Radhika Garg vs Ritwik Garg on 6 December, 2017

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

W.P. No.1848/2017

Ritwik Garg S/o Shri Ramesh Garg .... Petitioner

Vs.

Smt. Radhika Garg W/o Ritwik Garg .... Respondent

W.P. No.2587/2017

Smt. Radhika Garg W/o Ritwik Garg .... Petitioner

Vs.

Ritwik Garg S/o Shri Ramesh Garg .... Respondent

Shri Prateek Maheshwari, learned counsel for the petitioner in W.P. No.1848/2017 and for the respondent in W.P. No.2587/2017.

Shri A.M. Mathur, learned senior counsel with Shri A.S. Rathore, learned counsel for the petitioner in W.P. No.2587/17 and for the respondent in W.P. No.1848/2017.

Whether approved for reporting :

ORDER

(Passed on 6/12/2017) 1/ Both these writ petitions are heard and decided by this common order since these writ petitions are directed against the common order passed by the trial Court.

2/ The W.P. No.1848/2017 is at the instance of husband, whereas W.P. No.2587/17 is at the instance of the wife. For convenience parties are referred to as husband and wife in this order.

3/ Both these writ petitions have been filed by the parties challenging the order of the trial Court dated 1.12.2016, whereby the respective applications of the parties for making a complaint against each other under Section 340 of the Cr.P.C. have been rejected.

4/ The record reflects that at the instance of the husband the case for divorce under Section 13(1)(1-a)(1-b)

(iii) read with Section 13-A of the Hindu Marriage Act read with Section 7 of the Family Court Act, 1984 is pending before the Family Court, Indore wherein an application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955 was filed by the wife and in the course of the proceedings both the parties had filed the affidavits disclosing their financial status. Thereafter both the parties had filed the applications under Section 340 of the Cr.P.C. making allegations against each other. The allegation of the husband in the application under Section 340 Cr.P.C. is that the wife during the relevant time was employed in Sahara India and Sahara World Wide Hospitality Ltd., but she had suppressed this fact and filed the affidavit dated 18.10.2013, 19.4.2014, 5.5.2015 and 15.7.2015 disclosing that she is unemployed and had no source of income, whereas she was having sufficient income. The allegation of the wife in the application under Section 340 of the Cr.P.C. is that the husband had filed the affidavit disclosing incorrect income.

5/ The trial Court by the impugned order has rejected both the applications.

6/ Learned counsel appearing for the husband (petitioner in W.P. No.1848/2017) submits that since the wife has given incorrect affidavit falsely stating that she was unemployed and having no source of income wheres there are number of documents on record to show that she was employed during the relevant time and was having income and was also filing income tax return, therefore, the complaint under Section 340 Cr.P.C. should be filed. He has submitted that the trial Court had not examined the matter in the proper perspective.

7/ As against this, learned counsel for the wife submits that the scope of Section 340 of the Cr.P.C. is different and unless the court forms an opinion that it is expedient in the interest of justice to take action, there is no requirement to take action under Section 340 Cr.P.C. He has submitted that the power is discretionary and it has not been abused by the trial Court while dismissing the application of the husband but order in respect of rejection of wife's application is bad in law.

8/ I have heard the learned counsel for the parties and perused the record.

9/ Section 340 of the Cr.P.C. provides as under:-

> "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
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> (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,-
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> (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 for 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 given evidence before such Magistrate.

(2) ********** (3) ********** 10/ The core of the aforesaid provision is forming of opinion by the court "that it is expedient in the interest of justice" to make an enquiry for the referred offence and such an offence must appear to have been committed in or in relation to the proceedings of that court or as the case may be, that too in respect of a document produced or given in evidence in the proceedings of that court. The preliminary enquriy is optional. Hence the making of complaint under this provision is not a matter of routine but the aforesaid conditions are required to be satisfied beforehand. In the process of examining an application under Section 340 the court is also required to see the effect or impact of such commission of offence upon administration of justice, therefore, such a discretion is to be exercised only in the interest of the administration of justice and therefore, this power is to be exercised with utmost care and caution.

11/ The Supreme Court in the matter of Pritish Vs. State of Maharashtra and others reported in (2002) 1 SCC 253 while considering the scope of Section 340 of the Cr.P.C. has held as under:-

"Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts

> to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

12/ In the subsequent judgment in the matter of Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another reported in 2005(2) G.L.H. 413 the Supreme Court has 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 interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded."

13/ The Division Bench of this Court in the matter of Jagdish Vs. Ashok Kumar Gureja reported in 2007(4) MPLJ 229 has taken note of the earlier judgment on the point and has held as under:-

> "5. In the case of Chajoo Ram v. Radhey Shyam and Anr., reported in AIR 1971 SC 1367, the Supreme Court has held that indiscriminate prosecutions under Section 193, Indian Penal Code resulting in failure are likely to defeat the very object of such prosecution. It has been laid down that 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 reasonable 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 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.

"6. In the case of K. Karunakaran v. T.V. Eachara Warrier and Anr., reported in (1978) 1 SCC 18, the Supreme Court has considered two questions for taking action under section 340. The two preconditions 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, Indian Penal Code. It was further held that when the complaint is filed it will be for the prosecution to establish all the ingredients of the offence under Section 193, Indian Penal Code against the appellant and the decision will be based only on the evidence and the materials produced before the criminal court during the trial and the conclusion of the Court will be independent of opinions formed by the High Court in the habeas corpus proceeding and also in the enquiry under section 340(1), Criminal Procedure Code. It was further held that the fact that a prima facie case has been made out for laying a complaint does not mean that the charge has been established against a person beyond reasonable doubt. That Section contemplates that making out of a false statement is not enough and that it is to be made intentionally.

7. In the case of Chandrapal Singh and Ors. v. Maharaj Singh and Anr, reported in AIR 1982 SC 1238 the Court has considered this aspect of the matter that when it is alleged in the affidavit that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person, and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under section 199, Indian Penal Code. It was further considered that acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under section 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. Though in this case Division Bench held that affidavit sworn was false to his knowledge.

8. In the case of K.T.M.S. Mohd. and Anr. v. Union of India, reported in AIR 1992 SC 1831 the Apex Court has also held that it is incumbent that the power given by section 340 of the Code should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice.

9. In the case of M. S. Ahlawat v. State of Haryana and Anr., reported in (2000) 1 SCC 278, the Apex Court has held that it is settled law that every incorrect or false statement does not make it incumbent upon the Court to order prosecution, but requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of the justice.

10. In case of Suo Motu Proceedings against R. Karuppan, reported in (2001) 5 SCC 289, Supreme Court has observed that unscrupulous litigants are found daily resorting to utter blatant falsehood in the Courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, concededly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal code. If the system is to survive, effective action is the need of the time.

12. In the light of the aforesaid observations of the Supreme Court in the various decisions, we have considered the facts of the case in hand. In fact, it would have been expedient in the interest of justice to the learned Division Bench when the Division Bench was passing the order in L.P.A.No.1/93 on 28.2.2002. On that day the Court was not of the opinion that any order should be passed for perjury but Court has dismissed not only all pending I.A.s but the M.C.P. as well as the appeal. We have also found that the applicant, who has filed this application after belated delay of four and a half years, has also not taken care to protect his rights. He has not assigned any reason in the application as to why he has not filed such an application during last four and a half years. Though there is no limitation for prosecuting a person for perjury, but certainly, while forming an opinion by the Court, the Court has to consider the dictum of the law and the wisdom of the legislature that it is expedient in the interest of justice that an inquiry should be made into any offence."

14/ Having regard to the aforesaid provision of law, it is clear that when an application under Section 340 Cr.P.C. is filed, the trial Court is required to examine if on the basis of the available material a prima facie case for making a complaint is made out and is also required to see if in its opinion it is expedient in the interest of justice that inquiry should be made into an offence referred to in Section 195(1)

(b). The necessity of action will arise if the offence appears to have been committed in or in relation to the proceedings of that court and that too in respect of a document produced or given in evidence in a proceedings in that court.

15/ The impugned order reveals that the trial Court has rejected the application solely on the ground that in the case no opinion has been given by the court about producing false evidence or facts, nor any inquiry has been made and finding has been recorded. The trial Court has rejected the application mentioning that without the opinion of the court on the basis of the documents, the action under Section 340 Cr.P.C. cannot be taken, but while doing so trial Court has failed to appreciate that it is the Court concerned where application is filed, which has to form the opinion one way or the other in the light of relevant parameters given in the Section itself.

16/ The impugned order passed by the trial Court reveals that the trial Court has failed to consider the scope and requirement of Section 340 and has rejected the application without forming any opinion in either way.

17/ Hence, the impugned order passed by the trial Court cannot be sustained and is hereby set aside with a direction to the trial Court to decide the applications afresh, in accordance with law.

18/ Signed order be kept in the file of W.P. No.1848/2017 and a copy whereof be placed in the file of connected W.P. No.2587/2017.

(PRAKASH SHRIVASTAVA) Judge Trilok.

Trilok Singh postalCode=452001, st=Madhya Pradesh, 2.5.4.20=5e17c79b9e2cc6e5f119cb23d5c02e921be96a00 Savner 9cd5a4db8c43907729e8e93 c, cn=Trilok Singh Savner Date: 2017.12.13 16:45:02 +05'30'