Amarsang Nathaji As Himself And As Karta ... vs Hardik Harshadbhai Patel And Ors on 23 November, 2016

Equivalent citations: AIR 2016 SC 5384, 2017 (1) SCC 113, 2017 CRI. L. J. 758, AIR 2017 SC (CRIMINAL) 146, (2017) 1 GUJ LH 100, (2017) 1 PAT LJR 287, (2017) 1 WLC(SC)CVL 91, (2017) 1 ALLCRILR 343, (2017) 1 CRILR(RAJ) 301, 2017 CRILR(SC&MP) 301, (2017) 1 RECCRIR 92, (2017) 123 CUT LT 742, (2017) 1 JLJR 131, (2017) 169 ALLINDCAS 65 (SC), (2017) 66 OCR 77, (2016) 4 CURCRIR 244, 2017 CRILR(SC MAH GUJ) 301, (2016) 12 SCALE 269, (2017) 1 ALD(CRL) 407, (2017) 1 ORISSA LR 306, (2017) 1 MAD LJ(CRI) 481, (2017) 1 MH LJ (CRI) 323, (2017) 98 ALLCRIC 675, (2017) 1 CAL HN 27, (2016) 4 CRIMES 190, 2017 (1) SCC (CRI) 237, (2017) 1 BOM CR 265, AIR 2016 SUPREME COURT 5384

Bench: Rohinton Fali Nariman, Kurian Joseph

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11120 OF 2016
(Arising out of S.L.P.(C) No. 13749 of 2016)

AMARSANG NATHAJI AS HIMSELF
AND AS KARTA AND MANAGER ... APPELLANT (S)

VERSUS

HARDIK HARSHADBHAI PATEL AND
OTHERS ... RESPONDENT(S)

J U D G M E N T

KURIAN, J.:

Leave granted.

The scope of this appeal is limited to the challenge on legality of the proceedings under Section 340

of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") initiated by the High Court as part of the impugned judgment dated 12th/13th April, 2016 in Appeal from Order No. 489 of 2013 on the file of the High Court of Gujarat. The appeal before the High Court arose from an order passed by the Senior Civil Judge, Ahmedabad declining to grant an interim injunction, in Civil Suit No. 28 of 2012. Having extensively referred to the materials on record, the High Court after elaborately considering the arguments, by a detailed judgment, dismissed the appeal, confirming the order passed by the trial court. The plaintiff/respondent had also approached this Court by way of a Special Leave Petition (Civil) No. 14478 of 2016. The said Special Leave Petition has been dismissed on 15.11.2016 as not pressed on the submission that the parties have reached an amicable settlement on the issue. The High Court, on account of the contradictory stand taken by the appellant herein who was the first respondent before the High Court (Defendant no.1 in the Suit), took the view that the conduct of the appellant has affected the administration of justice, and therefore, it was expedient in the interests of justice to file a complaint against the appellant under Section 340 of the Code.

It is necessary to refer to the relevant paragraphs in the judgment where the High Court has dealt with the issue:

> "19. Before concluding, the Court deems it necessary to take serious view on the conduct of the respondent No.1 – defendant No.1, who either for an extraneous consideration, or to save his skin, has taken contradictory stands in the judicial proceedings by filing one written statement at Exh. 20 supporting the case of the present appellant – plaintiff and subsequently by filing the application at Exh. 43, and other documents in the nature of affidavits supporting the case of the respondents No.3 to 5.

It appears that the respondent No.1 has tried to change his version after the impugned order was passed by the trial Court, just to suit his purpose, misusing and abusing the process of law. The Court is constrained to observe that due to sky-rocketing escalation in the prices of the lands in and around the urban areas, the execution of such illegal agreements at the instance of the owners/power-of-attorney holders/banakhat holders has become rampant, and that more often than not, the proceedings of Courts are being misused and abused to a large extent by such unscrupulous elements. In many cases, innocent persons are being cheated and defrauded by such elements, in the quest of earning easy money, dragging such innocent persons to litigations which go on for years together.

20. In the instant case also, the respondent No.1 – defendant No.1 after requesting the trial Court to reopen his right to file written statement, and after filing written statement at Exh.20 along with the affidavit and declaration supporting the case of the appellant – plaintiff, had filed an application at Exh. 43, requesting the trial Court to de-exhibit the earlier written statement at Exh. 20 by stating, inter alia, that the said written statement was filed by the Advocate Ms. Trupti Patel on his behalf without his knowledge. The said Application at Exh. 43 was rejected by the trial Court, which order has remained unchallenged. All these documents namely the written statement at Exh. 20 with affidavit and declaration and the other written statement and the affidavit filed before the trial Court

have also been produced by the learned Counsels for the parties in the present proceedings and have been relied upon by them, to support their respective contentions. From the said documents on record, it clearly transpires that the respondent No.1 – defendant No.1 had sought to produce two sets of documents contradictory to each other, in relation to the proceedings in this Court, and had made the declarations and statements which he knew were false, for being used as evidence in the judicial proceedings. The respondent No.1 has neither denied his signatures on the written statement Exh. 20 and the affidavit filed along therewith, nor has taken any action against the advocate Ms. Trupti Patel, who had allegedly filed the said written statement on his behalf. The second written statement was sought to be filed along with the application Exh. 43 after the impugned order was passed by the trial Court, and when the present Appeal from Order was pending before this Court. The Court, therefore, has reason to believe that the respondent No.1 has deliberately and consciously tried to take Courts for a ride and filed the documents and declarations making false statements which could be read as evidence in the judicial proceedings, and thereby has prima facie acted in the manner which would affect the administration of justice, tantamounting to the offences as contemplated in Section 199 and Section 200 of IPC, and as referred in Section 195(1)(b)(i) of Cr.P.C. As stated herein above, nowadays such illegal transactions and agreements are rampant, and the process of law is being misused and abused by the unscrupulous elements, which ultimately hampers the administration of justice. The Court, therefore, is of the opinion that it is expedient in the interest of justice to file complaint against the respondent No.1 in exercise of the powers conferred under Section 340 of Cr.P.C.

21. In view of the above, the Appeal from Order is dismissed. The Registrar (Judicial), Gujarat High Court, Ahmedabad is directed to make complaint against the respondent No.1 in view of the above findings recorded by the Court for the offence under Section 199 and Section 200 of IPC before the competent Court of Magistrate, having jurisdiction, who shall, after following the procedure as contemplated in Section 343 of Cr.P.C., deal with the case in accordance with law." It is the main contention of the learned counsel for the appellant that while passing the order, as extracted above, the High Court has not followed the procedure contemplated under Section 340(1) of the CrPC. Section 340(1) of the CrPC reads as follows:

> "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." There are two pre conditions 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 of the CrPC and (ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

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[1]). 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 the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 of the CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See Pritish v. State of Maharashtra and Others[2]). In Iqbal Singh Marwah and Another v. Meenakshi Marwah and another[3], a Constitution Bench of this Court has gone into the scope of Section 340 of the CrPC. Paragraph-23 deals with the relevant consideration:

> "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. ..." Having heard the learned counsel appearing on both sides and having gone through the impugned order and also having regard to the subsequent development whereby the parties have decided to amicably settle some of the disputes, we are of the view that the matter needs fresh consideration. We are also constrained to form such an opinion since it is fairly clear on a reading of the order that the court has not followed all the requirements under Section 340 of the CrPC as settled by this Court in the decisions referred to above regarding the formation of the opinion on the expediency to initiate an inquiry into any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of the IPC, when such an offence is alleged to have been committed in relation to any proceedings before the court. On forming such an opinion in respect of such an offence which appears to have been committed, the court has to take a further decision as to whether any complaint should be made or not.

No doubt, such an opinion can be formed even without conducting a preliminary inquiry, if the formation of opinion is otherwise possible. And even after forming the opinion also, the court has to take a decision as to whether it is required, in the facts and circumstances of the case, to file the complaint. Only if the decision is in the affirmative, the court needs to make a complaint in writing and the complaint thus made in writing is then to be sent to a Magistrate of competent jurisdiction. Under Section 343 of the CrPC, the Magistrate has to deal with the complaint referred to in Section 340 of the CrPC as if it was instituted on a police report. Therefore, on the offences referred to under Section 195(1)(b)(i) of the CrPC, all falling within the purview of warrant case, the Magistrate has to follow the procedure for trial of warrant cases under Chapter XIX Part A comprising of Sections 238 to 243 of the CrPC. It is only in view of such seriousness of the matter, Section 340 of the CrPC has provided for a meticulous procedure regarding initiation of the inquiry. We find that the court in the impugned order has not followed the procedure in making the opinion that it was expedient in the interests of justice to file a complaint against respondent no.1 in exercise of the powers conferred under Section 340 of the CrPC and directing the Registrar (Judicial) of the High Court of Gujarat, Ahmedabad "to make complaint against respondent no.1 in view of the findings recorded by the court for the offence under Sections 199 and 200 of the IPC....". Having regard to the subject matter of the complaint and subsequent developments, we are of the view that in the interests of justice the matter needs to be laid to rest. The appeal is hence allowed. The impugned order to the extent of initiation of the proceedings under Section 340 of the CrPC is set aside. There shall be no orders as to costs.

.....J. (KURIAN JOSEPH) .....J. (ROHINTON FALI NARIMAN) New Delhi;

November 23, 2016.

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[1] (1992) 3 SCC 178
[2] (2002) 1 SCC 253
[3] (2005) 4 SCC 370

REPORTABLE
