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

CRA-S-1456-2023 (O&M)
Decided on : 15.05.2023

Om Prakash Chhabra ...... Appellant

Versus

Anant Chhabra and another ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Pankaj Kalia, Advocate
for the appellant.

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<u>Manjari Nehru Kaul, J.(Oral)</u>

<u>CRM-22074-2023</u>

Application is allowed as prayed for and the delay of 99 days in filing the appeal is condoned.

<u>Main case</u>

1. The appellant is impugning the order dated 02.12.2022 passed by learned JMIC, Jalandhar vide which an application moved by him for initiating proceedings against the respondents under Section 340 Cr.PC dated 08.10.2018 (Annexure A-4) in CRM-8550-2018 titled as Om Parkash Chhabra vs. Anant Chhabra and another, was dismissed.

2. Learned counsel for the appellant has submitted that he was a defendant in civil suit filed by respondent No.1 for permanent injunction. In the said suit, a prayer had been made by respondent No.1 to restrain the appellant from interfering in his peaceful possession over the property No.WG 421, Mohalla Suraj Ganj, Nakodar Road. The aforesaid property was in the joint

ownership of the respondents, who were running a partnership firm in the name and style of “Chhabra Sweets and Delights”. A rent deed was entered into between the appellant and the respondents on 15.05.2014 qua the aforesaid property for a monthly rent of Rs.25,000/-. The appellant paid an amount of Rs.15 lacs as security upto 31.12.2014. In addition to this, cheque bearing No.063468 dated 20.05.2014 for an amount of Rs.13 lacs was also handed over to respondent No.1 towards part payment.

3. Learned counsel has submitted that however, the respondents on account of malafides backed out from the rent agreement. Still further, respondents, in turn filed a civil suit, in which they suffered a false statement by denying that they had any bank account with Punjab National Bank. Since the aforesaid statement was patently false, the respondent had invited the mischief of offence under Section 195 Cr.PC against them.

4. Learned counsel has further submitted that the Court below while passing the impugned order had failed to appreciate that enough cogent evidence had been led before it to show that the respondents had made a false statement that they did not have any bank account in Punjab National Bank. Learned counsel has submitted that the Manager of Punjab National Bank, who appeared as AW1, had proved on record the account statement of Chhabra Sweets (Ex.PW-1/A). Hence, once AW-1 Manager of Punjab National Bank had categorically deposed and proved that respondents had a bank account, it was evident that the respondents had intentionally given a false statement, and therefore, action against them required to be initiated under Section 340 Cr.PC.

5. Heard learned counsel for the appellant and perused the relevant material available on record.

6. The object behind Section 340 Cr.PC is to ascertain whether any offence affecting or hampering the administration of justice has been committed during the recording of evidence in the Court. It is for the Court to ascertain whether it would be expedient in the interest of justice to initiate any action against the person(s), who has allegedly tried to mislead the Court by giving false evidence before it. Hon'ble Supreme Court while dealing with the provisions of Section 340 Cr.PC and the proceedings under it in ***Chajoo Ram vs. Radhey Sham, 1971 (1) SCC 774*** has held as under:

> *"7. ... 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."*

Still further, Hon'ble Supreme Court in ***R.S.Sujatha vs. State of Karnataka and others, 2011 (1) RCR (Criminal) 365*** has held as under:

> *"18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion*

> *that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."*

7. Adverting to the case in hand, respondent No.2 during his examination-in-chief deposed that there was no account of the respondents in Punjab National Bank at that point of time. He also admitted the fact that one account of M/s Chhabra Sweets had been opened in Punjab National Bank previously.

8. Hence, by no stretch of imagination, it can be said that respondents had tried to mislead the Court and had given false evidence as he did not deny having an account in the Punjab National Bank earlier. Merely, because during his cross-examination, the respondent denied having a bank account "at present" in Punjab National Bank, it would not amount to giving a false evidence.

9. Mere denial of having bank account on the date when the respondent was examined would not in any manner invite an offence of perjury because it is not the case of the respondent that he never had opened any bank account in Punjab National Bank.

10. Hon'ble Supreme Court in ***Amarsang Nathaji as Himself and as Karta and Manager vs. Hardik Harshadbhai Patel and others, Civil Appeal No.11120 of 2016 (Decided on 23.11.2016)*** has held as under:

> *"The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. and Another v. Union of India, 1992 (2) RCR (Crl.) 398). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."*

10. As a sequel to the above, the present appeal stands dismissed being devoid of any merit.

(MANJARI NEHRU KAUL)
JUDGE

15.05.2023
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No