

Praveen Malpani vs M. D'Costa W/O Francis D'Costa on 19 August, 1992

Equivalent citations: 1994(0)MPLJ669

ORDER

P.N.S. Chouhan, J.

1. The petitioner boastful of his affluence and illustrious ancestry in case No. 487/90 initiated by him under section Criminal Procedure Code gave the following statement on oath on 9-8-1990 :

^^eSus Jhefr ,e- ,l- Mh- dks"Vk ls Cykd ua-

33 IykV ua- 5@8 {ks=Qy 17250 o- Qq- dk lkSnk fd;k Fkk 31 ekpZ 1989 dks eSaus :-

50]000@& mls c;kus ds rkSj ij fn;s FksA rhu fd'rks esa jkf'k nh FkhA ;g [kkrk cgh esa ntZ gSA 28@3 dks chl gtkj] 29@3 dks nl gtkj ,oa 30@3 dks nl gtkj rFkk 31@3 dks nl gtkj fn;s FksA fookfnr lEifÜk dk lkSnk 4 yk[k esa fn;s FksA vizsy dks lsyMhM gksuk FkkA 31@3 dks dCtk fn;k x;k Fkk gesa vkSj ml ij fLFkr Hkou vkfn ij gekjs rkys Mky fn;s x;s FksA ;g lkSnk ckypan nyky us r; dj;k FkkA izn'kZ&ih&1 [kkrk cgh gS ftldh QksVks dkih izn'kZ&ih&1 v gS**A On the basis of the above statement, an ex parte order was passed in applicant's favour. Afterwards when the respondent came to know of the ex parte order, she filed a civil suit No. 12A/91 in the Court of District Judge, Jabalpur and produced her travel documents to show that in the month of March, 1989 when the alleged payments were purported to have been made to her by the petitioner, she was not in India. The petitioner then filed an affidavit on 29-4-1989 in which he admitted that no payments were made in the month of March and that entries were made in the books of account at the request of the respondent. Subsequently, this civil suit was withdrawn. The respondent had also filed Criminal Revision No. 280/92 challenging the order of the S.D.M. which was allowed by this Court vide order dated 25-9-1991 and the impugned order passed by the S.D.M. was set aside. The petitioner filed special leave petition No. 151/92 before the Supreme Court which has been dismissed in these terms :

"Excepting to state that the Civil Suits filed by the parties shall be tried purely on their merits uninfluenced by the findings rendered in the impugned Judgment. We see no reason to interfere the Special Leave Petition is dismissed. We also make it clear that it will be open to both the parties to adduce such evidence as they may have at their command. Should the petitioner desire to move any application by way of review of an interlocutory order made on the basis of the impugned Judgment, he is

at liberty to do so."

After filing of the aforesaid affidavit dated 29-4-1989 in the civil suit, the respondent applied under Section 340 of the Code of Criminal Procedure for prosecution of the petitioner for offences punishable under Sections 193/196/209/463 and 467 of the Indian Penal Code. This application presented on 16-5-1989 was rejected the very next day on the ground that the same was barred under Section 10 of Civil Procedure Code in view of the pendency of the civil suit between the parties relating to the same disputed property. The respondent went up in appeal under Section 341 of the Criminal Procedure Code and since the petitioner failed to appear despite notice, the same was ex parte allowed by the District Judge, Jabalpur, vide judgment dated 13-11-1991 passed in Criminal Case No. 331/91. The learned Sessions Judge after setting aside the impugned order remanded the case back to S.D.M. to hold an enquiry under Section 340 of the Criminal Procedure Code in the light of observations made in the appellate judgment.

2. The petitioner applied to the Sessions Judge, Jabalpur for setting aside the ex parte judgment on the ground that the petitioner entrusted the summons of the appeal to his clerk Shri Promod Sharma who is looking after his cases pending in various courts and directed him to attend the date of hearing. Through mistake Shri Sharma noted the date of appearance as 6-11-1991 and when he conveyed this to petitioner's counsel, it was pointed out that there must be some mistake as the Court was to remain closed on that date due to Diwali holidays. The holidays were over, the Court did not function on 12-11-1991 due to sad demise of Shri Panna Lal Shrivastava, Advocate. Petitioner's counsel Shri Abhay Sapre inspected the case on 13-11-1991 and found that the case was fixed for passing of orders in the appeal. On 14-11-1991, Shri Sapre discovered that the date of petitioner's appearance in the appeal was 6-9-1991 and on that date the case proceeded ex parte. The impugned judgment was pronounced on 13-11-1991 and the petitioner made an application on 15-11-1991 for setting aside the ex parte order which is still pending. Though in this petition under Section 482 of the Code of Criminal Procedure the prayer is for setting aside the impugned order and remanding the case back to the District Judge for deciding the appeal on merits after by party hearing the said impugned judgment has been assailed on almost every conceivable ground detailed in paras 40 to 50 of the petition reproduction whereof appears unnecessary for a fair disposal of this petition. Suffice it to say that the petitioner doggedly asserts that he had no intention of giving false evidence before the learned S.D.M. and that the question of making an enquiry against him in this behalf could not be decided till his civil suit No.....pending in the Court of District Judge, Jabalpur, is disposed of.

3. In reply the plea of mistake about the date of hearing is characterised as improbable. The Court had reopened on 12-11-1991 after the Diwali vacation and though on the date the court did not transact business due to the sad demise of Shri Panna Lal Shrivastava, Advocate, Court's office was working and still the petitioner did not make any attempt to know the fate of the appeal. Only after the impugned order was passed on 13-11-1991, the petitioner applied for setting aside the ex parte order. Obviously, the petitioner had no ground to urge against this appeal. He, therefore, deliberately avoided appearing before the Court and has now made this petition on false grounds. A

petition under Section 482 is tenable only where the abuse of the process of the Court is writ large or intervention for securing ends of justice is warranted. None of these conditions exist in the case. In view of the clear documentary evidence that the petitioner has given false statement during proceeding under Section 145 of the Criminal Procedure Code an enquiry in this behalf under Section 340 of the Criminal Procedure Code is necessary in the ends of justice.

5. It was not disputed that the learned Sessions Judge in directing the S.D.M. to hold enquiry under Section 340 of the Criminal Procedure Code in the light of the observations made by him in the impugned judgment virtually left no room for an independent inquiry. The observations made by the District Judge had the effect of crippling the discretion of the inquiry officer in this behalf. It was frankly conceded that the above underlined observation (here in italics) in the impugned judgment deserves to be excised to pave the way for an independent and uninhibited inquiry.

6. It was argued that in view of the observations recorded in the Supreme Court's order in the S.L.P., the petitioner has yet to exercise his discretion to file a review petition and, therefore, no direction can be given to the S.D.M. to hold an inquiry against the petitioner under Section 340, Criminal Procedure Code. Perusal of the order passed by the Supreme Court in the S.L.P. makes it abundantly clear that there is nothing therein to prevent this Court from passing a final order directing the learned S.D.M to hold an inquiry under Section 340, Criminal Procedure Code.

7. The gratitude this Court owed to applicant's learned counsel for not agitating the correctness of the finding in the impugned judgment that pendency of a suit did not create a bar under Section 10, Civil Procedure Code to an inquiry being held under Section 340, Criminal Procedure Code thawed with his submission that such an inquiry should not be permitted to be held pending disposal of petitioner's suit for specific performance of contract against the respondent wherein genuineness of respondent's receipts dated 28-3-1989 to 31-3-1989 is to be decided. In view of the irreconcilable inconsistency between petitioner's statement before the S.D.M. on 9-8-1990 and his affidavit dated 29-4-1989 filed in the Court of District Judge in relation to a Civil Suit filed by the respondent the inference is irresistible that his statement before the S.D.M. was untrue to his knowledge. In *Mayapur Sree Chaitanya Math and Ors. v. Sachidananda Brahmachari and Ors.*, 1984 Cri. L.J. 1692, cited by applicant's learned counsel was a case where the defendant filed certain documents to support his claim of shebaitship before the High Court which were challenged as forged by the plaintiff. Then a suit was filed in which the genuineness of the said document was in issue. The plaintiff fought the suit for five years from 1978 till 1983. He even tried to compromise with the defendant who never admitted the falsity of those documents and then in 1983 the plaintiff moved an application for initiating proceedings under Section 340, Criminal Procedure Code and in that context it was held that initiation of such proceeding pending disposal of the civil suit would amount to abuse of the process of the Court. In the present case the petitioner has admitted falsity of the receipts in his affidavit and there has been no delay in praying for initiating of proceedings under Section 340, Criminal Procedure Code. As such, the petitioner does not derive any help from the said citation. Thus, there appears to be a clear case for holding an inquiry under Section 340, Criminal Procedure Code against him. The pendency of the Civil Suit filed by the petitioner against the respondent involving the issue of the genuineness of the allegedly forged receipts purported to have been executed by the respondent does not present any legal obstacle for initiation of such

inquiry. For old obvious reasons such an inquiry intended to keep the flow of Nyay Ganga free of pollution should not be over delayed.

8. It was then argued that the circumstances of the case do not warrant petitioner's prosecution for giving false evidence as the respondent has been pressing this issue not due to her anxiety to safeguard the interests of administration of justice but only to gratify her personal vengeance. Reliance in this behalf was placed on the following observations made in *Santhokh Singh v. Izhar Hussain and Anr.*, AIR 1973 SC 2190. :

"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."

9. Where the exercise amounts to serving the personal revenge of a party and the facts and circumstances do not justify action to advance the public cause of administration of justice and its purity the court will certainly be loathe to hold an enquiry under Section 340, Criminal Procedure Code. The entire criminal justice system is built on the edifice of the concept of public interest. But can it be said that when a murderer or rapist is convicted and sentenced the sense of personal revenge of those who suffered personal loss or injury as a result of the crime is not satisfied ? Thus it is manifest that satisfaction of the sense of personal revenge and the cause of public interest may coincide or be at variance depending upon the facts and circumstances of each case. Where they are at variance with each other no enquiry under Section 340, Criminal Procedure Code will be held to satisfy some one's personal revenge. Where they overlap enquiry under Section 340, Criminal Procedure Code will not be eschewed merely because the same will also entail serving the urge of personal revenge of some aggrieved party. Here we find the petitioner having indulged in blatant falsehood in supporting his case before the S.D.M. against the property interest of a lady who resides in England and comes to India only occasionally. In his statement before the S.D.M on oath this petitioner has claimed execution by the respondent of receipts on dates when she was not in India. An order in petitioner's favour was passed on the basis of such false statement. Subsequently confronted with irrefutable evidence in the suit presented by the lady showing her absence in the country on the dates when the receipts were alleged to have been executed, the petitioner admits the fact that the receipts were not executed on those dates, therefore faced with the prospect of imminent prosecution he adopts the well-known strategy of buying time by allowing the appeal to be decided ex parte and then seeking repeated adjournments in the appellate court and ultimately sans waiting for the outcome by filing this petition. Here also instead of expressing remorse and being repentant of his conduct he has tried to assert that what he stated before the S.D.M. was not false. He boasts of his high lineage and derides the respondent as owner of a 'bungalia'. All this unmistakably shows that in wider interests of administration of justice an inquiry against him under Section 340, Criminal Procedure Code, is pre-eminently warranted. And in the process if

respondent's personal sense of vengeance is also satisfied so be it.

10. The last case relied on by Shri Datt is Chajoo Ram v. Radhey Shyam and Anr., AIR 1971 SC 1367, wherein it has been held :

"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....."

As already held above, all these requirements are fulfilled in this case.

11. In result, the petition is partly allowed. The directions contained in para 14 of the impugned judgment, dated 13th November, 1991 are upheld subject to the modification that 'in the light of observations made by this Court in this appeal' should not be read as if these words do not occur in the said judgment.