

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SCO/2/2025

SATYA RAJ DAS
VS
ASIS KUMAR DAS

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 1st April, 2026

Appearance:

Mr. Surajit Nath Mitra, Sr. Adv.
Ms. Sananda Mukhopadhyay, Adv.
Ms. Susmita Pal, Adv.
...for the Petitioner

Mr. Shibo Prasad Mukherjee, Sr. Adv.
Ms. Sudeshna Das, Adv.
...for the Respondent.

The Court: This is an application filed under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 215 read with Section 227 and 229 of the Bharatiya Nyaya Sanhita, 2023.

This application is connected to GA 3 of 2024, an application pending for revocation of grant of probate.

One PLA 58 of 2021 was filed by the present Petitioner praying for grant of Letter of Administration in respect of the last will and testament of the Testatrix Shefali Bhattacharjee, since deceased. Letter of Administration was granted by this Court on 27/04/2022. After grant of the aforesaid Letter of Administration, the

Respondent herein filed the application being GA No. 3 of 2024 praying for revocation of the grant. The instant application is filed alleging that the Respondent herein has made false averments before this Court. The particulars of the allegations made in this application, in nutshell, are as follow:

- a) From Para. 39 to 41 of the application for revocation of grant (GA No. 3 of 2024), it would appear that it is the case of the present Respondent that he came to know of the will of the Testatrix sometime on or after the middle week of September 2022. Paragraphs 42 and 43 of the revocation application aver that subsequently, he made contract with his Advocate and on advice of the said Advocate he obtained certified copy of the Probate Application (PLA No. 58 of 2021) along with copies of the Will, death certificate of the Testatrix and other cause papers.

The statements, so made by the Respondent, in Para. 39 and 43 of the revocation application is false and known to him as false and the same would appear from the annexures.

- B) In Paragraphs 44 and 45 of the revocation application the Respondent alleged that on perusal of the certified copy of the entire probate proceeding and on careful reading of the death certificate of the deceased, it was seen by him that the deceased expired at Green View Nursing Home at Panihati on 14th August. The same was reiterated in the Affidavit in Reply, filed in the said revocation application.

These statements are also false and false to his knowledge, as would be evident from the death certificate relied on by the Respondent in an application filed by him for grant of probate of an earlier Will of the

Testatrix dated 05/11/2004. The said death certificate of the Testatrix had been obtained by the Respondent on 28/07/2022 even prior to making application being PLA 58 of 2021.

- C) It was further averred that in the Affidavit-in-Opposition specific plea was taken by this Petitioner challenging the maintainability of the revocation application since the Petitioner had not taken any step for grant of probate of the alleged Will of the Testatrix dated 05/11/2004.

Falsity of the statements on oath made by the Respondent herein would be evident from the Probate Case No. 45 of 2023 filed in the City Civil Court at Calcutta.

In terms of an earlier order, this Court directed that at this stage, the Respondent has no right of audience. In view of the fact that the Respondent has no right to audience at this stage, this Court should be cautious in appreciating the applicable provisions and interpretation thereof.

In Para. 39 of the revocation application it was stated that in the middle week of September 2022, the Respondent came to know about the grant. But it is on record that certified copies of the Probate Application was obtained on 17/08/2022, prior to the mid-week of September 2022. Copy of death certificate was obtained on 28/07/2022. This certified copy of death certificate of the Testatrix was annexed to the Probate Case No.45 of 2023, filed in the City Civil Court at Calcutta, though it is in the revocation application that he came to know the death of the Testatrix at a later point of time.

In this premises, it is to be considered whether the instant application should be allowed or dismissed.

Section 379 of the BNSS, 2023 read as follow:

“379.Procedure in cases mentioned in section 215.

(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 215, 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 215.

(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 215.”

This Section is *peri materia* with Section 340 of the Code Criminal Procedure, 1973 which states:

Section 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;
- ¹[(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."

From time to time the Supreme Court of India considered the scope and ambit of Section 340 of the Code of Criminal Procedure, 1972. The spirit and contentions of both the provisions namely Section 340 of the Code of Criminal Procedure, 1973 and Section 379 of the B.N.S.S, 2023 are identical. Both the provisions are applicable in the same sphere with the same spirit. Observations and the governing principles of Section 340 of the Code of Criminal Procedure, 1973 as well as Section 379 of B.N.S.S, 2023 are the same.

In **K.T.M.S. Mohd & Anr. Vs. Union of India [(1992) 3 SCC 178]**, the Supreme Court of India observed that there is a word of caution built in section 340 itself that the action to be taken should be expedient in the interests of justice. Therefore, it is incumbent that the power given by section 340 of the Cr.P.C. should be used with utmost care and after due consideration. It was further observed that the fact that the deponent had made contradictory statements at two different stages in a judicial proceeding is not itself always sufficient to justify a prosecution of perjury. It was further observed that under Section 193 of Indian Penal Code it must be established that the deponent has intentionally given false statement in any stage of judicial proceeding or fabricated false evidence for the purpose of any stage of judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interests of justice. In **Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr. [(2005) 4 SCC 370]** a probate application was contested on the ground that the concerned will was forged by the Respondent. On their application, the Appellant No.1 produced the will. Then on the ground of forgery, the Respondent took recourse to an application under section 340 of the Code of Criminal Procedure, 1973. Constitutional Bench considered the scope of

Section 340 of the Code of Criminal Procedure, 1973 specifically in view of the prevailing conflicting decisions. The following observation of the Supreme Court of India is relevant:

“23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice”. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a

situation where a victim of a crime is rendered remediless, has to be discarded. “

In Amarsang Nathji Vs. Hardik Harshadbhai Patel & Ors. [(2017) 1 SCC 113] the Supreme Court of India observed that there are two pre-conditions for initiating proceedings under Section 340 of Cr.P.C.:-

“**5.** There are two preconditions for initiating proceedings under Section 340 CrPC:

(i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 CrPC, and

(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

6. 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 Penal Code, 1860 (45 of 1860) (hereinafter referred to as “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 to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See *K.T.M.S. Mohd. v. Union of India* [*K.T.M.S. Mohd. v. Union of India*, (1992) 3 SCC 178 : 1992 SCC (Cri) 572]). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.”

In Chintamani Malviya Vs. High Court of Madhya Pradesh [(2018) 6 SCC 151], it was alleged that the Appellant had committed perjury by stating falsely that the notice in the election petition was given to his employee whereas the said notice

was actually served upon the Appellant by the process server. Referring to earlier authorities, **Amarsang Nathji's** case (supra) as well as **K.T.M.S. Mahammad's** case (supra), the Bench observed that initiation of proceeding in that case was not consistence with the parameters laid down by this Court. In **James Kunjwal vs State of Uttarakhand and Anr.[2024 SCC OnLine SC 1943]**, after considering all the previous authorities and judicial precedents, three Judges' Bench of the Supreme Court of India held:

“16. What we may conclude from a perusal of the above-noticed judicial pronouncements is that:—

- (i) The Court should be of the *prima facie* opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);
- (ii) Such proceedings should be initiated when doing the same is “expedient in the interests of justice to punish the delinquent” and not merely because of inaccuracy in statements that may be innocent/immaterial;
- (iii) There should be “deliberate falsehood on a matter of substance”;
- (iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;
- (v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.”

On the basis of aforesaid discussions and authorities above mentioned, it is clear that making mere contradictory statements does not attract the penal provisions of perjury. Secondly, even making false statement is also not enough to attract the penal provisions. Further, parameter is that, as observed by the five

Judges Bench in **Iqbal Singh Marwah's** case ,that it is expedient in the interests of justice that an enquiry should be made and that this expediency will normally be judged by the Court by owing not the magnitude of injury suffer but having regard to the effect or impact of such commission of offence on the administration of justice.

Mr. Mitra, the Learned Senior Counsel referred to **K. Karunakaran Vs. T. V. Eachara Warriar & Anr. [(1978) 1 SCC 18]**; **L. S. Raju Vs. State of Mysore [(1954) 2 SCC 473]**. In **L.S. Raju's** case false statements was made by the Appellant accused who was one of the Senior Advocate of the High Court and one of the Joint Executors appointed by retired Judge of High Court under a Will followed by two codicils. Considering the gravity of allegation, conviction under Section 191 as well as 193 was upheld. However, this judgment did not consider the scope of Section 340 of the Cr.P.C. In **K. Karunakaran's** case scope of Section 340 of the Cr.P.C. was considered. In this case, it was held by the Supreme Court of India that an enquiry held by the Court under Section 340(1) of the Cr.P.C., irrespective of the result of the main case, the only question is whether a *prima facie* case is made out which, if unrebutted, may have reasonable likelihood to establish the specified offence and whether it is also expedient in the interests of justice to take such action. It was also observed whether the Appellant made a false statement before a High Court and intentionally did so, will be an issue at large for trial of the criminal court. Observation and decision in the first case was on its own merit and specific facts and circumstances. So far as, **K. Karunakaran's** case is concerned the law has been elaborately explained in subsequent decisions and specially by five Judges Bench in **Iqbal Singh Marwah's** case which has a precedence over the decisions made in this case.

Coming to the case in hand, statements were made by the Respondent which are contradictory or, let me say, false. But these false statements, even if it is so assumed, have little impact on the judicial proceeding. This Court is unable to find a case of deliberate falsehood calculated to impede the judicial proceedings. There may be false averments on date of knowledge of the death of the Testatrix or date of obtaining certified copy. These statements might have been advantageous to the Respondent for hearing revocation application to set up a wall against encroaching limitation. But at the time of hearing, these statements may be considered by the Court to come to a decision. By itself these statements would not stand on the way of hearing a revocation application. These statements are not impediments in administration of justice. Observations made in **Iqbal Singh Marwah's** case (supra) are relevant.

For reasons stated above and following the judicial precedents, this Court is of opinion that it is not expedient to initiate proceeding under Section 379 of the BNSS, 2023.

Accordingly, the instant application stands disposed of.

Fix 20th May, 2026 for hearing revocation application.

(SUGATO MAJUMDAR, J.)