**HIGH COURT OF PUNJAB AND HARYANA**

**Bench: Hon'ble Mr. Justice Kuldeep Tiwari**

**Date of Decision: 22 March 2024**

CRM-M-38759-2018

**United Bank of India and Anr. .....Petitioners**

**Versus**

**State of Haryana and Ors. ……Respondents**

**Legislation and Rules:**

Section 340, 482 of the Criminal Procedure Code (Cr.P.C.)

Sections 191, 192, 193, 196, 199, 200, and 420 of the Indian Penal Code (IPC)

Section 138 of the Negotiable Instruments Act, 1881

**Subject:** The petition challenges the order dated 12.02.2018, which directed further enquiry into allegations of perjury and false evidence by petitioners in a complaint under Section 138 of the N.I. Act against the respondents.

**Headnotes:**

Criminal Procedure – Allegations of Perjury and False Evidence - Application under Section 340 of the Cr.P.C. – The petitioners challenged the order remitting the matter to the trial court for further inquiry into allegations of perjury under Section 340 of the Cr.P.C. The contention revolves around the false implication of respondents No. 2 and 3 in a complaint under Section 138 of the Negotiable Instruments Act, 1881, by the petitioners. [Para 1, 3, 5-6]

Scope of Section 340 of the Cr.P.C. – Discussed – Emphasized that the invocation of Section 340 of the Cr.P.C. requires a deliberate and conscious act of perjury with reasonable probability of conviction. It is not meant for vindication of private grievances but to uphold the administration of justice. [Para 17, 19]

Judicial Prudence in Perjury Prosecution – Observed – Courts should sanction prosecution for perjury in cases where false evidence appears deliberate and with a likelihood of conviction. Mere inaccuracy in statements, which may be innocent or immaterial, should not attract prosecution under Section 340. [Para 17, 18, 21]

Findings on the Application under Section 340 of the Cr.P.C. – Held – On the basis of available records and arguments, found no deliberate perjury or intention to commit forgery by the petitioners. The alleged inaccuracies did not demonstrate a deliberate attempt to mislead the court or affect the administration of justice. Thus, initiation of prosecution under Section 340 of the Cr.P.C. not expedient in the interest of justice. [Para 19-21]

Decision – Set Aside Order for Further Inquiry under Section 340 of the Cr.P.C. – The impugned order remitting the matter to the trial court for further inquiry under Section 340 of the Cr.P.C. set aside, finding it lacking in legality and failing to establish the expediency or necessity in the interest of justice. The court directed to expedite the conclusion of the complaint pending for 12 years. [Para 23-24]

**Referred Cases:**

- K.Karunakaran vs. T.V.Eachara Warrier, AIR 1978 SC 290
- Pritish vs. State of Maharashtra & Ors., (2002) 1 SCC 253
- Chajoo Ram vs. Radhey Shyam, AIR 1971 SC 1367
- Dr. S.P.Kohli vs. The High Court, AIR 1978 SC 1753

Representing Advocates:

For Petitioners: Mr. R.S. Cheema, Sr. Advocate with Mr. Arshdeep Singh Cheema, Advocate

For Respondents: Mr. Abhinash Jain, D.A.G., Haryana, Mr. Adhirath Singh, Advocate with Ms. Raymon Singh, Advocate, and Mr. R.D. Gupta, Advocate.

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**KULDEEP TIWARI, J.**

1.Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner No.1-Bank, which is a body corporate constituted under the Banking Companies (Acquisition of Transfer of Undertakings) Act, 1970, and, the petitioner No.2, who is Deputy General Manager of the petitioner No.1-Bank, yearn for grant of the hereinafter extracted relief(s):-

*"Set aside the order dated 12.02.2018, whereby, the learned Additional Sessions Judge concerned has, after allowing the appeal, as preferred by the respondents No.2 and 3 herein, against the dismissal of their application under Section 340 of the Cr.P.C., set aside the order dated 16.07.2016 and remitted the respondents concerned to the learned trial Court concerned, with a direction to the latter to hold further enquiry and to proceed with the matter, as per law."*

**FACTUAL MATRIX**

2. Owing to dishonour of cheque(s), which was issued by the authorized signatory of M/s Lakhani India Limited (hereinafter referred to as "accused firm"), in lieu of his firm's outstanding liability, the petitioner No.1, through petitioner No.2, i.e. its then Chief Manager, instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act') against the firm (supra). In the complaint (supra), apart from other Directors of the accused firm, the respondents No.2 and 3 herein were also arrayed as accused Nos.7 and 5, in the capacity of Directors of the accused firm. Moreover, in support of the complaint (supra), the petitioner No.2, i.e. the then Chief Manager of the petitioner No.1 furnished an affidavit in preliminary evidence.

3. During pendency of the complaint (supra), the respondents No.2 and 3 herein moved an application under Section 340 of the Cr.P.C. before the learned trial Court concerned, thereby seeking prosecution of the present petitioners under Sections 191, 192, 193, 196, 199, 200 and 420 of the IPC. What triggered the respondents concerned to make the application (supra), was that, despite the petitioners being well acquainted with their designation/status in the accused firm, i.e. "Independent Non-Executive Directors", yet they were deliberately arrayed as accused in the complaint (supra) in the capacity of Directors, on the allegations that, they along with other Directors, used to accept and undertake to make the payment of

proceeds to the petitioner-Bank. The respondents further averred in their application (supra) that they had neither executed any security document in favour of the petitioner-Bank, nor had given any undertaking to make payment to it, however, despite that, the petitioner No.2 furnished a false affidavit carrying the hereinafter extracted incorrect averments, in support of the complaint (supra):-

*"a. That the accused no. 1 being the principal borrower company through accused no. 2 to 7 being the Directors and touching daily affairs of the company's business, have been enjoying the "Suppliers Bill Discount" credit limit from the complainant bank to the tune of Rs. 5,00,00,000/- against the security documents executed by the accused no. 2 to 7 for and on behalf of accused no. 1 company on 06th January 2009. On the request of accused no. 2 to 7 being the Directors for and on behalf of accused no. I company, the complainant bank further accommodated the accused in granting ad-hoc "Supplier Bill Discount" financial assistance to the tune of Rs. 1,25,00,000/- on 30th October 2010 against the security documents executed by the accused no. 2 to 7 for and on behalf of accused no. 1 Company. (As per point no. 2).*

*b. That the accused no. 1 to 7 used to discount the bills with the complainant bank, so raised by the suppliers of material to the accused. As a result thereof, the complainant bank used to make payment against such instruments to the supplier and the accused no. 1 to 7 used to accept and undertake to make the payment of such proceed to the complainant bank As a matter of arrangement, the accused no. 1 to 7 also used to issue and tender the cheque(s) favouring the complainant bank A/c reference supplier (As per point no.3)."*

4. The learned trial Court concerned, after examining the record available before it, proceeded to dismiss the application (supra) vide order dated 16.07.2016.

5. Since the dismissal order (supra) caused pain to the respondents No.2 and 3 herein, they assailed its validity by instituting a statutory criminal appeal thereagainst, before the learned Additional Sessions Judge, Faridabad. This criminal appeal resulted in the drawing of the impugned order dated 12.02.2018, whereby, the learned Additional Sessions Judge concerned has allowed the appeal, set aside the order dated 16.07.2016 and remitted the respondents No.2 and 3 herein/ appellants therein to the learned

trial Court concerned, with a direction to the latter to hold further enquiry and to proceed with the matter, as per law.

6. Fetching grievance from the impugned order dated 12.02.2018, the petitioners have now accessed this Court, through the instant petition, for redressal of their grievance.

**SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONERS**

7. The learned senior counsel representing the petitioners has argued that the affidavit, which was filed as preliminary evidence in support of the complaint (supra) and which is alleged to be false, was in fact furnished by the petitioner No.2 after collecting material in methodical manner. To substantiate his above made argument, and, to submit that the details enumerated in the complaint/affidavit (supra) tally with the information furnished by the accused firm, he has drawn attention of this Court towards Annexure P-7, which encloses the list of Directors of the accused firm, as provided by its the then Company Secretary, and wherein, the designation of the respondents No.2 and 3 has been recited as Directors. In the above regard, he has further placed reliance upon Annexure P-8, which is a 'Due Diligence Certificate', to argue that even the Manager concerned of the petitioner-Bank had obtained confirmation from an overseas bank, through exchange of information, regarding the details of Directors of the accused firm. Consequently, he argues that, in view of what had surged forth in the documents (supra) *qua* designation of the respondents No.2 and 3, they have rightly been arrayed as accused in the complaint (supra) along with other Directors and authorized signatory of the accused firm, who are not a party herein before this Court.

8. The learned senior counsel for the petitioners has, on the bedrock of the above made arguments, submitted that neither the petitioners have furnished any false evidence, as alleged, nor there was any intentional arraignment of the respondents No.2 and 3, rather the respondents concerned have rightly and in a *bona fide* manner been arrayed as accused in the complaint (supra).

9. Concluding his arguments, the learned senior counsel for the petitioners has argued that prosecution under Section 340 of the Cr.P.C. has to be resorted to only in specific circumstances and in cases where (i) perjury

appears to be deliberate and conscious; (ii) conviction is likely; (iii) launching of prosecution is expedient in the interest of justice. Such prosecution shall not be launched for vindication of private grievances.

10. In support of his arguments, the learned senior counsel for the petitioners has placed reliance upon the following judgments, whose relevant extracts are also extracted hereinafter.

***"AIR 1978 SC 290: K.KARUNAKARAN VS. T.V.EACHARA WARRIER***

*PARA 20: The reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the Court in the earlier proceedings.*

*PARA 21: At an enquiry held by the court u/s 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.*

*PARA 25: An enquiry when made, u/s 340(1) Cr.P.C., is really in the nature of affording a locus paenitentiae to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence.*

***(2002) 1 SCC 253: PRITISH VS. STATE OF MAHARASHTRA & ORS.***

*PARA 2: The reference court conducted an inquiry on being told that the documents produced were forged. PARA 9: Hub of S.340(1) Cr.P.C. is formation of opinion by the court that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. Even where court forms an opinion it is not mandatorythat the Court should make a complaint. Preliminary inquiry contemplated in the sub-section is not for finding whether any person is guilty or not, it is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.*

*PARA 12: The person against whom a complaint is made has a legal right to be heard whether he should be tried for the offence or not; but such a legal right is envisaged only when the Magistrate calls the accused to appear before him.*

***AIR 1971 SC 1367: CHAJOO RAM VS. RADHEY SHYAM:*** *PARA 7: Prosecution for perjury should be sanctioned where perjury appears to be deliberate and conscious and conviction reasonably probable or likely.*

*Only when it is considered expedient in the interest of justice to punish the delinquent and not because there is some inaccuracy.*

***AIR 1978 SC 1753: DR. S.P.KOHLI VS. THE HIGH COURT*** *PARA 16: Prosecution for perjury should be sanctioned where perjury appears to be deliberate and conscious and conviction reasonably probable or likely.*

*PARA 19:It is desirable and necessary that portions of witnesses' statement in regard to which he has perjured himself should be specifically set out so that accused is in a position to furnish an adequate and proper reply thereto and also meet the charge."*

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS NO. 2 AND 3**

11. The arguments advanced by the learned senior counsel for the petitioners have vociferously been opposed by the learned counsel for the respondents No.2 and 3. He has argued that, based upon a sweeping and misleading statement made by the petitioner No.2 on oath that the respondents No.2 and 3 are Directors of the accused firm and are responsible for its day-to-day affairs, the learned trial Court concerned, vide order dated 16.04.2012, erred in summoning them in the complaint (supra), and as a result whereof, the respondents No.2 and 3 have been facing rigmarole of trial for the past 12 years.

12. The learned counsel for the respondents No.2 and 3 has further argued that, despite the petitioners being well cognizant that the respondents No.2 and 3 do not fall within the ambit of Section 138 read with Section 141 of the N.I. Act, inasmuch as, their designation/status in the accused firm is "Independent Non-Executive Directors" and they do not have any pecuniary relationship or control over day-to-day affairs of the accused firm, yet they were deliberately arrayed as accused in the complaint (supra) in the capacity of Directors, on false allegations.

13. Lastly, defending the validity of the impugned order dated 12.02.2018, the learned counsel for the respondents No.2 and 3 has argued that since the petitioners have, with the sole intention to obstruct and affect the administration of justice, committed perjury, therefore, it is expedient in

the interest of justice to take action against them. The learned counsel for the respondents No.2 and 3 has, in support of his arguments, made dependence upon the hereinafter judgments, whose relevant extracts are also reproduced hereinafter.

***"(1978) 1 SUPREME COURT CASES 18: K. KARUNAKARAN VS. T.V. EACHARA WARRIER AND ANOTHER***

*19. Chapter XXVI of the Code of Criminal Procedure 1973 makesprovisions as to offences affecting the administration of justice. Section 340 Criminal Procedure Code, 1973 with which the chapter opens is the equivalent of the old Section 476 Criminal Procedure Code, 1898. The chapter has undergone one significant change with regard to the provision of appeal which was there under the old section 476-B, Criminal Procedure Code, 1973 Under section 476B, Criminal Procedure Code, 1973 (old) there was a right of appeal from the order of a subordinate court to the superior court to which appeals ordinarily lay from an appealable decree or sentence of such former court. Under Section 476-B (old) there would have ordinarily been a right of appeal against the order of the High Court to this Court. There is, however, a distinct departure from that position under Section 341, Criminal Procedure Code, 1973 (new) with regard to an appeal against the order of a High Court under Section 340 to this Court. An order of the High Court made under sub-section (1) or sub-section (2) of Section 340 is specifically excluded for the purpose of appeal to the superior court under Section 341 (1), Criminal Procedure Code, 1973 (new). This is, therefore, a new restriction in the way of the appellant when he approaches this Court under Article 136 of the Constitution.*

*20. Whether, suo motu, or on an application by a party underSection 340 (1), Criminal Procedure Code, 1973 a court having been already seized of a matter may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In a proceeding under Section 340 (1), Criminal Procedure Code, 1973 the reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the court in the earlier proceedings.*

*21. At an enquiry held by the court under Section 340 (1), CriminalProcedure Code, 1973 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.*

*XX XX XX XX*

*26. It is well settled that this Court under Article 136 of the Constitution would come to the aid of a party when any gross injustice is manifestly committed by a court whose order gives rise to the cause for grievance before this Court. Even when two views are possible in the matter it will not be expedient in the interest of justice to interfere with the order of the High Court unless we are absolutely certain that the two pre-conditions which are necessary for laying a complaint after an enquiry under Section 340 are completely absent. The two pre-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 Indian Penal Code…."*

**ANALYSIS**

15. Before embarking upon the process of gauging the validity of the impugned order 12.02.2018, and, before penning down any opinion upon the arguments advanced by the learned counsels for the contesting litigants, it is deemed imperative to first advert to the legal provisions, which are of utmost significance for adjudication of the instant *lis*.

16. Since the gravamen of the application moved by the respondents No.2 and 3 lies in prosecution of the petitioners under Section 340 of the Cr.P.C., therefore, provisions of this Section are 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 havingjurisdiction;*

*(d) take sufficient security for the appearance of the accusedbefore such Magistrate, or if the alleged offence is nonbailable 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 beforesuch 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;*

*1[(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."*

17. The keynote in the hereinabove extracted provision is "It is expedient in the interest of justice that an enquiry should be made". Therefore, before a Court can start the proceeding contemplated under this provision of law, against a private individual, it must be clearly told to the latter that, his prosecution is in the interest of justice. The prosecution for erjury should only be initiated in those cases, where perjury appears to be deliberate and conscious, and, where conviction is reasonably probable or likely. Merely because there is some inaccuracy in the statement, which may be innocent or immaterial, the Court may refrain from initiating prosecution under the *ibid* provision.

18. The above principle gains strength from a judgment rendered by the Hon'ble Supreme Court, in case titled as ***"Chajoo Ram v. Radhey Shyam and Anr.", AIR 1971 Supreme Court 1367.*** The relevant extract of this judgment is reproduced hereinafter:-

*"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 affidavit 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……"*

19. On the touchstone of the law (supra), this Court has arrived at a conclusion that the narrations made in the affidavit, as sworn by the petitioner No.2 in support of his complaint (supra), and, which resulted in summoning of the respondents No.2 and 3, are indeed based upon the information received by the executant from the quarter(s) concerned and he did not have any personal vendetta against the respondents concerned. Moreover, neither has it anywhere been the case of the respondents No.2 and 3 that, owing to any individual grievance, the petitioners have deliberately and wrongfully arrayed them as accused in the complaint (supra), nor the record encompasses any material even remotely suggestive that the petitioner No.2 had, under the garb of performing his official functions as Chief Manager, any intention to commit perjury or forgery.

20. Moreover, when in paragraph No.3 of the application filed by the respondents No.2 and 3, thereby seeking prosecution of the petitioners under Section 340 of the Cr.P.C., it has itself been mentioned that the management of the Bank rests with the Managing Director & CEO andsupported by Executive Directors, therefore, it can safely be cncluded that even if there was any perjury, the same was neither deliberate, nor with conscious mind, and as such, launching of prosecution cannot be termed as
expedient in the interest of justice.

21. This Court has also examined the order rendered by the learned trial Court, thereby declining to prosecute the petitioners under Section 340 of the Cr.P.C. This dismissal order was anchored upon the observations that provisions of Section 340 of the Cr.P.C. are not meant for individualistic vendetta, and that, there is nothing on court file to suggest that administration of justice is affected or any offence is constituted for taking action under Section 340 of the Cr.P.C. The relevant extract of this dismissal order is extracted hereinafter:-

*"…. At this stage, it is also relevant to mention here that it is no more res-integra that provision of Section 340 Cr.P.C. cannot be allowed to be restored for the satisfaction of private vendetta…….this Court is of the view that merely because applicants were not the authorized signatory of accused company is not a ground to presume that false complaints has been filed by respondent*

*No.1. It is not required that every director must be the authorized signatory. Mere submissions in the application cannot inclined this Court to grant permission to enquire into the allegations made by the complainant in their complaints. There is nothing on the court file to have affect the administration of justice or to have constituted any offence for taking legal action under Section 340 Cr.P.C…."*

22. Insofar as the impugned order is concerned, this Court has examined the same also, however, does not find any reasons recorded therein, which could satisfy the prerequisite of Section 340 of the Cr.P.C. that *"how it is expedient, in the interest of justice, to enquire into the alleged offence"*, and/or, *"how an offence affecting the administration of justice has been committed*", and/or, *"how perjury appears to be deliberate and conscious".*

**FINAL ORDER**

23. For all the reasons (supra), this Court believes that the impugned order dated 12.02.2018 does not pass the test of legality and warrants inference. Consequently, the instant petition is **allowed,** and, the impugned order (supra) is hereby set aside.

24. Since it has been informed to this Court that the complaint, as preferred by the petitioners, is *subjudice* for the past 12 years, therefore, this Court expects that the learned trial Court shall, in case there is no legal impediment to proceed further in the complaint (supra), make an endeavour to expedite the conclusion of the complaint (supra).