

referring to a number of distinct types of legal monopolies over creating of the mind both artistic and commercial. Its importance in international trade relations has been well recognized by the global community with

the inception of TRIPS Agreement. The academic, industrial and commercial importance of intellectual property is ever increasing with the revolutionary changes which TRIPS brought about.

PROSECUTION FOR PERJURY IN EXPERT TESTIMONY : A STUDY IN THE LIGHT OF PUNJAB TRACTORS LTD., CASE*

By

—Dr. MUKUND SARDA,
Principal and Dean, New Law College,
Bharatiya Vidya Peet University,
Pune

1. Section 340 of the Criminal Procedure Code,¹ 1973 states as follows:

(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 complaint thereof in writing;
- (c) Send it to a Magistrate of the first class having 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.

(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 the 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.

(4) In this section, “Court” has the same meaning as in Section 195.

* *Punjab Tractors Ltd. v. International Tractors Ltd. and others*, (2009) 2 Copyright and Trade Marks Reporter Oct. 2009, P.315.

1. Criminal Procedure Code hereinafter referred to as Cr.PC throughout this study

2 Section 340 Cr.PC provides for procedure in cases enumerated under Section 195 Cr.PC which includes an offence relating to 'perjury'. When this offence relates to the proceedings of a Court, sanction of the Court is required for the prosecution of the person committing 'perjury'². In *Chajoo Ram's* case,³ the Supreme Court ruled: "The sanction should be granted only in those cases where the perjury appears to be deliberate and conscious.... To start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very end".

3. The complaint must contain facts with exact precision on which the complaint is based and the evidence available for proving the offence in question⁴.

4. In the case of 'perjury' alleged to have been committed by an expert, while giving testimony in Court questions often arise with regard to the prosecution of the witness. In the *Punjab Tractors* case,⁵ the Delhi High Court considered this question elaborately and laid down the following principles :

- (i) The Court should not order the prosecution of the witness, when the case is pending trial or the trial is underway. In other words, no prosecution can be ordered before the close of the Court proceedings of the case where false evidence is given;
- (ii) As held by the Supreme Court in *Santokb Singh's* case,⁶ "that every incorrect or false statement does not

make it incumbent upon the Court to order prosecution. The Court should exercise judicial discretion in the light of all relevant circumstances..... in the larger interests of justice"

Merely because an expert has held the opinion which is found to be wrong by the Court is no ground for prosecuting him;

- (iii) The Court must be very cautious in its approach in prosecuting a person for making any statement claimed to be false in regard to a pleading for the reason.
 - (a) The party's right to plead freely is not curtailed; and
 - (b) He can take appropriate pleadings which will throw the burden on the opponent to prove the contrary⁷;
- (iv) An enquiry to be held by the Court under Section 340 Cr.PC is only to the extent whether a *prima-facie* case is made out, which if unrebutted, may have a reasonable likelihood to establish the offence and whether it would be expedient in the interests of justice to take such action⁸;
- (v) Evils of perjury assuming alarming proportion,⁹ the Supreme Court observed: ".....justice dispensation system would be wrecked, if statutory restrictions are not imposed upon the litigants who, attempt to mislead the Court by filing and relying upon false evidence¹⁰;

2. See Section 195(1)(b) Cr.PC

3. *Chajoo Ram v. Radhey Shyam*, AIR 1971 SC P.1367

4. In *Re Ram Prasad*, (1927) 49 All. P.753

5. *Supra* – See also *Jindal Ployster Ltd., Rabul Jawa*, 124 (2005) DLT P.613 and also *Kuldeep Kapoor v. Susanta Sen Gupta*, 126 (2006) DLT 149

6. *Santokb Singh v. Izhar Hussain*, AIR 1973 SC P.2190. See also *Net Ram v. Beant Singh*, (28) 1985 DLT P.318

7. *Supra* P.322 (In *Re Punjab Tractors Ltd.*)

8. *K. Karunakaran v. T.V. Eachara Warriar*, (1978) 1 SCC P.18

9. *Mabila Vinod Kumari v. State of Madhya Pradesh*, (2008) 8 SCC P.34

10. *In Re : Suo Moto Proceedings against R. Karuppan*, (2001) 5 SCC P.289

- (vi) In contempt of Court cases, the Supreme Court ruled,¹¹ that the person committing the act derived 'any definite advantage' is not a relevant factor to decide whether the act committed constituted contempt of Court or not. The same principle will apply in cases of perjury as well *i.e.*, whether the person committing perjury derived any benefit or not would be not relevant in order to constitute 'perjury';
- (vii) Merely because the evidence of a witness is not accepted, it does not tantamount to perjury As in all case where complaints of perjury were to be filed against the losing party, it would amount to abuse of the process of the Court¹²;
- (viii) Proceedings under Section 340 Cr.PC should not be resorted to when a criminal case is calculated to hamper fair trial of issue in a Civil Court before which the matter would go on for longer¹³;
- (ix) Every witness has the opportunity to correct himself. In Punjab Tractor's Case¹⁴, the expert admitted two mistakes in the drawings alleged to be fabricated and the Court held that he ought not to be prosecuted, when he corrected himself;
- (x) The Court may dismiss the application under Section 340 Cr.PC, if it is not a fit case for having recourse under this section¹⁵.

In conclusion, it may be pointed out that only in grave cases of falsity, where a deliberate attempt is made to mislead the Court or intentionally giving false evidence *i.e.*, existence of *mens rea* or criminal intention, recourse should be had to Section 340 Cr.PC, when there is a reasonable probability of conviction of the person committing perjury. This will also serve the interests of justice.

11. *Murray and Co v. Ashok Kumar Nevatia*, (2000) 2 SCC P.367

12. *Chandrapal Singh v. Maharaj Singh*, (1982) 1 SCC P.466

13. *Rewa Shanker Moolchand v. Emperor*, AIR 1940 Nag. P.72

14. Supra P.325

15. *Rawal Singh v. Quality Stores*, AIR 1986 Del. 236