

Rajesh Ranjan Yadav Vs. Pappu Yadav vs . Cbi & Ors. The Relevant Portion Of The on 27 November, 2014

CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi

IN THE COURT OF SH. POORAN CHAND: CHIEF METROPOLITAN
MAGISTRATE: CENTRAL DISTRICT: TIS HAZARI COURTS: DELHI

CC No.:33/1
PS: Subzi Mandi
U/s : 195 IPC r/w section 340 Cr.P.C.
Unique ID No.: 02401R0263722011

J U D G M E N T:

(a) S. No. of the case : 33/1

(b) Name of complainant : Registrar, Delhi High Court, New Delhi.

(c)	Date of commission of offence	:	26.03.1999
(d)	Name of the accused	:	Rajesh Ranjan Yadav @ Yadav, S/o Sh. Chande Yadav, R/o RZ-70, Vij Najafgarh, New Delhi.
(e)	Offence complained of	:	U/s : 195 IPC r/w section 340
(f)	Plea of accused	:	Pleaded not guilty
(g)	Final arguments heard on :		22.11.2014
(h)	Final Order	:	Acquitted
(i)	Date of such order	:	27.11.2014

A.
BRIEF FACTS & REASONS FOR SUCH DECISION:

The present complaint has been filed by the then Ld. Registrar General, High Court of Delhi in view of the directions given on 05.05.1999 by a Division Bench of Hon'ble High Court of Delhi in Crl. Writ Petition No. 268/99 titled as Rajesh Ranjan Yadav Vs. Pappu Yadav Vs. CBI & Ors. The relevant portion of the order is reproduced below:

"Before parting with the order we would like to point out that there is a growing tendency to file false affidavits in the Courts. This tendency must be curbed to maintain purity of the judicial system.

In the circumstances, we direct the Registrar of
this Court to file a complaint before

CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi

appropriate court against the petitioner for stating in para 10 of the petition that there was no question of his absconding from prosecution, when it is clear that the petitioner had been declared as an absconder and non-bailable warrants had been issued against him which still remain unexecuted."

2 The accused had filed criminal Writ petition No. 268/99 in Hon'ble High Court of Delhi inter alia seeking following relief:

a) writ of Mandamus or any other appropriate writ quashing the investigation being conducted by CBI pursuant to Crime Case No. RC-12(5)/98/SIC.IV/ND registered with them as per the order passed by Central Government under Sub-section (I) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946).

b) Quash the impugned notification issued by the Central Government vide which the fresh investigation of Case No. 230/98, PS Hat, Purnia, Bihar is handed over to CBI.

3 In para 10 of the said petition filed by the accused, it was stated by the accused that:

"That the petitioner is resident of Delhi and completed two terms of Member of Parliament as such there is no question of his absconding from prosecution and there is no question of his tampering or terrorizing the witnesses."

4 According to the complainant, the accused had filed an affidavit dated 26.03.1999 in support of the said petition wherein he made a declaration and affirmation on oath with regard to the correctness of the contents of the petition.

The said petition was heard by a Division Bench of the Hon'ble High Court and vide judgement dated 05.05.1999 it was held that the accused has given a false affidavit. The extracts of the judgement is as under:

CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014
"Learned Additional Solicitor General has invited out attention to the counter affidavit where it is stated that material has come on record during investigation which primaface indicates the involvement of the petitioner. The affidavit also alludes to the fact that non-bailable warrants were issued against the petitioner by the Special Magistrate, CBI on March 6, 1999 and the same is pending for execution.

It is also stated therein petitioner is absconding. The Learned Additional Solicitor General has also drawn our attention to Annexure R-3 to the counter affidavit in support of the submission that the petitioner is absconding."

"Having regard to the Annexure R-3 to the counter affidavit it cannot be disputed that the petitioner has been declared as absconder and non-bailable warrants have been issued against him. The petitioner has also suppressed the fact that he had earlier filed an application for anticipatory bail which was subsequently withdrawn by him."

5 The complainant has stated that the accused has suppressed the true and correct factual position and deliberately sought to mislead the Hon'ble High Court of Delhi with a view to obtain favourable orders by stating that there is no chance of his absconding when he had already been declared as absconder and non- bailable warrants were issued against him, due to said reason the present complaint has been filed.

6 In order to prove its case the prosecution has examined 4 witnesses. PW1 S. K. Sood has proved the record of criminal writ petition No. 268/99 and criminal Misc. No. 2119/90. He has placed on record the order dated 05.05.1999 which is CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 Ex. PW1/A passed by the Division Bench of Delhi High Court comprising of Hon'ble Mr. Justice Anil Dev Singh and Hon'ble Mr. Justice A K Srivastava in criminal writ petition No. 268/99. He has also placed on record the true copy of criminal writ petition No. 268/99 alongwith its affidavit and memo of the parties colly. Ex.PW1/B, true copy of the counter affidavit of Sh. M. Narayanan in Crl. Writ Petition No. 268/99 alongwith annexure R1, R2 and R3 are Ex.PW1/C. 7 PW2 Gopal Krishan is the complainant who has proved the present complaint which is Ex. PW2/A. He has identified the signatures of Sh. H. R. Malhotra the then Registrar General on the same. In his cross-examination this witness has stated that he has no personal knowledge about the contents of the complaint.

8 PW3 Ms. Kanchan Lata is the Oath Commissioner who has proved that on 26.03.1999 he attested the affidavit of accused Rajesh Ranjan Yedav identified by Sh. A K Vajpayee. She has proved the said affidavit which is Ex. PW3/A. In her cross-examination, the witness has stated that she had made relevant entries in the Oath Commissioner Register but she is unable to give the entry no. as the same has been deposited in the High Court after the period of appointment is expired.

9 PW4 M. Narayanan has stated that in the year 1999 he was working as Superintendent of Police, CBI and has proved having filed the counter affidavit Ex. PW1/C alongwith the annexures R1, R2 and R3 which are Ex. PW4/A to PW4/C respectively in the criminal writ petition titled as Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI. According to him, he has filed the said counter affidavit on the basis of official record and at that time the accused was absconding. He has stated that during the investigations they had made efforts to trace the accused at his residence but he could not be traced due to which reason the investigating officer had obtained the NBWs for his arrest on 06.03.1999. The witness has further stated that thereafter they also made efforts to trace the accused but he could not traced hence, they declared a reward for Rs. 50,000/- to the public who

gave information about his whereabouts. PW4 has stated that during one of the CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 raids the accused was arrested from his house in Patna on 23.05.1999.

10 In his cross examination the witness has stated that no notices were issued to the accused for his appearance since they straight away wanted to arrest him. According to him, the investigating officer gave 5-6 addresses of Pappu Yadav to the court for obtaining his NBWs. He has stated that the investigating officer knew that the accused was the sitting member of Parliament from Bihar and the MPs quarter occupied by the accused was also searched and kept under watch. The witness has further stated that only NBWs of the accused were obtained and no proceedings u/s 82/83 Cr.PC were initiated against him. He has denied the suggestion that the accused was available throughout before his arrest and was attending public functions in his constituency and joining with various officials and ministers. He has further denied the suggestion that the accused used to attend the court in other cases.

11 During cross examination, witness has also admitted that he is aware with the details of the other cases including FIR number and Police Station pending against the accused. He has also filed details of those cases as Ex. PW4/X1. The witness has also admitted that the aspect if the said case has put in the Court or not has not been investigated. He has also volunteered that IO has furnished the details stating that accused had not appeared in the said cases also. Witness has also admitted that accused was not named in the FIR and volunteered that it was during the investigation that his involvement come to light. He has also admitted that in the earlier chargesheet filed in the case present accused Rajesh Ranjan Yadav @ Pappu Yadav was not chargesheeted. The witness has also admitted that during the interrogation accused Ranjan Tiwari has given certain addresses of the present accused i.e. 173, North Avenue, New Delhi, Ashiyana Apartment Patna, Punai Chowk House in Patna, Court Station Road in Purnia and Arjun Bhawan in Purnia. The copy of the application for issuance of arrest warrant against the accused filed before Special Magistrate, CBI, Patna is Ex. PW4/D1. The copy of the warrant is Ex. PW4/D2 which has been issued on the Court Station Road, Purnia. The witness has also admitted that on the date when the arrest warrant was issued the anticipatory bail application of the accused was CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 pending. The witness has also admitted that the details of places where the officer have conducted raids and searches for arrest have not been mentioned in the affidavit filed before Hon'ble High Court. It is also admitted that warrant were not obtained on the other addresses of the accused given by Ranjan Tiwari.

12 After completing the pre charge evidence and on hearing the arguments on charge from both the sides vide order dated 16.09.2006, the then Ld. ACMM, New Delhi has framed formal charge against accused Rajesh Ranjan@ Pappu Yadav u/s 181/182/193 r/w Section 199 IPC to which accused pleaded not guilt and claimed trial.

13 After framing the charge, out of above named witnesses accused preferred to call PW4 M. Narayanan for further cross examination and this witness was further cross examined at length. Thereafter, statement of accused u/s 313 Cr.PC was recorded wherein claims innocence and stated that he has been falsely implicated in this case and accused wishes to lead DE in his favour. Accused

examined four defence witnesses and also examined himself as defence witness. The brief scrutiny of the testimonies of defence witnesses is as under:-

14 DW-1 Sh. Parmanand Yadav deposed that he received the summon from this Hon'ble Court. He was working as a PA with Mr. Rajesh Ranjan Yadav since 1996 and he always with him. He was aware of all the programmes of Sh. Rajesh Ranjan Yadav and his job was to get appointment of Rajesh Ranjan Yadav with the public and arranging public function and he was always in contact with the public. Since January 1999 till April 1999 he was busy in public functions at Purnia, Patna, Darbhanga and Madhubani. In the month of May 1999 Sh. Rajesh Ranjan Yadav was busy in public function at his residence at Patna where official of CBI got arrested him. He was with Rajesh Ranjan Yadav at Delhi 173 North Avenue where he use to reside and they were at 173 North Avenue, Delhi till January 1, 2000. Thereafter, he shifted at 1, Balwant Rai Mehta Lane, New Delhi.

15 DW-2 Sh. Khwaja Rohail Anjum Hashmi deposed that he was working as a private guard of Sh. Rajesh Ranjan Yadav since 1997 till 20.05.1999. During the CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 said period whenever and wherever Sh. Rajesh Ranjan Yadav participated in the public meeting in the area in Purnia, Dhamdah, Rupauli, Banmankhi, Baisi Etc. On 28.03.1999, there was a mass public meeting in Banmankhi in which Sh. Rajesh Ranjan Yadav participated as a chief guest and local police were also present there. On 20.05.1999 he was ill and due to this reason he did not accompany him to Patna.

16 DW-3 Sh. Tirthanand Yadav deposed that he is a Lecturer in R.L. College, Madhav Nagar, Purnia. He is residing in Banmankhi M.L.A Constituency, it is in Purnia Lok Sabha Constituency. In Banmankhi M.L.A Constituency Sh. Rajesh Ranjan Yadav used to attend the meetings. In the year 1999, in the month of February and March he visited several times in Banmamkhi M.L.A Constituency.

17 DW-4 Aftab Alam has deposed that he is associated with the Parliamentarian since 1998 alongwith his friend K.R. Hasmi (DW2). He attended the public meetings held in the month of January, February, March & April in the year 1999. There was a mass rally organized in the month of March, 1999. He came back to his house after the rally. The Parliamentarian in Purnia till half of the April and thereafter he went to Patna.

18 Accused Rajesh Ranjan Yadav @ Pappu Yadav also examined himself as DW and deposed that before the investigations of case bearing RC No. 12(5). 98/SIC/IV/ND were handed to CBI the said investigations were being conducted by Purnia Police (Bihar) vide FIR No. 230/98, PS K Hatt, Distt. Purnia, Bihar. During the investigation of this case by Purnia Police he had received information through newspapers and electronic media that some landlord of Purnia were involved in the murder of Ajit Sarkar alongwith some other persons and there was no information regarding his involvement in the matter from any source nor he was involved. His name had also not come during the investigation. This was in the year 1997-98 and prior to this he had remained a Member of Parliament for two times i.e. between 1991 to 1996 and 1996 to 1997. He was not a member of Parliament during period i.e. December 1997 till 10.10.1999. After the matter was handed over to the CBI for investigations they had incorrectly stated that he was a CC No. 33/1: U/s 195 IPC r/w

section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 Member of Parliament during the said period. During this period when he was not a Member of Parliament he used to frequently come to Delhi, and also used to visit Patna and Purnia to participate in his social and political activities. Since, he had strong political rivals who were averse to him were in the Government, he was falsely got implicated at their instance since earlier his name had never figured in the chargesheet filed by the Purnia police. The handing over of the investigation to the CBI was a political decision by the government with the sole aim of framing him in the Purnia case directly or indirectly. The information with regard to the handing over the case to CBI had been received by him only through the newspapers sources. It is in this background that he approached his advocate Sh. A K Bajpai in Delhi for requesting him to plead that the CBI should not investigate this case as he was fearful and apprehensive that the case has been handed over to the CBI investigation with the motive of framing him. Since the Purnia Police had already filed the chargesheet in 1998 where he has not been named and it was only because of this that he had asked his counsel Sh. Bajpai to file a petition against the CBI investigation. The entire petition had been drafted by Sh.A K Bajpai, Advocate. He had signed the petition reposing full faith on his advocate Sh. A K Bajpai and he had not signed the affidavit for purposes of giving evidence in any Court. At the time of filling of the affidavit and the petition he was resident of RZ-70, Vijay Park, Najafgarh, which was belonging to SH. S Prasad. The said person Sh. S Prasad had rented the said premises from some other person whose name he do not know. At the time, he was arrested from Patna by the CBI, he was at his residence at New Punai Chuk, near Pump House, Patna in ordinary course, he was relaxing after attending some meeting when the DSP CBI accompanied with 3 to 4 persons came and asked his father if he was at home to which he replied in affirmative. On being told that they wanted to see him, his father in normal course called him. When he met the DSP CBI, he was told by him that he was wanted in the aforesaid CBI case and they had come to arrest him. He had requested the said DSP that he was never informed about his involvement previously nor was any notice u/s 160 Cr.PC given to him nor was he called for interrogation at any time. He also told them that they should have given him notice u/s 160 Cr.PC and he would have joined the investigation, but he only told him that he had a warrant to arrest him so he accompanied him without any protest. He CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 had initiated the legal proceedings in Delhi High Court on 26 th of March 1999 only on account of this apprehension of being falsely implicated. The criminal writ petition no.268/99 had been filed by him only under a bonafide belief of pursuing his legal remedies and he did not deliberately or intentionally make any incorrect statement or contention in the petition nor he concealed any material fact in the same. He was never an absconder and was always available to join the investigation, but he has never been serve to any notice, hence, there is no question of suppression of any material fact. The present complaint has been sent by the Hon'ble Division Bench of the High Court only for the purpose of inquiry into the correctness of the claims and counter claims made before the Delhi High Court by himself or by the CBI. The CBI did not place the correct fact before the Delhi High Court and this present complaint has been sent by the Delhi High Court only for the inquiry for the correctness of the said case.

19 This is all as far as prosecution evidence and defence witnesses in the matter are concerned.

Arguments advanced & Case law cited:

20 I have heard final arguments advanced on behalf of both the sides and also have perused the entire judicial records, carefully.

21 It is argued on behalf of Ld. Additional PP that prosecution has successfully proved its case. All the witnesses examined during trial supported the prosecution case and nothing material came on the record in favour of accused on cross examination of said witnesses. It is submitted that PW4 M. Narayanan deposed against the accused and he specifically deposed that during the course of investigation, they had made efforts to trace the accused Pappu Yadav at the known premises of his residence, in New Delhi, Patna, Purnia etc, but the accused could not be traced. Thereafter, they declared a reward of Rs. 50,000/- to the public who gave information about his whereabouts and then gave wide publicity in various newspapers for collecting clues about the whereabouts of accused and to arrest him but, accused could not be traced.

CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 Ld. Additional PP also relied on the following judgments:-

1) Pritish v. State of Maharashtra AIR 2002 SC 36 in which Hon'ble Supreme Court has held that "the court is not bound to make a preliminary enquiry but if it decides to do so it should make a finding as to whether on fact, it is expedient in the interest of justice that the offence should be further proved.

2) Bai Kastur Bai v. Vanmali Dass 1925 49 Bom. 710, in which it was held that Court also includes High Courts.

3) Govind Mehta v. State of Bihar AIR 1971 SC 1708 (1712, 1713) in which Hon'ble Supreme Court has held that section 340 Cr.P.C which corresponds with section 476 of the Repeal Code is intended to be complimentary to section 195 of the code. Section 195 creates bar on filing a complaint by all and sundry and section 340 removes the bar by conferring jurisdiction on the court to file complaint. It prescribed the procedure to be followed in the case of complaints before Court in respect of the offence mentioned in clause 'b' of section 195 (1).

4) 1991, 1 All Cri. L.R. 919 (920) (P & H) it was held that the court in which false affidavit was produced may have jurisdiction to file a complaint on the ground that the party concerned had filed false affidavit before it. This however, does not oust the jurisdiction of the court which exercises jurisdiction under provisions of the court.

Hence, it is argued that accused be convicted for the offence charged and sentenced as per law.

22 Per contra, written arguments filed on behalf of accused Rajesh Ranjan Yadav @ Pappu Yadav and also filed the copy of Judgment passed by Division Bench of Hon'ble High Court of Patna in Criminal No. 418/02 dated 17.05.2013 wherein accused has been acquitted in the main case.

23 Sh. Surender Singh, Senior Advocate alongwith Sh. Rakesh Kumar Singh, Advocate addressed the final arguments on behalf of accused. During the arguments Ld. Senior counsel has relied upon several Judgments to support his arguments which are as under:-

In case titled as "Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 S.C. 468, Chittaranjan Mukherji v. Barhoo Manto, AIR 1953 S.C. 472, CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 Aher Raja Khima v. State of Saurashtra, AIR 1956 S.C. 217, Daulat Ram v. State of Punjab, AIR 1962 SC 1206, Sankatha Singh and other v. State of Uttar Pradesh AIR 1962, SC 1208, Baban Singh and another v. Jagdish Singh and others, AIR 1967 SC 68, Kartarey and others v. The State of U.P. (1976) I SCC 172, Labh Singh and others v. State of Pubjab (1976) I SCC 181, Dudh Nath Pandey v. State of U.P., AIR 1981, Superintendent and Remembrancer of Legal Affairs, West Bengal v. Satyen Bhowmick and others, AIR 1981, Bhugdomal Gangaram and others v. The State of Gujarat, AIR 1983, Sheikh Zakir v. State of Bihar, AIR 1983, Kehar Singh and others v. State (Delhi Administration) (1988)3 SCC 609, Anil Phukan v. State of Assam (1993) 3 SCC 282, P.M. Hari Kumar v. Union of India and others, (1995) 5 SCC 691, R. V. Bhupal Prasad v. State of A.P. and others (1995) 5 SCC 698, M S Ahlawat v. State of Haryana and another, AIR 2000 SC 168, Banti Alias Guddu v. State of M.P., (2004) SCC 414, Md. Nazrul Islam v. State of Assam, 2008 Crl. L.J. 3374, Rai Singh & Ors. v. State of M.P., 2008 CRL. L.J. 3378, Rohit Kumar alias Raju v. State of NCT Delhi & Anr., 2008 CRL, L.J. 3561, State of H.P. v. Bhola alias Paras Ram & Ors., 2008 CRI.L.J. 3567, C. Muniappan and others v. State of Tamil Nadu with D.K. Rajendran and others v. State of Tamil Nadu (2010)9 SCC 567, Paramjeet Singh @ Pamma v. State of Uttarakhand, AIR 2011 SC 200, Dr. V. N. Shrikhande v. Mrs. Anita Sena Fernandes, AIR 2011 SC 212, Kalyan Kumar Gogoi v. Ashutosh Agnihotri and another, AIR 2011 SC 760 and Samitri Devi and another v. Sampuran Singh and another, AIR 2011 SC

773.

24 Sh. Rakesh Kumar Singh, Ld. Counsel for accused has also filed written submissions along with copy of Judgment relied during arguments.

Court View & Final Decision:

25 I have gone through the Judgment dated 05.05.1999 passed by Division Bench of Hon'ble High Court of Delhi in Criminal writ petition No. 268/99 titled as "Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI & Ors. and also have perused the directions given in the said order for filing of the present complaint. At the cost of CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 repetition the said directions are reproduced as under:

"Before parting with the order we would like to point out that there is a growing tendency to file false affidavits in the Courts. This tendency must be curbed to maintain purity of the judicial system. In the circumstances, we direct the Registrar

of this Court to file a complaint before the appropriate court against the petitioner for stating in para 10 of the petition that there was no question of his absconding from prosecution, when it is clear that the petitioner had been declared as an absconder and non-bailable warrants had been issued against him which still remain unexecuted."

26 As mentioned in the directions the para No. 10 of the writ petition is also material which is also reproduced as under:-

"That the petitioner is resident of Delhi and completed two terms of Member of Parliament as such there is no question of his absconding from prosecution and there is no question of his tampering or terrorizing the witnesses."

27 The legal proposition set by Hon'ble Supreme Court in dealing court complaint u/s 340 Cr.P.C., n case AIR 1978 Supreme Court 290, titled as K Karunakaran v. T.V. Eachara Warriar and Anr. is as under:-

"We should make it clear that when the trial of the appellant commences under section 193 IPC the reasons given in the main judgment of the High Court or those in the order passed under section 340 (1) Cr.P.C. should not weigh with the criminal court in coming to its independent conclusion whether the offence under section 193 IPC has been fully established against the appellant beyond reasonable doubt. It will be for the prosecution to establish all the ingredients of the offence u/s 193 IPC 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 CC No. 33/1: U/s 195 IPC r/w section 340 Cr.P.C : PS Subzi Mandi DOD: 27.11.2014 formed by the High Court in the habeas corpus proceeding and also in the enquiry under section 340 (1) Cr.P.C.

An enquiry, when made, under section 340 (1) Cr.P.C. is really in the nature of affording a locus paenitentiae to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence".

28 Accordingly, the issue before this Court to decide is whether accused Rajesh Ranjan Yadav @ Pappu Yadav was declared absconder as per the provisions of law mentioned in the Cr.P.C. If so, whether accused has concealed the fact of absconding from Hon'ble High Court with a view to secure favourable order in his favour in the writ petition mentioned above.

29 To decide the above issues the counter affidavit filed by PW4 M. Narayanan which is proved on record Ex. PW1/C is material. In para 13 of the counter affidavit PW4 has deposed that the petitioner is absconding and Special Judge, CBI had on 06.03.1999 issued Non Bailable Warrants against the accused and the same is pending execution. In para 14 he has further deposed that accused moved a petition for anticipatory bail in the Court of Ld. District & Sessions Judge, Patna

on insufficient grounds and has been withdrawn on 19.02.1999. In para 15, PW4 further deposed that petitioner is carrying a reward at Rs. 50,000/- and despite publication in the local newspapers he has remain to be apprehended. These are the allegations of the CBI in the counter affidavit levelled against the accused and on the basis of these allegations Hon'ble High Court of Delhi was pleased to pass the above directions and pursuant to said directions present complaint was instituted on the complaint of the then Ld. Registrar General, High Court of Delhi. As mentioned above accused claimed himself innocent and further stated that he has not concealed any fact from the Hon'ble High Court in writ petition and he has raised certain objections in his written arguments to substantiate his view.

30 The first argument submitted on behalf of accused that Hon'ble High Court while exercising extra ordinary writ jurisdiction under its constitutional authority CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 and jurisdiction under article 226 of the Constitution of India is not ordinarily maintainable at all u/s 340 Cr.PC. It is also argued that the complainant did not filed the present complaint as per the scheme of Section 340 Cr.PC. Hence, complaint itself is not maintainable. It is also argued that four charges u/s 181/182/193 r/w Section 199 IPC and u/s 199 IPC. were framed against the accused without applying its mind by Ld. ACMM to the mandatory provisions of Section 195 Cr.PC and procedure laid down u/s 340 Cr.PC.

31 I do not agree with the legal argument addressed on behalf of accused that while exercising writ jurisdiction Hon'ble High Court cannot be termed as a Civil Court in view of the Clause 3 of Section 195 of Cr.PC. Writ jurisdiction is a extra ordinary jurisdiction exercised by Hon'ble High Court in view of Section 226 of the Indian Constitution and the relief sought under writ is a equitable relief and it is settled principle of law that he who seeks equity must approach the court with clean hand. Therefore petitioner is required to approach the court for seeking the equitable relief with clean hand. The concealment of material fact in the writ which is verified by petitioner by way of affidavit is an offence punishable under the provisions of Indian Penal Code for giving the false evidence and the proceedings of Hon'ble High Court while exercising writ jurisdiction are judicial proceedings and by any stretch of imagination it cannot termed otherwise. To substantiate my view the legal preposition held by Superior Court in cases is relied upon.

32 So far as the other argument that there was no proper authorization in favour of Ld. Registrar General, High Court of Dehli by Court to file the present complaint. Sub Clause 3 of Section 340 Cr.P.C. Speaks-A complaint under this section shall be signed:- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint. In the present case, there were specific directions to Ld. Registrar General, High Court of Delhi to file a complaint. Hence, I also find not substantiate in this argument also. Moreover by virtue of Rule 2 of Chapter 3 part 'C' of High Court Rules the Registrar had been delegated the powers to sign complaints under clause 'a' of Sub section '3' of Section 340 Cr.P.C.

CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 33 Now,I come to the fact in issue whether accused Rajesh Ranjan Yadav @ Pappu Yadav was declared absconder or not. The procedure to declare the accused as absconder is prescribed under section 82 and 83 Cr.P.C. For better appreciation both the sections are reproduced as under:-

"Section 82-Proclamation for person absconding-(1) If any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation".

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village.

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause

(i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4)

(5)

Section 83- Attachment of property of person absconding-(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued-

CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014

(a).....

(b).....

(2).....

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(5).....

(6).....

34 It is settled preposition of law that before declaring the accused as absconder, the court has to be satisfied that accused had left their permanent address or they are avoiding service or there is no chance of arrest in near future. The Code of the Criminal Procedure has provided that power to execute a warrant. But if it remains unexecuted, there are two more remedies:-

(i) issuing of a proclamation (section 82)

(ii) attachment or sale of property (section 83) The sine qua non for an action under Section 82 is the prior issuance of warrant of arrest by the Court. There must be a report before the magistrate that the person against whom the warrant was issued by him had absconded or had been concealing himself so that such warrant can be issued. An attachment warrant can be issued only after the issuance of proclamation.

35 The expression "reason to believe" occurring in section 82 Cr.P.C. suggests that the court must be subjectively satisfied that the person has absconded or has concealed himself on the materials before him. The term "absconded" is not to be understood as implying necessarily that a persons leaves the place in which he is. Its etymological and its ordinary sense is to hide oneself. Further under section 82 Cr.P.C. the Court issuing proclamation must record its satisfaction that accused had "absconded" or "concealed himself". For attachment of the property of the person absconding it is also a sine qua non that the Court issuing a proclamation must record the reasons in writing that such person is about to dispose of the whole or any part of his property or about to remove the whole or any part of his property from the local jurisdiction of the Court and such satisfaction is to be arrived at by affidavit or otherwise. The word "otherwise" here would embrace CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 making of such other enquiry as may be found necessary on the facts and circumstances of a given case taking note of antecedents and conduct of the accused as may be revealed from the record.

36 The meaning of word 'Abscond' (Black's law dictionary) running away from the law to make oneself absent in an attempt to avoid the legal process. But before it can be said that a person is absconded, law required that a person must have knowledge of the fact that he is required to appear before a court on particular date and time at a specified placed. Hon'ble Supreme Court in Joti Prasad v. State of Haryana, AIR 1993 SC 1167 (1169) has held that knowledge is a awareness on the

part of the person concerned including his state of mind. Further in Arun Nivalji More v. State of Maharastra AIR 2006 SC 2886 it was held that knowledge is a fact or condition being cognizant, conscious or aware of something to be assured or being acquainted with.

37 Now, I appreciate the evidence brought on record by the prosecution to prove the fact in issue. In order to prove the charge against accused prosecution examined in as much as 4 witnesses. PW1 S.K. Sood, Administrative Officer, Judicial who has proved the certified copy of the order dated 05.05.1999 as Ex. PW1/A, true copy of Cr. W.P. no. 268/1999 along with affidavit as Ex PW1/B, true copy of counter affidavit of Sh. M. Narayanan in Cr. WP no. 268 of 1999 along with its annexure as Ex PW1/C. In his cross examination this witness has admitted that he has no personal knowledge of the contents and the facts of the present case. PW2 Gopal Krishan Sharma, the then Deputy Registrar of Hon'ble High Court of Delhi has proved the complaint dated 31.01.2000 as Ex. PW2/A. During cross examination this witness has also admitted that he has no personal knowledge about the contents of the complaint. PW3 Ms. Kanchan Lata Jha who has proved the affidavit dated 26.03.1999 as Ex. PW3/A and she has also deposed that on 26.03.1999 she was oath commissioner and has attested the affidavit of accused Rajesh Ranjan Yadav who was identified by one A.K. Vajpayee advocate. She has also stated that the said affidavit was in support of criminal writ petition which was accompanied with it. The affidavit is proved as Ex. PW3/A. CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 38 PW4 R. Narayanan who has deposed that in 1999 he was working Superintendent of Police, CBI and have filed the counter affidavit dated 01.05.1999 in W.P. no. 268 of 1999. Counter affidavit is proved as Ex. PW1/C and its annexure R1 as Ex. PW4/A, R3 as Ex. PW4/C. This witness has further deposed that he has filed this affidavit on the basis of official record and information available on record. Thus has he no personal knowledge except the record. This witness has also stated that at the time of filing of counter affidavit the accused was absconding. But in cross examination PW4 has admitted that he was not personally investigating the case except that he was supervising. In the affidavit Ex PW1/C this witness has also deposed about the efforts for tracing the accused at the residence in New Delhi, Patna and Purnia and also referred that due to non tracing of the accused IO obtained NBWs for his arrest on 06.03.1999 and he also refers about the raid at different places. But it is matter of record that the investigating officer (IO) is not examined as a witness in this case who has personal knowledge of the proceedings conducted in the main case. It is also pertinent to mention that copy of the order by which Ld. Special Judge CBI has issued NBWs is also not proved on record for perusing the reason mentioned in the order. PW4 has also mentioned about the publication in the newspapers daily Hindustan (Hindi Edition, Patna) regarding the absconding of the accused but perusal of the copy of the newspapers Ex. PW4/C shows that the publication in the newspaper was made after filing of writ petition before the Hon'ble High Court of Delhi. PW4 has also admitted that procedure u/s 82/83 Cr.P.C. has not been conducted against accused Rajesh Ranjan Yadav by the competent court.

39 It is settled principle of law that burden of proving is always on prosecution through legal and reliable evidence. In the present case PW1, PW2 and PW4 have deposed on the basis of record and have no personal knowledge of the case. PW3 is the Oath Commissioner who has prove the attestation of affidavit of accused which in any case not denied by accused. Admittedly, IO not examined as a witness who has first hand knowledge. PW4 has admitted that accused Rajan Tiwari has provided five addresses of accused but NBWs were obtained only on one address. Even the

details of raids were not provided. Admittedly no notice u/s CC No. 33/1: U/s 195 IPC r/w section 340 Cr.PC : PS Subzi Mandi DOD: 27.11.2014 160 Cr.P.C. served upon accused. Accused was not named in earlier charge sheet filed by Patna Police. Even accused is not named in the FIR. Even in the RC registered by CBI on 12.10.1998 accused was not named. Between 12.10.1998 to 05.03.1999 no publication in newspaper that accused is required in this case was made. No proceeding u/s 82 Cr.P.C. conducted against accused. Even no process u/s 83 Cr.P.C. was ever issued for attachment of property. The name of the accused for the first time came into picture in Ex. PW4/D-1 i.e. application for issuance of NBWs. The order of Ld. Special Judge CBI is also not filed to know the reason mention in the order for issuance of NBWs. In my view PW4 has deposed on the basis of record. He is not the eye witness of the proceedings conducted in the main case. In my view the evidence of PW4 in the court including the counter affidavit in the WP no. 288/99 about the fact of absconding is hearsay evidence as not based on personal knowledge. The publication for record by CBI in the news paper on 31.03.1999 is after filing of writ petition. It cannot be read against accused. Hence, it cannot be said that accused was declared absconder at the time of filing of the writ petition.

40 In view of my above reasons, this court is of the considered view that present accused was not declared absconder as pleaded in the counter affidavit Ex. PW1/C by PW4 and also mentioned in complaint made by Ld. Registrar General Ex. PW2/A in sub para 5 of para 2 of complaint. A person can be said to attribute knowledge or awareness under law, only after he has been declared absconder by competent court by complying procedure u/s 82 Cr.P.C, when a court declare a person as absconder, only then he can be termed as absconder. As I have hold that accused was not absconder at the time of filing of writ petition, hence prosecution has failed to prove the charges against the accused. Hence, accused is acquitted from all the charges.

Announced in the open court
on 27.11.2014

(Pooran Chand)
Chief Metropolitan Magistrate
Central District: Tis Hazuri
Courts: Delhi