

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CRM-27889-M of 2001 (O&M)
Date of Decision: 12.12.2017**

Major Harinder Singh Gill

...Petitioner

VERSUS

Kuldip Singh and others

...Respondents

2. CRM-11298-M of 2002 (O&M)

Major Harinder Singh Gill

...Petitioner

VERSUS

Kuldip Singh and others

...Respondents

3. CRM-26615-M of 2002 (O&M)

Major Harinder Singh Gill

...Petitioner

VERSUS

Kuldip Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.P.S. Shergill, Advocate with
Mr. R.C. Sharma, Advocate
for the petitioner in all the petitions.

Mr. Rakesh Gupta, Advocate
for respondent no. 1 in all the petitions.

None for respondents no. 2 and 3.

SURINDER GUPTA, J.

Above petitions have been taken up together as in all these three petitions, petitioner has sought initiation of proceedings under Sections 340 and 195 Cr.P.C. against respondent no. 1-Kuldip Singh.

2. The revision petition (CR No. 1326 of 2001) was filed by respondent no.1-Kuldip Singh challenging order dated 28.02.2001 passed

by Additional Civil Judge (Senior Division), Jalandhar, whereby application filed by plaintiff-Harinder Singh Gill (petitioner) under Order XI Rule 1,2, 5 and 8 read with Section 151 of Code of Civil Procedure (CPC) for issuing of interrogatories, was allowed and defendant no. 5 in that suit, namely, Kuldip Singh (respondent no. 1) was directed to answer all the 44 interrogatories submitted by plaintiff. In that petition, petitioner (respondent no. 1) took the plea that he had filed reply to application as well as interrogatories and case was not covered under the provisions of Order XI CPC. He placed on file copy of reply to interrogatories filed before the trial Court as Annexure P-8.

3. In the petition (CRM-27889-M-2001), the petitioner had alleged that the plea taken by revision petitioner-Kuldip Singh (respondent no. 1) that he had filed reply (Annexure P-8) attached with the petition as true copy of the original by his counsel, is wrong. This document (Annexure P-8) was a forged and fabricated document as the reply (Annexure P-8) was not filed before the trial Court.

4. Petitioner (respondent no. 1) filed application for amendment of grounds of revision stating therein that counsel for the petitioner had prepared reply of application seeking issuance of interrogatories as well as interrogatories and it was told to petitioner that both the replies will be filed before the date fixed i.e. 15.03.2001. Under this impression the petitioner told the counsel at Chandigarh that reply to both i.e. the application to file interrogatories as well as to interrogatory had been filed and under that belief, the petitioner has even signed photocopy of the reply to the application and interrogatory as true copy on 10.03.2001. Under his instruction counsel at Chandigarh had also filed a copy of the said reply to

interrogatory as Annexure P-8. However, mistake came to notice, when the petitioner received notice from this Court in Crl. Misc. No. 27889-M of 2001. On enquiry his counsel at Jalandhar informed that due to inadvertence he did not file the reply to interrogatories and only filed the reply to the application (Annexure P-9), which was sought to be placed on file to replace the same with reply to interrogatories (Annexure P-8). The revision petition was later on dismissed as not pressed as on the request of petitioner (respondent no. 1), trial Court was directed to first look into the application regarding maintainability of suit and it appears that application to replace the document (Annexure P-8) with reply to interrogatories (Annexure P-9) remained undecided.

5. CRM-11298-M and CRM-26615-M of 2002 were also filed by the petitioner for initiating action against respondent no. 1-Kuldip Singh under Sections 195 and 340 Cr.P.C. for filing affidavit dated 14.01.2002 based on incorrect and false facts, which amounts to misrepresentation to this Court.

6. Affidavit dated 14.01.2002 filed by Kuldip Singh in CR No. 1326 of 2001, reads as follows:-

- “1. That the above noted Civil Revision Petition is pending before this Hon'ble Court and the same is fixed for hearing on 11.04.2002.*
- 2. That the deponent purchased 7K-7M of land situated in village Boot, Tehsil and Distt. Jalandhar in Court auction on 19.10.87. The sale was confirmed and the sale certificate was issued. The respondent no. 1 filed objection Petition under order 21 rule 90 read with*

section 151 CPC in the court of Sub Judge, Ist Class, Pathankot and the same was dismissed on 2.12.87. The respondent no. 1 filed appeal against the said order before the Distt. Judge, Gurdaspur and the appeal was also dismissed on 28.2.89. The respondent no. 1 filed Civil Revision Petition No. 993 of 1989 before this Hon'ble Court and the same was also dismissed on 12.4.89. The matter ultimately went upto the Supreme Court and the Hon'ble Supreme Court dismissed the same on 31.7.95.

- 3. That the respondent no. 1 again filed civil suit for declaration challenging the sale of the land in question in the civil court at Jalandhar and in the said civil suit the respondent no. 1 filed application under order 11 rule 1, 2, 5 and 8 read with section 151 CPC for submission of interrogatory. The application of interrogatory of dated 24.8.99 (reference is made Annexure P-6 and P-7) is attached with the Revision Petition.*
- 4. That Sh. N.K. Aggarwal, Advocate who is the counsel for the present deponent before the Ld. Civil Judge at Jalandhar, had prepared reply of application Annexure P-6 as well as of interrogatory Annexure P-7. Both the replies were prepared by the counsel and it was told to the deponent that both the reply will be filed before the date fixed i.e. 15.3.01. Under this impression the*

deponent told the counsel at Chandigarh that reply to both the application as well as to interrogatory have been filed and under that belief the deponent has even signed photocopy of the reply to the application and interrogatory, as true copy on 10.3.2001, photocopy of the same is attached herewith for kind perusal of this Hon'ble Court. Under this belief the counsel at Chandigarh has also filed a copy of the said reply to interrogatory as Annexure P-8.

5. *That the deponent has came to know about this mistake only when he received notice from this Hon'ble Court in Crl. Misc. No. 27889-M of 2001 and then deponent went to Jalandhar and contacted his counsel. The counsel at Jalandhar Sh. N.K. Aggarwal after seeing the file of the case and told the deponent that inadvertently he did not file the reply to the interrogatory and reply to the application only has been filed. Thus, the reply filed to the application on 29.8.2000 is attached herewith as Annexure P-9 and the same may be read in place of earlier document filed as Annexure P-8.*
6. *That the present amendment in para no. 8 of the Grounds of Revision Petition is very much relevant for the purpose of decision of this case. It is further submitted that the Revision Petition has been filed against the impugned order dated 28.2.2001 and the Annexures filed with the Revision Petition are just for*

the sake of reference and as such there is no malafide intention on the part of deponent in filing Annexure P-8. The deponent is law abiding citizen and have all respects for the Court of law and cannot dream to make any wrong statement. Hence, in the interest of justice the present amendment in the pleadings of the grounds of Revision Petition may kindly be allowed and the para no. 8 of the Grounds of Revision Petition may be read as under:-

“8. That the present petitioner filed the reply to the applications on 29.8.2000 and submitted that the present case is not covered under the provisions of Order 11 CPC and the application deserved to be dismissed. A true copy of the reply dated 29.8.2000 filed by petitioner is attached herewith as Annexure P-9.”

That the above amendment is very much necessary for the purpose of decision of this case and Annexure P-9 may be read in place of Annexure P-8.”

7. Learned counsel for the petitioner has argued that the affidavit was filed in support of application seeking amendment of revision petition and to replace document (Annexure P-8) with the reply to interrogatories. In this affidavit also the petitioner has misrepresented that he remained under wrong impression that the reply to interrogatories (Annexure P-8) had been filed by his counsel. The averment that the petitioner had filed reply to interrogatories and relying on copy of the same as Annexure P-8 and then

taking the plea that he was under the wrong impression, virtually amounts to misrepresentation to this Court in the matter and the petitioner has made him liable for proceedings under Section 340 Cr.P.C.

8. Learned counsel for the respondent has argued that the respondent had not denied filing of document (Annexure P-8). He has rather explained that reply to interrogatories was prepared by his counsel at Jalandhar, who told him that the same will be filed in Court but due to inadvertence instead of filing the reply to interrogatories he filed reply only to application seeking issuance of interrogatories and this fact was not intimated to the respondent. It was a *bona fide* mistake on the part of respondent and his counsel, calling for no criminal action to be initiated under Section 340 Cr.P.C.

9. Perusal of file of CR-1326-2001 shows that on filing of the revision petition, notice of motion to respondent no. 1 only, was ordered to be issued and further proceedings before the trial Court were stayed. This revision petition was withdrawn and directions were issued to trial Court that in the event of application taking a objection with regard to maintainability of suit being filed, the same will be decided at the first instance. It has been submitted by learned counsel of respondent that after filing of the application, challenging the maintainability of the suit, the same was dismissed, as such, question of filing of interrogatories and reply to interrogatories did not survive before the trial Court.

10. While answering the above submission of learned counsel for the respondent, learned counsel for the petitioner has submitted that order of the trial Court dismissing the suit has been set aside in appeal and regular second appeal against that order is pending.

11. The question, which arises for consideration in this case is, as to whether allegations as levelled in these three petitions filed by the petitioner, call for any proceedings to be initiated under Section 340 Cr.P.C. No doubt the respondent had filed document (Annexure P-8) with the averment that the same was filed before the trial Court. However, later on he sought amendment of grounds of revision petition in this regard and to replace the same with reply to application for issuance of interrogatories (Annexure P-9). He explained the circumstances under which the plea was taken in the petition and sought to rectify the same. It is not the law that every false statement before the Court should attract provisions of Section 340 Cr.P.C., which are intended to provide safeguard against criminal prosecution. The gravity of false statement, circumstances under which such statement is made, object of making such statement and its tendency to impede and impair normal flow of course of justice are matters for consideration, when the Court decides on the propriety of instituting a complaint for perjury. For reaching such conclusion, there must be deliberate and conscious efforts to misguide the Court and interfere in the administration of justice. While taking facts of the case into consideration, I find that no reason is made out to initiate any proceeding as per provisions of Section 340 Cr.P.C. The petitioner had attached a document with submission that he had filed the same before the trial Court but later on he sought permission to amend the petition and explained the circumstances under which he took the said plea. He also sought to replace that document with the reply he had filed in the Court. It appears that there is property dispute between the petitioner and respondent no.1 and motive behind filing application under Section 340 Cr.P.C. appears to be gratified feeling of

revenge and not to vindicate purity of administration of justice. Respondent no. 1 in this case had explained the mistake on his part. The document placed on record by him cannot be termed as forged and fictitious document to misguide this Court.

12. Keeping in view above facts, I find no merit in these petitions and the same are dismissed.

December 12, 2017

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No