

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

CRM-M-2389-2017 (O&M)

Date of Decision:-23.01.2019

Hitesh Kumar and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ashwani Nagra, Advocate
for the petitioners.

Mr. Ashok Singh Choudhary, Addl. A.G., Haryana.

Mr. D.R. Bansal, Advocate
for respondent No.9.

GURVINDER SINGH GILL, J.

1. The question before this Court today is as to whether to proceed against the petitioners – Hitesh Kumar and Rekha under provisions of Section 340 Cr.P.C. for the purpose of their prosecution for having perjured before this Court.
2. A few facts, necessary to notice, are that the petitioners had approached this Court by way of filing this petition under Section 482 Cr.P.C. seeking

protection of their lives and liberty as they apprehended threat to the same on account of having married against wishes of relatives and other members of family of respondent No.2-Rekha. The petitioners have averred in the petition that they, having fallen in love with each other, got married on 19.01.2017 and that they were major at the time of their marriage. It is also averred in the petition that this was first marriage of both the petitioners and that they do not have any spouse living. When the matter was listed before a Co-ordinate Bench of this Court for the first time i.e. on 25.01.2017, upon a specific query put to the petitioners they stated that they are not in any prohibited relationship and have never been married earlier. A direction was issued to respondent No.3-Superintendent of Police, Ambala to ensure that no harm is caused to the petitioners at behest of the private respondents.

3. On the next date, i.e. on 10.03.2017, one Deep Chand moved an application stating that in fact he was husband of petitioner No.2-Rekha having married her on 21.12.2014 and that the marriage was still subsisting. This Court, observing that it *prima-facie* appeared to be a case of perjury especially as regards the specific averments made in the petition in para No.10, as regards marital status of the parties, it was ordered that a notice be issued to the petitioners as to why proceedings under Contempt of Courts Act, 1971 and also proceedings under Section 340 Cr.P.C. be not initiated against them.
4. Vide order dated 14.11.2017, this Court ordered that before proceeding under Section 340 Cr.P.C., an inquiry be conducted by Registrar (Vigilance) of this Court as to whether petitioner No.2-Rekha was previously married and as to whether the averments made by both the petitioners in their affidavit as regards that it was their first marriage were incorrect. It was

ordered that inquiry report be submitted within 3 months by Registrar (Vigilance).

5. Pursuant to the aforesaid order dated 14.11.2017, the Registrar (Vigilance) conducted inquiry, during the course of which statements of petitioners – Hitesh Kumar & Rekha and also of Deep Chand apart from statements of police officials, Notary, Sh. Man Mohan Advocate counsel for the petitioners and also of his Clerk were recorded.
6. Smt. Rekha admitted in her statement that she had been married to Deep Chand and stayed in matrimonial home for about 6 months. She further stated that Deep Chand had however threatened to kill her if she did not live as per his terms & conditions and therefore, she refused to live with him. She further stated that she has also filed a complaint against Deep Chand and other members of his family, which she was later forced to compromise. The relevant extract from the statement of petitioner Rekha reads as follows:-

“My marriage with Sh. Hitesh Kumar was solemnized in Gurudwara but I do not know the name of the place. Hitesh and I are Hindus, by religion. Our marriage was got solemnized by our Advocate Sh. Man Mohan Singh, having seat No.5 in the Hall adjoining to the Canteen. He charged Rs.35,000/- to get our marriage solemnized in Gurudwara. Hitesh and I informed Sh. Gurpreet, Clerk of Sh. Man Mohan Singh, Advocate that I am already married with Sh. Deep Chand and my marriage has not been dissolved so far. Hitesh and I do not know the contents of the petition and the affidavit attached with the petition. We have simply signed these documents on the directions of Sh. Man

Mohan Singh, Advocate. Now, we have engaged Sh. Ashwani Nagra, Advocate, Room No.27, Second Floor near Canteen. He has not told me about the status of the case.”

7. Petitioner No.1-Hitesh Kumar stated as under:-

“My marriage with Ms. Rekha was solemnized on 19.01.2017 in Gurudwara, Sector-31, Chandigarh. Ms. Rekha and I belong to Hindu Religion and our marriage in the Gurudwara was got conducted at the instance of Sh. Man Mohan Singh, Advocate. I do not know the name of the Granthis and the certificate given by the Granthi is with Sh. Ashwani Nagra, Advocate and also with Sh. Man Mohan Singh, Advocate. Our Advocate Sh. Man Mohan Singh is having his seat in a Hall near the Canteen and the lawn. Solemnization of my marriage with Ms. Rekha was arranged by Sh. Man Mohan Singh, Advocate and he charged Rs.36,000/- from me. I was aware of the fact that Ms. Rekha is already married to Sh. Deep Chand. I informed my Advocate Sh. Man Mohan Singh that Ms. Rekha is already married to one Sh. Deep Chand but he did not give any response and simply asked the documents for identity and date of birth i.e. Aadhar Card etc.”

8. Some of the relevant extracts from the inquiry report dated 10.5.2018 read as follows :-

“From the statement of the witnesses, it is clearly established that Shri Deep Chand and Smt. Rekha Devi got married on 21.12.2014 as per Hindu Rites and Ceremonies. It is also established that the petitioner in CRM-M No.2389 of 2017 (O&M) was filed on 25.01.2017. It is also admitted by all the

concerned witnesses that the marriage between Shri Deep Chand and Smt. Rekha Devi was not dissolved till the date of filing of petition. It is also admitted and proved that Shri Hitesh Kumar was aware of the marriage of Smt. Rekha Devi with Shri Deep Chand. It is also established on record that they had furnished an affidavit attested by Smt. Shadhna Trikha, Notary, Punjab and Haryana High Court, Chandigarh that they are not previously married and they have filed the petition before the Court for protection as their marriage was being opposed by the family members of Smt. Rekha Devi, petitioner No.2.

It has come in the statement of Shri Hitesh Kumar, petitioner No.1 and Smt. Rekha Devi, petitioner No.2 that they had disclosed this fact to Shri Man Mohan, Advocate but he did not bother and asked only the document of about date of birth, age and for identity. Since, they were not having document of their marriage, therefore, they performed rituals in Gurudwara and had photographs attached as Annexure P-1 in the CRM-M2389 of 2017. However, during pendency of the aforesaid petition Shri Deep Chand moved a petition and this fact came to the notice of the Court that Smt. Rekha Devi had already married and her marriage has not been dissolved so far.

On the other hand, Shri Man Mohan, Advocate has disclosed that the fact was never disclosed to him and both the clients approached him through Shri Gurpreet Jangra, District Courts, Panchkula. The petitioners have claimed that the rituals of marriage were got performed at the instance of their Advocate Shri Man Mohan at some Gurudwara but they failed to disclose the location of the Gurudwara. However, from the certificate it appears

that both the petitioners also performed the marriage as per Sikh Rituals and Ceremonies though both belong to Hindu community.

The role of Shri Man Mohan, Advocate engaged by the petitioners to seek the marriage certificate from the Court is also suspicious as both the petitioners have consistently stated on oath that they had disclosed about the first marriage of petitioner No.2 but the Advocate did not pay any heed to the information. It is well-known that the Notary Public is required to administer oath and to read the contents of the affidavit but in practice, it is hardly followed. The relationship between the petitioner and the Advocate is trust based, thus, petitioners who are semi-literate and are not well versed with the English had no other reason for them to make such averments that they had disclosed the factum of their previous marriage to Shri Man Mohan, Advocate.

From the above admitted and established fact from the material on record, it is crystal clear that the contents of the CRM-M No.2389 of 2017 and the affidavit dated 23.01.2017 furnished by petitioner No.1 and 2 are false.

The report is submitted before the Hon'ble Bench for kind perusal, consideration and orders, please."

9. Upon perusal of the report, while it is noticed that petitioner No.2 has admitted the factum of her marriage and both the petitioners have stated that they had disclosed the said factum of earlier marriage to their Advocate, Sh. Man Mohan but Sh. Man Mohan, Advocate has taken a stand that petitioners never disclosed about their earlier marriage to him.
10. The Inquiry Officer has observed that the role of Sh. Man Mohan, Advocate engaged by the petitioners is suspicious as both the petitioners have

consistently stated on oath that they have disclosed the factum of their first marriage to their counsel. It has further been observed that the petitioners are semi -literate and are not well versed with English. From the perusal of the affidavits and the '*Vakalatnama*' it indeed appears that the petitioners are not very well educated, especially petitioner No.1-Hitesh Kumar who barely signs in Hindi language. From the afore stated position while this Court has no hesitation in holding that the petitioners, in their petition have stated incorrectly as regards the marital status of petitioner No.2, the question before this Court is as to whether the said falsehood by itself is sufficient to proceed against the petitioners under Section 340 Cr.P.C. for having perjured before this Court more particularly when the petitioners in fact appear to be semi-literate. Section 340 Cr.P.C. which deals with procedure in such matters reads as follows:-

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 interest 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 for 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.

11. A perusal of the bare provisions of section 340 Cr.P.C. would show:

- (i) that section 340, Cr.P.C., prescribes that before the Court directs that a complaint be lodged in respect of offences mentioned in section 195 Cr.P.C., it must record a finding to the effect that the person concerned has intentionally given false evidence.
- (ii) that the Court should also be satisfied that in the interests of justice, it is expedient that such person be prosecuted. In other words, if the court forms an opinion, on the basis of the material available, that it is not expedient in the interests of justice to proceed to prosecute such person, the Court could

dismiss the complaint and drop the proceedings even at the very outset.

- (iii) that the Court may chose to hold a preliminary inquiry to reach at aforesaid findings but it is not mandatory to hold preliminary inquiry in each and every case. The words “*if any*” existing after the words “*after such preliminary inquiry*”, leave no room to doubt this position. In a given case, where the falsehood is evident from the facts already before the Court, the Court may form an opinion even without holding preliminary inquiry.

12. In the present case as per report of Inquiry Officer the role of the Advocate who was representing the petitioners has been held to be suspicious. There could be some element of truth in the stand of the petitioners that they had in fact disclosed about the factum of first marriage of petitioner No.2 to their counsel but said fact was brushed aside by their counsel. The petitioners had approached this Court seeking protection of their lives and they were not seeking any other relief other than securing their life and liberty. They were not seeking any relief from private respondents.
13. This Court in 2011(9) RCR (Criminal) 943 Sanjeev Soni Vs. State of Punjab, where also a “runaway couple” had approached this Court seeking protection while claiming themselves to be of major and later the girl’s father had moved an application under Section 340 Cr.P.C. for prosecuting petitioners alleging that there was misrepresentation regarding age as his daughter was barely aged 16 ½ years, did not chose to initiate proceedings

under Section 340 Cr.P.C., while relying upon an earlier decision of this Court 'Tarun v. Manoj Kumar' *Criminal Misc. No.M-8928 of 2010 decided on 13th October, 2011*) and while observing that every false statement will not call for prosecution of litigant.

14. This Court in 'Tarun v. Manoj Kumar' (*Supra*) held as under:

"The legislation in its wisdom has specifically laid a bar under Section 195 Cr.P.C. not to prosecute each and every litigant. The offence, if any, has been committed against the Court. It is a common knowledge that the litigants do make wrong statements in the Court proceedings. For each and every wrong statement, each litigant cannot be prosecuted. The Court shall prosecute and punish such a litigant, when its conscience is pricked. However, the powers of the Court cannot be used for settlement of personal revenge or vengeance. To maintain majesty of law, it is necessary that in each and every complaint, the prosecution is not initiated and the Courts are not flooded with such kind of litigation".

In view of the above, no directions are called for and the present petition is disposed of."

15. In an another case 1988(1) RCR (Criminal) 223 Vittappan vs. State, Kerala High Court held as follows:-

"Though the courts are expected to be zealous in putting down perjury to the extent possible, it is not every case of perjury that should form the subject of the enquiry contemplated in section 340. Expediency in the interest of justice should be the criterion. Otherwise there could be almost as many prosecutions as the number of witnesses examined because in the evidence of almost each and every witness an element of untruth could be found. 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. To start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material will defeat its very purpose. Some inaccuracy in the statement which may be innocent or immaterial may not justify a prosecution as expedient in the interest of justice. There must be *prima facie* case of deliberate falsehood on a matter of substance and the court must be satisfied that there is reasonable foundation for the charge.”

16. Hon’ble Supreme Court in a case titled as Chajoo Ram Vs. Radhey Shyam AIR 1971 SC 1367, 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 affidavits 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.”

17. Upon examining the facts of the present case in light of ratio of above referred judgments, more particularly the fact that the relief sought by the petitioners was protection of their lives and liberty and not any

relief against an adversary and also that there could be some element of truth in their stand that they had in fact informed their counsel about marital status of petitioner No.2, but their counsel did not pay any heed to the same and rather arranged for getting the marriage ceremony solemnized, this Court is of the opinion that present case is not such where it is expedient to conduct proceedings under Section 340 Cr.P.C..

18. Tested from another angle, it goes without saying that the petitioners in any case were entitled to be extended protection whether or not their marriage was valid. This Court, even while noticing the factum of false statement regarding the marital status had clarified vide order dated 10.03.2017 that the protection extended vide order dated 25.03.2017 shall continue while all those aggrieved against the petitioners may have recourse to legal proceedings. As such the notice issued to petitioners to show cause as to why procedure under Section 340 Cr.P.C. be initiated is dropped. Similarly, for the same reason this Court also does not find sufficient grounds to proceed against the petitioners for proceedings under Contempt of Courts Act, 1971. Consequently, the notice issued to the petitioners for initiating aforesaid proceedings is also dropped.

19. It is however clarified that the aforesaid order is not to be construed as any expression regarding the validity or otherwise of marriage of the petitioners and that persons aggrieved by the same would be at liberty to have recourse to legal remedies both civil or criminal, if available to

them. The private respondents are however directed not to cause any harm to the petitioners.

20. The petition is accordingly disposed of with the aforesaid directions with liberty to the petitioners to approach this Court again if ever they apprehend any threat to their lives and liberty at the hands of the private respondents.

(GURVINDER SINGH GILL)
JUDGE

23.01.2019
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No