

\$~J

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 11.01.2016

%

Judgment Pronounced on: 07.04.2016

+

LPA 764/2015 & C.M.No.25053/2015

RAMESHWAR

..... Appellant

Versus

SUSHIL GROVER & ORS

..... Respondents

AND

+

LPA 765/2015 & C.M.No.25058/2015

SATISH SHARMA

..... Appellant

Versus

SUSHIL GROVER & ORS

..... Respondents

Present:- Mr.Dayan Krishnan, Sr.Adv. with Mr.Manish Vashisht, Mr.Sameer Vashisht, Mr.Jeevesh Nagrath, Advs. for the appellant.
Mr.Jugal Wadhwa, Mr.Rishabh Wadhwa and Mr.Parth Kaushik, Advocates for Respondent No.1.
Respondent No.3 in person.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeals seek to impugn the order of the learned Single Judge dated 07.10.2015 passed in CrI.M.A.16774/2013 filed by respondent No.1 under sections 340 Cr.P.C. and Sections 191,192,193,196-200, 468,471 read with section 120B IPC. By the impugned order the application of respondent No.1 was allowed. Proceedings were directed to be initiated

before the concerned Magistrate, Dwarka Court, Delhi under section 195(1) (b) Cr.P.C.

2. For the purpose of convenience the facts of LPA 764/2015 are narrated herein. The background facts are that the plaintiff in the suit/respondent No.1 Shri Sushil Grover filed a suit for cancellation, declaration and perpetual injunction. The suit pertains to a plot situated at Kakrola Village, West District, Delhi. It is stated that the matter was listed on 17.4.2013 before the learned Single Judge of this Court and an interim order was passed directing the parties to maintain status quo in respect of the suit property and notices were issued to the defendants, namely, the appellant and respondent No.2, returnable for 12.8.2013.

3. In the meantime, after filing of the present suit it is averred that on the complaint of Respondent No.1/plaintiff, FIR No.129/2013 was registered on 26.4.2013 under section 448/420/468/471/506/34 IPC against the appellant and respondent No.2 in respect of two properties at Police Station Dwarka. Pursuant to the FIR, respondent No.2 was granted anticipatory bail. However, the application of the appellant for anticipatory bail was declined. He was arrested and produced before the concerned MM on 27.6.2013 and was remanded to judicial custody. Subsequently, vide orders dated 2.7.2013 he was released on bail. The sureties produced were accepted by the MM on 3.7.2013 and thereafter the appellant was released from judicial custody having remained in custody from 27.6.2013 to 3.7.2013.

4. In the meantime, the defendants in the suit, namely, the appellant and respondent No.2 filed a joint written statement which is purported to have been signed by the said defendants on 1.7.2013 alongwith an affidavit which

is also dated and attested by the Oath Commissioner/Respondent No.4 on 1.7.2013. The written statement and affidavits were filed through their advocate Shri B.L.Chawla/Respondent No.3. It was the contention of the plaintiff/respondent No.1 that a perusal of the affidavit in support of the written statement would show that on 1.7.2013 Shri B.L.Chawla, Advocate/Respondent No.3 has identified the appellant Shri Rameshwar having signed in his presence before the Oath Commissioner i.e. Shri Girdhari Lal Sharma/Respondent No.4. It is urged that it is quite obvious that the appellant was in judicial custody from 27.6.2013 to 3.7.2013 and could neither sign/verify the written statement or be present before the Oath Commissioner/ Respondent No.4 or be identified by his Advocate B.L.Chawla/Respondent No.3 on 1.7.2013. Based on this averment the present application was filed by respondent No.1 for appropriate directions for an appropriate complaint to be filed before CMM, Tis Hazari Courts under sections 191-193, 196-200, 468, 471 read with section 120B IPC.

5. In their respective replies that were filed by the appellant and respondent No.2, a common stand was taken and it was stated that the written statement/reply to the interim application and supporting affidavits were drafted by their counsel i.e. Respondent No.3 during the summer vacations of June 2013. These were signed by the appellant and respondent No.2 in the presence of their advocate in the last week of June 2013 whereafter the signatures of the appellant and respondent No.2 were identified by their counsel. These were the affidavits that were got attested by the Oath Commissioner on 1.7.2013. Hence, it is urged that the affidavits/written statement have been signed by both the appellant and

respondent No.2 in the last week of June 2013, when the appellant was not in custody.

6. The impugned order dated 7.10.2015 notes that neither the appellant nor respondent No.2 have denied their signatures on the written statement. The version of the appellant and respondent No.2 has been noted, namely, about having signed the documents in the last week of June 2013. The order further notes that the only aspect left for investigation is with regard to the date of attestation of the affidavits in support of the written statement filed in the Court record. Keeping in mind the facts of the case and the fact that the affidavit of Shri Rameshwar, the appellant, in respect of the written statement bears the date 1.7.2013 when he was in judicial custody, the impugned order requested the Magistrate, Dwarka Courts to initiate proceedings under section 195(1)(b) of Cr.PC in accordance with law. The Court clarified that the findings noted are *prima facie* and no firm conclusion has been drawn on the said findings.

7. To impugn the said order dated 7.10.2015 Shri Rameshwar has filed LPA 764/2015 whereas Shri Satish Sharma/defendant No.1 in the suit has filed LPA 765/2015.

8. We have heard learned counsel for the parties and gone through the record. Learned senior counsel appearing for the appellant in LPA No.765/2016 has strenuously urged that there has been no intention on the part of the appellant to in any manner take advantage or cause undue harm to the plaintiff in the suit when the affidavit was filed. The mistake was *bona fide* and there is no *mens rea* involved. He has further submitted that the affidavit which is purportedly dated 1.7.2013 cannot be termed to be

evidence and hence sections 191,192,193 IPC etc. would not be applicable. He relied upon judgments of the Supreme Court in the case of ***Chajoo Ram vs Radhey Shyam, 1971 (1) SCC 774*** and judgment of this Court in ***Indraprastha Power Generation Co.Ltd. vs. Faheem Baig & Others, 2015 (148) DRJ 167 (DB)*** to contend that prosecution for perjury should be sanctioned by courts only where the perjury appears to be deliberate and conscious and it is in the interest of justice. He submits that the facts clearly show that the mistake in the date of the affidavit is neither deliberate nor conscious. No prejudice has been caused to the plaintiff in the suit whatsoever. Learned counsel appearing for respondent No.1 has stressed on the falsity of the date of the affidavit filed by Shri Rameshwar dated 1.7.2013 whereas on that date he was in judicial custody.

9. The legal position regarding initiation of proceedings under section 195 Cr.PC are well settled. In a recent judgment dated 22.03.2016 in LPA No.888/2016 and 889/2015 this Court spelt out the legal position as follows:-

“12. The law is well settled that every wrong statement in a judicial proceeding does not result in prosecution for perjury. In lieu of the language used in Section 340 Cr.P.C., filing of complaint under Section 195 of Cr.P.C. is necessary only where the Court is of the opinion that it is expedient in the interest of justice and where an offence under Section 195(1)(b) appears to have been committed. As held in *Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.*; AIR 2005 SC 2119, the expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such wrong statement but having regard to the affect or impact such commission of offence has upon administration of justice. The same principle has been reiterated in a recent decision of the Supreme Court in *Ashok*

Kumar Aggarwal Vs. Union of India & Ors.; AIR 2014 SC 1020.”

10. Similarly, the Supreme Court in *Chajoo Ram vs Radhesyam (supra)* held as follows:-

7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavit is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint.

11. The facts in the present case, in our opinion, do not justify a conclusion that it is expedient or in the interest of justice to file a complaint as directed by the impugned order. It is no doubt an admitted fact that on 1.7.2013 Shri Rameshwar was in judicial custody when purportedly he has signed the affidavit in support of the written statement. However, a plausible explanation has been given by him and by Shri Satish Sharma the other defendant in the suit that the written statement was prepared and signed during the course of summer vacations when Shri Rameshwar was not in

judicial custody. The signatures of Shri Satish Sharma and Shri Rameshwar were identified by the advocate/Respondent No.3 B.L.Chawla and the documents were thereafter, only on opening of the Court on 1.7.2013 presented to the Oath Commissioner for attestation and other formalities. There is no doubt an error in the manner of attestation of the affidavit which normally should not occur inasmuch as counsels and litigants should be more careful while carrying out attestation of affidavits. However, by their mistake the appellant and respondent Nos. 2 to 4 have not in any manner taken any advantage or caused any injury to the plaintiff in the suit. The mistake is in-advertent. In our opinion, it is neither expedient nor in the interest of justice to initiate proceedings as directed by the impugned order. The appeals are accordingly allowed and the impugned order is accordingly set aside.

**(JAYANT NATH)
JUDGE**

(CHIEF JUSTICE)

APRIL 07, 2016

n/rb/v