M.S.Ahlawat vs State Of Haryana And Anr on 27 October, 1999

Equivalent citations: AIR 2000 SUPREME COURT 168

Bench: S. Rajendra Babu, R.C. Lahoti

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           CASE NO.:
Writ Petition (crl.)  353 of 1997

PETITIONER:
M.S.AHLAWAT

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT: 27/10/1999

BENCH:
DR. A.S. ANAND CJ & S. RAJENDRA BABU & R.C. LAHOTI

JUDGMENT:
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JUDGMENT 1999 Supp(4) SCR 160 The Judgment of the Court was delivered by RAJENDRA BABU, J, By an order made on January 17, 1996 Writ Petitions (Criminal) Nos. 356-57 of 1996 were disposed of by this court. In the course of that order it was held that the petitioner, M.S. Ahlawat, has deliberately fabricated false records before this Court. He is, therefore, held punishable under Section 193 Indian Penal Code (IPC) and also for contempt of this Court under Article 129 of the Constitution of India, Accordingly, he was convicted and sentenced under Section 193 IPC to undergo rigorous imprisonment for a term of one year and under Article 129 of the Constitution of India to undergo rigorous imprisonment for a term of 6 months but both the sentences were directed to run concurrently. Now it appears that the petitioner has undergone the sentence of imprisonment imposed by this Court under the said two provisions, While hearing the Writ Petitions (Criminal) Nos, 356-57 of 1996, it was reported on November 5, 1993 to this Court through the Standing Counsel that his signature on the affidavit filed in this Court has been forged. This Court, after considering the two affidavits filed on November 2, 1993 and November 5, 1993 purported to have been made by the petitioner, directed a detailed inquiry to be made by the District Judge, Faridabad about the alleged forgery of the petitioner's signature. The District Judge made a report on January 29, 1994 holding that the petitioner was not responsible for the same. After considering the report of the District Judge this Court ordered investigation as to the purported forgery and the Central Bureau of Investigation (CBI) was entrusted with the inquiry. On receipt of the report of the CBI this Court on April 17, 1995 issued notice to Head Constable Krishan Kumar, SI Ishwar Singh and ASI Randhir Singh as to why they should not be convicted for forgery of the signatures of the petitioner on the affidavits dated November 2, 1993 and November 5, 1993 and also for contempt of this Court for filing false affidavits. On July 10, 1995 this Court issued a notice to the petitioner to show cause why he should not be considered for conviction for forgery and making false statements at different stages in this Court and for committing contempt of this Court.

On January 17, 1996 after perusing the affidavits this Court convicted the petitioner as stated earlier. Review Petition against the same was also dismissed summarily on March 29, 1996. In this writ petition the petitioner while challenging his conviction under Section 193 IPC is not questioning the conviction under Article 129 of the Constitution of India for committing the contempt of this Court.

Shri Harish Salve, learned senior counsel for the petitioner, contended that in convicting the petitioner under Section 193 IPC this Court has completely stultified the procedure prescribed under the Code of Criminal Procedure thereby acting contrary to the mandate of Article 21 of the Constitution of India. Elaborating this submission he stated that Section 195 Cr.P.C, deals with the manner of taking cognizance of offences arising under Section 193 IPC and Section 340 Cr.P.C. regulates the procedure of making complaints thereto. A complaint ought to have been filed in a competent criminal court for offences arising under Section 193 IPC as provided in Section 195 Cr.P.C. read with Section 340 Cr.P.C. and this Court itself could not have assumed jurisdiction of a criminal court and convicted the petitioner without trial.

On behalf of the petitioner Shri Harish Salve also contended that the gist of offence of perjury punishable under Section 193 IPC and the charge for contempt of this Court being identical, while detailed and elaborate inquiry at a trial in a criminal case is contemplated for the former but a summary inquiry for the later. This Court ought to have directed a complaint being lodged in a competent criminal court and postponed the consideration of the case arising for contempt of this Court. However, this line of argument is not pursued with since the petitioner is confining his case only to challenging conviction under Section 193 IPC.

Chapter XI of IPC deals with false evidence and offences against public justice' and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

Section 340 Cr.P.C. prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. While under Section 195 Cr.P.C, it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr.P.C. prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 Cr.P.C. are mandatory and no court can take cognizance of offences referred to therein. It is in respect of such offences the court has jurisdiction to proceed under Section 340 Cr.P.C. and a complaint outside the provisions of Section 340 Cr.P.C. cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.

This Court in Chajoo Ram v, Radhey Shyam & Anr., AIR (1971) SC 1367, stated that where the offence relates to a court under Section 195 Cr.P.C. sanction of the court should be obtained first and such sanction should be granted only in those cases where me perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely and to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very end. It is made clear that there is no inherent power to make a complaint apart from the provisions of Section 195 Cr.P.C.

We have given our anxious consideration to the questions raised in this case vis-a-vis the background in which this Court was constrained to pass the order impugned herein. When a litigant complains of miscarriage of justice by exercise of powers of this Court which is without jurisdiction or not after following due procedure resulting in his incarceration in a prison losing valuable liberty for a period with the attendant catastrophe descending on his career and life we have no option but to examine the correctness of his contention.

This Court in Supreme Court Bar Association v. Union of India & Anr., [1998] 4 SCC 409, has held as follows:

> "However, the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed the Supreme Court is not a court of restricted jurisdiction of only dispute-settling. The Supreme Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by the Supreme Court while making an order under Article
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> 142. Indeed these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

It was made clear in Supreme Court Bar Association case (supra) that under Article 142 of the Constitution this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism, prescribed in another

statute. This Court notices that "a complaint of professional misconduct is required to be tried by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The enquiry is a detailed and elaborate one and is not of a summary nature and it is, therefore, not permissible for this Court to punish an advocate for `professional misconduct' in exercise of the appellate jurisdiction by converting itself as the statutory body exercising `original jurisdiction' under Article 142 of the Constitution of India".

In Mohan Singh v. Late Amar Singh through L.Rs., [1998] 6 SCC 686, a contention had been raised that the landlord had procured an order by playing fraud on the court by producing a forged document. It is noticed herein that:-

> "Tampering with the record of judicial proceedings and filing of false affidavit in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of the unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity. Since we are prima facie satisfied that the tenant has filed false affidavits and tempered with the judicial record, with a view to eradicate the evil of perjury, we consider it appropriate to direct the Registrar of this Court to file a complaint before the appropriate court and set the criminal law in motion against the tenant, the appellant in this case namely Mohan Singh".

This Court has always adopted this procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false. We have not been able to appreciate as to why this procedure was given a go-bye in the present case. May be the provisions of Sections 195 and 340 Cr.P.C. were not brought to the notice of the learned Division Bench.

In the light of the enunciation of law made by this Court in the Supreme Court Bar Association case (supra), this Court could not have assumed jurisdiction by issue of a notice proposing conviction for forgery and making false statements at different stages in the court punishable under Section 193 IPC without following the procedure prescribed under Sections 195 and 340 Cr.P.C. Primarily this Court does not exercise any original criminal jurisdiction in relation to offences arising under Section 193 IPC and secondly the seriousness of the charge arising under Section 193 IPC requires an elaborate inquiry and trial into the matter by me competent criminal court and a summary inquiry by mere issuing a show cause notice and considering affidavits or inquiry reports would not tantamount to a procedure provided under the Criminal Procedure Code. The order made by this Court convicting the petitioner under Section 193 IPC is, therefore, one without jurisdiction and without following due procedure prescribed under law. Though it is not clear from the impugned order whether the powers under Article 142 of the Constitution were exercised to convict the petitioner under Section 193 IPC, we have proceeded on the assumption that it is by exercise of that power that the impugned order had been made for there is no other provision enabling the passing of such an order. As discussed earlier, in view of the decision in Supreme Court Bar Association, case

(supra) such an order could not have been made.

At this stage the petitioner has filed an Affidavit of Undertaking on October 12, 1999 in the following terms:-

> "(1) That I am the petitioner in the above-mentioned writ petition and as such am fully conversant with the facts and circumstances of the case and am fully competent to swear this affidavit.
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> (2) that I have filed the above mentioned writ petition in which I have put in issue my conviction under Section 193 IPC by this Hon'ble Court vide judgment and order dated 17.10.96 passed in Writ Petition (Crl.) No. 356-357 of 1993.
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> (3) That I undertake to this Hon'ble Court that in case my conviction Us 193 IPC is set-aside I will not claim any compensation or initiate any proceedings before this Hon'ble Court or any other court for my conviction Us 193 IPC and for the contempt of court under Article 129 of the Constitution or for the sentence I had undergone pursuant to the said conviction, save and except using any order passed by this Hon'ble Court, setting aside my conviction Us 193 IPC in any proceedings initiated by State in relation to my service in the Indian Police Services and/or any departmental proceedings.
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> (4) that the averments made in this affidavit are true to my knowledge and have been made of my own volition."

To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience. We, therefore, unhesitatingly set aside the conviction of the petitioner for the offence under Section 193 IPC. We also do not at this stage, consider it expedient to direct the filing of a complaint in the competent court as envisaged by Section 340 Cr.P.C. because the petitioner has already undergone the sentence imposed upon him for an offence under Section 193 IPC although set aside now by this order and we are upholding his conviction and sentence imposed under Article 129 of the Constitution of India for committing contempt of court.

For the aforesaid reasons, the order made in Writ Petitions (Criminal) Nos. 356-357 of 1996 convicting the petitioner under Section 393 1PC is recalled and set aside. It is made clear that this order will not enable the petitioner to claim any compensation or initiate any proceedings in any court arising out of his conviction under Section 193 IPC except to use the same in any proceeding initiated against the petitioner departmentally regarding his services,