

Rajkumkar Pathak vs Laxman @ Krishan Dutt Tiwari on 17 July, 2018

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M.Cr.C.No.8849 of 2016

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Single Bench : Hon'ble Shri Rajeev Kumar Dubey, J.

Misc. Criminal Case No.8849/2016

Rajkumar Pathak

vs.

Laxman @ Krishan Dutt Tiwari & Ors.

Shri Niranjan Pathak, counsel for the applicant.

Shri Arpit Kumar Tiwari, counsel for the respondent.

ORDER

Reserved on : 11/07/2018 Delivered on : 17/07/2018 This petition has been filed by the applicant under Section 482 r/w 340 of CrPC for taking action against the respondent for making false declaration and filing false affidavit before this Court in M.Cr.C.No.3429/2016.

2. Learned counsel for the applicant submitted that on the report of applicant police registered Crime No.1322/2015 at P.S. Garha for the offence punishable under Section 3 & 4 of Dowry Prohibition Act against the Respondent and co-accused Ghanshyam Tiwari, Smt. Deepa Tiwari, Ajay Tiwari and Pankaj Tiwari. Respondent had filed an application under Section 438 of CrPC before this court for getting anticipatory bail in the crime, which was registered as M.Cr.C.No.3429/2016 and disposed of by this court vide order dated 23/02/16. In that application, respondent stated that to the best of his knowledge no application for bail has been filed by the co-accused persons and also filed an affidavit in support of his application. While the respondent is real brother of Smt. Deepa Tiwari and maternal uncle of Pankaj Tiwari. Respondent even has also claimed parity for getting the similar benefit as extended to other co-accused by this Court while disposing of the bail application filed by them, therefore, it is very much clear that the respondent was aware about the filing and disposing of the bail application of other co-accused of the crime before this court and inspite of having knowledge of this fact respondent deliberately made false declaration on affidavit before this Court that he has no knowledge for filing of bail by the co-accused persons of the crime.

3. Likewise respondent stated in his application that he has no nickname as Laxman Tiwari whereas it is very much clear from the perusal of the bail application filed by the other co-accused person namely Ghanshyam Tiwari and Smt. Deepa Tiwari that applicant has nickname as Laxman Tiwari.

Therefore, it is very much clear that the respondent has made false statement on oath by filing an affidavit before this Court. So cognizance of offence punishable under Sections 191, 192, 193 & 420 of IPC be taken against him. In this regard, learned counsel for the applicant also placed reliance on the Apex Court judgment passed in the case of Sciemed Overseas Inc. v. BOC India Limited and Others reported in (2016) 3 SCC 70 and the judgment passed by this Court in the case of Delton Impex Pvt. Ltd. Katni v. Sanjay Dang and others reported in 2009 (2) MPLJ (Cri.) 13.

4. Learned counsel for the respondent opposed the prayer and submitted that the respondent did not deliberately made false declaration in his application. Respondent had only stated in his application that "to the best of my knowledge, no bail application is filed by the co-accused". There is no evidence on record to show that at the time of filing of the bail application respondent had had the knowledge that co-accused of the crime i.e. Ghanshyam Tiwari and Smt. Deepa Tiwari have already filed their bail application before this court. So no offence is made out against the respondent and prayed for rejection of the application.

5. This Court has gone through the record and arguments put forth by the counsel for both the parties. It appears from the record that Ghanshyam Tiwari and Smt. Deepa Tiwari co-accused of the crime No.1322/2015 registered at P.S. Garha district Jabalpur filed the bail application M.Cr.C.No.94/2016 before this court on 02/01/16 which was disposed of by this court by the order dated 27/01/16 thereafter applicant who is the brother of the co-accused Smt. Deepa Tiwari filed his bail application before this court on 17/02/16 and even during arguments of the application counsel of the respondent claimed parity for getting the similar benefit as extended to co-accused Smt. Deepa Tiwari and Ghanshyam Tiwari by this Court. So it cannot be said that respondent has no knowledge regarding filing of bail application of co-accused Smt. Deepa Tiwari and Ghanshyam Tiwari before this court in the same crime at the time of filing his bail application.

6. But the declaration to the effect that whether the bail application of co-accused of the same crime is pending or disposed of by the high court or not is required to facilitate the registry of this court to list all the bail applications arising out of the same crime before same bench. It does not appear that respondent deliberately gave this false information to this court for getting any undue benefit.

7. Section 340 of the Code of criminal Procedure reads as under:-

"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 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.

8. On reading the provisions of Section 340 Cr.P.C. it is clear that before a direction either for an inquiry or for prosecution the Court has to form an opinion that it is "expedient in the interest of justice" that an inquiry should be made into any such offence. The meaning of the word "expedient in the interest of justice" is that forming of the opinion is a sine qua non for proceedings to launch a prosecution for perjury.

9. The facts of the cases M/s Sciemed Overseas Inc Vs BOC India Limited & Ors (supra) and Delton Impex Pvt. Ltd. Katni v. Sanjay Dang and others (supra) relied by the learned counsel of the applicant do not match with the present case. In the first case appellant knowingly filed false affidavit regarding completion of work which was not completed and on that basis high court rejected the petition and in second case respondent no. 1 to 4 in collusion with respondent no.5, obtained interim injunction from court in the suit filed by them by playing fraud with the court. While in this case respondent did not get any relief from the court on the basis of false information. So that judgement do not help applicant much.

10. On the other hand in the case of Chandrapal Singh And Ors. vs Maharaj Singh & Anr reported in AIR 1982 SC 1238, the Apex Court observed. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under Section 199 of IPC are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court.

11. In the case of K.T.M.S. Mohd. And Anr vs Union Of India reported in AIR 1992 SC 1831 the Apex Court has also held that it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice.

12. In the case of Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another reported in (2005) 4 SCC 370, the Supreme Court in para-23 of the judgement observed as under:-

"In view of the language used in Section 340 Cr.P.C. the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the

interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)

(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint."

13. From the aforesaid observations of the Supreme Court in various decisions, it emerged that every incorrect or false statement does not make it incumbent upon the Court to order prosecution, but requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of the justice. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Prosecution for perjury can be directed in the larger interest of the administration of justice only in case of deliberate falsehood.

14. If we consider the facts of the case which are alleged to be false, in the light of above pronouncement of the Apex Court it does not appear that allege fact is such a nature that in the larger interest of the administration of the justice prosecution for perjury should be directed. In the considered opinion of this court, it would not be expedient in the interest of justice to invoke the provisions of Section 340 of Cr.P.C. for this purpose.

15. Hence, this petition is dismissed.

(Rajeev Kumar Dubey) Judge (ra)/as Date: 2018.07.17 15:57:03 +05'30'