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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th December, 2019

+ CRL.M.C. 1695/2017 & CRL.M.A. 29284/2018

JASMER SINGH

..... Petitioner

Through

Mr. Madhav Khurana with Mr. V.
Pasayat, Advs.

versus

JAI SINGH SADANA

..... Respondent

Through

Mr. Adab Singh Kapoor along with
Ms. Shefali and Mr. Raghav Mittal,
Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A. 40815/2019

1. The present application has been filed by the respondent on the ground that at running page 39 of the court file in the captioned matter, the Petitioner has attached his residence permit bearing No. RE2855147. The said Residence Permit has been annexed as a part of "Annexure-P3" by the Petitioner. The signatures upon the said documents are conspicuously different from the signatures provided at Page No. 45 of the Court file, which are on the Passport of the Petitioner.

2. At running Page 14, the supporting affidavit of the Petitioner in relation to his Petition is annexed and evidently, the signatures in the affidavit are glaringly dissimilar from the signatures that have been provided in the passport of the Petitioner on Page 45 as well as - the signatures that have been provided as a part of Self Attestation on page 45 and 46 of the court file. Moreover, these signatures are also different from the signatures of the Petitioner that have been provided on page 39 in his Residence Permit.

3. The Petitioner has also signed the supporting affidavit which is at running Page No. 64, in respect of the application under section 482 of Cr.P.C. seeking exemption from filing certified, dim and original copies of the annexures. Further, the Petitioner has purportedly signed on the supporting affidavit in respect of the Rejoinder, which is at running page 166 of the court file. The signatures provided by the Petitioner in the supporting affidavits at page 64 and page 166 are patently dissimilar from the signatures that have been provided in the passport of the Petitioner, which the Petitioner has himself annexed and self-attested at Page 45. The signatures of the Petitioner at Page 171 under the 'Prayer Clause' of the application to disregard annexures filed along with the reply to the present

petition, are also dissimilar from the signatures that have been provided on the passport of the Petitioner which have been annexed at Page 45, as well as the purported signatures of the Petitioner on the supporting affidavits in respect of the pleadings at running page nos. 14, 64 and 166.

4. Learned counsel for the applicant/respondent submits that this Court, time and again, deplored such falsehoods in the pleadings and emphasised upon the necessity of the judicial system to protect itself from such wrongdoing by taking cognizance of the same. To strengthen his arguments, learned counsel for the applicant has relied upon the case of ***Sanjeev Kumar Mittal v. State, cited as 174 (2010) DLT 214***, whereby this Court held as under:

"6.6. If there is falsehood in the pleadings (plaint, written statement or replication), the task of the Court is also multiplied and a Us that could be decided in a short time, then takes several years. It is the legal duty of every party to state in the pleadings the true facts and if they do not, they must suffer the consequences and the Court should not hold back from taking action."

6.13. A party, whether he is a petitioner or a respondent, or a witness, has to respect the solemnity of the proceedings in the court and he cannot play with the courts and pollute the stream of justice. It is cases like this, with false claims (or false defences) which load the courts, cause delays, consume judicial time and bring a bad name to the judicial system. This case is a sample where the facts are glaring. Even if they were not so glaring, once falsehood is apparent, to not take action would be improper.

6.16. In an effort to redeem the situation, not only realistic costs and full compensation in favour of the winning party against the wrongdoer are required, but, depending on the gravity of the offence, penal action against the wrongdoers is also called for. Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens. Litigation caused by false claims and defences will come to be placed before the courts, load the dockets and delay delivery of justice to those who are genuinely in need of it.

8.9 It is not necessary that a person should have appeared in the witness box. The offence stands committed and completed by the filings of such pleadings. There is need for the justice system to protect itself from such wrongdoings so that it can do its task of justice dispensation "

5. He further submits that purported signatures of the Petitioner in the pleadings, in several documents which have been filed on record, are glaringly different from each other, and evidently different from the signatures that have been provided in the passport of the Petitioner on Page 45, which the Petitioner has himself attested to be true and correct. Hence, the Petitioner is liable for the offence punishable under Section 195 and 209 of the Indian Penal Code, 1860 read with Section 340 of the CrPC, for having provided false and fabricated signatures on the pleadings and the affidavit of the Petitioner.

6. Learned counsel for the applicant submits that in a similar situation,

before the Hon'ble Supreme Court in the case of (2009) 13 SCC 201: ***Radhey Shyam Garg v: Naresh Kumar Gupta*** Directed Register (Judicial) to conduct an enquiry in terms of Section 340 of the Code of Criminal Procedure and submit a report to the Court.

7. Ld. Counsel for the applicant has also relied upon the case of ***Mahesh Tiwari Vs. State of U.P. and Ors. MANU/UP/1631/2016*** decided by the Single Judge of High Court of Allahabad whereby it was held that :- “*Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. Where a person falsely verifies a written statement he will be liable for perjury. Where a person falsely verifies an execution application he will be liable for perjury. An affidavit is ‘evidence’ within the meaning of Section 191 IPC and a person swearing to a false affidavit is guilty of perjury.*”

8. On the other hand, learned counsel appearing on behalf of the non-applicant/petitioner submits that the documents referred to by the applicant, are filed by the petitioner and there is no perversity in any of the documents. He submits that though signatures are different but all have been made by the petitioner, therefore, neither it is a false averment nor any false affidavit has been given, therefore, the case advanced by the applicant does not come

under the purview of Section 340 Cr.P.C.

9. Heard learned counsel for the parties at length and perused the material on record.

10. **In case of *Mohammed Ibrahim And Others Vs. State of Bihar And Another* (2009) 8 SCC 751:** the Hon'ble Supreme Court has held that court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. The Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.

Section 467 provides: “*whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document,*

shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery".

11. In para 15 of the cited judgment, it is observed that the sale deed executed by the first appellant (therein) clearly and obviously does not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

12. Further, it is observed in said para that there is a fundamental difference between a person executing a sale deed claiming that the property conveyed in his property and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered

by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that the bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his, even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

13. In para 17, it is observed that "*when a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 or Section 471 of the Code are attracted.*"

14. Counsel for the applicant has argued that if the allegations made in the application under Section 340 Cr.P.C. are proved, the petitioner finally would be convicted under Section 193, 195 and 209 IPC.

15. It is not in dispute that the petitioner has made all the signatures in the documents provided by him. The Applicant/respondent also does not dispute that in any of the documents mentioned above, the signatures are false.

16. Section 193 of the IPC is reproduced as under:-

“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.”

According to the said provision, whoever intentionally gives false evidence at any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used at any stage of a judicial proceeding, shall be prosecuted under Section 193 Cr.P.C.

17. However, in the present case, nowhere it is stated in the application that the petitioner intentionally gave false evidence or fabricated false

evidence for the purpose of being used in the judicial proceedings.

18. Section 195 of the IPC is reproduced as under:-

“195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which 1[by the law for the time being in force in 2[India]] is not capital, but punishable with 3[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.”

As per the said provision: whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

19. The Case of the applicant/respondent is not that the petitioner has fabricated forged documents or executed false evidence on the different point of time, therefore, the case of the petitioner does not fall under the purview of Section 195 of IPC.

20. As far as Section 209 of IPC is concerned, it is in regard to dishonestly making false claim before the Court.

Section 209 is reproduced as under:-

“209. Dishonestly making false claim in Court.— Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.”

As per the said provision: whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes, in a Court of Justice, any claim which he knows to be false, shall be punished under Section 209 IPC.

21. Regarding the offence mentioned above, nowhere it is stated in the application that the petitioner fraudulently or dishonestly or with intent to injure the applicant made any claim which he knows to be false, therefore, section 209 also does not apply in the present case.

22. However, if it is proved that the petitioner has committed forgery, he is liable to be prosecuted under Section 340 Cr.P.C. In that case, the Court has to take into consideration two factors, one is that the petitioner intentionally gave false evidence during any stage of judicial proceedings or fabricate evidence for the purpose of being used in any stage of judicial proceedings. Both the above said factors are not mentioned in the present

application.

23. Case of the applicant is that if any person made different signatures of the same person, on different documents, then he is liable to be prosecuted under Section 340 Cr.P.C. However, I disagree with the submissions of learned counsel for the applicant on the ground that in any of the provisions mentioned above, there is nothing on record that if a person puts different signatures on different documents, he would be punished under Section 340 Cr.P.C.

24. In view of above discussion and statutory and legal position, I find no ground to pass any order in the present application.

CRL.M.C. 1695/2017

25. Vide the present petition, the petitioner seeks direction thereby to quash the Criminal Complaint No. 3622/2017 and summoning order dated 03.03.2017 with the proceedings emanating therefrom qua the Petitioner.

26. The aforesaid complaint has been filed by the respondent for the alleged commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as the N.I. Act)

27. The present petition is filed on the ground that Petitioner is neither the signatory of the cheque in question nor the person from whose Bank

Account the cheque was issued. Moreover, the Petitioner is not the signatory to the alleged loan agreement and the respondent, after dishonour of the cheque, did not issue the statutory notice to the Petitioner.

28. I hereby note some facts of the case which are necessary to adjudicate the present petition. The petitioner is a 23 years old and pursued and completed his studies in Finance Accounting from the London School of Economics, UK. On 21.06.2016, the Respondent entered into a loan agreement (hereinafter referred to as the "Agreement") with Mr. Ravinder Singh (father of the Petitioner). Under the loan agreement a sum of ₹1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs only) was paid by the Respondent to Mr. Ravinder Singh. As per the Loan Agreement, the Respondent had given the said sum to the father of the Petitioner for the purpose of investing in Solar Power Projects. The Petitioner was neither the signatory to the said loan agreement, nor the recipient of the money.

29. However, the aforesaid loan was secured by the father of the Petitioner Mr. Ravinder Singh who handed over, to the Respondent, a Cheque bearing no. 000750 dated 05.11.2016 drawn on Standard Chartered Bank, Narain Manzil Barakhamba Road for a sum of Rs. 1,33,43,750/- (Rupees one crores thirty three lakhs forty three thousand seven hundred

fifty only). But, petitioner did not sign the cheque nor was it issued from his bank account. However, on 02.02.2017, the Respondent presented the Cheque for encashment to his banker HDFC Bank Vasant Kunj - II, New Delhi. On 03.02.2017, the Cheque was returned unpaid by the said bank for insufficiency of funds. On 09.02.2017, the Respondent sent a Legal Notice U/s 138 of Negotiable Instruments Act only to the father of the Petitioner, i.e. Mr. Ravinder Singh, calling upon him to make the payment in lieu of the dishonour of the Cheque within a period of 15 days from the receipt of the said Notice.

30. Learned counsel for the petitioner submits that the said Legal Notice under Section 138 of NI Act was neither addressed to the Petitioner nor made any reference about him.

31. However, on 17.02.2017, the Respondent sent another Legal Notice to Mr. Ravinder Singh and the Petitioner by email requesting for a payment of Rs. 16,90,067/- (Rs. Sixteen Lakhs Ninety Thousand and Sixty-Seven Rupees only) for some alleged past dues. The said Legal Notice makes no mention of the dishonour of the Cheque or its repayment, except for a passing reference along with a mention of the Legal notice dated 09.02.2017, which was never issued to the Petitioner.

32. On 27.02.2017, the Respondent filed the Impugned Complaint and on 03.03.2017 the Ld. MM passed the Impugned Order summoning inter-alia the Petitioner.

33. On the other hand, learned counsel appearing on behalf of respondent submits that the arraignment of the petitioner as an accused in the complaint mentioned above has been done by the respondent on a justified and reasonable basis. The Petitioner was equally a part of the conspiracy planned by his father, Mr. Ravinder Singh, in order to dupe the Respondent of his hard earned money. Petitioner had also made false representations to the Respondent inducing the Respondent to believe that he and his father were rich and successful businessmen and Respondent's money would be returned to him as stipulated in the Loan Agreement. The Petitioner is the Director of a Company by the name Vijayapura RKR Solar Energies Pvt. Ltd., which from its very name indicates that it is involved in the business of solar energy, which is the very purpose for which the loan was availed of by the Petitioner's father from the Respondent as per their Loan Agreement. The actions and inactions of the Petitioner were in conspiracy with his father.

34. Counsel appearing on behalf of respondent further submits that the petitioner in the capacity of himself and as a director of Vijayapura RKR

Solar Energies Pvt. Ltd., in conspiracy with his father has cheated the Respondent and handed him a cheque, which from the very inception they knew that will not be honoured. Accordingly, a thorough investigation into the bank account details of the Petitioner and his father would reveal the manner in which the loaned amount was used by them. The nature and role of the Petitioner's father in Vijayapura RKR Solar Energies Pvt. Ltd. is required to be investigated to ascertain and unearth the extent of conspiracy between the parties and appropriate summoning orders be also issued against the said Company as well.

35. The case of respondent is that the petitioner in the capacity of himself and as a director of Vijayapura RKR Solar Energies Pvt. Ltd., in conspiracy with his father has cheated the Respondent and handed him a cheque which from the very inception they knew the cheque will not be honoured. Thorough investigation into the bank account details of the Petitioner and his father has revealed the loaned amount was used by them. The nature and role of the Petitioner's father in' Vijayapura RKR Solar Energies Pvt. Ltd, is required to be investigated to ascertain and unearth the extent of conspiracy between the parties.

36. It is not in dispute that for the aforesaid purpose, the respondent filed

application under Section 156(3), the same has been dismissed and being aggrieved by the same, he filed the revision petition which was also dismissed. Thereafter, the respondent is in process to lead pre summoning evidence under Section 200 Cr.P.C.

37. Accordingly, if the respondent succeeds in establishing the case against the petitioner, he will be summoned in that petition but, the fact which is not disputed in the present case is that the petitioner neither signed the check nor from the account of the petitioner the cheque was issued nor he was signatory of the agreement which took place between the father of the petitioner and the respondent. Moreover, legal notice has not been issued as pre condition of Section 138 of N.I. Act.

38. Regarding the non-issuance of notice, issue came before this Court in the case of ***R. L. Varma & Sons (HUF) Vs. P.C. Sharma*** in CrI. Rev. 438/2017 decided on 01.07.2019 whereby, it was held as under:-

“34. Since the pre-condition of filing a complaint under section 138 of the Negotiable Instruments Act of sending a statutory notice has not been satisfied in the present case, no cause of action arose in favour of the complainant to file the subject complaint. Since no cause of action arose, the petitioner could not have instituted the complaint nor could the trial court as well as the appellate court by the impugned order have convicted the petitioner.”

39. As per Section 138 of the N.I. Act, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person out of that account for the *discharge*, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence.

As per sub Section (b) clause (i) of 138 of the N.I. Act, the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and if the drawer of such cheque fails to make the payment of the said amount of money to the payee within fifteen days of the receipt of the said notice, then the case comes under Section 138 of N.I. Act.

40. Admittedly, in the present case, notice of demand of ₹ 1,33,43,750/- (Rupees one crores thirty three lakhs forty three thousand seven hundred fifty only) has not been issued in favour of the petitioner, thus pre condition

of 138 of N.I. Act is not satisfied.

41. In view of the above facts and statutory position, I hereby set aside the summoning order and the complaint filed by the respondent qua the petitioner.

42. The petition is accordingly allowed.

(SURESH KUMAR KAIT)

JUDGE

DECEMBER 12, 2019

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