Jagdish vs Ashok Kumar Gureja on 2 August, 2007

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ORDER

Abhay Gohil, J.

1. Applicant has filed this application under Section 340 Cr.P.C. for a direction that the respondent be prosecuted for perjury for filing false affidavit in the Court and for that necessary direction be issued.

2. The brief facts of the case are that in L.P.A. No. 1/1993, respondent No.1-Ashok Kumar Gureja was the appellant and on his behalf respondent No.2-Ashok Kumar Kushwah has filed an affidavit on 3.8.2000 that he came to know that the respondent Gyanchand has expired. He inquired through his Advocate and he came to know about this fact on 1.8.2000, when he went to the office of Raghuveer Singh, it was told that Gyanchand has died. Thereafter Raghuveer Singh wrote a letter to the appellant on his Gwalior Address but since he was residing in Delhi, he could not receive the letter. Thereafter respondent No.2-Ashok Kushwah filed an affidavit in support of his application under Order 22 Rule 4 read with Section 151 IPC, in L.P.A. When the Division Bench was considering the application (I.A. No. 6541/2000), which was filed under order 22 Rule 4 CPC, it was found that in the reply of the aforesaid application it was categorically stated that in another appeal between the same parties, filed by the same appellant which is F.A.No.13/93, an application for substitution of legal representatives was filed on 16.7.1998 alleging therein that respondent died on 25.12.1997. Therefore, the Division Bench found that this contention of the appellant in his affidavit dated 3.8.2000 that he came to know about the death of the respondent only on 1.8.2000 through Raghuveer Singh, Advocate, was not correct and the Division Bench considering the facts of the case found that the appellant has sworn an affidavit which was false to his knowledge and thereafter the application for condonation of delay was dismissed and, consequently, I.A.No.6541/2000, I.A.6542/2000 and M.C.P.No.2057/2001 were also dismissed and appeal was also dismissed as stood abated. Admittedly, on that day when the Division bench was passing the order in L.P.A.No.1/1993 on 28.2.2002, no such prayer was made by the appellant that a direction be given regarding the prosecution of the respondent No.2-Ashok Kushwah, for perjury who had filed a false affidavit before the Court.

3. There is no doubt that a false affidavit was submitted by Ashok Kushwah but the question for consideration in this case is whether in such matter where after lapse of more than four and a half years, the applicant has filed this application under Section 340 Cr.P.C., the permission should be

granted for prosecution or not. Certainly a person, who has filed a false affidavit, should be prosecuted for perjury but we are of the view that no such prayer was made by the counsel for the respondent on the day when the Division Bench was passing the order in L.P.A. on 28.2.2002.

4. Shri R.K. Sharma, learned Counsel for the applicant submitted that there is no limitation for prosecuting a person for perjury. This may not be disputed but on reading the provision 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, which shows that the Court has to be careful in balancing of many factors and prosecution for perjury can be directed in the larger interest of the administration of justice in case of deliberate falsehood.

5. In the case of Chajoo Ram v. Radhey Shyam and Anr. , the Supreme Court has held that indiscriminate prosecutions under Section 193, Indian Penal Code resulting in failure are likely to defeat the very object of such prosecution. It has been laid down that 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 reasonable 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 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.

6. In the case of K. Karunakaran v. T.V. Eachara Warrier and Anr. , the Supreme Court has considered two questions for taking action under Section 340. The two preconditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193, IPC. It was further held that when the complaint is filed it will be for the prosecution to establish all the ingredients of the offence under Section 193, IPC against the appellant and the decision will be based only on the evidence and the materials produced before the criminal court during the trial and the conclusion of the Court will be independent of opinions formed by the High Court in the habeas corpus proceeding and also in the enquiry under Section 340(1), Cr.P.C. It was further held that the fact that a prima facie case has been made out for laying a complaint does not mean that the charge has been established against a person beyond reasonable doubt. That Section contemplates that making out of a false statement is not enough and that it is to be made intentionally.

7. In the case of Chandrapal Singh and Ors. v. Maharaj Singh and Anr. the Court has considered this aspect of the matter that when it is alleged in the affidavit that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations

cannot co-exist, both being attributable to the same person, and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199, I.P.C. It was further considered that acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. 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, I.P.C. 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. Though in this case Division Bench held that affidavit sworn was false to his knowledge.

8. In the case of K.T.M.S. Mohd. and Anr. v. Union of India 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.

9. In the case of M. S. Ahlawat v. State of Haryana and Anr. , the Apex Court has held that it is settled law 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.

10. In case of Suo Motu Proceedings Against R. Karuppan , Supreme Court has observed that unscrupulous litigants are found daily resorting to utter blatant falsehood in the Courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, concededly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal code. If the system is to survive, effective action is the need of the time.

11. In the case of Pritish v. State of Maharashtra and Ors. , the Supreme Court again considered the scope of Section 340(1) of Cr.P.C. that:

> The hub of Section 340(1) Cr.P.C. 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. 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.

12. In the light of the aforesaid observations of the Supreme Court in the various decisions, we have considered the facts of the case in hand. In fact, it would have been expedient in the interest of justice to the learned Division Bench when the Division Bench was passing the order in L.P.A.No.1/93 on 28.2.2002. On that day the Court was not of the opinion that any order should be passed for perjury but Court has dismissed not only all pending I.A.s but the M.C.P. as well as the appeal. We have also found that the applicant, who has filed this application after belated delay of four and a half years, has also not taken care to protect his rights. He has not assigned any reason in the application as to why he has not filed such an application during last four and a half years. Though there is no limitation for prosecuting a person for perjury, but certainly, while forming an opinion by the Court, the Court has to consider the dictum of the law and the wisdom of the legislature that it is expedient in the interest of justice that an inquiry should be made into any offence.

13. We are of the view that filing such an application after four and a half years has reduced the force behind the plea of prosecution. It was proper on the day when the order was passed in the Court to direct for prosecution of the respondent but on that day Court has not found that there should be any such direction. Now, it would not be proper for this Court to give any such direction after four and a half years and it would not be expedient in the interest of justice to invoke the provisions of Section 340 Cr.P.C. for this purpose.

14. Thus, we do not find any justification to form an opinion when the Court has already dismissed the L.P.A. on the basis of the false affidavit filed by the respondent and the erring party has received the adequate punishment for filing false affidavit in the Court. It is not necessary that in every case direction should be given for prosecution and we do not find that at this stage, we should form a view that a fresh direction be issued for prosecution. Thus, the application is dismissed. Parties are directed to bear their own cost.