

2024:PHHC:113304



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

122 **CRM M-14346 of 2024**
Date of Decision: 24.07.2024
Chaman Lal ...Petitioner
Versus
Sarwan Kumar and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Chetan Bansal, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 16.10.2023 (Annexure P-1) passed by the Court of Additional Sessions Judge, Amritsar, whereby, the appeal filed by the petitioner under Section 341 Cr.P.C. was ordered to be dismissed and the order dated 24.01.2020 (Annexure P-2) passed by the Civil Judge (Jr. Division), Amritsar was ordered to be upheld.
2. The brief facts of the case are that the petitioner had filed an application under Sections 340 read with Section 195 Cr.P.C. before the Court of Civil Judge/Trial court for initiating perjury proceedings against the respondents. It was averred that Sarwan Kumar, respondent No. 1 had filed a suit for permanent injunction against Chaman Lal, petitioner, which was dismissed by the Court of

Civil Judge, Junior Division, Amritsar, vide judgment and decree dated 27.02.2017. Earlier also, Aanother suit for declaration was filed by Sarwan Kumar against the petitioner and Parkash Chand, which was dismissed by Civil Judge (Junior Division), Amritsar, on 13.06.2012. Even, the appeals against those judgments were ordered to be dismissed and were decided in favour of the petitioner. It was stated that the statements made by Sarwan Kumar and Gian Chand in the suit for declaration and in the suit for permanent injunction were contradictory in nature and even Parkash Chand, respondent No. 3 had also made a written statement. It was further alleged that all the three respondents, who are real brothers had hatched a conspiracy and had given false evidence on oath and had also forged and fabricated certain documents.

3. In support of his case, the petitioner appeared as CW1 and exhibited certain documents. After appearance of the petitioner, his evidence was closed by the Court order.

4. Learned counsel for the petitioner vehemently argues that the respondent No. 1 had filed a civil suit for declaration claiming that the sale deed dated 29.07.2003 was illegal and also sought the relief of permanent injunction against the petitioner from making any additions, alteration or construction in the suit property. The said suit filed by respondent was dismissed by the Court of Civil Judge (Junior Division) on 13.06.2012. In the said suit, Gian Chand and Sarwan

Kumar appeared as PW1 and PW3, respectively, whereas, Parkash Chand proceeded ex-parte. Even, the appeal was ordered to be dismissed by the Court of Additional District Judge, Amritsar, on 30.11.2013. The respondent No. 1 proved the pendency of the earlier suit, also filed a suit for permanent injunction restraining the petitioner and his associates from dismantling any part of the property or from raising any kind of additions, alteration, constriction, reconstruction and sought injunction restraining the petitioner from changing the nature of the plot. The said suit was also dismissed by Civil Judge (Junior Division), Amritsar, on 27.02.2017 and the appeal against the same was also dismissed on 30.04.2019 by the Court of Additional District, Judge, Amritsar. In the second suit, Gian Chand appeared as PW1, Parkash Chand as PW3 and Swaran Kumar complainant as PW4. Learned counsel further contends that the statements made by these witnesses in both the suits were highly contradictory. Even, the petitioner had tendered oral/documentary evidence in support of his application, which was ignored by the Courts and the impugned orders are abundantly illegal and are liable to be set aside.

5. I have heard learned counsel for the petitioner and perused the case file carefully with his able assistance.

6. Section 340 Cr.P.C. deals with the procedure in the cases mentioned under Section 195 IPC and same has been reproduced below:-

"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."

7. A bare reading of aforesaid Section makes it clear that power under this Section can be exercised by the Court either *suo moto* or upon the application made to it in that behalf. Before invoking the provisions of Section 340 Cr.P.C., the Court has to form

an opinion that it is expedient in the interest of justice that an enquiry be made into any offence referred to in clause (b) of sub-section (1) of Section 195 Cr.P.C. The underlying object of enacting Section 195(1)(b)(c) and Section 340 Cr.P.C. seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass their opponents. These provisions are intended to provide safeguard against criminal prosecution on insufficient grounds filed against a party by his opponent motivated by a revengeful desire to harass or spite the opponent.

8. In ***Chajoo Ram Vs. Radhey Sham and another, 1971 AIR 1367*** Hon'ble Apex Court has observed as under:

"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."

9. Similarly, Hon'ble Apex Court again in **Santokh Singh Vs. Izhar Hussain, AIR 1973 Supreme Court 2190**, has observed as under:

".....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. The Court orders 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. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the Court should direct prosecution."

10. In **Thomman Vs. IInd Addl. Sessions Judge, Ernakulam and Others, 1994 Crl. L.J. 48**, Hon'ble Apex Court has observed as under:

"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. 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."

11. Thus, from the afore-stated judgments of the Hon'ble Apex Court, it is clear that every incorrect or false statement does not make it incumbent upon the Court to order prosecution. Such prosecution can be initiated only in those cases where the perjury appears to be deliberate and conscious. 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. These proceedings should not be initiated on inconclusive and doubtful material. Before initiating the proceedings, the Court must reach to the conclusion that initiation of the proceedings is expedient in the interest of justice.

12. In the present case also, both the Courts have discussed the evidence of the complainant witnesses in detail. However, there were minor contradictions in their statements. However, the prosecution for perjury cannot be initiated on such minor variations/contradictions in the statements of the witnesses. Both the Courts have perused the examination and cross-examination of Sarwan Kumar, Parkash Chand and Gian Chand. However, it was deemed fit not to invoke the provisions of Section 340 Cr.P.C. The Hon'ble Supreme Court and this Court have held in number of judgments that inquiry proceedings should be initiated by Court in exception circumstances, where the Court is of the opinion that

perjury had been committed by a party deliberately to solicit beneficiary order from the court. The mere fact that a person has made a contradictory statement in special proceedings is not by itself always sufficient to justify a prosecution.

13. Thus, finding no merits, the present petition is ordered to be dismissed.

24.07.2024.
amit rana

(N.S.SHEKHAWAT)
JUDGE

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