

M.Cr.C. No. 47977/2021
(Pradeep Kumar Arya Vs. State of M.P. & others)

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SINGLE BENCH:

Misc. Criminal Case No. 47977/2021

Pradeep Kumar Arya

Vs.

State of M.P. & others

CORAM

Hon. Shri Justice Rajeev Kumar Shrivastava

Appearance

Shri Atul Gupta, learned counsel for the petitioner.

Shri Nirmal Sharma, learned Public Prosecutor for
respondent No.1/State.

Shri Sameer Kumar Shrivastava, learned counsel for
respondents No.2 & 3.

Whether approved for reporting : Yes.

Reserved on : 05/10/2021

ORDER
(Passed on 08/10/2021)

This petition under Section 482 of the Code of Criminal
Procedure read with Section 340 of Cr.P.C. has been preferred by
the petitioner for conducting enquiry in respect to forged

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documents filed in M.Cr.C. No.28033/2021 (Keshav Singh Chauhan Vs. State of M.P.) in connection with Crime No.163/2020 registered at Police Station Hazira, District Gwalior, which was withdrawn on 27/07/2021.

2. It is undisputed fact that aforementioned M.Cr.C. No.28033/2021 was dismissed as withdrawn on 27/07/2021.

3. Petitioner has preferred this petition seeking invocation of inquiry against respondents No.2 & 3, namely, Keshav Singh Chauhan & Nitin Chauhan, under Section 340 r/w Section 195(1) (b) of Cr.P.C., as they had committed the act of perjury by intentionally disclosing false information and attaching forged documents knowing that the same records are being submitted in relation to Court proceedings before this Court. The act tantamount to giving false information and committing an act of forgery so as to hamper the course of public justice and therefore, falls within the purview of offence mentioned under Section 195(1)(b) of Cr.P.C.

4. The facts of this case in short are that the petitioner, who is the complainant for the purpose of FIR bearing crime No.163/2020 registered at police station Hazira, Distt. Gwalior, has levied charges under Sections 420, 467, 468, 471, 120-B of IPC and Section 6 of Chit Fund Act, against respondents No.2 – Keshav Singh Chauhan and two others. Respondent No.2- Keshav

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Singh Chauhan after registration of FIR was taken into custody and had applied for bail before the Court below which was dismissed on 21/05/2021. Against that order, the bail application bearing M.Cr.C. No.28033/2021 was preferred by respondent No.2 before this Court on 07/06/2021. Subsequently, respondent No.2 filed an application bearing I.A. No.18782/2021 in the aforesaid M.Cr.C. for taking additional documents on record along with affidavit of respondent No.3- Nitin Chauhan. Respondent No.3 has annexed Annexure-N which states that as per the Shop and Establishment Act, Umeed Co-operation Producer Company Limited has been registered in the name of Devarshi Sharma S/o Shri Pradeep Sharma, and description of same document has also been provided by the respondents in internal paragraph-6 of page No. 10 of Annexure-P/3 of this petition. Copy of Annexure-N is annexed herewith this petition and marked as Annexure-P/4. It is the contention of the petitioner that the respondents have produced the forged documents, rather on the contrary Umeed Co-operation Producer Company was registered in the name of Kiran Chauhan W/o Keshav Singh Chauhan. The respondents had filed forged documents before this Court which they knew was false with an intention to deceive this Court. The sole intention of producing the false information was to mislead and to deceive the Court proceedings and to obtain a relief which the respondents otherwise

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would not have been entitled for.

5. Devarshi Sharma, who is the son of present petitioner, had received information through RTI that the said shop has been registered in the name of Kiran Chauhan, who is the wife of respondent No.2 and mother of respondent No.3. Copy of information received through RTI is annexed as Annexure-P/5. Therefore, the respondents have committed the offence under Sections 193 & 196 of Indian Penal Code. Respondent No.2 – Keshav Singh Chauhan, is a person having criminal antecedents, therefore petitioner prayed to initiate enquiry against respondents No.2 & 3, namely Keshav Singh Chauhan & Nitin Chauhan under Section 340 r/w Section 195(1)(b) of Cr.P.C.

6. Learned counsel for respondents No. 2 & 3 by filing reply which is duly supported by affidavit, has objected the submissions made by learned counsel for the petitioner and has submitted that the instant petition filed by the petitioner – Pradeep Kumar Arya, is not maintainable, as the petitioner himself is absconding in Crime No. 234/2020 which was registered by victim Dr. Brajesh Kumar Gaud at Police Station Padav, Distt Gwalior. In that case, the FIR was registered on 15/06/2020 but even after lapse of more than one year & three months, present petitioner is still absconding. Therefore, petition under Section 482 of Cr.P.C. at the instance of absconding person cannot be entertained. The present

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petition filed by the petitioner is not supported by affidavit.

7. Learned counsel for respondents No.2 & 3 has further submitted that son of petitioner, namely Devarshi Sharma, is accused in FIR bearing Crime No.22/2019 registered at Police Station Hazira, Distt. Gwalior for the very same company which is under dispute in this case and he is also absconding. The said FIR has been registered on 25/01/2019 whereas as per Annexure-P/5 filed in this petition, information through RTI has been obtained by Devarshi Sharma on 27/12/2019. Hence, it is clear that the instant petition has been filed by the persons who are absconding and have not submitted themselves to the course of justice, therefore, this instant petition on behalf of absconding person cannot be entertained and is liable to be dismissed with cost.

8. In parawise reply, it is submitted by learned counsel for respondents No.2 & 3 that no enquiry under Section 340 r/w Section 195(1)(b) of Cr.P.C. is required in the present facts and circumstances of the case. No false information has been provided by the answering respondents. In fact, it is the present petitioner who has not come with clean hands and therefore this instant petition is liable to be dismissed with heavy cost. It is also submitted that the FIR lodged by Pradeep Kumar Arya was nothing but an abuse of process of law and Pradeep Kumar Arya is the main kingpin behind the entire fraud and respondents No.2 &

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3 are being made escape-goat in the process. The petitioner has not informed this court that he himself is accused in Crime No. 234/2020 registered at Police Station Padav, Distt. Gwalior on 15/06/2020. Therefore, it is clear that the petitioner is absconding and hence no relief can be granted to a person who is absconding from the course of justice. It is further submitted that all the documents annexed with I.A. No.18782/2021 filed by the respondents No.2 & 3 were correct and true to the best knowledge of the answering respondents.

9. Respondents No. 2 & 3 had filed Annexure-N which was registration certificate issued under M.P. Shops and Establishment Act in which for the company, namely, Umeed Co-operation Producer Company Limited, name of Devarshi Sharma, who is son of the present petitioner, was mentioned. That certificate was given by Devarshi Sharma himself to respondent No.3 and even a certified copy of the certificate was provided by Devarshi Sharma to respondent No.3 which is in possession of answering respondents. The answering respondents is having certified copy of the certificate in which name of Devarshi Sharma is reflecting.

10. Along with this reply, coloured photocopy of certificate Annexure-N has been filed which is annexed as Annexure-R/1 wherefrom it is evident that the same is certified by the Labour Department and a valid number has been given to the certificate. It

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is further submitted on behalf of respondents No.2 & 3 that as submitted in the original bail application as well as in I.A. No.18782/2021, the main mastermind behind the company and this entire case is the present petitioner, therefore he is in possession of all the documents of the company and further he himself has got the manipulation done in the record in order to falsely implicate the respondents No.2 & 3. It is further submitted that Devarshi Sharma is also absconding in FIR registered at Crime No. 22/2019 at Police Station Hazira, Distt. Gwalior and therefore, it is beyond understanding that an absconding person is applying for RTI in District Gwalior but is not being arrested by the Police which clearly shows that the petitioner and his son are hands in gloves with the police. It is further submitted that RTI information Annexure-P/5 which the petitioner is relying is not the complete information. From the perusal of covering letter, it is apparent that the information has been given on 27/12/2019. Deliberately, no information was sought by the petitioner with regard to the information of property in question as regards the entry in the record maintained under M.P. Shops and Establishment Act as on today. The reason is obvious because as of now the records further have been changed and name of one Praveen Kumar Rohila resident of Delhi is entered in the record. Admittedly, the answering respondents are in custody and

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therefore there is no possibility that the present applicant will get the name changed in the record and in all likelihood it is the present petitioner who in order to save himself has now further changed the records. Copy of the certificate granted under Shops and Establishment Act of Praveen Kumar Rohila is annexed herewith and marked as Annexure-R/2. It is further submitted that recently respondents have taken the copy of recent certificate of Praveen Kumar Rohila. Copy of the coloured photocopy of certified copy of Praveen Kumar Rohila is annexed herewith and marked as Annexure-R/3.

11. It is further submitted that the present petitioner has only given the certificate Annexure-N to the answering respondents in order to show that the business is registered under their name. In the FIR registered at Crime No. 234/2020, it is clearly mentioned that the shop is registered in the name of Devarshi Sharma. Therefore, it is clear that it was the petitioner and his son Devarshi Sharma who were behind all these frauds and they managed to get the certificate in the name of Kiran Chauhan who is wife of respondent No.2. Thereafter, they got mutated their own names in the certificate but when the FIR was registered against Devarshi Sharma on 25/06/2019 vide Crime No. 22/2019, they again got the name changed and now as on today as per the best information of the answering respondents, name of Praveen Kumar Rohila is

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available in the records. Therefore, it is clear that no perjury of any kind has been done.

12. On behalf of respondents No.2 & 3, it is further submitted that incomplete information has been submitted by the petitioner before this Court, since as per Annexure-P/5 seven documents were given to the son of the petitioner; however, only one document has been annexed with Annexure-P/5, which clearly shows that the present petitioner is concealing material facts from this Court. Further, even the information which is at page No. 39 of petition is incomplete, since if the statutory format of certificate is seen, it will be clear that there are some other columns after column No.6. Therefore it appears that only incomplete information is being given by the petitioner. Even there is no barcode on page No. 39 which is usually present on all certificates which are now issued and therefore this creates heavy doubts on the certificate relied by the petitioner. It is further submitted that *prima facie* no case is made out under Sections 193, 196 of IPC against the respondents No.2 & 3. As no correct information has been submitted by the petitioner therefore, present petition deserves to be dismissed. Hence, prayed to dismiss this petition.

13. Heard arguments advanced by learned counsel for the rival parties and perused the available record.

14. Section 482 of the Code of Criminal Procedure reads as

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under:-

“482. Saving for inherent power of High Court – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

15. The powers of High Court under Section 482 of CrPC are partly administrative and partly judicial. The Hon'ble Apex Court in **State of Karnataka vs. Muniswami [AIR 1977 SC 1489]** held that the section envisages three circumstances in which the inherent jurisdiction may be exercised, namely, “to give effect to an order under CrPC, to prevent abuse of the process of the court, and to secure the ends of justice.”

16. The jurisdiction under Section 482 CrPC is discretionary. The Court may depend upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of CrPC. It is true that their powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.

17. It is also settled law that the inherent power under Section 482 of CrPC has to be exercised for the ends of the justice and should not be arbitrarily exercised to cut short the normal process of a criminal trial.

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18. It is apparent from the perusal of record available that there is no rebuttal on record that the petitioner and his son are absconders. Annexure-P/5 filed by the petitioner is an incomplete document and the document filed by respondents No.2 & 3, i.e. Annexure-R/1, is a certified copy issued by the Labour Department and is having valid number over the certificate. Therefore, it cannot be said that Annexure-R/1 was a forged document and it is clear that no forged document was produced before this Court.

19. Furthermore, Hon'ble Apex Court in the case of **Prof. Chintamani Malviya Vs. High Court of Madhya Pradesh, [(2018) 6 SCC 151]** has observed that prosecution should be ordered under Section 340 r/w Section 195(1)(b)(i) of Cr.P.C. when it is considered expedient in the interest of justice to punish the delinquent, and there must be *prima facie* case of deliberate falsehood on the matter of substance and the Court should be satisfied that there is reasonable foundation for the charge.

20. In **Prof. Chintamani Malviya (supra)**, Hon'ble Apex Court has observed as under:-

“9.1. It has consistently been laid down by this Court that prosecution for perjury be sanctioned by Courts only in those cases where perjury appears to be deliberate and on a matter of substance and the conviction would reasonably be probable. Further, prosecution ought to be ordered when it would expedient in the interest of justice to punish the

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delinquent and not merely because there is some inaccuracy in the statement. He placed reliance on the decision of this Court in **Chajoo Ram v. Radhey Shyam and Another [(1971) 1 SCC 774]** wherein this Court observed:-

“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. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation....” ”

21. Similarly, in the case of **Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. [(2005) 4 SCC 370]**, Hon'ble the Supreme Court has observed as under:-

“23. In view of the language used in [Section 340 Cr.P.C.](#) the Court is not bound to make a

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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, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants,

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would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.”

22. Section 340 of Cr.P.C. runs as under:-

“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.

(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;
- (b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195.”

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23. Under Section 340 of Cr.P.C., the discretion vests with the Court and the discretion required to be exercised under Section 340 of Cr.P.C. should be judiciously along with the observations made by the Apex Court in the aforesaid judgments.

24. In view of the above annunciation of law, I am of the view that present petition under Section 482 of Cr.P.C. is devoid of merits as the petitioner and his son are absconders and no forged document was produced by the respondents before this Court. Respondents had produced copy of certified copy of document which was certified by the labour officer and was having specified document number. Therefore, being a public document, it cannot be said that the document produced was forged, rather the document produced along with present petition by the petitioner is an incomplete document, therefore no presumption could be gathered from the incomplete document produced by the petitioner. Furthermore, no relief was sought by respondents No.2 & 3 against the petitioner in M.Cr.C. No. 28033/2021, which was withdrawn, therefore no *prima facie* case is made out against respondents no.2 & 3 under Sections 193 & 196 of IPC.

25. Resultantly, this petition under Section 482 of Cr.P.C. *sans substance* and is hereby **dismissed** being devoid of merits.

(Rajeev Kumar Shrivastava)
Judge