

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PERJURY PETITION NO. 1 OF 2018
IN
SUMMONS FOR JUDGMENT NO. 54 OF 2016
IN
COMMERCIAL SUIT NO. 138 OF 2015

New World Resources	...Applicant
<i>Versus</i>	
Maresh S Parekh	...Respondent

Ms Hetal Gala, with Mr Ranbir Singh, I/b Manish Upadhye, for the
Applicant/Petitioner.
Ms Asha Bhuta, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 17th January 2019

PC:-

1. The Petition before me seeks an order under Sections 191, 192 and 196 read with Section 193 of the Indian Penal Code 1860 (“**IPC**”) and Sections 195 and 340 of the Criminal Procedure Code 1973 (“**CrPC**”). The Petitioner says that an order should be made on this Petition issuing directions for a written complaint against the Respondent for having committed offences under these sections of

the IPC and this complaint be directed to be sent to the Magistrate concerned, one who has appropriate jurisdiction, to try the cause.

2. At the outset, Mr Singh, learned Advocate for the Petitioner does not canvas arguments under Section 196 of the IPC and restricts himself to Sections 191, 192 and 193 of the IPC.

3. The matter arises from a Summary Suit that the Petitioner filed under Order XXXVII of the Code of Civil Procedure 1908 (“CPC”). A Writ of Summons having been served, the Defendant (Respondent to this Petition) entered appearance. The Petitioner then filed a Summons for Judgment No. 54 of 2016. On that Summons for Judgment on 19th June 2017, SC Gupte J granted conditional leave to defend upon the Defendant depositing a sum of Rs. 7.10 crores within twelve weeks. That deposit was never made and according to the Petitioner/Plaintiff on account of that non-deposit the Petitioner/Plaintiff was entitled to a decree.

4. On 5th April 2018, noting the production of a certificate of non-deposit, SC Gupte J passed a decree under Order VII Rule 3(6) of the CPC and also granted a decree for interest. There does not appear to have been an order for costs.

5. In parallel the Petitioner separately filed criminal proceedings against the Defendant. The Defendant filed Criminal Writ Petition No. 4400 of 2013 and said that that Criminal Writ Petition be clubbed with this Perjury Petition. I am told that that prayer for consolidation or clubbing was rejected.

6. Before I turn to the facts presented, I believe it is appropriate to have a look at the conspectus of such an application and particularly the relevant provisions of Sections 340 and 195 of the CrPC. These two sections read thus:

"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 or by such officer of the Court as the Court may authorise in writing in this behalf.

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

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 abatement of, 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 section 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 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."

7. From this it is evident that Section 340 sets out the manner in which a Court must proceed and the procedure it must follow when presented with such an application. Section 195 speaks of prosecution for contempt of a lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. We are clearly concerned with the latter. Sub-section (1)(b)(i) of Section 195 is the relevant provision, though of course, it must be read with sub-section (1)(b)(iii) of Section 195 which speaks of a criminal conspiracy. That need not detain us as that is not invoked. The cause for such an action is that where there is said to be any such offence committed under the IPC a written complaint of the court before which that offence is allegedly committed is required. Section 340 then tells us that on an application (although the section also says "or otherwise"), the court must form an opinion that it is expedient in the interest of justice that an inquiry be made into the offences referred to in Section 195(1)(b)(i) and that offence must have been committed in

or in relation to a proceeding in the court required to make an order or in respect of a document produced or given in evidence in a proceeding in that court. If satisfied after a preliminary inquiry the Court may as it thinks fit then take any steps recording (a) to (e) below.

8. It is incorrect to suggest that the result of such an inquiry and such a satisfaction would conclude the rights of the parties. That is in fact nobody's case. All that Mr Singh says is that if he is able to make out a case then the matter should be directed to be sent along with a complaint in writing to the Magistrate for a full-fledged inquiry in accordance with law, and the Magistrate may then return his verdict and will always be at liberty to hold either for or against the accused. He may find the Respondent guilty or innocent and an order on a Petition of this kind is by no means conclusive or determinative of that result. The only inquiry required is whether such a complaint should be made in writing or not. He suggests that absolutely technically speaking such a Petition is a matter between the Petitioner and the Court and the Respondent is not required to establish his innocence in respect of the allegations at such a stage. If the Court decides to hear the Respondent in such a Petition, it may be by way of indulgence or as a courtesy but certainly is not conclusive of innocence or guilt of the Respondent. All those contentions must be kept open for appropriate proceedings in accordance with law. I believe this is not only a fair but an absolutely correct approach, and for reasons that follow, this is precisely the order that I propose to make today.

9. With this I now turn to the relevant provisions of the Indian Penal Code, namely, Sections 191, 192 and 193 and these sections read thus:

"191. Giving false evidence — Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false , and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1 — A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2 — A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations:

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Fabricating false evidence — Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material

to the result of such proceeding, is said "to fabricate false evidence".

Illustrations:

(a) A, puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

193. Punishment for false evidence — Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1 — A trial before a Court-martial is a judicial proceeding.

Explanation 2 — An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration:

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3 — An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Illustration:

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence."

10. Obviously these sections must have their roots in some factual foundation; and the factual foundation that Mr Singh

canvasses is the portions of the Affidavits filed by the present Respondent in opposition to the Summons for Judgment.

11. I must note, however, that those very Affidavits were before SC Gupte J at the time when he made his order on the Summons for Judgment on 19th June 2017. Before I turn, therefore, to what is stated in the Petition about the Affidavits filed by the Petitioner, it is perhaps best to have a look at the findings that SC Gupte J returned on the Summons for Judgment before him. It is appropriate in my view, to start with the observations in paragraph 12 because these are more or less an effective summary of the more detailed and elaborate findings that went before. This is what SC Gupte J said in paragraph 12:

"12. On these facts, this Court would be perfectly justified in making the Summons for Judgment absolute and passing a decree in favour of the Plaintiff. However, with a view to give one opportunity to the Defendant, only by way of mercy, to bring home his defence at the trial of the Suit, this Court is rather inclined to grant a conditional leave to the Defendant to defend the Suit, subject to and upon payment of the entire principal amount claimed by the Plaintiff."

(Emphasis added)

12. On its own this is the clearest possible statement that SC Gupte J finds no merit at all in the defence and if he made a conditional order it was only by way of indulgence to the Defendant and, as he directly puts it, as an act of clemency rather than a finding of there being any merit in the defence. If there is any doubt about

this, it is put to rest by the summation in paragraph 7 of SC Gupte J's order:

"7. In the light of the foregoing narration, it is palpably clear that the defence raised by the Defendant contesting the consideration of the dishonoured cheques, is moonshine and nominal and does not inspire any confidence."

(Emphasis added)

13. It is on this basis and with this background that the present Petition comes to be filed.

14. The claim against the Defendant was an amount of just under Rs 11 crores, plus interest and costs. The specific averments in the present Petition are contained in paragraphs 8 to 15. Rather than set these out at length, I will summarize these. First, the Petitioner says that the Respondent raised two principal defences in reply to the Summons for Judgment. One was that the parties had ceased all transactions from August 2012 and that the Respondent had not received any goods from the Petitioner in September 2012. Therefore, Invoices Nos. 27, 28 and 29 on which the Petitioner proceeded were false. No goods were ever delivered by the Petitioner to the Respondent in September. The amount of Rs. 2,39,07,844/- covered by these three invoices was not due or payable. The second line of defence taken in reply to the Summons for Judgment was that the Respondent had paid the Petitioner a sum of Rs. 90 lakhs and this was reflected in some documents but that the Petitioner had not given the Defendant any credit for payment by adjusting these towards goods admittedly delivered. The

Respondent also said that this amount of Rs. 90 lakhs was wholly ignored by the Petitioner and required to be adjusted.

15. In paragraph 9 and its sub-paragraphs, the Petitioner contends that these statements are false. The relevant portions of the Affidavit in Reply are culled out in paragraphs 9 and 10. Then in paragraph 11 the Petitioner says that further false statements to the same effect are also to be found in the Affidavit in Sur-rejoinder dated 11th February 2018 filed in the Summons for Judgment.

16. In paragraph 12 the Petitioner attempts to demonstrate the falsity of the assertions of the Respondent. Dealing first with the three invoices (Nos. 27, 28 and 29) the Petitioner says that the Petitioner imported goods under the MODVAT scheme. The invoices of the Respondent to third party purchasers were required to contain the invoice numbers of the actual importer, namely, the Petitioner, as well the import bill of entry number so as to be able to claim a rebate or exemption from the Value Added Tax (VAT) already paid. Consequently, all invoices by the Respondent of third party purchasers of goods imported by the Petitioner contained these invoice numbers and the import bill of entry number of the Petitioner and these evidence the receipt of the goods. In the course of a police inquiry and a complaint, the Respondent supplied the investigating authorities copies of invoices that he raised on third party purchasers of goods imported by the Petitioner. These bills supplied to the investigating authorities (that is, invoices raised by the Respondent himself) according to the Petitioner reference the invoice numbers as well as the import bill of entry number of the very three invoices of September 2012, i.e., invoice Nos. 27, 28 and

29 totalling to Rs. 2,39,07,844/-. Therefore, as a consequence of these references and cross-references, according to the Petitioner, there can be no manner of doubt that the Respondent did in fact receive not just the documents but the goods themselves for consignment or trans-shipment to third party purchasers. Copies of some of these documents are also annexed to the Petition.

17. It is then stated that the Respondent sent emails to the Petitioner's Constituted Attorney on three dates in September 2012 providing the vehicle numbers and quantity of goods to be delivered. Copies of these emails are also annexed. This is said to be further evidence of delivery of the goods. Next there is a reference to other correspondence including an email of 5th September 2012 in which the Respondent confirms having taken a day earlier delivery of a certain quantity and a further quantity on the day of the email and confirming the liability in a stated amount. Another email a day later on 6th September 2012 provided a confirmation of this and the cheque details. This document is on the letter-head of the Respondent and bears his stamp and signature. These have been produced by the Respondent in Criminal Writ Petition No. 4400 of 2013.

18. Turning now to the defence of the alleged payment of Rs. 90 lakhs and alleged failure of the Petitioner to give credit for it, the Petitioner deals with this in paragraph 13 as follows. First, the Petitioner says that in the Affidavit in Reply to the Summons for Judgment and the additional Affidavit in Reply (respectively dated 24th October 2016 and 3rd December 2016), the Respondent annexed an identical ledger of the Petitioner's account in the

Respondent's books. The Respondent alleged that this reflected the position between the parties *inter alia* in regard to the Rs. 90 lakhs payment. The Petitioner claims that this ledger was fabricated. According to the Petitioner at least eleven entries in this ledger are false and fabricated since they purport to show cash payment of a total of Rs. 90 lakhs allegedly paid between 15th March 2012 and 18th July 2012. Two of these are supposedly dated 5th July 2012 and 18th July 2012. When during the police investigation the authorities confronted the Petitioner with the Respondent's documents, the Respondent came up with a ledger account on three different occasions. These are three different variants or versions of what is supposedly the same ledger account said to have been maintained by the Respondent in his books for the Petitioner for the year 2012. These three ledger accounts do not contain, according to the Petitioner, a single one of these eleven cash entries aggregating to Rs. 90 lakhs and which were produced as annexures to the Affidavits filed in this Court in Reply and as an additional Reply. The original ledgers are with the Economic Offences Wing. The Petitioner, therefore, says that Exhibit 31 to the Affidavit in Reply and Exhibit 1 to the additional Affidavit in Reply are thus fabricated and false Affidavits filed before this Court attempting to mislead this court and give false evidence before it that an amount of Rs. 90 lakhs had been paid. Incidentally it does not seem to have been disputed by the Respondent that he did in fact provide three ledger accounts to the police authorities and Mr Singh, in my view, is quite correct in relying on these even if it is for the limited purpose of demonstrating a comparison.

19. While on this, the Petitioner also says that in the Criminal Writ Petition that the Respondent filed, the Respondent produced a document at Exhibit “E” which was also said to be a ledger account for the period of February 2012 to September 2012 and maintained by the Respondent in his books in the name of the Petitioner. The Respondent made an averment in regard to this ledger account in paragraph 25. That copy shows a single entry of 30th June 2012 for Rs. 90 lakhs. This is, according to Mr Singh, totally at variance with the three ledger accounts provided to the investigating authorities and, more importantly, totally inconsistent with Exhibit “31” to the Affidavit in Reply to the Summons for Judgment and Exhibit “1” to the additional Affidavit in Reply. All those ledgers cannot possibly stand together. Indeed none of them is correct. All of this is nothing but giving of false evidence and a fabrication of false evidence squarely within the meaning of Sections 191 and 192 of the IPC.

20. The Petitioner then says that the Respondent went so far as to rely on the Income Tax returns to demonstrate a payment of Rs. 90 lakhs in cash. He also said he would rely on a witness statement to show this. The Petitioner sought disclosure and filed Chamber Summons (L) No. 39 of 2017 to compel this disclosure. This was disposed of on 12th January 2017 when this Court directed the Respondent to give inspection and copies of the so-called witness statement and Income Tax returns. By his letter dated 17th January 2017 the Respondent flatly refused to give inspection or furnish copies. The conclusion, Mr Singh submits, is inescapable: No such witness exists and there are no Income Tax returns evidencing such payment.

21. Finally there is another argument and this is dealt with in paragraph 15 of the Perjury Petition. This deals with the Respondent's contention that of a total consignment of 510 MT of PVC Resin that the Petitioner imported from Pakistan, the Respondent purchased only 242 MT and not the remaining 268 MT which was covered by the three invoices of September 2012. The purpose of this paragraph is more to demonstrate the unreliability of anything that the Respondent says rather than to point to a specific act of perjury. For, according to his contentions, the Respondent made cash sales of PVC Resin to third parties and apparently did so well before he obtained delivery from the Petitioner. Mr Singh therefore submits that any such transaction is so commercially incredible that it can afford no defence whatsoever and it is *ex facie* apparent therefore that even these so-called cash invoices for sale of those imported goods to third parties are in themselves all fabricated. A quantity of about 45 metric tonnes was supposedly sold in batches or lots of 100 to 150 kilos spread over several hundred invoices.

22. On its own I should have been satisfied that this material is enough to constitute the necessary satisfaction on a preliminary inquiry and to direct the filing of a complaint. I am leaving aside for the moment the question of the fabricated cash invoices though even that in my view should be inquired into and should be a subject matter of the complaint. On the first two aspects of the matter, i.e., the three invoices of September 2012 and the so-called payment of Rs.90 lakhs, there is no manner of doubt that what was placed before this Court in the Affidavits in the Summons for Judgment was *prima facie* not credible at all and was very likely covered by

Section 191 and 192 of the IPC. Again at the cost of repetition, this is not a final or conclusive determination, and the contentions of the Respondents are specifically kept open and the Magistrate to whom the complaint is ultimately sent will decide the cause before him without being influenced by these observations. I returned these findings only for the limited purposes of Section 340 of the CrPC.

23. Before I make the final order however, I must consider what it is that the Respondent has attempted to say in the Affidavit in Reply. That Affidavit in Reply to this Perjury Petition was required to be refiled and I have made a separate order in that behalf. The relevant portions are in paragraphs 7 to 13 of the Affidavit in Reply at pages 74 to 81 of the paper book. This actually makes matters worse because I find that what the Respondent has done here is more or less to reiterate his contentions in the Affidavit in Reply, Affidavit in Sur-rejoinder and further Affidavit in Reply in the Summons for Judgment. As regards the question of bill of entry number, while accepting that the MODVAT scheme of operation is correct, the Respondent maintains that he has not received any goods under the disputed invoices and once again says that some quantity was sold for cash to various third parties. There is an explanation of sorts provided as to how the bill of entry comes to be placed on various documents, but this is not an answer on merits to what the Petition says at all. As regards the matter of the so-called payment of Rs.90 lakhs, the Respondent denies that his annexures to his Affidavits in the Summons for Judgment were fabricated. He says that what he annexed to the Criminal Writ Petition was not a ledger account but a summary of payments and that he used inadvertently the wrong nomenclature. He then alleges that the handwriting on some of

these ledger accounts are not of the Respondent but of the Petitioner. Evidently that raises more questions than it answers because it remains unclear how the Petitioner could have inveigled his handwriting into a ledger account maintained by the Respondent in his own books of account. He seems to suggest at page 79 that the Petitioner has somehow inserted handwritten material after the Respondent gave documents to the police authorities. This is the wildest kind of allegation because it attempts to tar not only the Petitioner but also the officers of the Economic Offences Wing with the same rush.

24. I find that in the Affidavit in Rejoinder to this Petition, the Petitioner has comprehensively addressed the responses in the Affidavit in Reply and has maintained his position. There is no variation in stand taken by the Petitioner. In my view, a preliminary inquiry must return a single result.

25. While on this I must thank Mr Singh for his assistance in drawing my attention to two decisions of the Supreme Court in *Mohan Singh v Late Amar Singh Through the Lrs*¹ and *Ranjit Singh v The State of Punjab*.² In the *Mohan Singh* case, in paragraph 36 after observations on the need for ensuring that the processes of the justice delivery system are kept unsullied, the Supreme Court said that the filing of false Affidavits would constitute an act of forgery and directed the Registrar of that Court to file a complaint before the appropriate court and set the criminal law in motion against the appellant tenant in that matter. The earlier decision of 1959 in *Ranjit*

1 (1998) 6 SCC 686.

2 SCR 1959 [Supp.] 727.

Singh's case deals with Section 191 of the IPC and portions of this at pages 732 and 733 may profitably be quoted thus:

"As the appellant was giving evidence on his own behalf in that he was denying the allegation made in the affidavit of the brother of Surjit Singh he was bound to state the truth on the subject on which he was making the statement. The contention therefore that under s. 191 of the Indian Penal Code the relevant portion of which is:

S.191. "Whoever being legally bound by an oath or by an express provision of law to state the truth.....makes any statement which is false and which he either knows or believes to be false or does not believe to be true, is said to give false evidence"

The appellant was not legally bound by oath to state the truth cannot be supported. On the other hand at the state of the proceedings in the High Court where it was being alleged that Surjit Singh was being detained by the appellant illegally it was necessary for the appellant to make an affidavit in making a return and therefore if the statement is false, as it has been found to be, then he has committed an offence under s.193.

The opening words of s.191 "whoever being legally bound by an oath or by an express provision of law to state the truth...." do not support the submission that a man, who is not bound under the law to make an affidavit, can, if he does make one, deliberately refrain from stating truthfully the facts which are within his knowledge. **The meaning of these words is that whenever in a court of law a person binds himself on oath to state the truth he is bound to state the truth and he cannot be heard to say that he should not have gone into the witness-box or should not have made an affidavit and therefore the**

submission that any false statement which he had made after taking the oath is not covered by the words of s.191 Indian Penal Code, is not supportable. Whenever a man makes a statement in court on oath he is bound to state the truth and if he does not, he makes himself liable under the provisions of s.193. It is no defence to say that he was not bound to enter the witness-box. A defendant or even a plaintiff is not bound to go into the witness-box but if either of them chooses to do so he cannot, after he has taken the oath to make a truthful statement, state anything which is false. Indeed the very sanctity of the oath requires that a person put on oath must state the truth. In our opinion this contention is wholly devoid of force and must be repelled."

(Emphasis added)

26. These words put the matter beyond controversy. It is simply no answer to a party before a Court to say that he may have been required to file an Affidavit but nothing requires that Affidavit to be truthful. This can only result in a complete perversion of the judicial process and is in abuse of the process of the Court. When we administer oath, the person taking the oath or, as the case may be, agreeing to proceed on solemn affirmation, commits himself to saying the truth, the whole of it and nothing but it. There is simply no resiling from this position. This is what the Supreme Court says and it therefore rejected the quite astonishing submission made before it that taking an oath or making an Affidavit carries with it no obligation of the oath-taker to speak the truth. In every court across this country there is a single motto to guides us all, and it tells us *the truth must prevail*. If we allow parties to make false statements and get away with it, that result can never be achieved. Order XXXVII of

the CPC, as Mr Singh points out, is a special provision and the Defendant in such a suit is not entitled to leave to defend unless he shows cause on a Summons for Judgment why he should be granted such leave. The Petitioner filed such a Summons for Judgment and the Respondent/Defendant sought this leave. SC Gupte J found that plea for leave to defend to be utterly worthless and he said so in so many words. I do not see how it is open to me to even attempt to return a finding that some portions of what the Respondent says in his opposition to the Summons for Judgment are credible and have substance. But there is as yet a gap between a defence in a civil action being found to be without merit and a false statement being made on Affidavit. What the Petitioners have done in the present case is to go one step further than is usual in Summary Suits. The Petitioner does not only say that the defence is worthless. He succeeded on that submission before SC Gupte J. He says now that not only is that defence worthless but it is entirely false and comprises significantly of fabricated evidence.

27. For these reasons I am satisfied that the Petition deserves to be allowed and that it is expedient in the interests of justice that an inquiry should be made into offences in relation to Sections 191 to 193 of the IPC, referred to in Section 195(1)(b) of the CrPC. The Petition is made absolute in terms of prayer clause (a) as I am satisfied that the requirements of Section 340 of the CrPC are met. The interests of justice (especially in terms of the Supreme Court's dictum enunciated in *Ranjit Singh*) demand such an order. The offence *prima facie* has been committed at least in respect of the documents produced and statements made on Affidavits in a proceeding before this Court. The Prothonotary and Senior Master

is directed to make a complaint in writing on this basis to the Judicial Magistrate First Class concerned. As to the question of security for appearance before the Magistrate that order is not necessary as the passport of the Respondent has already been impounded. In any case the learned Magistrate will make appropriate orders and both sides are free to make such applications as are required in that behalf. At the cost of repetition, all contentions are left open for the criminal proceeding before the Magistrate.

28. The Perjury Petition is disposed of.

(G. S. PATEL, J)