
(2016) 03 MP CK 0054

MADHYA PRADESH HIGH COURT (GWALIOR BENCH)

Case No: Cr.R. No. 856 of 2013.

Rajendra Bharti -
Applicant @HASH Shri
Narottam Mishra and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: March 17, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 340

Citation: (2016) 2 JabLJ 191

Hon'ble Judges: N.K. Gupta, J.

Bench: Single Bench

Advocate: Shri V.K. Saxena, Senior Advocate with Shri Aditya Singh, Advocate, for the Applicant; Shri V.K. Bharadwaj, Senior Advocate with Shri M.P.S. Raghuvanshi, Advocate, for the Respondent Nos. 1 and 2; Shri Arvind Dudawat, Additional Advocate General, for the R

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. N.K. Gupta, J. - The applicant has filed a complaint under section 340 of Cr.P.C. before the Judicial Magistrate First Class, Datia which was registered as MJC No. 33/2013 and the same was dismissed vide order dated 29/07/2013. Thereafter, appeal No. 33/2013 filed by the applicant was also dismissed on 05/09/2013 by the Sessions Judge, Datia. Being aggrieved with the aforesaid orders, the present revision is filed.

2. The facts of the case, in short, are that the applicant as well as the respondent No. 1 had contested legislative assembly election in the year 2008. The respondent No. 1 had submitted a nomination form before the returning officer along with an

affidavit that he did not own any motor vehicle. Thereafter, the respondent No. 1 arranged for various vehicles during his election. One four wheeler bearing registration No. HR-37 B 1282 was used in that election campaign by respondent No. 1 upto 27/11/2008 which was of the respondent No. 1 himself. That vehicle was seized by the officers of the police station Jigna, District Datia for offence under section 188 of IPC and various other offences and crime No. 86/2008 was registered. That vehicle was taken on interim custody by the respondent No. 2 having a power of attorney executed by the respondent No. 1 and vide order dated 01/12/2008, the Judicial Magistrate First Class, Datia gave the vehicle on interim custody to the respondent No. 2. Since, the respondent No. 1 had given an affidavit along with nomination form that he did not have any motor vehicle, therefore, complaint was made before the Election Commission. Vide letter dated 13/04/2012 District Election Officer, Shivpuri intimated the Superintendent of Police, Shivpuri to register a criminal case against the respondent No. 1 relating to submission of false affidavit. Thereafter, on enquiry it was found that the vehicle bearing registration No. HR 37-B 1282 was not of the respondent No. 1 and it was made clear by the District Election Officer that affidavit submitted by the respondent No. 1 along with nomination form was correct and therefore, it is self evident that the power of attorney issued by the respondent No. 1 in favour of respondent No. 2 to get the aforesaid motor vehicle on interim custody was forged document and the respondent No. 2 has also submitted affidavit before the JMFC, Datia to get the interim custody of the vehicle which was false and therefore, a complaint under section 340 of Cr.P.C. was filed by the applicant before the JMFC, Datia to get a relief for offence under section 191, 192, 193, 420, 467 & 468 of IPC.

3. After making a short enquiry, the JMFC, Datia vide order dated 29/07/2013 dismissed the complaint, whereas, appeal filed by the appellant was also dismissed.

4. I have heard learned counsel for the parties at length.

5. For disposal of the present revision only two questions are to be decided on merits. Firstly, whether the respondent Nos. 1 & 2 have produced a fabricated or false document like power of attorney or affidavit in a judicial proceedings and secondly whether it was expedient in the interest of justice for the trial court to lodge a criminal complaint against the respondents. The grievances of the applicant can be considered on aforesaid two questions. However, some points are also raised by learned Senior Advocate for the respondent Nos. 1 & 2 relating to maintainability of the case and right of the applicant to lodge a complaint under section 340 of Cr.P.C. Learned Senior Advocate for the respondent Nos. 1 & 2 has invited attention of this Court to the provision of section 341 (2) of Cr.P.C. that after filing of an appeal against the order under section 340 of Cr.P.C., no revision lies. The provisions of section 341 of Cr.P.C for ready reference is reproduced as under :-

"Section 341 - Appeal

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section

(1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision."

6. By perusal of the aforesaid provisions, it would be apparent that the order passed by the appellate court shall be final and shall not be subjected to revision. However, learned Senior Advocate for the applicant has invited attention of this Court to the judgment of the Apex Court in the case of "M/s Pepsi Foods Limited and Anr. v. Special Judicial Magistrate and Ors." (AIR 1998 SC 128) in which it is laid down that if there is no liberty to file a revision with the aggrieved person then he can approach the High Court under section 482 of Cr.P.C.. Similarly, attention is also invited to the judgment passed by the Apex Court in the case of "Krishnan and Anr. v. Krishnaveni and Anr." (1997) 4 SCC 241 in which it is laid down that second revision is barred, but if nature of the matter permits, the High Court can exercise its power under section 482 of Cr.P.C. A little portion of para 8 of the judgment is hereby reproduced as under :-

"In addition the inherent powers of the High Court is preserved by section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities /incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order. "

In the light of aforesaid judgments, revision filed by the applicant cannot be discarded only on the ground that it was not maintainable. Merits of the case may be examined by this Court having power under section 482 of Cr.P.C

7. One more question has been raised by learned Senior Advocate for the respondent Nos. 1 & 2 that the applicant was not at all an aggrieved person and, therefore, he could not file a complaint under section 340 of Cr.P.C.. However, that question has already been answered by the trial court by referring to the judgment of the Apex Court in the case of "A.R. Antulay v. Ramdas Srinivas Nayak and Anr."

(AIR 1984 SC 718). In the light of judgment passed by the Apex Court in the case of A.R. Antulay (supra), the complaint under section 340 of Cr.P.C filed by the applicant could not be discarded only on the ground that he was not personally aggrieved by filing of the alleged false or fabricated document. However, the grievance of the respondent Nos. 1 & 2 may be considered while considering the question that whether the complaint was filed in expedient in the interest of justice, but the complaint could not be discarded only on the ground that the applicant was not aggrieved by filing of such documents. Both the Courts below have rightly entertained the complaint as well as the appeal filed by the applicant.

8. On examining the order passed by the Courts below, it appears that it was presumed before the trial court that affidavit given by the respondent No. 2 was correct and the document "power of attorney" was also correct. However, the applicant has challenged the conclusion drawn by the courts below on the presumption regarding the registration of the vehicle in the name of respondent No. 1 to be an admitted position. Learned Senior Advocate for the applicant has submitted, that before returning officer the respondent No. 1 has given a nomination form along with an affidavit that he did not have any vehicle in his ownership. Also the applicant has filed an information of the RTO, Datia that the vehicle was transferred to the respondent No. 1, but its registration number was changed, therefore, the courts below could not presume that the affidavit as well as the documents of power of attorney were correct. The contention advanced by learned Senior Advocate for the applicant appears to be acceptable. It could not be presumed that the affidavit executed by the respondent No. 2 and power of attorney executed by the respondent No. 1 were prima facie correct. However, the applicant has moved a complaint under section 340 of Cr.P.C then it was his duty to prove that forged and fabricated documents were filed before the trial court by the respondents and hence by mere assertion, it cannot be presumed that the respondents have filed forged or fabricated documents to take interim custody of the vehicle.

9. The applicant did not take much pain to prove that the documents filed by the respondent Nos. 1 & 2 were forged and fabricated. For example in report dated 24/08/2012, the District Transport Officer has given an intimation that information relating to vehicle bearing registration No. HR 37 B 1282 was not available completely in the office of District Transport Officer, Datia because the vehicle was transferred from Haryana to one Bhanuprakash resident of Dabra and, therefore, the registration authority of that vehicle was RTO, Gwalior. Similarly, on enquiry done by the District Election Officer, Shivpuri an information was sought from the District Transport Officer, Shivpuri that the vehicle was transferred to one Bhanuprakash. Hence, it was for the applicant to get the correct and exact information from the District Transport Officer, Gwalior about the transfer of the vehicle, but the applicant did not take any pain to get the exact information. The applicant has filed photo copy of registration documents before the trial court. Such

documents were photo copies of the registration certificates of the vehicle, authorised copy of the registration book could not be produced, therefore, these documents could not be exhibited. However, if the documents relating to registration of vehicle in the name of Bhanuprakash is considered then it would be apparent that such registration document was issued on 06/01/2005, but it was not clearly mentioned in that document as to when the vehicle was registered in the name of Bhanuprakash. Similarly, a second photo copy has been filed in which the aforesaid vehicle was shown to be registered in the name of respondent No. 1, but a single page was filed which indicates that the vehicle was manufactured in the year of 2005, but there is no clarity regarding the person who was the first owner and when the vehicle was registered in the name of respondent No. 1. Under these circumstances, when the applicant had an opportunity to obtain the document from the District Transport Officer, Gwalior to show that at the time of filing of the document, the respondent No. 1 was not a registered owner, but the applicant did not take any steps to prove that the respondent No. 1 was not the registered owner of the vehicle when a document of power of attorney was executed.

10. By mere assertion that the District Election Officer has dismissed the complaint of the applicant that affidavit filed by the respondent No. 1 at the time of filing of nomination form was not incorrect, it cannot be said that the respondent No. 1 was not a registered owner of the vehicle at the time of execution of that power of attorney. There is a slight difference between the owner and registered owner of the vehicle. If a registered owner transfers a vehicle to a person, but due to delay of District Transport Officer, if name of the purchaser has not been entered in the registration record then a person who does not own a vehicle may be shown as registered owner of the vehicle and such a person may execute an affidavit that he was not owner of the vehicle, but he was registered owner of the vehicle and, therefore, if the respondent No. 1 has executed an affidavit before the District Election Officer along with nomination form that he did not own any vehicle then by mere affidavit it cannot be presumed that the respondent No. 1 was or was not a registered owner of the vehicle.

11. Learned Senior Advocate for the respondent Nos. 1 & 2 has cited some judgments of the Apex Court delivered in the cases of "Managing Director, Karnataka State Road Transport Corporation v. New India Assurance Co. Ltd. and Anr." (2016) 2 SCC 382, "Purnya Kala Devi v. State of Assam and Anr." (2014) 14 SCC 142 & HDFC Bank Limited v. Reshma & Ors. (2015) 3 SCC 679 to illustrate the position of the owner of the motor vehicle. Out of these judgments in the case of HDFC Bank Ltd. (supra) word "owner" of the vehicle was discussed on the basis of law on that point in detail. Hence, a person could be a registered owner of the vehicle at a particular time, but at the same time it is possible that he was not the actual owner of the vehicle. Therefore, if the respondent No. 1 had filed an affidavit before the District Election Officer along with his nomination form that he did not own the vehicle then it cannot be said automatically or impliedly that he was not a

registered owner.

12. If the complaint filed by the applicant before the Election Commission is perused then only due to such rejection of complaint, it cannot be accepted that the complaint under section 340 of Cr.P.C. filed by the applicant was correct. Scope of both the complaints were different. It was for the District Election Officer to examine as to whether the affidavit filed by the respondent No. 1 was incorrect or the respondent No. 1 had used an unauthorized vehicle for his election campaign or to take the voters to the pooling booth. On enquiry from various Transport Officers, if it was found that the respondent No. 1 was not the owner of the vehicle then it was satisfactory for the District Election Officer. Similarly, it would be apparent from the documents filed by the applicant relating to the criminal case registered for that particular vehicle that no flag, poster or banner of a particular party was found on that vehicle, at the time of seizure. It was not mentioned that any mike or such amplifier, etc. was affixed in the vehicle so that it could be used for an election campaign. The passengers who were in the vehicle left the spot before the police officer could reach to the vehicle and therefore, it was not established that the vehicle was being plied for election campaign or taking the voters to the pooling booth. Hence, the District Election Officer has rightly found that the complaint made by the applicant before the Election Commission was not acceptable and, therefore, the same was dismissed. Only on these counts, it cannot be said that the power of attorney given by the respondent No. 1 before the trial court was a false or fabricated document.

13. No evidence was adduced by the applicant in preliminary enquiry to show that the respondent No. 2 had a knowledge that power of attorney executed by the respondent No. 1 was a false document. The respondent No. 2 a nephew of the respondent No. 1 was directed to take the vehicle on interim custody with the help of power of attorney then it was for him to presume that the document of power of attorney was correct and, therefore, if he executed an affidavit on the basis of that power of attorney then such affidavit cannot be considered as a false or fabricated document because it was executed in a bona fide manner with an impression that the power of attorney was correct, hence, no prosecution of the respondent No. 2 could be initiated for offence under section 193 of IPC only because he filed an affidavit and obtained the aforesaid vehicle on interim custody. Similarly, when it is not proved by the applicant that the power of attorney executed by the respondent No. 1 was false or fabricated document then the trial court could not proceed under section 340 of Cr.P.C. even against respondent No. 1 to lodge the private complaint for offence under section 193 of IPC.

14. Learned senior counsel for the respondent Nos. 1 & 2 has also invited attention of this Court that if it is presumed that the power of attorney executed by respondent No. 1 was false, then still it was not a case to prosecute the respondent No. 1 for offence under section 193 of IPC on an application under section 340 of

Cr.P.C. because it is not in the interest of justice. It is a personal interest of the applicant that he could not get any relief from the Election Commission therefore, he wants to take revenge from the respondent Nos. 1 & 2. In this connection, the respondents have referred so many judgments of the Apex Court namely "K. Sudhakaran v. State of Kerala" (2009) 4 SCC 168, "Pritish v. State of Maharashtra & Ors." 2002 SCC (Cri.) 140, "Santokh Singh v. Izhar Hussain and Anr." 1973 SCC (Cri.) 828, "Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr." 2005 SCC (Cri.) 1101. In all the aforesaid judgments, it is laid down that only in glaring cases of deliberate falsehood where conviction is highly possible then the Court should direct for prosecution. In this connection a little portion of para 11 of Santokh Singh (supra) is reproduced as under :-

"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 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."

15. In the light of aforesaid judgments, if the present matter is considered then it would be apparent that the vehicle was found in the territorial jurisdiction of the police station Jigna and it was not found that the vehicle was being used for election campaign of the respondent No. 1 or it was used in contravention of code of conduct and the vehicle was transferred to one Bhanuprakash resident of Dabra, but if vehicle was not registered in the name of Bhanuprakash and if the respondent No. 1 in his good faith helped the actual owner of the vehicle by executing that power of attorney then it cannot be said that the power of attorney was a forged document, deliberately forged to defeat the interest of justice. Similarly, as argued by the learned senior counsel for the respondent Nos. 1 & 2 that an application to get the interim custody of the vehicle is not required to be filed by its registered owner or actual owner. Such application could be filed by the Driver Gabbar from whom the vehicle was seized. If occupier or controller of the vehicle gets the vehicle on interim custody then it was for him to establish that when the vehicle was seized, he was the occupier or controller of the vehicle. But when such position was to be dealt by the lawyer who drafted the document of power of attorney and affidavit the possibility cannot be ruled out that by inadvertent mistake, the respondent No. 1 was shown to be registered owner in the documents, where he was only occupier or controller of the vehicle who could get the vehicle on interim custody with the help of respondent No. 2 and, therefore, it may be a case of inadvertent mistake and it cannot be said that the respondent No. 1 has wilfully fabricated the document of power of attorney and filed it before the Magisterial Court.

16. The contention advanced by learned counsel for the respondents is acceptable. Looking to the factual position of the case, it cannot be said that the respondent No. 1 has deliberately executed a false power of attorney or he produced a false or fabricated evidence before the trial court. It was not a case in which any damage to any other person was caused. On the contrary, the respondent No. 1 who contested the election has received the vehicle on interim custody by filing such power of attorney and he gave opportunity to the applicant to show that he was connected to the seized vehicle. Under these circumstances, if it is presumed that the respondent No. 1 has filed a power of attorney with a wrong fact that he was a registered owner of the vehicle then it cannot be said that he had deliberately filed a fabricated document before the court and also since no damage was caused to any one on getting the vehicle on interim custody, it is not in the interest of justice to prosecute the respondent No. 1 for that mistake committed by him while power of attorney was executed.

17. It is settled view of the Apex Court that the prosecution should be done on finding that it is expedient in the interest of justice to lodge the prosecution, otherwise, prosecution is not to be undertaken to satisfy the private grudge of a litigant. In this connection, the judgment passed by the Apex Court in the case of "K.T.M.S. Mohd. and Anr. v. Union of India" (1992) 3 SCC 178 may be referred in which a judgment of the Apex Court in the case of "K. Karunakaran v. T.V. Eachara Warriar" (1978) 1 SCC 18 is referred in which it is held that two pre conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly it is expedient in the interest of justice to permit the prosecution under section 193 of IPC. It is also held that an enquiry held by the Court under section 340(1), Cr.P.C, irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

18. On the basis of aforesaid discussion, it would be apparent that the applicant has failed to prove that the respondent Nos. 1 & 2 have forged the power of attorney or affidavit or gave a false evidence before the JMFC, Datia to get the aforesaid vehicle in interim custody, whereas, the applicant has failed to prove that the respondent No. 1 was not a registered owner of the vehicle at the time of execution of power of attorney and even if he had done so then it is not a case of such nature that it may be treated as expedient in the interest of justice, so that the respondent No. 1 may be prosecuted. The JMFC, Datia has rightly dismissed the complaint of the applicant under section 340 of Cr.P.C. The appellate court has rightly dismissed the appeal filed by the appellant.

19. On the basis of aforesaid discussion, there is no reason to make interference in the order passed by the court below and to invoke inherent powers of this Court under section 482 of Cr.P.C. in favour of the applicant to satisfy his private grudge.

Hence, the criminal revision filed by the applicant Rajendra Bharti which is considered under section 482 of Cr.P.C is hereby dismissed.

20. Copy of this order be sent to the court below along with their respective record for information.