



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1365 OF 2015

**PRABHAKAR YESHWANT MASRAM
AND ANOTHER**

APPELLANTS

VERSUS

**SOU TULA NAMDEORAO JAIPURKAR
AND ANOTHER**

RESPONDENTS

J U D G M E N T

ATUL S. CHANDURKAR, J

1. The short issue that arises for consideration in this Criminal Appeal is whether on the basis of a *prima facie* satisfaction that ‘wrong statements’ were made by a party in his pleadings that were prepared by his counsel, power under Section 340 of the Code of Criminal Procedure, 1973¹ could have been exercised for directing filing of a complaint against both of them for the offence punishable under Sections 193, 199 and 200 of the Indian Penal Code, 1860²?

2. The facts in issue lie in a narrow compass. The first and

¹ For short, ‘the Cr.P.C.’

² For short, ‘the Penal Code’

second respondent³ filed a civil suit against the predecessors-in-title⁴ of the first appellant seeking to restrain them from causing any obstruction to the enjoyment of their property, amongst other reliefs. An application for temporary injunction during pendency of the suit having been moved, the trial Court by its order dated 03.04.2001 restrained the defendants from causing any obstruction to the plaintiffs' occupation and also permitted the plaintiffs to approach the water meter so as to effect any replacement and repairs thereto. The defendants preferred a miscellaneous appeal for challenging the order of temporary injunction passed by the trial Court. In the meanwhile, the first appellant⁵ purchased the suit property from the original defendants and on 16.01.2003 got himself impleaded as a defendant in the said suit. During pendency of the said appeal, the plaintiffs moved an application under provisions of Order XXXIX Rule 2A of the Code of Civil Procedure, 1908⁶ making a grievance that the defendant had breached the order of temporary injunction. They prayed for an order of attachment to be thus passed. By an order dated 13.10.2003, the trial Court in exercise

³ For short, 'the plaintiffs'

⁴ For short, 'the defendants'

⁵ For short, 'the defendant'

⁶ For short, 'the CPC'

of power under Order XXXIX Rule 2A of the CPC directed the defendant to restore the earlier position at the suit site and also issued a show cause notice to him as to why he should not be held guilty of committing breach of the order of temporary injunction. The defendant preferred a miscellaneous appeal and challenged the aforesaid order. Along with the miscellaneous appeal, an application for stay was also moved. On 17.01.2004, the appellate Court stayed the effect and operation of the order dated 13.10.2003 passed by the trial Court.

3. According to the plaintiffs, the defendant had made incorrect and false statements in the miscellaneous appeal as well as in the application for stay that had been filed before the appellate Court. In view of such statements, the order passed by the trial Court had been stayed by the appellate Court. The plaintiffs, therefore, filed a criminal contempt petition before the Nagpur Bench of the Bombay High Court⁷ against the defendant and his learned counsel, the second appellant⁸ herein. The learned Judge of the appellate Court who had passed the order dated 17.01.2004 was also impleaded as a respondent in the said contempt petition. The High Court by its order dated 12.10.2004 observed that it did not

⁷ For short, 'the High Court'

⁸ For short, 'the learned counsel'

intend to proceed with the contempt proceedings. It, however, granted liberty to the plaintiffs to initiate proceedings under Section 340 of the Cr.P.C. against the defendant and his learned counsel. Thereafter, the plaintiffs moved an application before the appellate Court under Section 340 of the Cr.P.C. stating therein that the defendant and his counsel had deliberately and consciously made false statements in the miscellaneous appeal as well as the application for stay filed before the appellate Court. By an order dated 19.01.2006, the appellate Court observed that a *prima facie* case was made out that wrong statements had been made by the defendant and his learned counsel in the miscellaneous appeal and hence a case for directing filing of a complaint for the offence punishable under Sections 193, 199 and 200 of the Penal Code had been made out. It, accordingly, directed so. The appellants, being aggrieved, filed an appeal under Section 341 of the Cr.P.C. The High Court by the impugned judgment dated 14.08.2012 declined to interfere with the said order and dismissed the appeal. Being aggrieved, the appellants have challenged the order directing initiation of criminal proceedings against them.

4. Mr. Satyajit A. Desai, learned counsel for the appellants submitted that the Court was not justified in directing filing of a

complaint in exercise of power under Section 340 of the Cr.P.C. According to him, unless there was a case of deliberate falsehood with an intention to mislead or deceive the Court, such direction could not have been issued. There were no false statements made by the defendant in the miscellaneous appeal that had been prepared by his learned counsel. There were in fact typographical errors in the miscellaneous appeal and the application for stay, which were sought to be rectified by filing an application for correcting the same, much prior to filing of the application under Section 340 of the Cr.P.C. In absence of there being any material whatsoever to even *prima facie* hold that any false statement had been made by the defendant, a drastic order of initiating criminal proceedings ought not to have been passed. Moreover, the defendant's learned counsel had given an explanation that on account of typographical errors that went unnoticed, the mistake had crept in the pleadings. There was no justification whatsoever to initiate criminal proceedings against the defendant's learned counsel. It was, thus, submitted that the Court erred in issuing such direction which was maintained by the High Court without proper examination of the material on record. He, therefore, prayed that the impugned orders be set aside.

5. Despite service, the respondents have not chosen to oppose

the appeal.

6. Having heard the learned counsel for the appellants and having perused the relevant material on record, we are satisfied that the Court merely on the basis of a *prima facie* finding that ‘wrong statements’ had been made by the defendant in the memorandum of appeal and the stay application that were drafted by his learned counsel erred in directing the lodging of a complaint for the offence punishable under Sections 193, 199 and 200 of the Penal Code, more so, in the absence of any consideration whatsoever whether it was expedient in the interest of justice to make such complaint.

7. As the plaintiffs invoked the provisions of Section 340 of the Cr.P.C, the relevant portion of the said provision is reproduced hereunder:

“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 interests 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 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.”

It is by now settled that while entertaining proceedings under Section 340 of the Cr.P.C., it must be borne in mind that the material produced before the Court ought to make out a *prima facie* case for an inquiry to be made into an offence referred to in Section 195(1)(b) of the Penal Code. Further, the Court has to also consider whether it is expedient in the interest of justice that such inquiry should be made into the alleged offence. Reference in this regard can be usefully made to the decision of the Constitution Bench in **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another**⁹. In paragraph 18 of the report, it has been observed as under:

“18. 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 interest 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(i)(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,

⁹ 2005 INSC 129

the Court may not consider it expedient in the interest of justice to make a complaint.....”

8. The genesis of initiation of proceedings under Section 340 of the Cr.P.C. was the statements made in the memorandum of appeal preferred by the defendant for challenging the order dated 13.10.2003 passed by the trial Court under Order XXXIX Rule 2A of the CPC. The relevant portion of the memorandum of appeal is reproduced herein:

“2. The plaintiff thereafter preferred Civil Revision Application no. 967/2001 before the Hon'ble High Court and some time on 09.09.2002 has withdrawn the revision and in its place filed Writ Petition No. 77/2003, which has been dismissed by the Hon'ble High Court on 17.02.2003 against which the plaintiff filed Misc. Civil Application No. 161/2003 for review of the said order and is pending before the Hon'ble High Court.”

[the offending word has been underlined]

According to the plaintiffs, the proceedings had been ‘disposed of’ by the High Court and not ‘dismissed’.

Similarly, in the application for stay preferred by the defendant, a grievance was raised by the plaintiffs with regard to the statements in paragraphs 3 and 4 thereof. The same read as under:

“3. It is submitted that the defendant no. 7 was not party to the suit bearing no. 21/2001. Originally the defendant No. 7 was owner of ground floor Block No. G-3 and along with defendant no. 1, five other persons were named as defendant, the matter was heard and in the appeal the appellate court has passed order on 28.08.2003 thereby setting aside the order of the trial Court and substituted the order that permanent structure shall be erected and plaintiff, his agent be allowed to operate the water meter as and when necessary.

[word ‘no’ was stated to be omitted]

between the words 'that' and
'permanent']

4. Against this order, revision was filed before the Hon'ble High Court which came to be withdrawn by the plaintiff. Then the writ petition was filed, which was dismissed by the Hon'ble High Court. It was a dispute in relation to the grill and temporary shed in front of ground floor block no. G-3 and in respect' of the operating of water meter by the plaintiff. The observation of the appellate Court in the Judgment is self explanatory and sufficient as to the rights of the parties to the suit."

[the offending word has been underlined]

According to the plaintiffs, the proceedings had been 'disposed of' and not 'dismissed'.

9. The Court while dealing with the application filed under Section 340 of the Cr.P.C. considered the said pleadings and concluded in paragraph 6 as under:

"6. From the above facts it appears that there is prima facie case that wrong statements were made by the appellant and his counsel in M.C.A. No. 28/2004 and therefore, there is prima facie case for lodging the complaint against the appellant and his counsel xxxxxxxxxxxx. From the material on record it appears that prima facie there is made out the commission of the offence punishable under section 193, 199 and 200 of I.P.C. but there is no case made out showing commission of the office punishable under section 120-B of I.P.C. Therefore, I proceed to pass the following order.

Order

The application is partly allowed.

The complaint for the offence punishable under section 193, 199 and 200 of I.P.C. be lodged before the Chief Judicial Magistrate, Nagpur against the appellant in M.C.A. No. 28/2004 and his counsel xxxxxxxxxxxx."

(emphasis supplied)

10. A reading of the aforesaid observations clearly indicates that the Court was *prima facie* satisfied that 'wrong statements' had

been made by the defendant and his learned counsel in the miscellaneous appeal and, hence, a *prima facie* case for lodging a complaint had been made out. It would, thus, be necessary to examine whether a *prima facie* case of commission of offence punishable under Sections 193, 199 and 200 of the Penal Code had been made out. Section 191 of the Penal Code relates to giving false evidence and the said Section reads as under:

“191. Giving false evidence.—

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.— A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.”

Sections 193, 199 and 200 of the Penal Code read as under:

“193. Punishment for false evidence.—

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

199. False statement made in declaration which is by law receivable as evidence.—

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false.—

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.— A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200.”

11. From the aforesaid provisions, it becomes clear that what is punishable is the giving of ‘false evidence’ under Section 193 or making of a ‘false statement’ under Section 199. What is thus required at the stage of directing initiation of proceedings for an offence punishable under the said provisions is a *prima facie* case of having given ‘false evidence’ or making a ‘false statement’ in a declaration which by law is receivable as evidence. As noted above, the Court for the purposes of directing the filing of a complaint recorded its *prima facie* satisfaction that ‘wrong statements’ had been made in the memorandum of appeal and the application for stay preferred by the defendant that was filed through his learned

counsel. The order dated 19.01.2006 directing lodging of a complaint does not record any *prima facie* satisfaction that ‘false statement’ had been made in the aforesaid proceedings. There is a material difference between making a ‘wrong statement’ and ‘false statement’ in the context of Sections 199 and 200 of the Penal Code. A ‘wrong statement’ of fact may not always have the character of a ‘false statement’. While making of a ‘wrong statement’ may not fall within the ambit of Sections 199 and 200 of the Penal Code, a ‘false statement’ would qualify as relevant material for being considered as an offence under the said provisions. The threshold for initiating action for an offence punishable under Sections 199 and 200 of the Penal Code is the making of a ‘false statement’ and not the making of a ‘wrong statement’. It is so because a ‘false statement’ denotes a deliberate intention in making such statement; in other words, it is a wrongful or erroneous statement made intentionally to gain an undue advantage. Thus, the basic premise on which the Court proceeded to direct a complaint to be filed is erroneous and it does not satisfy the necessary threshold. It is, therefore, clear that no *prima facie* satisfaction was recorded by the Court that ‘false statements’ were made by the defendant and his learned counsel in the memorandum of appeal and in the application for stay,

warranting initiation of proceedings for the offence punishable under Sections 193, 199 and 200 of the Penal Code.

12. It is also pertinent to note that the Court failed to record its satisfaction that it was expedient in the interest of justice that an inquiry should be made into the alleged offence in view of such statements. Without recording any satisfaction that it was indeed expedient in the interest of justice to hold an enquiry, such a direction was issued. Section 340 (1) of the Cr.P.C. mandates that a Court before directing an inquiry to be made into any offence referred to in Section 195 (1) (b) of the Penal Code, it should form an opinion that it is expedient in the interests of justice that such inquiry is in fact necessary. This would indicate that on the mere making of a ‘wrong statement’, an inquiry cannot be ordered. The forming of an opinion by the Court that holding of an inquiry is in fact expedient in the interests of justice is also a must. Ordering an inquiry without formation of any opinion as required by Section 340 (1) of the Cr.P.C. would render the order bad in law being not in accordance with the mandate of Section 340 (1). We may in this regard refer to the observations of this Court in **Santokh Singh Vs. Izhar Hussain and another**¹⁰ as under :

¹⁰ 1973 INSC 96

“...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...”

Thus, on both counts the Court fell into error in directing initiation of criminal proceedings.

13. The High Court in the appeal preferred by the appellants challenging the order directing initiation of criminal proceedings proceeded to record its satisfaction that the appellants had filed a false affidavit in support of the application for stay. Such *prima facie* finding not having been recorded by the court of first instance, the High Court in the appeal preferred by the appellants challenging that order could not have recorded such finding, especially when the plaintiffs had not challenged the said order. The appellants could not have been placed in a worse position by preferring an appeal. The court of first instance having *prima facie* found that it was a case of making ‘wrong statements’, the High Court went on to record a finding that the appellants had in fact filed a false affidavit. Further, the High Court also recorded a finding as to the expediency of filing a complaint in the interests of justice. This finding was absent in the original order. The High

Court has, thus, proceeded to improve the impugned order in an appeal preferred by the appellants, who were in fact aggrieved by the same. Such course is not permissible in law.

14. We may also note that the application under Section 340 of the Cr.P.C. came to be filed by the plaintiffs on 27.04.2005. Much prior thereto, on 20.09.2004 the defendant through his learned counsel moved an application seeking correction of the typing mistakes in the memorandum of appeal as well as the application for stay. The relevant portion of the said application reads as under:

“APPLICATION FOR CORRECTION OF TYPING
MISTAKES IN THE MEMO OF APPEAL AND
STAY APPLICATION UNDER ORDER 6 RULE
17 OF C.P.C. READ WITH SECTION 151 OF
THE CODE OF CIVIL PROCEDURE.

The applicant/Appellant most humbly submits as under :-

1. That, this Miscellaneous Civil Appeal No. 28/2004 and Stay Application was dictated by the Counsel for the Appellant to his part time Steno-Typist. In the Memo of Appeal, the order passed in M.C.A. No. 210/2001 has been reproduced in which there is no typing error, but while typing the application for Interim Relief, the Steno has committed mistake, the word “not” has not been typed. The Part Time Steno-Typist also committed error while typing in place of word “disposed of”, the word typed are “dismissed”. After giving dictation, the matter was typed and along with Appeal, stay application came to be filed by the Junior Counsel. It is submitted that after the matter was typed, it was mistake on the part of Counsel that prior to filing by his Junior, he did not go through the contents of the typed matter in Memo of Appeal and Stay Application. The Counsel admits his mistake of not going through the typed matter by the Steno prior to being filed by his Junior. However, the Counsel will take care in future to check the matters typed by the Steno-Typist prior to the matter being filed. He is hereby tendering his sincere apology for the error which has occurred in the Memo of Appeal and Interim Relief Application.

2. It is submitted that the typing errors to be corrected are as under :-

- (i) In Para 2 of M.C.A. No. 28/2004, the word “dismissed” to be corrected and substituted the word as “disposed of”.
- (ii) In Para 3 of Stay Application, the word, “no” to be added after the words substituted the order that and prior to the word permanent structure.
- (iii) In Para 4 of Stay Application, in place of “dismissed” the word “disposed of” to be substituted.

3. It is submitted that the aforesaid typing errors are apparent on the face of record, as the Certified copies of the orders which have been referred in the Memo of Appeal and Stay Application, are already on record of this M.C.A. No. 28/2004 with List Exh.10 and 11.”

15. Perusal of the said application clearly indicates that the mistakes were typographical in nature and an explanation was duly furnished for their occurrence. The gravity of a statement that is false is definitely greater than that of a statement that is wrong. Inadvertent errors or mistakes in a statement could be termed as a ‘wrong statement’. However, a ‘false statement’ would imply something more than a mere untruth as it carries with it an intent to deceive coupled with knowledge, actual or constructive. This perhaps explains the reason as to why the court of first instance was of the view that ‘wrong statements’ had been made in the memorandum of appeal and the application for stay instead of holding them to be ‘false statements’. It, therefore, cannot be said that the errors in the memorandum of appeal and the application for stay were of such a grave nature that it amounted to making ‘false statements’ requiring initiation of proceedings under

Sections 193, 199 and 200 of the Penal Code.

16. We are, thus, satisfied that no case, whatsoever, has been made out to direct initiation of criminal proceedings against the appellants. We are fortified in this conclusion by a recent decision of a three Judge Bench in **James Kunjwal Vs. State of Uttarakhand and another**¹¹ which observed as under:

“**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.”

17. Before parting, it may be noted that the Constitution Bench in *Iqbal Singh Marwah and another (supra)* was of the view that a direction for filing of a complaint normally ought not to be made during the pendency of the substantive proceedings before the Court but only when the proceedings conclude and the final

¹¹ 2024 INSC 601

judgment is rendered. The object is clear inasmuch as the main proceedings ought to be proceeded with and decided instead of diverting them with the aid of Section 340 of the Cr.P.C. It is noticed that at times, the aid of Section 340 of the Cr.P.C. is sought to be taken merely to delay the adjudication of the substantive proceedings, as also in the present case. The dictum of the Constitution Bench, thus, ought to be borne in mind by the Courts.

18. For all these reasons, the order dated 19.01.2006 passed by the 7th Additional District Judge, Nagpur below Exhibit 24 in M.C.A. No.28 of 2004 as well as the judgment dated 14.08.2012 passed in Criminal Appeal No.125 of 2006 by the learned Single Judge of the High Court is quashed and set aside. The application preferred by the plaintiffs under Section 340 of the Cr.P.C. stands dismissed. The Criminal Appeal is, accordingly, allowed.

.....**J.**
[UJJAL BHUYAN]

.....**J.**
[ATUL S. CHANDURKAR]

NEW DELHI,
JULY 21, 2026.