

# SUPREME COURT OF INDIA

B.K. Gupta

Vs.

Damodar H. Bajaj

(V.N. Khare and S. V. Patil JJ.)

10.01.2001

## ORDER

1. In Writ Petition No. 1442/1983, Damodar H. Bajaj and Ors. v. Municipal Corporation of Greater Bombay and Ors., the appellant herein filed a separate affidavit on behalf of respondent No. 4. A learned Single Judge of Bombay High Court while deciding the said writ petition found that the appellant has made false statement on oath and also adduced evidence known to be false and fabricated. Under such circumstances, the learned Single Judge, in exercise of power under Section 340 Cr. PC issued notice to the appellant to show cause for having committed offence referred to under Clause (b) of Sub-section (1) of Section 195 Cr. PC In compliance thereof, the appellant appeared through his Counsel. The learned Single Judge in the said inquiry, prima facie, found that the appellant has intentionally made false statement on oath and adduced evidence known to be false and fabricated and, therefore, the Rule was made absolute and direction was issued for filing complaint before the Magistrate against the appellant. It is against the said order the appellant has filed the present appeal.

2. Learned Counsel appearing for the appellant urged that there is nothing on record to show that the High Court while making an inquiry under Section 340 Cr. PC applied its mind whether it was expedient in the interest of justice that a complaint be filed against the appellant. Under Section 340 Cr. PC, if the Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into an offence referred to in Clause (b) of Sub-section (i) of Section 195 Cr. PC in relation to any proceeding in that Court, the Court after such preliminary inquiry may direct for filing a complaint before the appropriate court against such person.

3. From the above, it follows that there are two conditions, on fulfillment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated. On perusal of the record we do not find any material on record to show that

there was any application of mind by the court that it was expedient in the interest of justice to make an inquiry and file a complaint against the appellant. We have also perused the judgment in Writ Petition No. 1442/1983 and the judgment does not show that the court applied its mind regarding the second condition as to whether it is expedient in the interest of justice to make an inquiry into the false evidence given by the appellant and a complaint is to be filed. In the absence of application of mind in regard to expediency for filing complaint against the appellant, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated.

4. On this short ground, this appeal deserves to be allowed. We accordingly set aside the order under challenge. The appeal is accordingly allowed. There shall be no order as to costs.