SUPREME COURT OF INDIA

Ashok Kumar Aggarwal

Vs.

Union of India

Crl.A.No.1842 of 2013

(B.S.Chauhan and S.A.Bobde,JJ.,)

22.11.2013

JUDGMENT

Dr. B.S.Chauhan,J.,

1. This appeal has been preferred against the impugned judgment and final order dated 16.4.2010 passed by the High Court of Delhi at New Delhi in Criminal Miscellaneous Application No. 3314 of 2006 in Writ Petition (Crl.) No. 938 of 2001, by which the application filed by the appellant to proceed against respondent no. 5 under Section 340 read with Section 195(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C.') has been dismissed.

2. Facts and circumstances giving rise to this appeal are that: A. The appellant had filed Writ Petition (Criminal) No. 938 of 2001 before the High Court of Delhi seeking transfer of investigation from respondent nos. 3, 4 and 5 to any other senior officer of Central Bureau of Investigation (hereinafter to referred as `CBI'), as the said respondents had been abusing their investigating powers and adopted unfair and improper means in RC No. S19/E0006/99 dated 7.12.1999.

> "B. The court made order dated 4.4.2002, on the submission of counsel for the respondent No. 5 that the investigation report had been finalised in the said RC case and no further investigation was required to be done, directed the competent authority of the CBI to file an affidavit in this regard by 5th April, 2002.
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> C. An affidavit was filed by respondent No. 5 on 5.4.2002, being investigating officer, wherein it had been stated that the investigation was complete and that no further investigation was required to be done and a final report Part-1 (FR-1) was submitted by him on 11.1.2002 to the Superintendent of Police (in short `SP').
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> D. However, coming to know that certain witnesses had been examined by the CBI subsequent thereto, the appellant preferred an application under Section 340 r/w

195(1)(b) Cr.P.C., which has been dismissed by the High Court vide impugned judgment and order. Hence, this appeal.

3. Shri Ram Jethmalani, learned senior counsel appearing on behalf of the appellant, has submitted that not only a statement was made, but even an affidavit had been filed by respondent no. 5 before the High Court that the investigation was complete and an investigative report had been finalised by him and no further investigation was required. Therefore, if further witnesses had been examined and certain evidence had been collected, it is evident that the statement so given and affidavit filed by respondent no. 5 was just to mislead the court and therefore, the court ought to have proceeded against him allowing the application filed by the appellant.

4. Per contra, Shri Ranjit Kumar, learned senior counsel appearing on behalf of the respondent No.5 and Ms. Indira Jaising, learned ASG for respondent no. 1 and 2, have vehemently opposed this appeal contending that the submission made before the court and affidavit filed by respondent no.5 that investigation stood concluded, was factually correct. However, as per the procedure prescribed under the CBI manual, the investigation report submitted by the I.O. goes to the superior officers for their comments, approval and directions, and ultimately, it goes to the Director of the CBI. In case the superior authorities have some query in respect of any matter in that report of the investigating officer, they are competent to issue directions to examine a particular witness on a particular point. The investigating officer is bound to do so in order to tie the loose ends of investigation. Such examination of witness or further investigation does not amount to the statement made by the I.O. in the affidavit before the court being false or having been made deliberately and mischievously to misguide the court. As per the requirement of the procedure prescribed under the CBI manual, the I.O., even after filing such an affidavit, was bound to carry out such directions issued by the superior authorities.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. In *Chandra Shashi v. Anil Kumar Verma*[1], this Court held that no body should be permitted to indulge in immoral acts like perjury, prevarication and motivated falsehoods in the judicial proceedings and if someone does so, it must be dealt with appropriately. In case recourse to a false plea is taken with an oblique motive, it would definitely hinder, hamper or impede the flow of justice and prevent the courts from performing their legal duties.

7. In this context, reference may be made of Section 340 under Chapter XXVI of the Cr.P.C., under the heading of "Provisions as to Offences Affecting the Administration of Justice". This Chapter deals with offences committed in or in relation to a proceeding in the court, or in respect of a document produced or given in evidence in a proceeding in the court and enables the court to make a complaint in respect of such offences if that court is of the view that it is expedient in the interest of justice that an inquiry should be made into an offence. Clause (b) of Section 195 (1) Cr.P.C. authorises such court to examine prima facie as it thinks necessary and then make a complaint thereof in writing after having recorded a

finding to that effect as contemplated under Section 340 (1) Cr.P.C. In such a case, the question remains as to whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offences and whether it is also expedient in the interest of justice to take any action. Thus, before lodging a complaint, the condition precedent for the court to be satisfied are that material so produced before the court makes out a prima facie case for a complaint and that it is expedient in the interest of justice to have prosecution under Section 193 IPC. (Vide*: Karunakaran v. T.V. Eachara Warrier & Anr.*[2]*,; and K.T.M.S. Mohd. & Anr. v. Union of India*[3],).

8. In the case of *Chajoo Ram v. Radhey Shyam & Anr.*[4]*,* this Court held:

> "7. 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 reasonably 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 the 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." (Emphasis added)

9. In *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.*[5]*,* this Court observed:

"In view of the language used in Section 340 CrPC 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 interests 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(1)(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….." (See also: *R.S. Sujatha v. State of Karnataka & Ors*[6]*.*,

10. In view of the above, law on the issue can be summarised that in order to initiate prosecution for perjury, the court must prima facie reach a conclusion after holding preliminary inquiry that there has been a deliberate and conscious effort to misguide the court and interfere in the administration of justice. More so, it has to be seen whether such a prosecution is necessary in the interest of justice. The case is required to be decided in light of the aforesaid settled legal proposition.

11. The affidavit filed by respondent no. 5 revealed that the respondent no. 5 had submitted the final report (Part-I) in the aforesaid case on 11.1.2002 to the SP. It is also not in dispute as can be seen from the affidavit dated 5.4.2002, that the report submitted by the IO goes to the superior officers for scrutiny and comments. The High Court had passed a consent order dated 19.4.2002 wherein certain directions had been issued to the Director, CBI to examine the case. The Director, CBI after examining the record of the case, vide order dated 23.4.2002, asked the IO to tighten the loose ends of the case. The said order has not been challenged till date. It is also evident that chargesheet was filed on 5.12.2002 and, subsequently, cognizance was taken by the competent court on 10.1.2003. The case was filed under Section 340 read with Section 195(1)(b) Cr.P.C. by the appellant on 3.5.2006, i.e. after three and a half years.

12. The High Court while dealing with the case has also, after examining the original records as well as the file and particularly the confidential notings therein, came to the conclusion that in view of the directions issued by the superior authority, some other witnesses were examined "to tighten the loose ends of the case" and there was no attempt on the part of the investigating agency to mislead the court. The order dated 23.4.2002 passed by the Director, CBI has not been challenged by the appellant and the instant complaint had been filed after 3-1/2 years in 2006. The statements were recorded on such directions, however, only to the extent of tightening the loose ends. More so, the provisions of Section 195(1)(b) etc. are also attracted in such a fact-situation. After looking into the voluminous record of the case, what has been done after filing the affidavit or making the statement was minimal. The prosecution for perjury is required only where perjury appears to be deliberate and conscious and the conviction is reasonable, probable or likely. In the circumstances, a mere impression or perception of the appellant would not make the deposition on affidavit by the respondent no. 5 to be false as being a deliberate and conscious act.

13. The court further observed that the complaint had been filed after 4 years on the basis of mere impression of the appellant and under no circumstances, it could be held that there had been some deliberate and conscious attempt to mislead the court which may warrant entertaining the application filed by the appellant.

14. We have given serious consideration to the material on record. However, we could not convince ourselves to take a view contrary to that of the High Court. The High Court has rightly reached the conclusion that there was no deliberate perjury to misguide the court while making such statement or filing the affidavit. In such a fact- situation, the question of allowing application under Section 340 Cr.P.C. read with Section 195 (1)(b) Cr.P.C. was not warranted.

15. Thus, we do not find any cogent reason to interfere with the impugned judgment and order. The appeal lacks merit and, is accordingly dismissed.

Judgment Referred.

[1]*(1995) 1 SCC 0421*

[2]*AIR 1979 SC 0290*
[3]*AIR 1992 SC 1831*
[4]*AIR 1971 SC 1367*
[5]*AIR 2005 SC 2119*
[6]*(2011) 5 SCC 0689*