# Aarish Asgar Qureshi vs Fareed Ahmed Qureshi on 26 February, 2019

## Equivalent citations: AIRONLINE 2019 SC 1802, (2019) 108 ALLCRIC 926, (2019) 201 ALLINDCAS 35, (2019) 2 ALLCRILR 854, (2019) 2 CRILR(RAJ) 648, (2019) 2 CRIMES 43, (2019) 2 RECCRIR 321, (2019) 4 SCALE 606, (2019) 74 OCR 591, 2019 CRILR(SC MAH GUJ) 648

## Author: R.F. Nariman

## Bench: Vineet Saran, Rohinton Fali Nariman

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REPO

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 387 OF 2019
(Arising out of SLP (Crl.) No. 2632/2018)

AARISH ASGAR QURESHI Appellant

VERSUS

FAREED AHMED QURESHI & ANR. Responden

J U D G M E N T

R.F. Nariman, J.

1) Leave granted.

2) The present case arises out of a judgment

07.03.2018 of the High Court of Judicature at Bombay, in which the High Court felt that a prima facie case has been made out for perjury under Section 340 of the Cr.P.C., and that it would be expedient in the interest of justice to prosecute the appellant before us.

3) The present case arises out of matrimonial proceedings in which certain averments have been

made in anticipatory bail applications both before the Sessions Court as well as the High Court. Insofar as the anticipatory bail application before the Sessions Court is concerned, the applicants in the aforesaid application stated:

> "8. That the Applicant No.1 was deeply troubled by these developments and thus approached his mother in law, Naseem Qureshi to ask for her intervention in this matter and in the hope that a mother would be able to talk sense to her own daughter and improve their relations. However, despite the intervention of several family members, there was no change in Sana's behaviour. During this period, it came to light that Sana was having an affair with one Waseem Shaikh who resided in Mahim. The in-laws of the Applicant No.1 admitted that they were aware of this relationship which had been going on prior to the marriage of the Applicant No.1 with Sana but as the said Waseem Shaikh belonged to another community, they did not approve of the relationship and had forced Sana to marry the Applicant No.1.
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> 11. That on the 29th of October, 2016, the Applicant No.1 went to fetch Sana from her maternal home and was completely aghast to find Sana in a compromising position with Waseem Shaikh. That the Applicant No.1 was further shocked that such incidences were occurring right under the nose of his in-laws who were doing nothing to discourage their daughter from maintaining these illicit relations. Thereafter, the Applicants made it clear to the Complainant and his family members that they would not tolerate the continuance of such illicit relations which went against the sacred institution of marriage and demanded that Sana stop all interactions with the said Waseem Shaikh and that she should genuinely try to make her marriage work. However, Sana refused to comply and in November, 2016, Sana left her matrimonial home taking with her various items." When the aforesaid statements were brought to the notice of the Sessions Court, and it was argued before the Sessions Court that these were knowingly false statements deliberately made in order to get favourable orders from the Court, the Sessions Court by a judgment dated 12.02.2018 held:
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> "The accused are charged for the offences punishable under Sections 323, 376(b), 377, 406, 498A, 504 and 506 read with 34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, 1961. F.I.R. was registered on 19-11-2017. Still charge-sheet is not filed before the Court therefore, proceeding against the Accused Nos.1 to 7 is yet to be conducted. Evidence of prosecution witnesses and defence witnesses, if any, are yet to be recorded. After recording of evidence, both parties having an opportunity to cross-examine the witness. Thereafter, it will be decided whether the allegation made by the accused persons are true or false. At this juncture, are before the Court. Now, the truthfulness of the statement is not decided. Admittedly, if the person made false statement before the Court on oath, he is liable for punishment. However, for that purpose, it is necessary to come to the conclusion that the accused persons had made false statement. Merely, on the basis of contradictory statement made by the accused, they cannot be punished, at this juncture, and cannot initiate proceeding under Section 340 of

Cr.P.C., as the allegations are yet to be proved in the case filed by the victim. Therefore, this application filed by the applicant is premature."

4) The same statements were made in an anticipatory bail application before the High Court. The High Court found that an investigating officer had filed a Report dated 24.11.2017 and recorded a finding that the allegations made in the anticipatory bail application were false. It prima facie appeared to the Court that the Respondent No.2 has made a false statement in the aforesaid application and that therefore, a case for filing a complaint under Section 340 read with Section 195(1)(b) of the Cr.P.C. is made out and it is expedient in the interest of justice that an enquiry be made by the judicial magistrate having jurisdiction. The High Court also referred to para 3 of an order dated 30.11.2017 in which the aforesaid allegations were repeated and, according to the High Court, anticipatory bail was granted.

5) Mrs. Amrita Panda, learned counsel appearing on behalf of the appellant, has stated that the so-called investigation report is a preliminary report made by an investigating officer two days after the filing of the F.I.R. in which no findings whatsoever had been recorded about the falsity of the statements made in the anticipatory bail application. She also argued that the High Court order of 30.11.2017 merely recorded the allegation that was found to be false as a submission made by appellant's counsel. However, the anticipatory bail was granted for reasons that were entirely different from the submission made. She also argued before us that it was highly improper on the part of the respondents to have suppressed the proceeding that ultimately culminated in the Sessions Court order of 12.02.2018, and said that on this ground also since the respondents approached the High Court with unclean hands, the impugned order ought to be set aside.

She cited certain judgments to buttress her contentions.

6) Mr. Nilesh Ojha, learned counsel appearing on behalf of the Respondent No.1, has countered these submissions. On suppression, he has stated that, as a matter of fact, the application for anticipatory bail made in the Sessions Court was made after that made in the High Court, and effective arguments were over in the High Court by the 8 th and 9th of February. Obviously therefore, the order dated 12.02.2018 could not be brought to the notice of the High Court. He also stated that the anticipatory bail application made before the Sessions Court was a separate and independent application, which the Sessions Court dealt with, and the anticipatory bail application made before the High Court again being separate, it was open to the High Court to arrive at its own conclusion in an independent proceeding as to whether a prima facie case under Section 340 has been made. He also relied upon certain judgments to buttress his arguments.

7) The law under Section 340 on initiating proceedings has been laid down in several of our judgments. Thus in Chajoo Ram vs. Radhey Shyam, (1971) 1 SCC 774, this Court, in para 7, stated:

"7. ... No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge."

8) Similarly in Chandrapal Singh and Others vs. Maharaj Singh and Another, (1982) 1 SCC 466, this Court, in para 14, stated:

"14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged 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, I.P.C. To illustrate the point, appellant 1 Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. 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. The learned Counsel for the respondents told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both

courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482, Cr. P.C."

9) Both these judgments were referred to and relied upon with approval in R.S. Sujatha vs. State of Karnataka and Others, (2011) 5 SCC 689 (at paras 15 & 16). This Court, after setting down the law laid down in these two judgments concluded:

"18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

10) It is clear therefore from a reading of these judgments that there should be something deliberate - a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise. In the facts of the present case, it is clear that the statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence has not yet been led. Moreover, the report dated 12.11.2011 being a report, which is in the nature of a preliminary investigation report by the investigating officer filed only two days after the F.I.R. is lodged, can in no circumstances be regarded as unimpeachable evidence contrary to the statements that have been made in the anticipatory bail application. Further, as has been correctly pointed out by learned counsel appearing on behalf of the appellant, that though the submission recorded by the High Court in para 3 of the order dated 30.11.2017 is from the aforesaid paragraph in the anticipatory bail application, yet, the High court made it clear that it was granting anticipatory bail principally because the F.I.R. annexed to the bail application does not show that there was sexual intercourse of the applicant with his wife during the course of their separation as a result of which it was not possible to assess whether the averment regarding the offence punishable under Section 377 of the I.P.C. is or is not substantiated. The High Court also recorded that considering that the husband and wife had resided together after marriage only for a very brief period, and that the husband was granted interim anticipatory bail, decided to grant final anticipatory bail on these grounds. It is clear, therefore, that both the grounds stated by the High Court would not suffice to initiate prosecution under Section 340 read with Section 195 (1)(b) of the Cr.P.C.

11) Learned counsel appearing on behalf of the Respondent No.1, however, cited a number of judgments. Thus in K. Karunakaran vs. T.V. Eachara Warrier and Another, (1978) 1 SCC 18, this Court, after referring to Chapter XXVI of the Code of Criminal Procedure, 1973 reiterated that a statement cannot be said to be false unless it is done deliberately or intentionally (see paras 23 & 30). Considering that this Court was hearing an appeal against a High Court order initiating prosecution it held that when two views are possible in the matter it will not be expedient in the interest of justice to interfere with the aforesaid order (see para 26).

12) In Sarvepalli Radhakrishnan University and Another vs. Union of India and Others, 2019 SCC OnLine SC 51, this Court referred to the facts in that case in which the Court constituted a high level committee headed by a senior officer deputed by the Director, Central Bureau of Investigation with two doctors of the All India Institute of Medical Sciences as its members to go into the facts. The Committee gathered facts in great detail, as is mentioned in paras 8 & 9 of the aforesaid judgment, and ultimately came to certain conclusions after a detailed enquiry. It is in this circumstance that this Court found, after perusing the Committee's Report, that the College in question had manufactured records brazenly in order to obtain favourable orders from the Court. It is on the basis of the aforesaid findings of the Committee that it was clear that a false statement had been made by the College on the basis of completely fabricated documents. The facts of this case are very far from the facts of the present case as there are no fabricated documents in the present case nor has there been a detailed enquiry by an independent high level committee going into facts. This case is, therefore, distinguishable from the facts of the present case.

13) The case next cited by learned counsel for the respondent No.1 is State of Goa vs. Jose Maria Albert Vales alias Robert Vales, (2018) 11 SCC 659 in which the learned counsel relied, in particular, upon para 34. Para 34 of this judgment, in turn, relied upon the celebrated judgment of M.S. Sherif vs. State of Madras, AIR 1954 SC 397, and ultimately concluded that as the High Court in that case had scrutinised the evidence "minutely" and had disclosed ample materials on which a judicial mind could reasonably reach the conclusion that further investigation was necessary in a Section 340 proceeding, held that the Section 340 proceeding must, therefore, go on. As has been stated in the facts of the present case, the High Court has not scrutinised any evidence as there was none to scrutinise. Further, all that the High Court has seen is a preliminary investigation report, and that too by a police officer, together with a High Court order granting anticipatory bail, none of which can be said to be unimpeachable evidence against which it can clearly be stated that a prima facie case of perjury can be said to have been made out. This judgment also does not further the respondent's case. The respondent then relied upon Perumal vs. Janaki, (2014) 5 SCC 377 and para 20, in particular, to state that the High Courts not only have the authority to exercise such jurisdiction under Section 195 but also an obligation to exercise such power in appropriate cases. This proposition is unexceptionable. We have, however, found that the present is not such an appropriate case.

14) Learned counsel then relied upon a Delhi High Court judgment reported as H.S. Bedi vs. National Highway Authority of India, 2015 SCC OnLine Del 9524 which states in some detail the problems faced with present day courts and the number of false affidavits that are filed before them. This again has very little application, as we have seen above, to the facts of the present case.

15) The arguments of learned counsel appearing on behalf of the appellant that the High Court has not satisfied itself that it is expedient in the interest of justice to proceed with the matter does not appear to be correct. Such finding is recorded. However, we have found otherwise that it ought not to have so proceeded. Equally, we are not impressed by the argument by the appellant's counsel on suppression of the Sessions Court order.

16) In the result, the appeal is allowed and the impugned order of the High Court is set aside.

..... J.

(ROHINTON FALI NARIMAN) ..... J.

(VINEET SARAN) New Delhi;

February 26, 2019.