

# **Mahesh Tiwari vs State Of U.P. And Another on 24 August, 2016**

**Author: Suneet Kumar**

**Bench: Suneet Kumar**

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Case :- APPLICATION U/S 482 No. - 12840 of 2016

Applicant :- Mahesh Tiwari

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Chetan Chatterjee

Counsel for Opposite Party :- G.A.,Amit Kumar Srivastava

Hon'ble Suneet Kumar,J.

The prospective accused /applicant has approached this Court, in proceedings under Section 482 Cr.P.C., assailing order dated 31 February 2015 passed by the Revisional Court /Additional Sessions Judge, Court No. 1 Bareilly, in Criminal Revision No. 22 of 2015 (Mahesh Tiwari vs. State of U.P. and others) affirming summoning order dated 17 December 2014 passed by the Judicial Magistrate-1 Anwla, Bareilly in complaint case no. 743 of 2014 for an offence under Section 193 IPC.

The facts, briefly is, that the applicant instituted a suit for permanent injunction against the complainant/opposite party no. 2 being suit no. 94 of 2013 (Sri Subhash Inter College, Anwla through its Manager, Mahesh Tiwari, Advocate vs. Smt. Ruchi Saxena and others). The plaint was duly supported by an affidavit sworn by the applicant which was stated to be true to personal knowledge. In paragraph 16 of the affidavit filed in support of the plaint, it was averred that the cause of action for instituting the suit arose on 26 July 2013 when the opposite party no. 2/complainant threatened the principal of the college to remove the wall, however, in the event of

failure, it was alleged that the wall would be removed by using force.

Aggrieved by the assertion, which according to the complainant, was false for the reason that the complainant was abroad (USA) from 18 May 2013 until 10 September 2013. The complainant, therefore, filed an application under Section 340 Cr.P.C. for initiating proceedings for perjury, which was rejected by the civil court by order dated 18 November 2013 for the reason that the alleged affidavit was prepared and sworn out side the court and thereafter filed in the court, therefore, the proceedings in terms of Section 340 Cr.P.C. would be impermissible.

Thereafter, complainant filed a private complaint under Section 190 Cr.P.C. against the applicant seeking his prosecution for an offence alleged to have been committed under Section 193 IPC. The learned Magistrate upon examining the complainant under Section 200 and recording statement of the witness under Section 202 Cr.P.C. summoned the applicant. Aggrieved, applicant preferred a revision, which by the impugned order affirmed the summoning order.

The summoning order, revisional order and the complaint proceedings is being assailed.

Sri Chetan Chatterji, learned counsel appearing for the applicant would contend that: (i) an application filed under Section 340 Cr.P.C. arising out of original suit was dismissed, against the dismissal order, since appeal was not preferred by the complainant under Section 341 Cr.P.C., therefore, subsequent private complaint was not maintainable; (ii) evidence would not include an affidavit in view of Section 1 read with Section 3 of the Indian Evidence Act 1872; (iii) Section 30 read with Order 19 of the Code of Civil Procedure (CPC), would provide the circumstances, when an affidavit can be permitted to be filed in evidence or in the alternative the circumstances in which certain facts may be proved by means of an affidavit, therefore, pleadings, as such, would not be an evidence within the meaning of Section 191/192 IPC; (iv) private complaint for an offence under Section 193 IPC for perjury would be barred in view of Section 195(1) Cr.P.C.

In rebuttal Sri Amit Kumar Srivastava, learned counsel appearing for the complainant would submit that the statement made on oath by the applicant being false, which fact he knew to be false on the date of swearing, therefore, would tantamount to giving false evidence in a judicial proceeding defined under Section 191/192 IPC, which is punishable under Section 193 IPC, therefore, would contend that an affidavit is an evidence within the meaning of Section 191/192 IPC. A private complaint for filing a false affidavit in civil proceedings would be maintainable, therefore, the impugned orders are lawful and valid.

Rival submission falls for consideration.

The salient features of giving false evidence under Section 191 IPC are:-

- (i) intentionally making a false statement, or
- (ii) declaration by a person who is under a legal obligation to speak the truth.

The giving of false evidence amounts to practicing of fraud upon the court. Thus to make a statement of false evidence within the meaning of this section, it must be established that the person was legally bound by an oath or an express provision of law (a) to state the truth, or (b) to make a declaration upon any subject.

In certain cases, the law requires a declaration from a person on verification in a pleading, and if such a declaration is made falsely it will come under this clause.

Section 191 and 192 deal with perjury and filing of false affidavit in pleadings would be covered under Section 191. Section 191 deals with evidence on oath and Section 192 with fabricating false affidavits; the offence under Section 191 IPC is constituted by swearing falsely when one is bound by oath to state the truth because a declaration made under an oath. The definition of the offence of giving false evidence thus applies to the affidavits. The offence may also fall within Section 192 which, inter alia, lays down that a person is said to fabricate false evidence if he makes a document containing a false statement intending that such false statement may appear in evidence in a judicial proceeding and so appearing in evidence may cause any person who, in such proceedings is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceedings. Therefore, where declarations in affidavits which were tendered in the Court to be taken into consideration, the authors of the affidavit clearly intended the statement to appear in evidence in a judicial proceedings and so appearing, to cause the Court to entertain an erroneous opinion regarding the compromise, therefore, the offence would fall within Section 191, 192 which is punishable under Section 193 IPC, therefore, it was held that the authors of the affidavits were guilty of offence of giving false evidence or fabricating false evidence for the purpose of being used in judicial proceedings. (Refer: Baban Singh and another vs. Jagdish Singh and others (AIR 1967 68)).

Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. But it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the courts and thus produce mischievous consequences to the administration of justice. A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law. Consequently, there cannot be any doubt that if a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 IPC. It is not necessary that a person should have appeared in the witness box. The offence stands committed and completed by the filing of such pleading.

In Ranjeet Singh vs. State of Pepsu AIR 1959 SC 843 the accused, a police officer, was called upon to make a statement against an application under Article 226 of the Constitution for a writ of habeas corpus in which it was alleged that the accused had illegally detained a man in police custody. In his written (statement), the accused filed an false affidavit denying that the man was never arrested by the police or was in his custody. It was held that the accused was legally bound to place the true facts before the court in his affidavit and since the statements made by him in the affidavit were found to be false, it was held that he has committed the offence under Section 193 IPC for giving false evidence as defined in Section 191 IPC.

The making of a false statement, without knowledge as to whether the subject matter of the statement is false or not is giving of false evidence. A witness falsely deposing in another's name, and a persons falsely verifying his plaint, and an official making a false statement upon the service of summons were held guilty of giving false evidence under this Section. (Refer: S.P. Kohli (Dr.) vs. High Court of Punjab and Haryana AIR 1978 SC 1753.) Section 191 contemplates declarations which a person is bound by law to make. The most familiar instances of such declarations are plaints and pleadings in suits. A person being under a legal obligation to verify facts in plaints and pleadings is liable to be punished under Section 193 for perjury, if he verifies falsely. (Asgar Ali Mulla Ibrahimji vs. Emperor AIR 1943 Nag 17(18)).

Where a person falsely verifies a written statement he will be liable for perjury. Where as person falsely verifies an execution application he will be liable for perjury. (Emperor vs. Padam Singh AIR 1930 All 490).

An affidavit is 'evidence' within the meaning of Section 191 IPC and a person swearing to a false affidavit is guilty of perjury. The definition of the offence of giving false evidence applies to the affidavits. (Parag Dutt vs. Emperor AIR 1930 Oudh 62 (63)).

Where a police officer, accused taking delivery of draft of counter affidavit from Standing Counsel for being signed by his superior for filing in Supreme Court. Asking a police official to forge signature of his superior on carbon copy of counter affidavit. On refusal, he contacting his superior and latter directing official asked to forge his signature. Official acting accordingly. Accused sending carbon copy with others for filing it in Supreme Court, said affidavit containing false averments. Accused officer present in Supreme Court premises along with the officer whose signature was forged on date of filing affidavit. Accused is guilty of offence under Section 193. He abetted officer to forge signature of his superior. (Refer: Afzal and another vs. State of Haryana and others AIR 1996 SC 2326 (2334)).

A five Judge Bench in Iqbal Singh Marwah and another vs. Meenakshi Marwah and another 2005 (51) ACC 910 (SC) noted the conflict of language between two decisions rendered by Bench of three Judge in Sachida Nand Singh and others vs. State of Bihar and others 1998 Criminal Law Journal 1565 and Surjeet Singh and another vs. Balbeer Singh 1996 Criminal Law Journal 2304 regarding interpretation of Section 195(1)(b)(ii) Cr.P.C. The Court was of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced and given in evidence in proceedings in a Court i.e. during the time when the document was in custodia legis.

Iqbal Singh Marwah case involved the interpretation of the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceedings in any court".

In the facts of the present case, the ratio of Iqbal Singh Marwah would not apply as affidavit in support of a plaint / written statement is neither a document or evidence as contemplated in

195(1)(b)(ii) of Cr.P.C. Nor does the offence under Section 193 IPC is covered therein, Section 195 (1)(b)(ii) deals with all kinds of forgery committed in respect of a document or evidence produced in the court. The complaint in the present case has been filed for filing a false affidavit in civil proceedings for an offence punishable under Section 193 which is referred to under Section 195(1)(b)(i) Cr.P.C. for the offence defined under Section 191 and 192 IPC.

Section 1 and Section 3 of Evidence Act together make it clear that affidavit is not regarded as evidence under the Act, but can be used as evidence only if for sufficient reason court passed an order under Order XIX Rule 1 and 2 of the CPC. Affidavits, though, are not included in Section 3 of the Act, same can be used as evidence, if law specifically permits certain matters to be proved by affidavit. Mere swearing of affidavit does not make statement contained therein a piece of evidence. Swearing is only a guarantee of the authenticity of the affidavits but not of their contents. (Sudha Devi vs. M.P. Narayanan and others AIR 1988 SC 1381, Rita Pandit vs. Atul Pandit AIR 2005 AP 253 (FB)).

As regards documentary evidence, documents requiring proof cannot become evidence before they are proved. A document has to be proved first then the question of its authenticity has to be determined. A written statement filed on behalf of an accused cannot be treated as a document produced for inspection of the Court. It is not strictly evidence even though the Court may consider it. The word 'evidence' means instruments by which relevant facts are brought before Court viz witnesses and documents by means of which court is convinced of these facts.

Filing of a false affidavit in a proceedings pending before the Civil Court would amount to an offence falling under Section 193 IPC and proceedings would have to be initiated on a complaint in writing by that court. Private complaint filed by the opposite party for an offence allegedly committed under Section 193 IPC is not maintainable being vitiated for non-compliance of the mandatory provisions under Section 195(1)(b)(i) Cr.P.C.

In Kailash Mangal vs. Ramesh Chand (D) Through Legal Representative (LAWS (SC)-2015-1-117) Supreme Court held as follows:

"In the instant case, the false affidavit alleged to have been filed by the appellant was in a proceeding pending before the civil court and the offence falls under Section of the 193 of the IPC and the proceeding ought to have been initiated on the complaint in writing by that Court under Section 195 (1)(b)(i) of the (Cr.P.C.). Since the offence is said to have been committed in relation to or in a proceeding in a civil court, the case of Iqbal Singh Marwah (supra) is not applicable to the instant case.

The private complaint filed by the respondent for the offences allegedly committed under Section 193 of the Code is not maintainable as the same is vitiated on account of non-compliance of the mandatory provision of Section 195(1)(b)(i) of the Cr.P.C." (Refer: Govind Mehta vs. State of Bihar (1971) 3 SCC 329, Surjit Singh and others vs. Balbir Singh (1996) 3 SCC 533, K. Venqadachalam vs. K.C. Palanisamy (2005) 7 SCC 352) Therefore, false averments in pleadings are sufficient to attract Chapter XI of

the Indian Penal Code.

Section 190 Cr.P.C. provides that a Magistrate may take cognizance of an offence (a) upon receiving a complaint of facts which constitute such offence (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the court as contemplated by Section 195(1) Cr.P.C. is given in Section 340 Cr.P.C. The purpose of the section is to bar private prosecution where the courts of justice is sought to be perverted leaving to the court itself to uphold its dignity and prestige.

In *M.S. Ahlawat v. State of Haryana & Anr.*, AIR 2000 SC 168, Supreme Court considered the matter at length and held as under :

"5....Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognisance of any of the offences mentioned therein unless there is a complaint in writing as required under that section." (Refer: *Kamla Prasad Singh vs. Hari Nath Singh* AIR 1968 SC 19, *Iqbal Singh Marwah* (supra)) Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceedings is concluded and the final judgment is rendered. ( Refer: *N. Natarajan vs. B.K. Subba Rao* AIR 1993 SC 541) For the law and reasons stated herein above, the impugned order dated 31 February 2015 passed by the Revisional Court/Additional Sessions Judge in Criminal Revision No. 22 of 2015 (*Mahesh Tiwari vs. State of U.P.*) and summoning order dated 17 December 2014 passed by the Judicial Magistrate-I, Anwla, Bareilly cannot be sustained, accordingly, is set aside, the proceedings being Complaint Case No. 743 of 2014 (*Vijay Kumar vs. Mahesh Tiwari*) instituted by opposite party no. 2 is thereby quashed.

The application is allowed.

Order Date :- 24.08.2016 S.Prakash