

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

105

CRA-S-1962-2019

Date of decision: 24.02.2020

Smt. Santosh Devi and another

.....Appellants

Versus

Suresh Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. V.P.Sangwan, Advocate
for the appellants.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present appeal under Section 341 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C') read with Section 482 of the Cr.P.C. against order dated 04.05.2019 passed by learned Additional District Judge, Bhiwani whereby application filed by the appellants under Section 340 of the Cr.P.C. for initiating proceeding against the respondent for making false statement in the Court has been dismissed.

Briefly stated the facts giving rise to the filing of the present appeal are that the appellants filed civil suit No. 18 of 2013 titled as Smt. Santosh Devi and another versus Suresh Kumar and another. Along with the civil suit, the appellants filed application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 which was dismissed by learned Additional Civil Judge (Senior Division) Loharu vide order dated 12.04.2013. The appellants filed Miscellaneous Civil Appeal No. 16 of 2013 titled Santosh Devi and another versus Suresh Kumar against the above said order. During pendency of the above said appeal, learned Counsel for

respondent Suresh Kumar made statement that if during the pendency of the suit, respondent Suresh Kumar will alienate the property in dispute then he will intimate the Court prior to alienation. Thereupon, learned Counsel for the appellant made statement withdrawing the appeal which was accordingly dismissed as withdrawn vide order dated 12.07.2013. The appellants filed application under Section 340 of the Cr.P.C. for taking action against respondent Suresh Kumar on the ground that the land in dispute had already been sold prior to 12.07.2013 when learned Counsel for the respondent made above referred statement before the Court and the complaint be filed against respondent in accordance with Section 340 of the Cr.P.C. The above said application was opposed by the respondent in terms of reply filed to the same. In the reply, the respondent submitted that the respondent could not contact his counsel and could not inform him regarding the sale deed No. 358 dated 17.06.2013 executed by him before there was any stay from any Court of law and his Counsel was not aware about the same. In view of the execution of the sale deed by the respondent prior to his appearance on 12.07.2013, the appeal had become infructuous. The application was dismissed by learned Additional District Judge, Bhiwani vide order dated 04.05.2019. Feeling aggrieved the appellants have filed present appeal.

I have heard arguments addressed by learned Counsel for the appellants.

Learned Counsel for the appellants has submitted that the respondent had already sold the land in question vide registered sale deed No. 358 dated 17.06.2013 but his Counsel made false statement

on 12.07.2013 that in case during the pendency of the suit the respondent will alienate the property in dispute he will intimate the Court prior to alienation. On the basis of his statement, the appeal filed by the appellants was withdrawn by their counsel. The application filed by the appellants has been wrongly dismissed on the ground that statement was not made by the respondent and the respondent could not be held liable to punishment for wrong statement made by his Counsel. The impugned order suffers from material illegality and may therefore be set aside with direction to the Court concerned to file complaint against the respondent.

In the present case, the appellants filed application under Section 340 of the Cr.P.C. for taking action against the respondent for false statement made by his counsel on his behalf in the course of hearing on the appeal.

Sections 193, 199 and 200 of the IPC, which are relevant to the decision of the present appeal, read as under:-

“Section 193 : Punishment for false evidence.-

Whoever intentionally gives false evidence in any 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.

Section 199 : False statement made in declaration which is by law receivable as evidence.-

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Section 200 : Using as true such declaration knowing it to be false.-

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation - A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.”

Section 195 (i)(b) of the Cr.P.C. bars the Court from taking cognizance of the offences punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 alleged to have been committed in or in relation to any proceedings in any Court except on complaint in writing of that Court or its authorised officer or higher Court to which such Court is sub-ordinate and the same reads as under:-

“195(i)(b) No Court shall take cognizance -

- (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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate”

Section 340 of the Cr.P.C., which prescribes the procedure as to how a complaint may be preferred under Section 195 of the Cr.P.C., 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 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."*

In CRM-M-30970-2016 titled Durgesh Vs. State of Haryana decided on 04.12.2019 (Law Finder Doc ID#1668680) this

Court summarised the law regarding initiation of proceeding for perjury

as under:-

“1. 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. (See ***Chajoo Ram v. Radhey Shyam and another, reported in AIR 1971 Supreme Court 1367***).

2. If the court is to notice every falsehood that is sworn to by parties in courts there would be very little time for courts for any serious work other than directing prosecution for perjury. Again, the edge of such weapon would become blunted by indiscriminate use. (See ***Thomman Vs. IInd Additional Sessions Judge, Ernakulam and others, 1994 Cri. L.J. 48***).

3. Mere acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. (See ***Chandrapal Singh and others v. Maharaj Singh and another, reported in 1982(2) RCR(Rent) 425 : AIR 1982 Supreme Court 1238***).

4. Every incorrect or false statement does not make it incumbent on the Court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. (See ***M.S. Ahlawat Vs. State of Haryana and others : 2000 (1) SCC 278***).

5. The gravity of the false statement, the circumstances under which such statement is made, the object of making such statement and its tendency to impede and impair the normal flow of the course of justice are matters for consideration when the court decides on the propriety of instituting a complaint for perjury. (See ***Thomman Vs. IInd Additional Sessions Judge, Ernakulam and others, 1994 Cri. L.J. 48***).

6. Prosecution should be ordered when it is considered expedient in the interests of justice to punish

delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial and 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. (See ***Chajoo Ram v. Radhey Shyam and another, reported in AIR 1971 Supreme Court 1367***).

7. 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. It is only in glaring cases of deliberate falsehood where conviction is highly likely, that the Court should direct prosecution. (See ***Chajoo Ram v. Radhey Shyam and another, reported in AIR 1971 Supreme Court 1367 and Santokh Singh Vs. Izhar Hussain and another : AIR 1973 Supreme Court 2190***).

8. The power given by Section 340 of the Cr.P.C. Should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice. (See ***K.T.M.S. Mohd. and another Vs. Union of India : AIR 1992 Supreme Court 1831***).

9. The Court must order prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. (See ***Santokh Singh Vs. Izhar Hussain and another : AIR 1973 Supreme Court 2190***)."

In the present case statement was made by learned Counsel for the respondent which was factually incorrect as the respondent had already sold the land in question after filing of the suit when there was no ad interim injunction restraining alienation. Generally speaking any party to the litigation will be bound by the statement made by his/her Counsel on his/her behalf where the circumstances of the case point to making of such statement by the Counsel on communication with and on instructions of such party. The respondent had already sold the land in question vide sale deed dated 17.06.2013. The respondent had pleaded in the reply that the respondent could not contact his Counsel.

In the facts and circumstances of the case the factually wrong statement

made by learned Counsel for the respondent cannot be said to have been made on communication with and on instructions of the respondent. On the other hand the statement appears to have been made by learned Counsel for the respondent in view of nature of injunctive relief claimed regarding alienation and applicability of doctrine of lis pendens without proper communication with the respondent and in this context the plea taken by the respondent that he could not contact his Counsel and could not communicate the fact of execution of sale deed by him assumes significance. Prosecution has to be ordered for prima facie case of deliberate falsehood on a matter of substance where the Court is satisfied that there is reasonable foundation for the charge and the conviction is highly probable and when it is considered expedient in the interest of justice that the delinquent be punished and not merely because there is some inaccuracy in the statement which may be innocuous or immaterial. In the present case the statement made by learned Counsel for the respondent was factually wrong but on that count deliberately false statement cannot be said to have been made to the knowledge of the respondent on matter of substance as due to applicability of the doctrine of lis pendens rights of the appellants were not materially affected as the vendee would be bound by decision of the suit by the Court .

In these facts and circumstances of the case it is not expedient in the interest of justice that the prosecution be initiated against the respondent and the application filed by the appellants under Section 340 of the Cr.P.C. has been rightly rejected by learned Additional District Judge, Bhiwani. The impugned order does not suffer

from any illegality and the appeal is liable to be dismissed.

Accordingly, the appeal is dismissed.

24.02.2020

Rajeev (rvs)

(ARUN KUMAR TYAGI)
JUDGE

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