right in reaching to the conclusion that there was no wilful intention of the IO to state wrong facts and it seemed inadvertent mistake. In fact, respondent No.2/HC Anand Kumar has not stated any wrong fact. He has not committed any mistake. He was discharging his statutory duties. It is appellant who was creating all possible hurdles in the investigation and filing of the application under SEction 340 Cr.P.C. was also part of such attempt.*

22. *The appeal is hereby dismissed with cost of ₹10,000/- payable to the State.'*

7. Learned counsel for the petitioner has relied upon ***Perumal vs. Janaki*** (2014) 5 SCC 377, ***Sanjeev Kumar Mittal vs. The State*** (2010) 174 DLT 214 and ***Laxminarayan Deepak Ranjan Das vs. K.K.Jha & Ors.*** 1999 Cri.L.J. 4200 and submitted that petition may be allowed and directions may be issued for initiation of preliminary inquiry against HC Anand Kumar for not mentioning about the reply sent by him to the notices dated 20.03.2014 and 28.03.2014.

8. Section 341(1) Cr.P.C. provides the remedy of appeal. Section 341(2) Cr.P.C. reads as under:-

'An order under this section and subject to any such order, an order under Section 340, shall be final, and shall not be subject to revision.'

9. It may be noted here that as per the status report, since the petitioner was not producing the vehicle as well the driver of the offending vehicle, the vehicle was seized and mechanical inspection was conducted pursuant to the

order dated 07.10.2014 passed by learned Addl.District & Sessions Judge (MACT), Delhi. The petitioner had been arrested in case FIR No.569/2013 under Section 279/337 IPC and released on police bail and chargesheet has also been filed against him.

10. Even as per the application, it is clear that the petitioner did not file any reply to the notice sent to him under Section 133 MC Avt though inadvertently it might have been mentioned as Section 133 Cr.P.C. The petitioner was supposed to give the reply as to who was driving the offending vehicle at the time of accident and not to be technical about the provision quoted i.e. mentioning of Cr.P.C. in place of M.V.Act. Sum and substance of the notice and the information sought should have been replied by the petitioner. The second reply though dated 06.04.2014 was also not given to the HC Anand Kumar as copy of the same shows that it is addressed to the SHO and received by someone on 09.04.2014. So far as HC Anand Kumar is concerned, it was not given to him or received by him.

11. The petitioner has already availed the remedy by filing an appeal, as per law.

12. Though the grievance of the petitioner against impugned order does not survive after his appeal has been dismissed, the law cited by the learned counsel for the petitioner has been perused.

13. Application under Section 340 CrPC was filed by the petitioner in Kalandra under Section 175 IPC filed against him. Copy of the application is placed on record as Annexure-5 wherein it is mentioned that by not stating about the reply filed by the petitioner in the Kalandra under Section 175 IPC, HC Anand Kumar has not only made false statement but has filed the said Kalandra on the basis of false and frivolous statement. Thus, he has

given false evidence which is an offence as defined under Section 191 IPC and punishable under Section 193 IPC.

14. Filing of a Kalandra before learned Magistrate does not amount to giving false evidence before the Court. It was necessary for the petitioner to bring on record that HC Anand Kumar appeared as a witness and had intentionally given false evidence and thereby committed perjury.

15. There being no material on record to establish the above fact and the Court having considered the averments made in the application to be not sufficient and expedient in the interest of justice to initiate proceedings under Section 340 Cr.P.C., had rightly dismissed the appeal under Section 341 Cr.P.C.

16. The writ petition is dismissed.

PRATIBHA RANI, J.

MAY 12, 2016

'st'