

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.34249 of 2016

ORDER :

This writ petition is filed by the petitioner seeking for a *Writ of Mandamus* directing respondent Nos.1 to 4 to initiate appropriate action against respondent No.5 for committing the offence of perjury by giving false statements in writing before various Courts.

The grievance of the petitioner is that respondent No.5 has given false evidence in different proceedings before various Courts, which are shown in para-9 of the affidavit filed in support of the writ petition. Briefly, the relief sought by the petitioner is for a direction to respondent Nos.1 to 4 to initiate appropriate action against respondent No.5 for committing the offence of perjury by giving false statements in writing before various Courts.

Heard learned counsel for the petitioner as well as the learned Assistant Government Pleader for Medical and Health appearing for respondent Nos.1 to 4 and the learned counsel appearing for respondent No.5. Perused the material on record.

The main question that falls for consideration in this writ petition is, whether the petitioner can maintain a writ petition seeking a direction to the official respondent Nos.1 to

4 to initiate appropriate action against unofficial respondent No.5 for the alleged offence of perjury committed by her.

The proceedings governing the offence of 'Perjury' is defined under Section 195 Cr.P.C., which reads as under:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

The procedure to be followed in cases mentioned under Section 195 of Cr.P.C. is governed by Section 340 of Cr.P.C., which reads as under:

“340. Procedure in cases mentioned in section 195 :--

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an 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 or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
- (b) in any other case, by the presiding officer of the Court.

(4) In this section, " Court" has the same meaning as in section 195.”

From the above procedure laid down under Section 340 Cr.P.C., it is obvious that if an offence of Perjury appears to have been committed in relation to a proceeding in the Court

in respect of a document produced or given in evidence in a proceeding in that Court, a preliminary enquiry is to be conducted and a finding is to be recorded to that effect. A complaint is to be made in writing and it has to be sent to a Magistrate of the First Class having jurisdiction.

From the above provision, it is clear that it is the Court, which has to refer the complaint to the Magistrate concerned having jurisdiction over the subject matter to consider the complaint of perjury.

Learned counsel for respondent No.5 has placed reliance on a judgment of the Apex Court in B.K. GUPTA v. DAMODAR H. BAJAJ¹ and submitted that if a false affidavit is given and false evidence is adduced in any proceeding before a Court, the procedure prescribed under Section 340 Cr.P.C. has to be followed.

It is appropriate to refer para-3 of the said judgment, which reads as under:

“3. From the above, it follows that there are two conditions, on fulfillment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and

¹ (2001) 9 SCC 742

fabricated. On perusal of the record we do not find any material on record to show that there was any application of mind by the court that it was expedient in the interest of justice to make an inquiry and file a complaint against the appellant. We have also perused the judgment in Writ Petition No. 1442/1983 and the judgment does not show that the court applied its mind regarding the second condition as to whether it is expedient in the interest of justice to make an inquiry into the false evidence given by the appellant and a complaint is to be filed. In the absence of application of mind in regard to expediency for filing complaint against the appellant, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated.”

From the above judgment, it is obvious that whenever it is brought to the notice of the Court during the proceedings that a false affidavit or a false document is filed before a Court, the Court on making an enquiry under Section 340 Cr.P.C. and on application of mind, whether it was expedient in the interest of justice that a complaint is to be filed against that person in exercise of powers under Section 195 Cr.P.C., after conducting such a preliminary enquiry for filing a complaint before the appropriate Court against such person in relation to the offence committed by him.

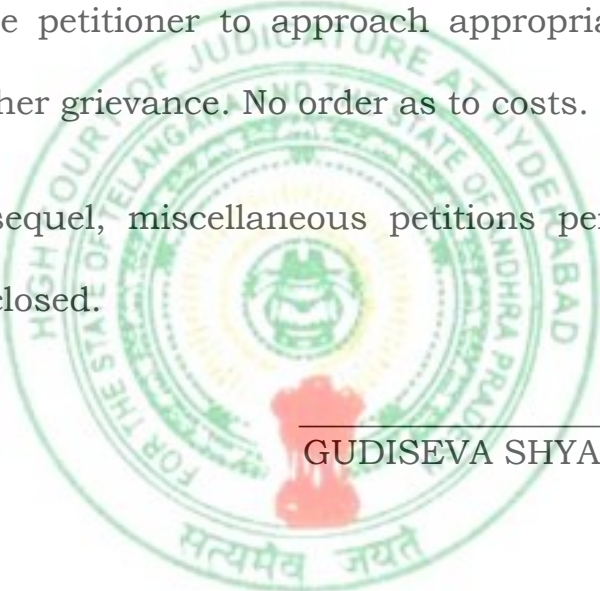
In the instant case, the petitioner has stated in the complaint that respondent No.5, being a Public Servant, has given false evidence in different cases before various Courts and sought for initiation of criminal action for perjury against her under Sections 191, 193 and 199 of IPC. However, to initiate proceedings under the above Sections 191, 193 and

199 of IPC, the procedure to be followed is prescribed under Sections 340 and 195 of Cr.P.C.

In the light of the above facts and circumstances of the case, there are no grounds to consider the request of the petitioner for issuance of a *Writ of Mandamus* directing respondent Nos.1 to 4 to initiate appropriate action against respondent No.5 for committing the offence of perjury.

Accordingly, this writ petition is disposed of giving liberty to the petitioner to approach appropriate Forum for redressal of her grievance. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.



GUDISEVA SHYAM PRASAD, J

30.04.2018.

NOTE: L.R. Copy be marked.
(B/O)
Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.34249 of 2016



30.04.2018
Msr

THE HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+ Writ Petition No.34249 of 2016

%30-04-2018

#K. Amulya

... Petitioner

Vs.

\$The State of Telangana and others.

... Respondents

! Counsel for the petitioners : Sri P.S. Nagarajan

^Counsel for the respondents : (1) G.P. for Medical & Health
(R.1 to R.4)
(2) Sri Nazeer Khan (R.5)

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>HEAD NOTE

? CITATIONS

: 1. (2001) 9 SCC 742

