

Neutral Citation No. - 2025:AHC-LKO:5864

A.F.R.

Court No. - 30

Case :- APPLICATION U/S 482 No. - 743 of 2025

Applicant :- Bharatendu Pratap Singh

Opposite Party :- State Of U.P. Thru. Its Prin. Secy. Deptt. Of Home Lko. And 2 Others

Counsel for Applicant :- Shivendra S Singh Rathore, Krishana Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Om Prakash Shukla, J.

1. Heard Shri Shivendra S Singh Rathore, learned Counsel for the applicant, learned A.G.A. for the for the State-respondents and perused the material placed on record.

2. The present application has been filed praying for setting-aside the final judgment/order dated 03.10.2024 passed by the learned Addl. District & Sessions Judge, Lucknow in Criminal Appeal No. 66/2023 (Bhartendu Pratap Singh V/s Rajeev Krishna & 2 others) filed under section 341 of the Cr. P.C by the applicant as well as the order dated 16.03.2023 passed by the learned CJM, Lucknow in Crl. Misc. Case No.1041/2023 (Bhartendu Pratap Singh V/s Rajeev Krishna & 2 others) filed under section 340 of the Cr. P.C by the applicant.

3. Learned counsel for the applicant has submitted that the opposite party Nos.2 and 3 prepared questionnaires under General Rules (Criminal), 1977 for declaration of a fact was false and they knew that the said questionnaires

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were false on the date when the same was obtained under the seal and signature of the concerned Court. According to him, the learned CJM, Lucknow, while exercising jurisdiction under section 340 Cr.P.C has committed material irregularity in forming opinion contrary to the admissible documentary proof of the offence under section 191 and section 192 of the Indian Penal Code, which paves foundation for the offence under section 196 and 199 of the IPC. According to the learned counsel for the applicant, the gravity of the offence is such that new *modus operandi* has been invented by the opposite party Nos.2 and 3 to misuse a legal instrument to cater to their quests for personal gains which evidently has become so intense that the opposite parties, who are involved in litigation and are senior Government servants, did not hesitate to take shelter of falsehood.

4. Learned Counsel for the applicant further submits that such an act is not only a prescribed offence but a serious fraud has been played upon the Court and the learned trial Court despite having the documentary evidence has not only committed grave irregularity in not proceeding any further but has also in improper exercise of its jurisdiction has not conducted the preliminary enquiry as envisaged under section 2(g) of the Cr.P.C. He further submits that the opposite parties committed such offence with the intention and design to misuse the questionnaires in the proceedings under law/before public servants particularly their competent Disciplinary/Vigilance Authorities of the Government and as such the

questionnaires were receivable as evidence, whereas the same were totally false. In the written submission filed after the completion of arguments, the learned Counsel for the applicant has also relied on the judgment of (i) *Godrej & Boyce Manufacturing Co. v/s The UOI, 1992 CRLJ 3752(Bom.)*, (ii) *M.S Jaggi V/s Registrar, High Court of Orissa &Anr. (1983) CRLJ 1527* and (iii) *Prithish V/s State of Maharashtra &Ors. 2002(1) SCC 253*.

5. Per contra, the learned AGA for the State-opposite party No.1 has vehemently opposed the petition and have submitted that the facts of the case do not trigger the minimum threshold required for maintaining an application under section 340 Cr. P.C and both the learned CJM and the learned Sessions Court have rightly dismissed the application & appeal of the applicant by giving a valid and cogent reasoning. Learned A.G.A has stated that the impugned orders does not call for any interference by this Court and the present application may be dismissed. The learned A.G.A. also relied on the Constitutional Bench Judgment of the Hon'ble Supreme Court in the case of *Iqbal Singh Marwah V/s Meenakshi Marwah (2005) 4 SCC 370*.

6. Having regard to the submissions advanced by learned Counsel for the parties and going through record, this Court before embarking on the path of deciding the present application may mention that the learned counsel for the applicant has tried to distinguish the Constitutional Bench Judgment of *Iqbal Singh Marwah (supra)* case by submitting in his written

submission that the same is applicable only for section 195(1)(b)(ii) for the crimes under Sections 463, 471, 475 or 476 of IPC, whereas the present case allegedly relates to offences u/s 193, 196, 199 and 200 of IPC, which were covered under section 195(1)(b)(i) of Cr.P.C.

7. Recently, a larger bench of the Hon'ble Apex Court in the case of ***James Kunjwal Vs State of Uttrakhand & Anr., (2024)8 SCR 332***, after tracing the various precedents relevant to the context, contemplated a guideline for the Courts for initiation of an action of perjury under section 340 Cr.P.C in the following words:-

"16. What we may conclude from a perusal of the above-noticed judicial pronouncements is that:-

(i) The Court should be of the prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);

(ii) Such proceedings should be initiated when doing the same is "expedient in the interests of justice to punish the delinquent" and not merely because of inaccuracy in statements that may be innocent/immaterial;

(iii) There should be "deliberate falsehood on a matter of substance";

(iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;

(v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court."

8. Keeping in mind the aforesaid judgment of the Hon'ble Supreme Court and giving a thoughtful consideration to the contention of the learned counsel for the applicant and learned A.G.A. and the documents on records, this Court finds that the background of the present case lie in a narrow

compass. It is available from records of the present case that the applicant had on an earlier occasion, filed a Complaint Case No. 135/2016 before the learned CJM, Lucknow, which came to be dismissed vide order dated 02.12.2016 under Section 203 of the Criminal Procedure Code. The said order came to be challenged by the applicant before the Sessions Court by means of Criminal Revision No. 105/2017, which came to be allowed on 25.06.2019 and the order dated 02.12.2016 of the learned CJM, Lucknow came to be set-aside, in the presence of the opposite party Nos.2 and 3, as they were also a party in the said Revision petition.

9. It is the case of the applicant that the opposite party Nos.2 and 3 procured three questionnaires dated 01.04.2022 in which dominant being "Whether aforesaid Complaint Case No. 135/2016 has been dismissed under section 203 Cr.P.C on dated 2.12.2016." under Rule 141 of the General Rules (Criminal) 1977 of the Allahabad High Court Rules, which according to them, could not had been procured, as the opposite party Nos.2 and 3 very well aware on that date that the Complaint Case No. 135/2016 had been restored by the learned Sessions Court order and, as such, according to him, the said conduct of the opposite party Nos.2 and 3 amount to commission of an offence in relation to pending proceedings before a Court of law and, therefore, an enquiry under Section 340 Cr.P.C read with section 195(1)(b) Cr.P.C was to be initiated against the opposite party Nos.2 and 3.

10. In the aforesaid context, it may be mentioned herein that Section 190 CrPC provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 CrPC is a sort of exception to this general provision and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the Court as contemplated by Section 195(1) CrPC is given in Section 340 CrPC, which reads as hereinafter:-

"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 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 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 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."

11. It is clear from the language used in Section 340 CrPC that the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C., as the section is conditioned by the words "*when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court*". Further, Section 195(1)(b) Cr.P.C. deals with two distinct categories of offence, which are described in clauses (b)(i) and (b)(ii) respectively. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause relates to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of justice (Sections 205 and 211 IPC). The scheme of both these two provisions or clauses of Section 195 Cr.P.C. is that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a Court of justice. Further, the expression "*when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court*" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court.

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Thus, clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court (**see Iqbal Singh Marwah V/s Meenakshi Marwah (2005) 4 SCC 370**).

12. However, it is relevant to mention herein that Section 195(1)(b)(i) Cr.P.C., is conditioned by the words "*when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court*", which indicates that such a course will be adopted only if the offence of Sections 193 to 196, 199, 200, 205 to 211 and 228 IPC have been committed in (a) any proceedings in Court or (b) in relation to the said proceedings in Court. learned Counsel for the applicant has failed to satisfy this Court as to how the asking of the alleged questionnaire is an offence under any of these sections and as to how the said questionnaire has been used in the proceedings before the learned CJM or in relation to the said proceedings before the learned CJM, Lucknow. Although, the centrifugal argument of the learned counsel for the applicant is that these questionnaire have a legal significance and can be used as an evidence before any Court or authority, however as can be seen from the order passed by the learned CJM, Lucknow as well as the learned Sessions Judge, Lucknow, there is not a single document on record to show as to when and in what manner these questionnaires' were produced before any Court or any authority, so as to trigger the penal provisions of Section 340 of the Criminal Procedure Code.

13. No doubt, 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 interest of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b) Cr.P.C.. However, the said stage would come only when the Court finds that the nature of complaint meets the minimum threshold, which would normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such false or forged document, but having regard to the effect or impact of such commission of offence, which it may have upon the administration of justice. It is possible that such false 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. It has to understand that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a Court of law or has a direct correlation with the proceedings in a Court of justice. This Court fails to appreciate as to how the alleged falsity of the said questionnaire could in any manner affect the functioning or discharge of lawful duties of the Court or in administration of justice or the other party has perjured themselves to

beneficial orders from the Court. Further, no case has been made out as to how the same would be expedient in the interest of justice as contemplated under the provisions of Section 340 of the Criminal Procedure Code.

14. For all the aforesaid reasons, this Court does not find any infirmity in the order dated 03.10.2024 passed by the learned Addl. District & Sessions Judge, Lucknow in Criminal Appeal No. 66/2023 (Bhartendu Pratap Singh V/s Rajeev Krishna & 2 others) and order dated 16.03.2023 passed by the learned CJM, Lucknow in CrI. Misc. Case No.1041/2023 (Bhartendu Pratap Singh V/s Rajeev Krishna & 2 others). Both the trial Courts have considered all the contentions as well as the Judgments referred by the applicant and has on due appreciation of the facts of the present case has rightly rejected the application under Section 340 of the Cr. P.C.

15. As a sequel to above, the application lacks merits and is hereby *dismissed*.

[Om Prakash Shukla, J.]

Order Date :- 28.1.2025

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