

Kuldeep Kapoor vs Susanta Sengupta on 8 December, 2005

Equivalent citations: 126(2006)DLT149

Author: Swatanter Kumar

Bench: Swatanter Kumar

JUDGMENT

Swatanter Kumar, J.

1. This is an application filed by the defendant under Section 340 of the Code of Criminal Procedure (in short Cr.P.C.) against the plaintiff Kuldeep Kapoor and his accomplices viz. Girdhari Lal, Ashok Kapoor and Ms. Priya Kapoor. This application has been filed in the above suit during its pendency. According to the defendant after putting his signatures on the agreement to sell, he had left the blanks unfilled in clauses 1 and 2 of the said agreement. In clause 4 of the said agreement, he had put signatures just above the said clause and this was done to validate a correction i.e addition of the letter 'd' in the word 'mature'. The two witnesses attested this document. According to the applicant, the copy of the receipt dated 20th October, 2004 on which the plaintiff has based his suit, is a forged document. Photo copy of the agreement as well as the original receipt had been placed on record as Annexures R-1 and R-2 respectively. The plaintiff and his accomplices not only tampered the receipt by erasing typed word 'cash' and written the same in hand but also the typed figure of Rs. 30,000/- and added in hand a figure of Rs. 2 lacs. Thus according to the applicant, Kuldeep Kapoor, Girdhari Lal and Ashok Kapoor have fabricated, tampered and forged the document with an intention to use the same in Court as evidence or otherwise. It is also stated that the plaintiff and his witness Girdhari Lal have intentionally given their incorrect addresses before the Court on affidavit and have therefore made false statement before the Court during judicial proceedings. The agreement and receipt were in possession of the plaintiff and his accomplices, as such they are liable to be prosecuted under Sections 191, 192 of the Indian Penal Code and punishable under Sections 193, 196 and 200 of the Code for forgery of documents and the offences under Sections 463, 464 of the Indian Penal Code punishable under Section 465 of the Code and for the offences under Sections 469 and 470 of the Code punishable under Section 471 of the Code. On this premise, it is prayed that the Court may direct initiation of appropriate proceedings under Section 340 Cr.P.C. against the plaintiff and his accomplices as afore noticed.

2. Notice of this application was issued to the plaintiff who filed a reply. In the reply filed by the plaintiff, some of the paragraphs were denied as matter of record. While in others, the averments made in the application were denied and it was stated that the averments are false, frivolous and afterthought of the defendant. It was stated that the replying respondents (in the application) have no concern or relation with the plaintiff and there is no question of their being accomplices of the

plaintiff. It was denied that the receipt dated 20th October, 2004 has ever been tampered with by the plaintiff and his accomplices/witnesses and the original typed figure of Rs. 30,000/- was ever erased and substituted by Rs. 2 lacs by the replying respondents in that application. According to them, the applicant has misled the Court and no proceeding under various sections referred to in the application can be initiated against the said respondents. In addition to this, a preliminary objection was also taken stating that the application has been filed with ulterior motives to pressurise the plaintiff, without any rhyme and reason. The application has been filed for oblique motive and the same should be dismissed. Rejoinder to this reply was filed by the defendant, who reiterated the averments made in the application with more emphasis in relation to the facts of the case.

3. Though no specific plea has been raised in the reply filed on behalf of the respondents, but the learned counsel appearing for the plaintiff (respondents in the application) contended that the present application is also not maintainable for the reason that the documents have been forged, if at all, prior to commencement of the judicial proceedings before the Court and as such, the same cannot fall within the ambit and scope of Section 340 Cr.P.C. While raising this argument, he relied upon a Full Bench judgment of the Punjab and Haryana High Court in the case of Harbans Singh and Ors v. State of Punjab and judgments of the Supreme Court in the cases of Iqbal Singh Marwah v. Meenakshi Marwah 2005(2) Crimes 11 (SC), Sachidanand Singh v. State of Bihar and Anr. . On the other hand, learned counsel appearing for the applicant contended that it is a case of apparent forgery, tampering and making false statement by way of evidence and filing false affidavit in Court and it would be immaterial that the documents were forged prior or during the course of judicial proceedings before the Court. In alternative, it is contended that the documents in the present case might have been forged or tampered with after institution of the suit and this itself being a matter of controversy, can only be examined by the Court of competent jurisdiction with the permission or under the directions of this Court. In support of this argument, he relied upon Section 195 of the Code read with Section 340 Cr.P.C and the very two judgments of the Supreme Court relied upon by the plaintiff in the case of Iqbal Singh Marwah v. Meenakshi Marwah (supra) and Sachidanand Singh v. State of Bihar and Anr (supra).

4. At this stage, it may be noticed that in the suit, the plaintiff had also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of ad-interim injunction Along with the suit. This application was contested by the defendant. The factual controversy raised in the present application was also raised in that application. The facts giving rise to the suit and that application were decided by the Court vide its order dated 24th November, 2005 and the facts and determination of some of the controversies can thus usefully be referred to from that judgment at this stage itself. The relevant extracts thereof are reproduced hereunder :-

The plaintiff has filed a suit for recovery and damages of Rs. 21 lacs against the defendant. Along with the suit, the plaintiff also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (in short 'the CPC') for grant of ad-interim injunction. When the suit and application came up for ex-parte hearing before the Court on 31st May, 2005, the Court passed the following order :-

CS(OS) 821/2005 Register. Issue summons by registered AD and through approved courier returnable by 2nd September, 2005.

Issue notice.

I have heard learned counsel for the plaintiff in support of the prayer for an ad interim ex-parte injunction restraining the defendant from creating any third party interest in property situate at D-632, Chitranjan Park, New Delhi. Keeping in view the averments made in the plaint as also the fact that an agreement to sell had been executed between the parties in respect of the super structure and the land underlying the same at D-632, Chitranjan Park, New Delhi, I am of the view that a prima facie case has been made out for the grant of an ad interim ex-parte injunction. I am also of the view that in case the defendant is not restrained from creating third party interest, the same shall result in multiplicity of legal proceedings and cause prejudice to the plaintiff. I accordingly direct that pending further orders from this Court and till 2nd September, 2005, the defendant shall not create any third party interest in property situate at D-632, Chitranjan Park, New Delhi without the leave of this Court.

Compliance with proviso to Order XXXIX Rule 3 CPC within one week.

Order dusty.

Besides filing written statement to the plaint and reply to the application of the plaintiff, the defendant upon service also filed an application under Order 39 Rule 4 praying for vacation of the ex-parte ad- interim injunction granted by the Court in terms of the above order. Thus, it will be appropriate to dispose of both these applications by a common order. The averments made in the plaint are that plaintiff entered into an agreement to sell with the defendant on 8th October, 2004 for purchase of entire second floor and the terrace thereupon of property situated at D-632, Chitranjan Park, New Delhi, for a sum of Rs. 10 lacs. The defendant received part payment of Rs. 4 lacs from the plaintiff towards the sale of the said property and acknowledged the receipt thereof in clause 1 of the agreement. The defendant also received a sum of Rs. 2,00,000/- from the plaintiff towards sale consideration. For this, the defendant executed a separate receipt on 20th October, 2004. In terms of clause 7 of the agreement to sell, the defendant was required to get the property in question converted into freehold from leasehold. On the property being converted, it was agreed between the parties that a sale deed would be executed. The plaintiff claims to have visited the defendant on number of occasions and requested him to execute the sale deeds in terms of the agreement to sell dated 8th October, 2004, but the request fell on deaf ears. Perturbed by the attitude of the defendant, the plaintiff claimed to have served a notice through counsel on 15th March, 2005 requesting the defendant to execute sale deed or in alternative, the plaintiff would proceed to recover the damages. The defendant did not reply to the said notice. The plaintiff

visited the premises and noticed that the defendant had got the premises demolished, thus intention on the part of the defendant never to execute the sale deed became obvious. The plaintiff felt that he was cheated by the defendant and with ulterior motive had got the premises demolished. Vide notice dated 4th May, 2005, the plaintiff called upon the defendant to refund a sum of Rs. 6 lacs and pay as damages Rs. 15 lacs, thus claiming a total sum of Rs. 21 lacs. Copy of the notice has been placed on record. It is also averred in the plaint that fear of the plaintiff was established when he received letter from the defendant dated 19th May, 2005 on 20th May, 2005 stating therein that the amount allegedly lent to the defendant by the plaintiff had been received by the plaintiff and the notice dated 4th May, 2005 does not stand. In these circumstances, according to the plaintiff, the cause of action arose on 8.10.2004 when the parties entered into an agreement to sell, on 20th October, 2004 when additional consideration of Rs. 2,00,000/- was paid by the plaintiff and on such dates when he visited and requested the defendant to execute the sale deed and then on 15th March, 2005 when the notice was got issued by the plaintiff to the defendant, when the premises were got demolished and on 4th May, 2005 when the plaintiff rescinded the contract and demanded the defendant to pay damages Along with refund of the part consideration and lastly the cause of action arose on 20th May, 2005 when the plaintiff received the letter dated 19th May, 2005 from the defendant. In these circumstances, the suit was filed by the plaintiff praying for the following reliefs :- ?In the facts and circumstances of the case, the plaintiff most respectfully prays that this Hon'ble Court may be pleased to pass the decree in favor of the plaintiff and against the defendant -

A. Directing the defendant to refund the part consideration of Rs. 6,00,000/- (Six Lacs) and pay damages of Rs. 15,00,000/- (Fifteen Lacs) to the plaintiff, B. Directing the defendant pay interest on Rs. 6,00,000/- from the date of receipt till the date of payment at the rate of 18% per annum;

C. Directing the defendant to pay the costs of the suit throughout;

D. Pass such other and further orders in the circumstances and facts of the case.

In the written statement filed on behalf of the defendant preliminary objection with regard to maintainability of the suit was taken that plaintiff has not come to the court with clean hands as plaintiff has forged and tempered with the documents on the basis of which the suit has been filed. While denying the averments made in the plaint, it was stated that the plaintiff had entered into agreement dated 8th October, 2004 in regard to sale of second floor of the property at D-632, Chitranjan Park, New Delhi, but copy of the agreement annexed to the plaint is forged and tempered document and the veracity of the document has been denied. It has been averred that there has been insertions. It is stated that Ashok Kapoor was instrumental and he Along with the plaintiff has played a fraud upon the defendant. It is stated that defendant was suffering from severe financial problems and was also having ill health

and had to undergo an open heart surgery on 26th August, 2004. During this time, he met Ashok Kapoor, who offered to help him financially by giving him loan of Rs. 1 lac. He came with a draft agreement to sell and instead of Ashok Kapoor, the plaintiff's name was mentioned and it was told to the defendant that they were brothers. A total sum of Rs. 1 lac was paid by Shri Ashok Kapoor on behalf of Kuldeep Kapoor as a loan and to secure this loan amount, an agreement for sale of the second floor was entered into. Because of dire need, he had signed the papers. Out of Rs. 1 lac, an amount of Rs. 50,000/- was paid by way of cheque on 8th October, 2004, another amount of Rs. 20,000/- was given by way of cash on the same date for which a receipt was executed and on 20th October, 2004 balance amount of Rs. 30,000/- was given by Shri Ashok Kapoor to the defendant. The original signed copy of the agreement to sell was not given to the defendant, after taking signatures of the defendant. Original copy of agreement to sell was taken by Ashok Kapoor on the pretext that he would get it signed from Kuldeep Kapoor and will return the same to the defendant. This was never done. This document was never registered and later on has been tampered with and forged by the plaintiff. It is specifically denied that he had received a payment of Rs. 4 lacs as stated at any point of time. The photo copy of the receipt dated 20th October, 2004 again is stated to be a forged document and the defendant had enclosed Along with his written statement photo copy of the document which he had signed and wherein he had received a sum of Rs. 30,000/- and not Rs. 2,00,000/- as now shown by the said receipt, after it has been tampered with by the plaintiff. It is stated that the defendant visited the plaintiff on various occasions for getting the copy of the original sale agreement but Ashok Kapoor as well as plaintiff evaded it on one pretext or the other. It is admitted that the defendant had got the property demolished in March, 2005, but it is stated that Ashok Kapoor and the plaintiff were trying to usurp the property of the defendant by these illegal and unauthorised acts. A malafide offer was also made by Ashok Kapur to develop the property by offering a sum of Rs. 20 lacs which was an unrealistic figure and while rejecting the same the plaintiff had returned a sum of Rs. 1 lac to the defendant by paying a sum of Rs. 50,000/- by way of bank draft No. 024067 dated 14th February, 2005 drawn on United Bank of India, C.R. Park, and another sum of Rs. 50,000/- was paid in cash on the same date. This was in terms of clause 4 of the agreement between the parties. The plaintiff though accepted the cash amount of Rs. 50,000/-, however, did not accept the demand draft dated 14th February, 2005 and instead asked for payment in cash. As such another sum of Rs. 50,000/- was given by way of cash to Kuldeep Kapur and on asking for receipt of these payments, the plaintiff said that the matter having been settled, there was no need of issuing receipts for Rs. 1 lac and original agreement would be destroyed. Later on Ashok Kapoor informed that the original documents had been destroyed and that as an abundant caution, the defendant vide his letter dated 4th April, 2005 informed the plaintiff that he had paid the full loan amount back. This was sent by registered post but was received back with the comments that the addressee had refused to receive the same. Notice dated 4th May, 2005 is admitted to have been received by the defendant which was replied and on 8th May, 2005 Kuldeep Kapur came Along with his brother Ashok Kapoor and his

wife Mrs. Priya Kapoor. They issued a receipt acknowledging the receipt of full amount of the loan along with interest from the defendant in February, 2005. Mrs. Priya Kapoor signed as a witness on this receipt. According to the defendant, the plaintiff has filed the present suit primarily to harass the defendant who has already entered into an agreement with Smt. Anuradha Tandon and the possession of the property has been given in terms of the agreement between the parties. The authenticity of the documents filed by the plaintiff has been questioned and it is prayed that the suit and the application is liable to be dismissed. While referring to the papers filed during the course of hearing, it was also stated that various cases of cheating and misappropriation of trust have been registered against the plaintiff and his associates being FIR Nos. 190-201 dated 27th February, 2005 in relation to fraudulent hypothecation of property to the State Bank of Patiala for obtaining loan there from.

As already noticed, the defendant had also filed an application under Order 39 Rule 4 for vacation of the interim injunction dated 31st May, 2005 on which the notice was directed to be issued to counsel for the plaintiff vide order dated 4th August, 2005. In view of the stand taken by the defendant, the plaintiff was directed to file original documents in Court during the course of the day and it was also considered desirable that statement of defendant is recorded in Court so as to narrow down the scope of controversy between the parties. In fact on 2nd September, 2005, the Court passed the following order :-

Counsel for the plaintiff shall file original documents in Court during the course of the day and supply a copy thereof to counsel for the defendant.

List this case for directions and recording of statement of defendant in Court on 5th September, 2005 as it appears to the Court that the controversy between the parties can be narrowed down to a very limited issue as it is a claim for recovery of money based on a written contract between the parties.

In view of the pleas taken by the parties in their pleadings, nature of the documents filed on record and apparent manipulation with the documents, the Court with an object to narrow down the controversy as well as the issue which may arise in the suit, recorded the statements of the parties. On 5th September, 2005, it was noticed by the Court that the parties were not stating true facts before the Courts and were bent upon telling lies. The plaintiff in his statement under Order 10 CPC even denied that he knows any Mr. Ashok Kapoor who was the attesting witness to the document. The conduct of the parties before the Court compelled the Court even to call the attesting witness for recording statement, who intentionally avoided to answer the questions and patently told lies and later on apologise to the Court with clear undertaking that they would answer the question of the Court truthfully, correctly and without any demur. The documents were kept in a sealed cover. The plaintiff as well as the attesting witness have not only failed to comply with their assurances

given to the Court, but even refused to answer the questions in relation to the receipt which according to the defendant had been tampered with by the plaintiff. A typed print which has been rubbed off of Rs. 30,000/- in cash was clearly visible to naked eye but was subsequently hand-written below as Rs. 2 lacs. But on these, plaintiff and the attesting witness refused to answer and even refused to read which could be seen by a naked eye in open Court. Vide order dated 10th September, 2005 keeping in view the blanks in the documents, over writing and rubbing off of the figures, documents were sent to the CFSL with a direction that the report be submitted before the next date of hearing.

A letter was received from the Director, CFSL wherein it was stated that certain more signatures of the witness were needed for proper comparison which were sent. Unnecessary requests for adjournments were made on behalf of the plaintiff, which in the interest of justice were allowed. On 19th September, 2005, learned counsel appearing for the plaintiff filed an application under Order III Rule 4(2) CPC read with Chapter V of the Delhi High Court (Original Side) Rules, 1967, praying that he be discharged from the case. As plaintiff had no objection, the counsel was discharged. Time was then granted to the plaintiff to engage another counsel. As already noticed, statement under Order 10 CPC of the parties were deferred which were then recorded on 23rd September, 2005. On that date, report of the CFSL was received.

The plaintiff insisted on stating incorrect facts before the Court and in fact misled the Court. Even in the plaint the plaintiff gave incorrect address and during his statement under Order 10 CPC failed to give any reason why he had given different addresses at different places. Not only this, the plaintiff also failed to file replication despite the fact that the written statement on behalf of the defendant was filed quite sometime back. Again a request was made which in the interest of justice was granted. In the order dated 27th September, 2005, the Court had clearly recorded that last opportunity is granted to the plaintiff to file replication. Despite order dated 27th September, 2005 no replication was filed. The order being pre-emptory the obvious result would have been to close the right of the plaintiff to file replication. However, the learned counsel appearing for the plaintiff raised certain serious controversies with regard to supply of documents. The Court while declining to comment on the said controversy, still granted another opportunity to the plaintiff to file replication.

The defendant had taken up the plea of the documents being tampered with and forged, which have been relied upon by the plaintiff. On this basis and probably keeping in mind the report of the CFSL, an application under Section 340 Cr.PC was filed by the defendant-applicant against the plaintiff on which arguments were heard and orders were reserved on 7th October, 2005. The plaintiff probably with an intention to further delay the proceeding in the suit also filed an application under Order 6 Rule 17 of the CPC, for amendment of the plaint, being IA 7988/2005 which was got dismissed as withdrawn on 21st October, 2005. The arguments on the

application under consideration were heard and judgment reserved on the same date. Before I proceed to discuss the merits of the contentions raised, in view of the above narrated factual matrix, as it appears from the pleadings of the parties and the Court record, it will be most appropriate to notice that Dr.S.R.Singh, Director, Central Forensic Science Laboratory, Kendriya Karyalaya Parisar, Block No. 4, Lodhi Road, New Delhi had indicted the plaintiff. This report was submitted in furtherance to the order of the Court. The relevant conclusion of the report reads as under :-

II. The computer printout of photocopied document i.e. agreement to Sell (C-1) running into pages 7 to 10 tally with the original Agreement to Sell 'X-1' running into pages 2 to 5 at their corresponding pages 2 to 5 at their corresponding pages (parawise) on superimposition with specific enlargement. The typed matter of the photocopied document i.e. Receipt 'C-2' tally with the typed matter on the original Receipt 'X' on superimposition with specific enlargement.

III. Video Spectral Comparator-5000 examination reveal that the in used in Clause-4 of Agreement to Sell 'X-1' for addition of letter 'd' and the vertical lines deleting the Clause (nine in nos.) show difference in their luminescence. The two photographs, General Photograph marked 'GP' and the photograph showing difference of luminescence of ink marked as 'DW' are enclosed for ready reference.

IV. Scientific examination of the red encircled portion marked 'Y' on a Receipt 'X' observed physical disturbance of fibres on the surface of paper at certain places to remove the original writings. The original writings were partially deciphered using VSC-5000, Twin Video Comparator (TVC) and other scientific techniques which appear to be read as 'Cash'. The photographs marked 'A', 'B' and 'C' showing partially visible strokes are enclosed herewith for ready reference.

V. Scientific examination of the red encircled portion marked Y-1 on Receipt 'X' observed physical disturbance of fibres on the surface of paper at certain portions to remove the original writings. However, some strokes consisting of figures 000 at unit , tenth and Hundred place and vertical stroke after the figure 0 at unit place is partially observed. The photograph using VSC-5000 marked as 'D' is enclosed for ready reference.

VI. It has not been possible to ascertain the original writings of physically deciphered portion marked Y and Y-1 on Receipt 'X' due to the reason that the contents of the original writings/printed matter is removed by some sharpen instrument.

VII. I have observed a number of individual handwriting characteristic similarities between the questioned signatures marked Q-25, Q-26 (appearing at ZY place on Agreement to Sell and ZY place on Receipt respectively) and specimen signatures marked S-1 to S-5 attributed to Ashok Kapoor which indicate that the writer of the specimen signatures marked S-1 to S-5 being the person responsible for writing the

questioned signatures marked Q-25, Q-26.

The agreement dated 8th October, 2004 was marked as X-1 and examined by the Forensic Experts. Clause 4 of the said agreement in the photo copy filed by the defendant is not scored out while in the original agreement clause 4 is scored by drawing horizontal lines. Both photo copy and the original even at clause 4 bear signatures of the defendant in addition to the page having been signed at 3 different places. According to the plaintiff, it was after scoring the said clause that defendant had put his signatures in his writing and with his pen at the same time. While according to the defendant, he had only added the word 'd' to make correction in the word 'mature' to 'matured'. In view of the report of the forensic expert, the version put forward by the defendant appears to be correct. The ink used in scoring out clause 4 of the original agreement is a different ink than the ink used for correction of the word 'd' and signatures of the defendant. The ink of 'd' and signatures of the defendant are in the same ink.

In relation to the receipt for a sum of Rs. 2 lacs dated 20th October, 2004, which was marked X, there is obvious variation in the stand taken by the plaintiff. In the plaint a different version has been stated to the one taken by the plaintiff in his statement recorded by the Court under Order 10 CPC.

This document was exhibited as Ex.P-17 during admission/denial of documents.

According to the plaintiff, he had paid a sum of Rs. 2 lacs in cash to the defendant on that date while according to the defendant only a sum of Rs. 30,000/- has been paid in cash and he had executed that receipt. This document was marked 'X' when it was sent to the forensic laboratory. As per the finding afore recorded by the experts, on top of the computer typed print 'cash' at encircled portion Y and 000 figures were removed by a sharp object. It was noticed by the Court during the course of recording of statements under Order 10 CPC of the parties and other persons that the expression 'cash' as well as Rs. 30,000/- at encircled portions 'Y' and 'Y-1' were even visible to naked eye. Of course, the plaintiff and attesting witnesses bluntly denied that they could see anything on mark X. Even according to the forensic experts as by that date considerable time has elapsed and the typed impressions were not so clearly visible, if the word 'cash' was typed which has not been confirmed by the forensic experts who have submitted the report after scientific examination and after putting it to TVC.

The defendant has filed Along with his written statement, photo copies of the agreement as well as the receipt in question only signed by him, which were marked as C-1 and C-2 respectively. There are blanks in different clauses of the agreement. Clause 4 has not been scored out, nor is witnesseth by anybody and on the receipt the word 'cash' and 'Rs.30,000/-' are clearly typed in computer print which as noticed above were visible even on the original document filed by the plaintiff on the initial

dates of hearing. At this stage and at least prima facie, there is nothing before the Court, in any way to take any other view than the one which has been expressed by the scientists. The scientist was even called vide order dated 9th September, 2005 to the Court and he explained the tampering of the documents.

5. The facts relating to the case as well as the application under consideration have been detailed above. The merit of the contentions raised by learned counsel appearing for the respective parties can be examined appropriately while referring to the principles of law enunciated by the Supreme Court in various cases relating to this aspect. In the case of K. Karunakaran v. T.V. Eachara Warriar and Anr. , the Supreme Court held that the Court on an application under Section 340 of the Code of Criminal Procedure is primarily concerned with the question whether a prima facie case is made out which if un-rebutted may have a reasonable likelihood to establish a specific offence and whether it is also expedient in the interest of justice to take such action. The Court is really not concerned with the result of the main case. Once false statements are made in the proceedings of a suit, this would have a great bearing in forming of the opinion by the Court. The Supreme Court in the above case, where the complainant before the High Court under Section 340(1) of the Code of Criminal Procedure stated that action should be taken against Shri Karunakaran for making false averments in the affidavit filed in a writ petition before the High Court, held as under :-

"26. It is well-settled that this Court under Article 136 of the Constitution would come to the aid of a party when any gross injustice is manifestly committed by a Court whose order gives rise to the cause for grievance before this Court. Even when two views are possible in the matter it will not be expedient in the interest of justice to interfere with the order of the High Court unless we are absolutely certain that the two pre-conditions which are necessary for laying a complaint after an enquiry under Section 340 are completely absent. The two pre-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193, IPC."

6. Sections 191 and 192 of the Indian Penal Code define the offences which would constitute giving false and fabricating evidence and Section 193 provides for punishment for commissioning of such offences. The person, who is legally bound by Oath or any provisions of law to state truth, makes a false statement or declaration which he either knows or believes to be false or does not believe it to be true, would be said to have given false evidence. Such statement could be verbal or otherwise. While a person, who causes any circumstance to exist or make any false entry in any book or record with an intent that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding or a proceeding taken by law and even may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion, will be said to have fabricated false evidence. Once these ingredients are satisfied, the person committing either of these offences would be punished in accordance with the sentence contemplated under Section 193 of the Code. Section 195 of the Criminal Procedure Code constitute a bar stating that no Court shall take cognizance of any offence punishable under any of the Sections of the Indian Penal Code namely Sections 193 to 196 (both inclusive), 199, 200, 205-211 (both inclusive) and 282 when such

offence is alleged to have been committed in or in relation to any proceedings in a Court except on a complaint in writing of that Court or of some other Court to which that Court is subordinate.

7. Under Chapter 26 of the Code, which relates to provisions as to the offences affecting the administration of justice, a party has a right to file an application while invoking the provisions of Section 340 of the Code. Wherever, the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made to any of the offences referred to in Section 196(1)(b), which appears to have been committed in or in relation to proceedings in that Court, such Court may after such enquiry, if any, as it thinks necessary record a finding to that effect, or even could make a complaint thereof in writing and send it to the Magistrate of the First Class having jurisdiction. That Court would then deal with the matter in accordance with law.

8. Thus, there would be matters where a person fabricates documents and then produces the same in evidence knowing it fully well that the Court is going to rely upon or form its opinion on the basis of such document. Still in other cases, the affidavit or statement made by a person in evidence or otherwise and where the person was under an obligation to speak truth, files false affidavit to his knowledge, in both these events he renders himself liable to be proceeded against in accordance with law in terms of the afore-referred provisions. In the case of Sachida Nand Singh and Anr. v. State of Bihar and Anr. (supra), the Supreme Court stated that the scope of enquiry envisaged under Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice is committed in respect of document produced in Court or given in evidence in a proceeding in that Court. In other words, offence should have been committed during the time when the document was in custodia legis. Another important aspect, which was clarified by the Supreme Court in that case was that the bar contained under Section 195(1)(b)(ii) against initiation of prosecution proceedings would not apply to cases where the document concerned was produced in Court, albeit the act of forgery was perpetrated prior to its production in Court. The real test is whether the offence alleged to have been committed upon which the Court, was called upon to hold an enquiry constitutes of the acts, which would have affected the administration of justice. Reference to other judgment of the Supreme Court in the case of Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. , (supra) would be necessary as this is the judgment on which both the learned counsel appearing for the respective parties have relied upon.

9. The Court has to examine in an enquiry under Section 340(1) of the Code whether the bar contained in Section 195(1)(b) of the Code is attracted or not in relation to offences punishable under Section 190-193 and whether offences and acts complained of had interfered with the administration of justice or not.

10. The argument of learned counsel appearing for the plaintiff/respondent that if the document was tampered/forged prior to institution of the legal proceedings, the Court will have no jurisdiction to entertain an application under Section 340 of the Code is entirely mis-conceived and is without merit. The document has been produced in Court proceedings. A document, which is tampered or forged and is produced during the court proceedings, the Court would have jurisdiction to conduct an enquiry under Section 340 of the Code and decide whether the bar contained under Section 195 partially or in its entirety is attracted in the facts and circumstances of the case or not. An offender

cannot take advantage of its own offence and wrongs committed, and give an interpretation of the provisions of law, which is destructive of the legislative intent and spirit of the statute. While conducting an enquiry, the Court may held that a person is liable to be prosecuted and grant the sanction, if necessary. If in the opinion of the Court, the bar under Section 195(1)(b) is not attracted, then the offender would be liable to be prosecuted in any event as the conditions imposed under Section 195(1)(b) would not be attracted or applied to the facts of the case.

11. The plaintiff/non-applicant has filed two replies, one on 19th September, 2005 and the other on 21st September, 2005. In the earlier reply filed it was stated that the non-applicants have no concern with the forgery and fabrication of the document as alleged, and the application was entirely malafide and intended to harass the non-applicant. The averments made in the application were denied and a definite stand was taken that the plaintiff had put a signature only to cover the alphabet 'd' in the word 'mature' and it was stated that this was put to confirm the fact that clause 4 has been struck off the agreement. It was denied that the plaintiff was in possession of the agreement to sell and has fabricated the said document. According to them the defendant had forged the said document and was liable to be proceeded against under the same provisions.

12. However, in the subsequent reply, a preliminary objection has been taken that application under Section 340 is not maintainable because the offence alleged to have been committed was not committed when the document was in custodia legis and it does not affect the administration of justice. It was stated that the procedure adopted by the court was against the law, and the accused could not be examined as a witness.

13. All these arguments raised on behalf of the plaintiff/non-applicants are without any merit. Firstly, as and when they were examined, it was prior to the filing of the application under Section 340 of the Cr.P.C. by the applicant and was in consonance with the provisions of Order 10 of the Code of Civil Procedure. Furthermore, the preliminary objection taken itself is destructive of the case of the non-applicants. On the one hand, it is stated that they had not committed the forgery, while on the other hand it is stated that the documents, if at all forged or tampered, were forged/tampered when they were not custodia legis. These arguments cannot be reconciled. It may be noticed that the original documents have been filed by the plaintiff and obviously were in his possession and power. In fact, this has never been the case of the plaintiff/non-applicants that the documents were not in their custody, power or possession. The stand of the defendant/applicant has been that he had given the documents which had some blanks, signed in good faith and thereafter the documents including the agreement to sell as well as the receipt were tampered by the non-applicants. They were forged and fabricated by the plaintiff, even after the institution of the suit and in any case they have been filed in this court to be taken in evidence and persuading the court to form an opinion on the basis of such documents, adverse to the interest of the defendant.

14. It would be necessary to refer to the facts in the case of Iqbal Singh Marwah and Anr. (supra) in some detail. Mukhtar Singh Marwah, who died on 3rd June, 1993 was stated to have executed a will. According to the Objectors, the will was a forged one. An application was filed under Section 340 Cr. P.C. before the Court of the District Judge, where the case was pending. Reply to this application was filed, however, the same had not been disposed of. During the pendency of the application, a

complaint was filed by the respondents under different Sections of the Indian Penal Code on the ground that the will of Mukhtar Singh Marwah set up by the appellants was forged and fictitious document. The complaint was dismissed by the Metropolitan Magistrate keeping in view the bar contained in Section 195(1)(b)(i).

This order was set aside and the matter was remanded by the Sessions Judge to the Trial Court. This order was challenged before the High Court which was dismissed on 15th September, 2000 following the principle laid down in Sachida Nand Singh's case. The order of the High Court was challenged before the Supreme Court which appeals were dismissed. In these circumstances, their Lordships of the Supreme Court held as under:-

In view of the language used in Section 340 Cr. P.C. 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 interest 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 interest 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 remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

19. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 Cr. P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions

are challenged in successive appellate for a which are time consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

20. An enlarged interpretation to Section 195(1)(b)(ii) whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in *Sachida Nand Singh*, after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

21. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b) (ii) is either not placed for trial on account of non- filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In *Statutory Interpretation* by Francis Bennion (Third ed.) para 313, the principle has been stated in the following manner:

The Court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong.

25. In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr. P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time

when the document was in custodia legis."

15. Another important principle settled by the Supreme Court in this very case, while rejecting the contention raised on behalf of the non-applicants, was that with an intent to avoid conflict of findings between the Civil and Criminal Court, it is necessary to accept the appeal. Their Lordships held that there was neither any statutory provision nor any legal principle that the findings recorded in one proceedings may be treated as final or binding on the other, as both the cases have to be decided on the basis of the evidence adduced therein. The standard of proof required in two proceedings are entirely different.

16. The object of a penal provision is always and must be construed so as to suppress the mischief and advance the object which the Legislature had in view for the administration of justice.

17. The arguments raised on behalf of the non-applicants are without merits as the judgment on facts would not help the non-applicants. It is pertinent to notice here that there is a controversy as to when the documents were tampered or forged. As already indicated the original documents were not filed with the plaint but were produced in the court in furtherance to order of the court dated 2nd September, 2005. According to the applicant he had signed the receipt with typed figures of 'cash' and Rs. 30,000/-, but when the original was produced in Court, this was scored out and substituted by handwritten word 'cash' and Rs. 2 lacs. Similar is the plea taken by the applicant in relation to the agreement executed between the parties. As far as Mr. Kuldeep Kapoor is concerned, he has filed affidavits which to his knowledge were incorrect and had given the address where he was not living. He also gave different, incorrect or false addresses in different affidavits filed by him. In response to the question of the Court, in his statement recorded under Order 10 of the Code of Civil Procedure, he admitted that incorrect address was given. However, he refused to answer the question. Following extract from his statement recorded under Order 10 on 10th September, 2005 can be usefully noticed at this stage.

" was resident of D-614, C.R. Park on the date of signing of agreement. The property at D-614 is a four-storey property. We stayed in that property for 2 months from July, 2004 to October, 2004 We left this house on 27-28th October, 2004 I was living on the second floor. I had shifted to the house No. B-186 CR Park, New Delhi in October, 2004 where I am presently residing."

Question Why have you then given incorrect address in the plaint as A-558, Doubley storey, Kalkaji, New Delhi-110019.

Ans. The witness refuses to answer the question.

18. The present case, is thus, a case which will fall outside the ambit of the principle enunciated by the Supreme Court in Iqbal Singh Marwah's case as this would have to be examined by the Court of competent jurisdiction itself that besides filing false affidavits, Mr. Kuldeep Kapoor and his accomplices, who have tampered and forged the documents i.e. the agreement to sell as well as the cash receipt dated 24.10.2004, when and how these documents were forged. Taking the case in

alternative and accepting the objections, at best, it could be said that the applicant can file a complaint under different Penal provisions of the Indian Penal Code in that behalf, even without leave of this Court and bar of Section 195(1)(b)(ii) would not operate against the applicant. This does not place the case of the non-applicants on any high pedestal. Keeping in view the complexity of the case and the fact that it is not possible to hold at this stage, as to when exactly the documents were forged, it will be most appropriate and the ends of justice would demand that an Officer of the Court is directed to file the complaint before the Court of competent jurisdiction. It is a matter of fact that until the defendant had produced the photocopies of the documents signed by him, the plaintiff had not produced the original documents before the court. When they were produced, the tampering was visible, even to a naked eye.

19. Applying the principles enunciated in the case of Iqbal Singh Marwah (supra), it is apparent that it is expedient in the interest of justice to direct prosecution of the three persons namely Mr. Kuldeep Kapoor, Mr. Ashok Kapoor and Mr. Girdhari Lal in accordance with law. Though, in the application name of Mrs. Priya Kapoor has been mentioned, but no specific averments have been made, nor her role in relation to any forged document has been stated in the application. Consequently, no prosecution can be directed against her.

20. There is more than one aspect to this application. It does not only relate to fabrication or forgery of documents, but also of filing false affidavits before the court.

21. The purpose of enquiry under Section 340 of the Cr.P.C. is a very limited one. Once the ingredients of this Section are satisfied, the court has to conduct a very limited enquiry. As a result of that enquiry the court may record a finding to that effect, or even on the basis of preliminary enquiry make a complaint or send it to a magistrate of the First Class having jurisdiction, for the offender to be tried in accordance with law. In the case of Pritish v. State of Maharashtra and Ors. , the Supreme Court has held that in respect of any document produced or given in evidence, in relation to proceedings in the court, the court is not required to afford any opportunity of hearing to the person against whom it might file a complaint before the Magistrate for initiating prosecution proceedings. The purpose of Section 340 is not to find 'whether a person is guilty or not' but is only to find 'whether it is expedient in the interest of justice to inquire into the offence. In the present case, to the application filed by the defendant, the non-applicants/plaintiff had even filed detailed replies, and counsel for the parties were heard at great length. The purpose was to provide an opportunity to the non-applicants, at least to show to the court as to whether it was a case where the court would direct filing of the complaint in compliance to the provisions of Section 340 or even drop the proceedings.

22. Even the judgments relied upon by the learned counsel for the plaintiff/non-applicants do not support the contention that if the document was forged prior to the institution of the suit, the applicant has no right to invoke the provisions of Section 340 of the Code. What is held in these judgments is that the bar contained under Section 195(1)(b)(ii) would not operate where the document was not forged or fabricated when it was custodia legis. In the present case, the averments of the applicant are not simply founded on these documents. The following are the circumstances which the court would have to consider while looking into the preliminary inquiry as contemplated

under Section 340 of the Code. Firstly, the report of the Forensic Expert clearly establishes tampering of these documents by erasing the words and figures and re-writing the same. It has also confirmed the fact that the crossing of clause 4 is not in the same ink in which alphabet 'd' and signatures supporting addition of alphabet 'd' are written. The tampering/fabrication of documents is evident from the afore-referred report of the expert. The non-applicants have filed false affidavits even in this regard that the original documents have been tampered with by the defendant, while all through the documents were in power and possession of the plaintiffs/non-applicants. The plaintiff in his statement before the Court has categorically admitted that he had given incorrect addresses in his affidavit, which were not his residential addresses. Not only this, he has even failed to give any explanation in that regard. The attempt of doing all this obviously is to mislead the court and interfere in the administration of justice. Such an attempt on the part of a party cannot be ignored by the court. The law enunciated in the above judgments and the facts and circumstances of the case kept in mind, would apparently show that it is expedient in the interest of justice that an enquiry should be made. Even if the bar under Section 195(1)(b) does not come into play, as alleged by the non-applicants, as the documents were tampered or forged prior to the institution of the suit, even then the remaining part of making false statement on affidavit before the court, would still require the permission of the court and as such this objection, even if taken to be correct on its face value, would hardly be of any consequence. One of the arguments raised on behalf of the applicant was that the documents have been tampered with during and after the institution of the suit, in as much as they were never filed along with the suit but were produced subsequently, after the Court had passed the order dated 2nd September, 2005 for production of the originals. The cumulative effect of all these submissions is that the conduct and acts of the non-applicants, as afore-referred, demonstrably show, at least prima facie, that it has affected the administration of justice and is in relation to a document produced in Court and given in evidence during the proceedings of the Court.

23. In view of the above finding recorded upon preliminary inquiry, the Court is of the prima facie view that Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal have tampered or forged the documents which have been filed in this Court during the pendency of the proceedings and also Kuldeep Kapur has filed false affidavits before this Court, during the proceedings in the Court, fully knowing that the Court is to rely upon such documents while passing judicial orders which would affect the right of the parties one way or the other. At least, it is clear that the said plaintiff/respondents, prima facie, have committed offences under Sections 191, 192 read with Sections 193, 199, 200, 465, 471 of the Indian Penal Code. The Registrar of this Court should file a complaint against Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal in accordance with law within a period of two weeks from today under the provisions of Section 340 Cr.P.C. The said persons shall also furnish a security in the sum of Rs. 10,000/- each for their appearance before the Court of Competent Jurisdiction, to the satisfaction of the Registrar of this Court within one week from today. The application against Ms. Priya Kapoor is dismissed.

24. IA stands disposed of accordingly.