Gulshan Sethi & Ors vs Government Of Nct Of Delhi & Ors on 4 August, 2015

Author: Ashutosh Kumar

Bench: Ashutosh Kumar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 108/2015
Date of decision: 04.08.2015

GULSHAN SETHI & ORS ..... Petitioners
Through: Ms.Kajal Chandra and Ms.Swati Sinha,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS..... Respondents
Through: Mr.Rajiv Khosla, Advocate for the applicant.
Mr.Rajesh Mahajan, ASC.
SI Shiv Dev, P.S.Defence Colony.
CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. The petitioners in Writ Petition (Crl. No.108/2015) who are 11 in number had preferred a writ petition seeking following reliefs against respondent Nos.6 to 11:-

> a) Issue a writ of mandamus or any other appropriate writ, commanding them to immediately take action on the FIRs No. 48/2013, 49/2013, 50/2013, 53/2013, 03/2014, 219/2014 and the complaints lodged by the Petitioners against Respondents no. 6to 11, and conduct a detailed and thorough investigation into the offences stated therein;
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> b) To transfer the aforesaid Complaints of the Petitioners or any other complaints of any other persons against the Respondents no. 6 to 11 to any other independent agency or either before EOW Cell or before MCOCA for further investigation;
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> c) Restrain Respondents no. 6 to 9 and the directors of the Respondents no. 10and 11 from leaving the country without permission of this Hon'ble Court till the pendency of the complaints;
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> d) Impound the respective passports of the Respondents no.

6to 9 till the pendency of the complaints;"

2. During the course of hearing of the above petition, a statement was made by the Additional Standing Counsel on instructions from the IO that the investigations in the said FIRs would be carried out diligently and report under Section 173 of the Code of Criminal Procedure will be submitted within a specified time period.

3. On the aforesaid assurance by the State counsel, the petition was withdrawn with the liberty to approach this Court again with regard to other complaints which were made by the petitioners.

4. Respondent No.6 preferred an application in the same petition namely W.P(Crl.) No.108/2015, being Crl.M.A No.2857/2015 seeking enquiry and registration of a complaint with regard to the offences committed by the petitioners while preferring the writ petition referred to above before this Court. It has been submitted that the petitioners have committed acts of perjury which could be detected by him only later in point of time. The perjury which is being referred to by the respondent No.6 is that some of the petitioners had not signed the petition. The suspicion of respondent No.6 stems out from the statement of one of the petitioners namely Omkar Jha, claiming himself to be the representative of M/s.Intec Capital Ltd, who, when contacted by respondent No.6, denied of having filed any such petition. Similar suspicion has been raised with respect to petitioner No.7, Mohan Jain, authorised representative of M/s.Capital First Ltd. In his telephonic conversation with the respondent No.6 he expressed his ignorance about any such petition having been signed by him or filed at his instance.

5. It has further been specifically averred on behalf of respondent No.6 that the signatures of petitioner Nos.4, 5 & 6 namely Raj Gaurav Wadhwa, Sh.Jagdeep Singh Virk and Lt.Gen.Rajinder Kumar Mehta have been forged. This statement is made by respondent No.6 on the basis and strength of his having seen their signatures in various applications which were filed by them seeking cancellation of bail of respondent No.6 before the Court below. Those applications seeking cancellation of bail of respondent No.6 were rejected ultimately. Copies of such affidavits of the petitioners referred to above has been brought on record and it has been averred that on a plain comparison of the signatures on both the documents viz. the petition and the affidavit, it would appear to be different and therefore forged.

6. This apart, the respondent No.6 also takes umbrage at suppression of certain vital facts, but for which facts, the writ petition referred to above would have been dismissed in limine.

7. The facts which are stated to have been suppressed by the petitioners are non disclosure of the lodging of the FIR by respondent No.6 bearing registration No.485/2014 under the various sections of the Indian Penal Code at Safdarjung Enclave police station against petitioner No.1 which is pending investigation and the arraignment of other petitioners in the aforementioned FIR as co-accused persons. It has, therefore, been submitted that suppression of these facts are in the nature of perjury committed by the petitioners and, therefore, they are required to be punished for various offences including the offence for fabricating false evidence and offering false evidence before the Court of law, knowing it or having reasons to believe that such grounds are false.

8. Under such circumstances, the present Crl.M.A No.2857/2015 has been filed seeking a preliminary enquiry into the matter and lodging of complaint against the petitioners in terms of Section 340 of the Code of Criminal Procedure read with Section 195(1)(b) of the Code of Criminal Procedure.

9. For the sake of completeness Section 195 and Section 340 of the Code of Criminal Procedure are being reproduced below:-

> "195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-(1) No Court shall take cognizance-
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> (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
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> (ii) of any abetment of, or attempt to commit, such offence, or
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> (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
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> (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
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> (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
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> (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-

clause (i) or sub- clause (ii), (except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate).

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded. (3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

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 interest 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 for the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

2. The power conferred on a Court by Sub-Section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-Section (1) in respect of that offence nor

rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-Section (4) of section

195.

3. A complaint made 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;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

4. In this section, "Court" has the same meaning as in section 195."

Section 340 of the Cr.P.C is an exception to the general rule that any person can lodge a complaint of an offence. When the offence is in relation to a court (Section 195(1)(b)), the sanction of the court is required to be obtained first.

10. Since a wide discretion has been given to the court under this Section, the same has to be exercised with great care and caution. One of the objects of this Section is to provide a safeguard against frivolous and vexatious prosecution.

11. The sanction referred to above can be granted only in such cases where perjury appears to be deliberate and conscious and there is every likelihood/possibility of conviction of the wrong doer. If such sanctions as contemplated under Section 195(1)(b) are granted too readily and frequently and on inconclusive materials, the purpose of enacting this section would be defeated. There must be a strong and prima facie case of deliberate falsehood.

12. The key note in Section 340 is "any court is of the opinion that it is expedient in the interests of justice that an enquiry should be made". Section 340 cannot be resorted to on mere allegation or for the purposes of vindicating personal vendetta. This machinery, therefore, can be put into motion only in the interest of justice.

13. Thus certain pre conditions are required to be fulfilled for initiation of any proceeding under Section 340 of the Code of Criminal Procedure namely; (a) the offences should be only those which have been listed under Section 195(1)(b); (b) the commission of the offence should be intentional; (c) interest of justice would be subverted if no action is taken and (d) it should not be invoked for satisfying private grudge of a litigant.

14. In Chajoo Ram vs. Radhey Shyam and Anr., 1971 (1) SCC 774, the Supreme court at para 7 has stated as follows:-

> 7. 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."

15. A controversy arose regarding interpretation of the expression "when such offence is alleged to have been committed in respect to a document produced or given in evidence in a proceeding in any court"

> occurring in clause b(ii) of sub Section (1) of Section 195 Cr.P.C.

16. In Surjeet Singh vs. Balbir Singh, (1996) 3 SCC 533, the Supreme court at para 10 stated as follows:-

> "10. It would thus be clear that for taking cognizance of an offence, the document, the foundation for forgery, if produced before the court or given in evidence, the bar of taking cognizance under Section 195(1)(b)(ii) gets attracted and the criminal court is prohibited from taking cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the Court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offence covered thereunder to contend that once the document is produced or given in evidence in Court, the taking of cognizance on the basis of private complaint is completely barred."

17. This declared that once a document is produced or given in evidence in court, the taking of cognizance on the basis of private complaint is completely bared.

18. In Sachida Nand Singh vs. State of Bihar, (1998) 2 SCC 493, after analysing the relevant provisions, the Supreme court recorded its conclusions in paras 11,12 and 23 which are being reproduced below:-

> "11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed

during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court."

19. The plain reading of Section 195(1)(b)(ii) talks of two interpretations: one being that an offence is committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary; the other being that when a document has been produced or given in evidence in a proceeding in any court and thereafter an offence is committed in respect thereof, the complaint by the Court would be necessary.

20. In Iqbal Singh Marwah and Another vs. Meenakshi Marwah and Another, (2005) 4 SCC 370, the Supreme court considered as to which of the two interpretations should be accepted keeping in view the scheme of the Act and the object sought to be achieved.

21. After discussing various case laws on the subject the Supreme court in Iqbal Singh Marwah (Supra) at para 25 held as follows:-

25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh [(1998) 2 SCC 493: 1998 SCC (Cri) 660] after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large."

26. In the aforementioned judgment the Supreme court went on to explain further in paras 26, 27 and 28 as under:-

26. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either

> not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (Third ed.) para 313, the principle has been stated in the following manner :
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> "The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong."

27. The learned author has referred to Sheffield City Council v. Yorkshire Water Services Ltd. (1991) 1 WLR 58, where it was held as under :

> "Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken by judges in developing the common law. '... the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society."

28. In S.J. Grange Ltd. v. Customs and Excise Commissioners (1979) 2 All ER 91, while interpreting a provision in the Finance Act, 1972, Lord Denning observed that if the literal construction leads to impracticable results, it would be necessary to do little adjustment so as to make the section workable. Therefore, in order that a victim of a crime of forgery, namely, the person aggrieved is able to exercise his right conferred by law to initiate prosecution of the offender, it is necessary to place a restrictive interpretation on clause

(b)(ii)."

27. Thus the ratio of Sachida Nand Singh (Supra) was affirmed and it was held that 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 or given in evidence in a proceeding in any court i.e during the time when the document was in custodia legis.

28. After delineating the legal aspect of Section 340 read with Section 195(1)(b)(ii) Cr.P.C, it would be necessary to refer to the allegations of respondent No.6. Suspicion has been raised by respondent No.6 that some of the petitioners have not signed the petition which was filed in the court. The aforementioned suspicion is buttressed by the so called statement of the two petitioners Omkar Jha (Petitioner No.3) and Mohan Jain (Petitioner No.7). The other aspect of the evidence highlighted by respondent No.6 is that the signatures of petitioners No.4, 5 & 6 are different from their signatures and their applications seeking cancellation of bail of respondent No.6 in the court below.

Respondent No.6 has also alleged suppression of a vital fact namely lodging of a case by him against petitioner No.1 and others.

29. Assuming but not admitting the fact that the signatures of petitioners No.4, 5 & 6 are different from the ones which were appended in another document, that by itself would not invite the court to initiate proceeding under Section 340 of the Code of Criminal Procedure for two reasons. One, that the forgery if at all has been committed is prior to the submission of the petition before the court and second that the interest of justice is not subverted when such a petition is filed which ultimately is disposed of on the assurance of the State counsel that the investigation as against respondent No.6 would be concluded within a short span of time. The background of the case and the relationship of the petitioners and respondent No.6 clearly give an insight that the present application is by way of personal vendetta and for settling private grudge against each other. What statement was made by petitioner Nos.3 and 7 to respondent No.6 is not known nor could be assumed. Initiation of any proceeding under Section 340 on such inconclusive material would be against the spirit of the section itself.

30. Non disclosure of a pending FIR and consequent investigation lodged by respondent No.6 against the petitioners is not a suppression of vital information. What the petitioners have prayed in the main writ petition is that the cases against the respondent No.6 be investigated expeditiously. There was no occasion for the petitioners to have made any such statement regarding their arraignment in any case lodged by respondent No.6.

31. This court does not consider such facts to be of any importance and of such genre which could constitute any offence relatable to any proceeding pending before this court.

32. Learned counsel for the respondent No.6 relies upon a judgment reported in AIR 2010 SC 3210 (Radhey Shyam Garg vs. Naresh Kumar Gupta). In the aforementioned case, the signatures of the appellant therein appearing at the end of the verification portion and the signature appearing in the affidavit affirmed in support of the application for stay, appeared to be different on a plain comparison. The facts of the case related to the evidence brought on record by way of affidavit under Section 145(2) of the Negotiable Instruments Act.

The Supreme Court, on finding such dissimilarity in the signature, directed for conducting an enquiry under Section 340 of the Code of Criminal Procedure.

33. In the aforementioned case an affidavit was submitted by way of evidence under Section 145(2) of the Negotiable Instruments Act. Under the Negotiable Instruments Act such affidavits are permitted by the Courts, subject to just exceptions to allow the complainant to give his evidence. Such documents are important as they constitute evidence on which the issue or the lis is decided. It was in this context that an enquiry under Section 340 was ordered by the Supreme Court when the signatures on the affidavit and the verification were found to be dissimilar. The facts of this case, therefore, are absolutely different and the citation given by the respondent No.6 does not apply to the facts of this case.

34. Thus on the basis of the aforementioned discussion, this court is of the opinion that the criminal M.A No.2857/2015 is devoid of any merit and substance.

35. The application is, therefore, dismissed.

AUGUST 04, 2015 ASHUTOSH KUMAR, J
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