

**(114) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-628-2022

Date of decision : 21.09.2022

BAKSHISH SINGH

... Petitioner

Versus

DEVINDERPAL SINGH & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vikram Preet Arora, Advocate for the petitioner.

JASJIT SINGH BEDI, J. (ORAL)

The present petition has been filed against the order dated 26.04.2018 passed by the Court of learned Judicial Magistrate, 1st Class, Fatehgarh Sahib and order dated 01.12.2021 passed by the learned Additional District Judge, Fatehgarh Sahib, whereby the application under Section 340 Cr.P.C. moved by the petitioner has been dismissed and in appeal the order has been affirmed.

2. The brief facts of the case are that the petitioner filed a civil suit titled as Bakshish Singh Versus PWD & others for recovery which was decided by the Court on 19.01.2017. The respondents appeared in the said case as DW-1 and DW-2. It is the case of the petitioner-plaintiff that respondent No.1 appearing as DW-1 had stated on oath that he was the incumbent Sarpanch at the time of his deposition in Court and had filed an affidavit Ex.DW1/A dated 31.08.2016 calling himself a Sarpanch of Gram Panchayat of Village Bibipur. In fact, he was not a Sarpanch and the said statement was made to injure his interest and

mislead the Court. Respondent No.1 had thereafter claimed that in the affidavit, there was typographical error since the same was drafted by his counsel. He thus contended that false evidence had been given by respondent No.1. It was also stated in the application that respondent No.2 had appeared as DW-2 and had denied that he had done construction work over the proposed road and had falsely deposed that no notice under Section 80 CPC was issued to defendant Nos.1 to 4. In fact, the notice was duly issued to the defendants. Respondent No.2 also falsely stated that he was not instrumental in seeking demarcation of the land and that no construction was raised during the pendency of litigation. Thus, it was prayed in the application under Section 340 Cr.P.C. that the respondents were liable to be punished for having committed the offences under Sections 417, 420, 465, 467, 468, 471, 120-B, 191, 192, 193 and 209 of the IPC and an appropriate inquiry be conducted under Section 195 Cr.P.C. in this regard.

3. The Court of learned Judicial Magistrate, 1st Class, Fatehgarh Sahib came to the conclusion that though the petitioner/applicant had stated that the respondents had deposed falsely in order to cause wrongful loss to him and wrongful gain to themselves, he was unable to *prima facie* show as to how the evidence of the respondents in the civil case filed by him effected the decision of the case. In fact, even the copy of the judgment dated 19.01.2017 had not been placed on record to establish that the decision of the Court was influenced by the purported false evidence given by the respondents.

4. Against the aforementioned order, an appeal was preferred before the learned Additional District Judge, Fatehgarh who after examining the matter came to the conclusion that the document i.e. the affidavit was not forged at the time of its production before the Court and therefore, the petitioner-complainant had failed to prove his case and the Trial Court had rightly dismissed the application against the aforementioned orders, thereafter the present petition has been filed.

5. The learned counsel for the petitioner contends that the mere filing of evidence by way of an affidavit where the respondent No.1 has called himself a Sarpanch itself amounts to the commission of an offence and appropriate proceedings under Section 340 Cr.P.C. ought to be initiated against him. He however, has not been able to point out anything to establish that the filing of the affidavit in any manner determined the outcome of the civil suit dated 19.01.2017, in which the evidence in the form of the said affidavit was produced.

6. I have heard the learned counsel for the petitioner at considerable length.

7. Admittedly, the evidence in question of respondent No.1- Devinder Pal Singh, Sarpanch was recorded as DW-1 (Annexure P-3). A perusal of the same would reveal that Devinder Pal Singh has called himself a Sarpanch of Village Bibipur. However, other than the said fact, there is absolutely no evidence on the record that the outcome of the civil suit was determined by this purportedly false averment. Secondly, so far as DW-2 is concerned, any defence lead by him during the course of civil proceedings even of denial would not lead to the commission of

any offence for which proceedings under Sections 195/340 Cr.P.C. ought to be instituted.

Importantly, during the course of the trial in the civil suit, the Civil Court too did not record any such finding that the respondents had in any manner committed any offence in question. Even the application under Section 340 Cr.P.C. has been moved after the decision of the civil suit and not during its pendency.

This Court in the case of **Nachhattar Singh Versus Rai Singh & Another, CRM-M-1771-2018, decided on 28.07.2022**, held as under:-

“10. In the present case, undoubtedly, the Civil Suit in which allegedly the false affidavit had been filed has been decreed in favour of the petitioner. However, the said Court nowhere gave a finding that the respondents had deliberately committed any offence in question or had taken a false plea in the written statement or filed any wrong sworn affidavit while appearing in the witness box thereby initiating proceedings under Section 340 Cr.P.C. In fact, no such reference was also made by the said Court while decreeing the suit. Further, the petitioner himself did not make any such application under Section 340 Cr.P.C. read with Section 195 Cr.P.C. before the said Court in order to initiate proceedings. Therefore, the filing of this complaint before another Court after the civil proceedings had culminated, is nothing but an attempt to brow-beat the respondents, who are his real brothers.

11. As per the settled proposition of law as enumerated hereinabove, proceedings under Section

340 Cr.P.C. are not to be initiated in every case where offences are purportedly made out. In fact, the said proceedings are to be initiated only in a situation, where the Court considers it expedient in the interest of justice to make a complaint. This shows that such a course of filing a complaint will only be adopted, if the interest of justice requires and not in every case. In the present case, no such finding has been recorded, as has already been mentioned above and even otherwise, the dispute is between the parties, who are closely related being brothers.

12. In fact, one of the criteria for proceeding under Section 340 of the Cr.P.C. would be where due to the false statement, one party has succeeded in getting a favourable order, which otherwise, he would not have got. Therefore, if the false statement affects the very nature of the order passed by the Court, then, that itself can be one of the circumstances, where proceedings under Section 340 Cr.P.C. ought to be initiated. In the present case, assuming that a false statement had been made either in the written statement or by virtue of filing of affidavits, those pleadings/averments did not affect the fate of the case. In fact the petitioner did obtain a decree in his favour. Therefore, there is no apparent illegality in the orders dated 09.10.2015 (Annexure P-1) and 08.02.2017 (Annexure P-2).

13. Having examined the matter in its entirety, I also find that the dispute in question is between close relatives. Certain pleadings are filed in civil/criminal proceedings and the defendants in a civil proceeding take their defence, which in the present case was denying the right of ownership of the petitioner-

complainant. Every person has a right to defend his case and he can take many defence pleas. Taking up a plea by itself would not amount to giving false evidence. Further, in the present case, in view of the discussion above, it would certainly not be expedient in the interest of justice to proceed against the respondents.

14. In view of the facts and circumstances mentioned hereinabove as also the relationship between the parties and the civil proceedings having culminated in favour of the petitioner, as such no advantage has been taken by the respondents by virtue of their allegedly false pleadings/affidavits. Therefore, it would certainly not be expedient in the interest of justice to initiate proceedings under Section 340 Cr.P.C.

15. Therefore, I find no merit in the present petition and hence, the same is hereby dismissed.”

8. In view of the aforementioned discussion as also the judgment in the case of Nachhattar Singh (supra), it is apparent that the present petition challenging the orders dated 26.04.2018 passed by the Court of learned Judicial Magistrate, 1st Class, Fatehgarh Sahib and order dated 01.12.2021 passed by the learned Additional District Judge, Fatehgarh Sahib is devoid of merit. Therefore, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

21.09.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No