K.J. Wadhan And Ors. vs Dilar Singh on 6 October, 2005

Equivalent citations: II(2006)BC372

Author: Satish Kumar Mittal

Bench: Satish Kumar Mittal

JUDGMENT

Satish Kumar Mittal, J.

1. The petitioners, who are the Branch Managers and Assistant Manager, have filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for quashing of the order dated 4.2.2003 passed by the District Judge, Kurukshetra whereby the order dated 3.5.2002 passed by the Civil Judge (Jr. Division), Kurukshetra dismissing the application of the respondent filed under Section 340 of the Code for initiation of prosecution against the petitioners, has been set aside.

2. The brief facts of this case, which are necessary for the adjudication of this petition, are that a suit for recovery of Rs. 70,060/- was filed by the State Bank of Patiala, Kurukshetra against Dilar Singh (respondent herein) and others (heirs of Avtar Singh, and guarantors of the loan taken by Avtar Singh). The said suit was instituted on 7.9.1996, was signed by petitioner No. 1 as the Branch Manager. The suit arose out of an outstanding debt towards Avtar Singh, who had taken an agricultural loan from the Bank. The suit was filed against the legal heirs as the loanee Avtar Singh had died on 11.10.1992. Amongst the documents relied upon to prove the suit for recovery being within limitation, a revival letter dated 9.10.1992 (Ex. P-11) executed by Avtar Singh, acknowledging the outstanding amount and an undertaking dated 1.8.1995 (Ex. P-12) to pay the same and thereby confirming the balance amount due, executed by the heirs of Avtar Singh, were placed on the record of the civil suit.

3. The defendants while contesting the suit being barred by limitation, disputed the genuineness of the letter dated 9.10.1992 (Ex. P-11). When the evidence of the plaintiff Bank was going on, the defendants moved an application dated 8.11.2000 seeking permission to compare the thumb impression of Avtar Singh on the aforesaid letter (Ex. P-11) with his admitted thumb impression. The said application was dismissed vide order dated 12.2.2001. The revision petition filed against the said order was also dismissed by this Court vide order dated 23.8.2001.

4. During the pendency of the civil suit, the respondent (who was one of the defendant in the above suit), moved an application dated 20.12.2001 for initiation of proceedings against the petitioners under Section 340, Cr.P.C. for having allegedly committed offences under Sections 120-B, 193, 209,

210, 419, 420, 465, 467, 468 and 471 IPC in respect of the document Ex. P-11. In the application, it has been alleged that the letter dated 9.10.1992 alleged to have been thumb impressed by Avtar Singh is a forged and fictitious document and the same was relied upon by the Bank to prove the suit of time barred debt within limitation.

5. Subsequently, the suit of the Bank was decreed by the Trial Court while holding that all the documents produced by the Bank including letter dated 9.10.1992 (Ex. P-11) and letter dated 1.8.1995 (Ex. P-12) have been duly proved and the suit filed by the Bank was within the period of limitation. The Trial Court also dismissed the aforesaid application filed by the respondent under Section 340 of the Code vide order dated 3.5.2002 while observing as under:

> ...After giving thoughtful consideration on the arguments advanced by the learned Counsel for the applicant, this Court is of the considered opinion that a letter promising to pay time-barred debt dated 9.10.1992 which is Ex. P-11 has been fully proved by the respondents in Civil Suit No. 376/2000 titled as State Bank of Patiala v. Daler Singh and Ors. Also the time barred debt as alleged by the applicant has been admitted by them, therefore, now it does not lie to their mouth that on Ex. P-11 deceased Avtar Singh has not penned down his thumb impression/signatures, therefore, once the time-barred debt has been admitted by the applicant and has been fully proved in civil suit No. 376/2000, it can be well executed and once executed as in the present case then applicant is bound to pay the same. Hence the plea of the applicant that said Avtar Singh deceased never put his thumb impression on the alleged document dated 9.10.1992 is not plausible.

6. The respondent filed an appeal against the aforesaid order. He also filed an appeal against the judgment and decree passed by the Trial Court decreeing the suit of the Bank. The learned District Judge allowed both the appeals filed by the respondent. The judgment and decree passed in favour of the Bank in the suit has been set aside while observing that the plaintiff Bank was not entitled to recover the amount from the defendants as the alleged debt had become time-barred. In this regard, it has been found that the documents Ex. P-11 and Ex. P-12 have not been proved by the plaintiff because these documents were filled up by J.K. Hans and Arun Bhardwaj, respectively, but these officers were not examined by the plaintiff. So, a strong adverse inference was drawn against the plaintiff. Secondly, it has been observed that the limitation period in the case was expiring on 30.9.1992 whereas Ex. P-11 was allegedly executed by Avtar Singh on 9.10.1992, i.e. after the expiry of limitation. The said letter could not be used as an acknowledgement under Section 18 of the Limitation Act, 1963 because according to the said section the acknowledgement has to be made before the expiry of the limitation period. Regarding Ex. P-12, it was held that the said document was not executed by all the defendants, therefore, the said document cannot be relied for extension of the limitation period. Regarding Ex. P-11, the following finding has been recorded by the Appellate Court:

> Plaintiff's case hinges on letter dated 9.10.1992 Exhibit P-l 1 promising to pay time-barred debt allegedly executed by Avtar Singh. This letter also cannot extend the limitation period as already discussed. However, even if promise to pay time-barred

debt is assumed to be valid, even then the plaintiff's case is not proved because document Exhibit P-11 is not proved to have been executed by Avtar Singh. In this regard, as already discussed, J.K. Hans who had allegedly filled in this document has not been examined although he was readily available and so strong adverse inference goes against the plaintiff. Statement of Suresh Sharma PW-10 is not sufficient to prove this document as it does not bear any writing or signature of this witness and so it cannot be said that it was executed in his presence or was read over or explained by him to Avtar Singh. Moreover, Suresh Sharma stated that he knew Avtar Singh personally and that Avtar Singh had only six issues and legal heirs but copy of the mutation Exhibit D-3 reveals that Avtar Singh left behind ten heirs including five sons, a widow and four daughters. Thus, Suresh Sharma did not know Avtar Singh and so it cannot be said that document Exhibit P-11 was executed by Avtar Singh.

7. Further, the Appellate Court has observed that the document Ex. P-11 seems to be a forged one as the same was executed just two days before the death of Avtar Singh and just 9 days after expiry of the limitation period. While relying upon the statement of Finger Prints expert (DW-4), it has been observed that the letter Ex. P-11 did not bear the thumb impression of Avtar Singh. Against the said judgment and decree passed by the District Judge, Second Appeal No. 3100 of 2003 filed by the State Bank of Patiala is pending being admitted, the file of which has also been perused.

8. Simultaneously, the District Judge allowed the appeal of the respondent against the order of the Trial Court vide which the application under Section 340 of the Code was dismissed on the same date, and directed the Civil Judge (Jr. Division), Kurukshetra to make necessary complaint under Section 340 of the Code against the respondent for various offences in the Court of competent jurisdiction.

9. In the impugned order, it has been mentioned that the Finger Prints expert Ram Dhan Babbar has proved that the letter Ex. P-11 does not bear the thumb impression of Avtar Singh and so it was not executed by him, which prima facie shows that the said document (Ex. P-11) is a forged one and the same was being used as genuine knowingly. On the basis of the said document, petitioner No. 1 filed the aforesaid suit for recovery and petitioner No. 2 alleged to have got executed the aforesaid document from Avtar Singh. However, the said letter does not bear his thumb impression. It has been also held that petitioner No. 3 also gave a false evidence regarding execution of the said document before the Court. The said impugned order has been challenged in this petition.

10.1 have heard the Counsel for the parties, perused the record of the case and also the file of R.S.A. No. 3100 of 2003.

11. Counsel for the petitioners submitted that in this case the District Judge while setting aside the well considered order dated 3.5.2002 passed by the Civil Judge (Jr. Division), Kurukshetra and directing initiation of proceedings against the petitioners under Section 340 of the Code, has acted illegally and has not applied his mind to determine as to whether it was expedient in the interest of justice to initiate the proceedings against the petitioners under the said section. The learned Counsel submitted that it is well settled legal position that prosecution for perjury should be initiated only in

glaring cases of deliberate and conscious falsehood and where conviction is highly probable. To start prosecution for perjury, too readily and frequently or on inconclusive and doubtful material, defeats the very purpose of law. The learned Counsel submitted that in the present case there is no conclusive and clear evidence to show that any perjury was committed and much less to show that the same was deliberate and conscious. There is no material on the record of the case as to justify a conclusion that it is expedient in the interest of justice to file the complaint. In support of this contention, learned Counsel for the petitioners relied upon the cases of Chajoo Ram v. Radhey Sham and Anr. ; Santokh Singh v. Izhar Hussain and Anr. and Pritish v. State of Maharashtra IV (2001) CCR 324 (SC) : 2002(1) RCR (Criminal) 92 (SC).

12. The learned Counsel submitted that in the instant case there is no conclusive evidence on the record of the case to establish that the letter dated 9.10.1992 (Annexure P-11) does not bear the thumb impression of Avtar Singh or the said document is forged and fabricated. The only evidence which has been produced during the course of inquiry is the report of the Handwriting and Finger Prints expert. Even that report prima facie does not establish that the aforesaid disputed document does not bear the thumb impression of Avtar Singh. It has been mentioned in the report that the basic pattern of both, the standard thumb prints and the disputed thumb prints, was the same, i.e. looptype. It is also mentioned in the report that the central ridges of the disputed thumb print opened towards right side and those of the standard thumb prints opened towards the left side. This aspect of the ridge pattern demonstrates that the standard thumb impression was of the left hand, whereas the disputed thumb impression could possibly be of the right hand, as according to the science relating to study of thumb print, the ridges of the right thumb slide to the right and ridges of the left thumb slide to the left. The learned Counsel submitted that the expert himself has mentioned in the report that it cannot be determined whether the disputed thumb print is of the right or the left hand thumb. In view of this, it was erroneous for the said expert to have stated in his report that the disputed thumb print belongs to some different person other than the one who affixed the standard thumb prints. So, learned Counsel for the petitioners submitted that merely on the basis of this Handwriting expert report, it cannot be conclusively held that the letter dated 9.10.1992 (Ex. P-11) is forged and fabricated document.

13. The learned Counsel further submitted that the first Appellate Court has reversed the finding of the Trial Court on the point of limitation while observing that the documents Ex. P-11 and Ex. P-l2 have not been proved by the plaintiff. Merely because the plaintiff could not prove the document Ex. P-11, it cannot be found that the same is a forged one. The learned Counsel for the petitioners further submitted that in this case the District Judge has erred in not appreciating that the necessary ingredient of deliberate and intentional forgery of the disputed document has not even prima facie proved. In this regard, the learned Counsel submitted that petitioner Nos. 1 and 2 were not posted in the concerned branch of the Bank on the date of execution of the alleged document (Ex. P-11). The petitioners being officials of the Bank had no personal interest in the suit for recovery and were not to derive any personal benefit. There was no motive for them to commit any forgery or fabrication of any document. Therefore, there was no material before the District Judge to come to the conclusion that the petitioners had deliberately, intentionally and consciously committed the alleged act of forgery.

14. On the other hand, learned Counsel for the respondent submitted that in this case there is no illegality or perversity in the impugned order. The District Judge has rightly directed the Trial Court to file a complaint under Section 340 of the Code against the petitioners for commission of various offences is prima facie. Learned Counsel submitted that there is sufficient material on the record, particularly the report of the Handwriting and Finger Print expert, which prima facie establishes that the letter Ex. P-11 is a forged document and the same was filed before the Court with intention to bring the suit for recovery of time-barred debt within limitation. He further submitted that in an inquiry under Section 340 of the Code, if prima facie case has been made out for laying a complaint then the complaint has to be filed by the Trial Court. The learned Counsel submitted that once the District Judge has found that there is a prima facie case and issued direction for laying the complaint against the petitioners before the appropriate Court, the High Court should not have exercised its inherent power under Section 482 of the Code for setting aside such an order. Such interference with the order of the District Judge at this stage will not be in the interest of justice. Even if two views are possible in the matter, it will not be expedient in the interests of justice to interfere with the impugned order. In support of his contention, learned Counsel for the respondent relied upon decision of the Hon'ble Apex Court in K. Karunakaran v. T.V. Eachara Warrier and Anr. . Learned Counsel further submitted that the offence of forgery or giving of false evidence should be strongly dealt with and effective and stern action is required to be taken to prevent the evil of perjury. Therefore, the learned Counsel submitted that in the facts and circumstances of the case, no interference is required by this Court.

15. Section 340(1) of the Code if reproduced below for ready reference:

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 (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-

(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 of 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 give evidence before such Magistrate.

16. A bare reading of the aforesaid section makes it clear that power under the section can be exercised by the Court either suo motu or upon the application made to it in that behalf. Before invoking the provisions of Section 340 of the Code, the Court has to form an opinion that it is expedient in the interest of justice that an inquiry be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195 of the Code. The underlying object of enacting Sections 195(1)(b) and (c) and Section 340 of the Code seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass their opponents. These provisions are intended to provide safeguard against criminal prosecution on insufficient grounds filed against a party by his opponent motivated by a revengeful desire to harass or spite the opponent.

17. It is not the object that every false statement should attract the provisions of Section 340 of the Code. In Chajoo Ram's case (supra), the Hon'ble Apex Court has observed as under:

> 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 reasonably 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 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.

18. Similarly, the Hon'ble Apex Court again in Santokh Singh's case (supra) has observed as under:

> ...Every incorrect or false statement does not make it incumbent on the Court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The Court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the Court should direct prosecution.
>
> In Thomman v. II Addl. Sessions Judge, Ernakulam and Ors. 1994 Crl.L.J. 48, the Hon'ble Apex Court has observed as under:
>
> If the Court is to notice every falsehood that is sworn to by parties in Courts there would be very little time for Courts for any serious work other than directing prosecution for perjury. Again, the edge of such weapon would become blunted by

> indiscriminate use. The gravity of the false statement, the circumstances under which such statement is made, the object of making such statement and its tendency to impede and impair the normal, flow of the course of justice are matters for consideration when the Court decides on the propriety of instituting a complaint for perjury.

19. Thus, from the aforestated judgments of the Hon'ble Apex Court, it is clear that every incorrect or false statement does not make it incumbent upon the Court to order prosecution. Such prosecution can be initiated only in those cases where the perjury appears to be deliberate and conscious. 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. These proceedings should not be initiated on inconclusive and doubtful material. Before initiating the proceedings, the Court must reach to the conclusion that initiation of the proceedings is expedient in the interest of justice.

The Hon'ble Apex Court in Pritish's case (supra) observed 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 Courts opts to conduct it, is only to decide whether it is expedient in the interest of justice to enquire into the offence which appears to have been committed.

20. In the instant case, the question is whether before issuing direction to the Trial Court for making a complaint under Section 340 of the Code against the petitioners, the learned District Judge has come to the conclusion whether it is expedient in the interest of justice to punish the petitioner or whether there is aprima facie case of deliberate falsehood on a matter of substance. In my opinion, the Appellate Court has not considered these aspects of the matter. The District Judge has not

framed any opinion that initiation of the inquiry in the instant case is expedient in the interest of justice. A suit has been filed by the Bank for recovery of the amount on the basis of certain documents. It was stated that the suit filed by the Bank was within limitation. The Trial Court decreed the suit while holding that the plaintiff has proved all the documents including Ex. P-11. The defendants in support of their plea that the document Ex. P-11 does not bear the thumb impression of deceased Avtar Singh, examined the Handwriting and Finger Print expert (DW-4) and proved his report. The said report was not given much weightage by the Trial Court. The first Appellate Court set aside the judgment of the Trial Court and dismissed the suit of the Bank. The first Appellate Court has found that the letter Ex. P-11 was not proved to have been executed by Avtar Singh. In this regard, it has been stated that the statement of PW-1 Suresh Sharma was not sufficient to prove the document as the same did not bear his signatures. The said document was executed before J.K. Hans and since the said witness was not examined, therefore, it was held that the said document was not proved to have been executed by Avtar Singh. Secondly, the issue of limitation was decided against the Bank while observing that the document Ex. P-11 was alleged to have been executed by Avtar Singh on 9.10.1992 whereas the period of limitation from the last transaction expired on 30.9.1992. Therefore, it was held that the said document Ex. P-11 did not save the limitation. However, on the basis of the report of the Handwriting and Finger Print expert, the first Appellate Court has observed that the defendants have proved that the letter Ex. P-11 does not bear the thumb impression of Avtar Singh and it was not executed by him. In the impugned order also, the District Judge relied upon the report of the Handwriting and Finger Print expert. In my opinion, the initiation of proceedings under Section 340, Cr.P.C. merely on the basis of the opinion of the Handwriting and Finger Print expert is not expedient in the interest of justice. The report of the Handwriting and Finger Print expert has also been annexed with this petition. Even from this report, it cannot prima facie establish that the aforesaid document (Ex. P-11) is a forged document. In the report, the basic pattern of the standard thumb prints and the disputed thumb prints was the same i.e. Loop-type. It is also mentioned in the said report that central ridges of the disputed print opened towards right side and those of the standard thumb prints opened towards the left side. This aspect of the ridge pattern demonstrates that the standard thumb impression was of the left hand, whereas the disputed thumb impression could possibly be of the right hand, as according to the science relating to study of thumb print, the ridges of the right thumb slide to the right and ridges of the left thumb slide to the left. So, from this report, it cannot be conclusively found that the thumb impressions of the Handwriting and Finger Print expert are not similar to the standard thumb impression.

21. Further, it is not the case where it can be said that the alleged perjury was deliberate and conscious. The petitioners are the Bank officers. The suit for recovery was filed by the Bank. They being the officers of the Bank had no personal interest in the suit for recovery and were not to derive any personal benefit. There was no motive for them to commit the alleged perjury. Petitioner No. 1 had only instituted the suit and signed the plaint. He did not have any other role. Before petitioner No. 2, the document Ex. P-11 was executed in the year 1992 when he was posted as Branch Manager. Petitioner No. 2 never prepared this document nor he produced the same in the Court as an evidence. Petitioner No. 3 appeared as a witness and he proved the documents as per the record of the Bank. Therefore, in this case, it cannot be said that the petitioners made any deliberate or intentional attempt to produce a forged document in the Court. The document (Ex. P-11) was

produced along with the plaint in the Court with a bona fide intention because the same was forming part of the Bank record. Therefore, the present case is not a case where it will be considered expedient in the interest of justice to initiate proceedings under Section 340 of the Code and to file a complaint for the alleged offence. In my opinion, the material placed before the Court is not sufficient and adequate to justify the imitation of the proceedings under Section 340 of the Code. I do not find any force in the contention raised by the Counsel for the respondent that in exercise of the inherent powers under Section 482 of the Code there is no justification for interference in the impugned order. For initiating the proceedings under Section 340 of the Code, two conditions must be fulfilled. Firstly, that sufficient material is produced before the Court to make out aprima facie case for lodging a complaint and secondly that it is expedient in the interests of justice to permit such a prosecution. In my opinion, both the conditions are lacking in this case. The instant case is not a case of deliberate and conscious falsehood on a matter of substance. In my opinion, this Court is fully justified in interfering in the inherent powers for setting aside such an order.

In view of the aforesaid discussion, this petition is allowed and the impugned order dated 4.2.2003 passed by the District Judge, Kurukshetra is set aside.