

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No.2363 of 2014 (O&M)
Decided on: 08.12.2017**

Vinay Kumar Saini

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Aman Pal, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

Mr. R.V.S. Chugh, Advocate
for respondent No.5.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 340 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to take appropriate action against respondent No.5 – Jai Parkash, the then Deputy Superintendent of Police, Hansi for filing a false affidavit in CRM-M No.22752 of 2011 filed by the petitioner seeking transfer of investigation in case FIR No.219 dated 21.04.2011 registered under Sections 409, 420, 468 and 471 of the Indian Penal Code (in short 'IPC') at Police Station City Hansi, District Hisar against the accused persons.

Brief facts of the case are that the petitioner filed the abovementioned petition i.e. CRM-M No.22752 of 2011 for taking appropriate action against the accused persons and for transfer of investigation in case FIR No.219 dated 21.04.2011. During pendency of that petition, the respondent No.5 being Deputy Superintendent of

Police, Hansi, filed an affidavit dated 25.01.2012 wherein he while informing this Court about the status of investigation of the aforesaid FIR deposed that accused – Ram Niwas resigned from the Directorship of the Neeligiri Forests Limited Company (in short 'the Company') on 12.02.1993, Ranvir Singh – accused resigned from the Company on 24.01.1993 and Daya Nand – accused resigned from the Company on 24.10.1994.

Counsel for the petitioner has submitted that later on, when the petitioner submitted before this Court that the deposition made by respondent No.5 in the aforesaid petition is factually incorrect, on 14.03.2012, the following order was passed:-

“Learned counsel for the petitioner submits that the accused named in the FIR have been let off only on the ground that they have resigned in 1993, whereas it is established from the record of the Registrar of Companies, Panchkula, Haryana that these accused are still the directors.

In view of the above, learned counsel for the State prays for time to file an affidavit alongwith supporting documents.

March 14, 2013

*Sd/-
Nirmaljit Kaur
Judge”*

It is further submitted that in pursuance thereof, another affidavit dated 31.03.2012 (Annexure P3) was filed by respondent No.5 reiterating the fact that during reinvestigation, the above-named 03 accused persons had resigned from the Directorship of the Company on 12.02.1993, 24.01.1993 and 24.10.1994 and it was further submitted that another co-accused Radha Saini never remained Director of the

Company. Counsel for the petitioner has further submitted that later on, when the police submitted the report under Section 173 Cr.P.C., the said petition was disposed of having become infructuous. It is further argued that the deposition made by respondent No.5 is factually incorrect and the same has been filed with an intention to mislead this Court.

Counsel for the petitioner has drawn the attention of this Court towards Annexure P5 where one of the accused namely Rohtash Saini has given an information vide letter dated 29.04.1998 to the Office of Securities and Exchange Board of India, New Delhi (in short 'SEBI') stating that as on 27.04.1998, Rohtash Saini was Chairman-cum-Managing Director, Rupesh Saini was Administrative Director, Rajneesh Prabha was Financial Director and Pratap Singh and Ranvir Singh were the Directors. Counsel for the petitioner has also relied upon Annexure P7, the Annual Return of the Company to show that the aforesaid persons were Directors of the Company and thus, it is submitted that the respondent No.5 has filed an affidavit which was factually incorrect.

It is further submitted that number of FIRs have been registered against the accused persons who are facing prosecution in different parts of the country on account of cheating various persons who have invested in the Company and in those proceedings, the accused persons are taking benefit of these affidavits to show that they were not the Directors of the Company at the given time as mentioned in the affidavit.

Counsel for the petitioner has further submitted that since this affidavit was filed only for the purpose of informing the Court

about the status of investigation in FIR No.219 dated 21.04.2011, now the accused persons are using the same in various proceedings and since, it is factually incorrect, the proceedings under Section 340 Cr.P.C. should be initiated against respondent No.5.

In reply, counsel for respondent No.5 has submitted that the fact that the accused in the aforesaid FIR were not the Directors of the Company at the given time is also verified by 02 other police officers of the rank of Superintendent of Police. It is further submitted that an affidavit of Superintendent of Police, Rewari was filed in CRM-M No.39032 of 2012 wherein a similar prayer was made with reference to some other FIR and the said officer in para No.3 of the affidavit (Annexure R IV) has deposed on the same line that accused – Ram Niwas, Ranvir Singh and Daya Nand had resigned from the Directorship of the Company on 12.02.1993, 24.01,1993 and 24.10.1994. It is also submitted on behalf of the respondent No.5 that an affidavit was filed by another police officer, in the capacity of Superintendent of Police, Rewari in the said petition reiterating in para 12 of this affidavit that on verification conducted by the Investigating Agency and from the records obtained from the Registrar of Companies, the afore-mentioned persons were found to have resigned from the Directorship of the Company in the year 1993.

It is further argued by counsel for respondent No.5 that no *mala fide* has been attributed towards respondent No.5 that he has acted in a manner to give any undue benefit to the accused in the said petition and he has filed the affidavit on the basis of the investigation done by him in his official capacity.

Counsel for respondent No.5 has relied upon the judgment *“Shri Kailash Vijayvargiya vs Antar Singh Darbar and others”*, 2017(1) SCC (Criminal) 275, where the Hon'ble Supreme Court of India has held that till the Court is satisfied as warranted under Section 340 Cr.P.C. to initiate preliminary enquiry, no preliminary enquiry can be ordered. The operative part of the said judgment is reproduced as follows:-

*“3. We are afraid, there is no satisfaction as warranted under section 340 of Cr.P.C. to initiate a preliminary inquiry. This court in a recent judgment in the case of Amarsang Nathaji as Himself and as **Karta and Manager v. Hardik Harshadbhai Patel and others**, (2017) 1 SCC 113 has dealt with this aspect in detail.*

*"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution.(See **K.T.M.S. Mohd. And Another v. Union of India**), 1992(2) R.C.R.(Criminal) 398 : (1992)3 SCC 178. The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."*

(Emphasis supplied)

4. Since, such a satisfaction is completely lacking in this case, the impugned order in I.A No. 7192 of 2015 in EP No. 15/2014 has to be set aside and we do so. The

matter is remanded to the High Court for fresh consideration in accordance with law.”

It is, thus, submitted on behalf of respondent No.5 that the affidavits filed by respondent No.5 were based on the investigation and enquiry done by the police and, therefore, no *prima facie* case is made out for initiating the preliminary enquiry in the present case.

After hearing counsel for the parties, I find no merit in the present petition due to following reasons:-

1. When the original petition i.e. CRM-M No.22752 of 2011 was pending in which the 02 affidavits were filed by respondent No.5, no such application under Section 340 Cr.P.C. was moved to submit that the affidavits are false.

2. Not only respondent No.5 but 02 other officers of the rank of Superintendent of Police have also filed similar affidavits in other proceedings i.e. in CRM-M No.2363 of 2014 making similar deposition that the aforesaid 03 accused persons were not the Directors of the Company at the relevant time which co-relates the deposition made by respondent No.5.

3. There is no allegation in the petition filed by the petitioner that respondent No.5 has acted in any mala fide or illegal manner to give any benefit to accused persons for any extraneous consideration and in the absence of the same, it cannot be held that the affidavits filed by respondent No.5 were not in discharge of his official duty.

4. So far as the document relied upon by the petitioner i.e. the application moved by one of the accused before the SEBI dated 29.04.1999 is concerned, the same has been placed on record for the first time in the Court, today itself and was not placed before the Court when the affidavits were filed by respondent No.5.

In view of the above, I find no merit in the present petition for initiating further proceedings to hold a preliminary enquiry. However, it is clarified that the affidavits filed by respondent No.5 were only for the purpose of informing the Court about the status of investigation in that case and it is always open for the petitioner or any other complainant to rebut the same by way of leading any evidence, if the said affidavit is produced before any other competent Court of law.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

08.12.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No