# Prof. Chintamani Malviya vs High Court Of Madhya Pradesh on 27 April, 2018

## Equivalent citations: AIR 2018 SUPREME COURT 2656, 2018 (6) SCC 151, AIR 2018 SC( CRI) 855, (2018) 2 CRILR(RAJ) 479, (2019) 1 MH LJ (CRI) 70, (2018) 71 OCR 177, (2018) 3 BOMCR(CRI) 140, 2018 (3) SCC (CRI) 89, (2018) 2 UC 891, (2018) 6 SCALE 437, (2018) 190 ALLINDCAS 31 (SC), 2018 CALCRILR 2 469, (2018) 2 CRIMES 397, (2018) 2 CURCRIR 225, (2018) 3 ALLCRILR 577, 2018 CRILR(SC MAH GUJ) 479, (2019) 106 ALLCRIC 694, (2018) 2 ALLCRIR 1630, (2018) 2 ALD(CRL) 186, 2018 CRILR(SC&MP) 479, (2018) 3 CAL LJ 6

## Author: Uday Umesh Lalit

## Bench: Uday Umesh Lalit, Arun Mishra

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Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 649 OF 2018
(Arising out of S.L.P. (Crl.) No.545 of 2016)

Prof. Chintamani Malviya ……Appellant

Versus

High Court of Madhya Pradesh ..…. Respondent

JUDGMENT

Uday Umesh Lalit, J.

Leave granted.

2. This appeal challenges the Judgment and Order dated 07.10.2015 passed by the High Court of Madhya Pradesh at Indore in M.CR.C No.2526 of 2015 whereby the High Court authorized the Principal Registrar of the High Court under Section 195(1)(b)(i) of Criminal Procedure Code ("Cr.P.C", for short) to file complaint in the concerned court of Magistrate against the appellant herein.

3. The appellant was elected to Lok Sabha in the elections held in the year 2014 from Ujjain Lok Sabha Constituency. His election was challenged vide Election Petition No.33 of 2014 by one Premchand Guddu. On 31.07.2014 notice was issued by the High Court in said election petition and the same was to be served upon the appellant through the District Judge, Ujjain. The next date in the petition being 01.09.2014, the notice was said to have been served upon the appellant on 16.08.2014 by one Mr. Arun Bhalerao, Process Server.

4. According to the appellant, the aforesaid notice was served on one of his employees while the appellant was in Delhi and that the appellant came to know about the pendency of the election petition only on 25.01.2015. On the other hand according to the election petitioner, the process server had served the notice on the appellant himself.

5. On the returnable date of hearing, namely, on 01.09.2014, neither the appellant was present before the High Court nor was he represented by any counsel. Since the service report presented before the Court showed that the appellant was duly served on 16.08.2014, the case proceeded ex parte.

6. On 29.01.2015 the appellant moved an application under Order 9 Rule 7 Civil Procedure Code ("CPC", for short) being I.A. No.927 of 2015 and submitted inter alia that the process server had served notice and documents on one of the employees while the appellant was in Delhi and that the appellant came to know about the election petition only on 25.01.2015. Soon thereafter the original election petitioner filed an application under Section 340 Cr.P.C. being I.A. No.1303 of 2015 in pending election petition alleging that the appellant had committed perjury by stating falsely that the notice in the election petition was given to his employee whereas said notice was actually served upon the appellant by the process server.

7. By its order dated 24.03.2015, the High Court allowed I.A. No.927 of 2015 preferred by the appellant for setting aside the order for proceedings ex-parte against the appellant and it allowed the appellant to participate in the proceedings. Further, by another order of the same date, the High Court allowed I.A. No.1303 of 2015 preferred by the original election petitioner and directed the Registry to register a criminal case. The Registrar was also given directions to conduct appropriate inquiry under Section 340 Cr.P.C. In compliance of said order, M.Cr.C. No.2526 of 2015 was registered on 27.03.2015 and appropriate show cause notice was issued to the appellant. In the subsequent proceedings, statement of Mr. Arun Bhalerao, Process Server was recorded who stated that the requisite notice was served on the appellant by him.

8. By its order dated 24.09.2015, the High Court accepted the plea taken by the appellant in his application preferred under Order 7 Rule 11 C.P.C. in pending election petition and the election petition was dismissed.

9. By subsequent order dated 07.10.2015 which is presently under appeal, the High Court authorized the Principal Registrar of the High Court under Section 195(1)(b)(i) of Cr.P.C. to file appropriate complaint in the concerned Court of Magistrate. It was observed:-

> "(6) After recording the statements and taking into consideration the served notice bearing No.1762 dated 12.08.2014 and enclosed hukmnama, it is apparent that notice was served personally on the respondent while in the affidavit, he mentioned that notice was served on his staff.

... (8) It is to be seen whether, it is in the interest of justice to punish the respondent whether, such lapses on his part are immaterial and innocent.

(9) Counsel for the respondent argues that it was unintentional mistake on the part of the respondent and, therefore, no action should be taken against him. (10) In my considered opinion, however, more cautious and responsible approach was expected from the respondent being representative of people and professor himself. He is expected to understand the consequences of not appearing before the Court of law and specially before the High Court. Therefore, in this case, lenient and sympathetic view is not called for. In this view of the matter, I find that prosecution for perjury should be initiated against the respondent."

10. Appearing for the appellant, Mr. K.V. Vishwanathan, learned Senior Advocate submitted inter alia ;

(a) It has consistently been laid down by this Court that prosecution for perjury be sanctioned by Courts only in those cases where perjury appears to be deliberate and on a matter of substance and the conviction would reasonably be probable. Further, prosecution ought to be ordered when it would expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement. He placed reliance on the decision of this Court in Chajoo Ram v. Radhey Shyam and Another1 where this Court observed:-

> "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. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation...." Reliance was also placed on the decision of this Court in K.T.M.S. Mohd. and Another v. Union of India2.

(1971) 1 SCC 774 (1992) 3 SCC 178

(b) The fact that there was delay of five months in filing the application under Order 9 Rule 7 from the date of alleged service of notice on 16.08.2014 indicated that the appellant was not aware of the pendency of the election petition.

11. Ms. Swarupama Chaturvedi, learned Advocate appearing for the respondent submitted that for a person to be made liable under Section 191 and 193 of IPC following ingredients would be required :-

(i) Person must be legally bound by an oath or any express provision of law to state the truth or to make a declaration on any subject.

(ii) He must make the false statement.

(iii) He must know or believe to be false or must not be believed to be true.

Relying on Baban Singh and Anr v. Jagdish Singh & Ors3, it was submitted that the appellant was obliged to state facts correctly. According to Ms. Chaturvedi the statement of Arun Bhalerao, Process Server clearly showed that the appellant himself had signed the receipt of notice and yet a false statement was made.

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12. Having given our anxious consideration to the entirety of the matter, in our view, the guiding principle is the one as laid down in Chajoo Ram (supra). The law is clear, "prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent.... and there must be prima facie case of deliberate falsehood on the matter of substance and the Court should be satisfied that there is reasonable foundation for the charge". The assessment made by the High Court, as extracted in the paragraph hereinabove, in our considered view, does not satisfy the parameters and requirements as laid down by this Court.

13. Recently, this Court in Amarsang Nathaji v. Hardik Harshadbhai Patel and Others4 summed up the legal position as under:

"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). The

(2017) 1 SCC 113 court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."

14. We are of the considered view that initiation of proceedings in the present case was not consistent with the parameters laid down by this Court. The election petition itself has been dismissed and considering the entirety of the matter, it would not be expedient to initiate proceedings under Section 340 Cr.P.C. read with Section 195(1)(b)(i) of Cr.P.C. We, therefore, accept the appeal and close the proceedings. The appeal stands allowed and the judgment and order under appeal is set aside.

.....J. (Arun Mishra) .....J. (Uday Umesh Lalit) New Delhi, April 27, 2018