HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

M.Comp.Appeal No. 47/2014

Rajiv Lochan soni and others

Appellants

Versus

Rakesh Soni and others

Respondents

M.Comp.Appeal No. 48/2014

Mrs. Shabnam Soni and others

Appellants

Versus

Rakesh Soni and others

Respondents

Shri Shekhar Bhargav learned senior counsel with Ms. Deepali Garhewal learned counsel for the appellants.

Shri Vijay Assudani learned counsel for respondents no. 1 & 2.

Whether approved for reporting :

J U D G M E N T

(Passed on 11/4/2018)

This order will govern disposal of M.Com.A. No. 47/2014 and M.Com.A. No. 48/2014 since it is jointly submitted by counsel for both the parties that these appeals arise out of same order of Company Law Board (CLB) and they involve the same issue.

2/ These appeals under Section 10-F of the Companies Act 1956 are directed against the order dated 1st September 2014 passed by Company Law Board Mumbai Bench Mumbai allowing the respondent's application to take action against the appellants under Section 195 of IPC read with Section 340 of Cr.P.C. by filing a complaint to the Magistrate of First Class for offence under Sections 191, 192, 193, 195, 199 and 200 of IPC.

3/ Short facts are that respondent No. 1 has filed the company petition as against M/s Neo Finance Pvt. Ltd. and appellants and other respondents herein under Sections 397, 398, 402 & 403 of Companies Act. Appellant Sabnam Soni(respondent no. 2 in company petition before CLB and appellant No. 1 in M.Com.A. No. 48/14) had filed the reply dated 11th March 2014 on her own behalf and on behalf of appellant Mrs. Sanam Soni, Mr. Sajan Soni and Mr. Rajiv Soni (respondents no. 3 to 5 in company petition before CLB and appellants in M.Com.A. No. 47/14) with the plea that Mrs. Shabnam Soni during the lifetime of Mrs. Jaishree Soni had gifted shares to her children i.e. Mrs. Sanam Soni and Mr. Sajan Soni for which transfer form and gift deeds were executed and same were filed alongwith the reply as Exs.3-1 and 3-2.

4 Respondent no. 1 had filed an interim application in the pending company petition before CLB by making the allegation that appellants had filed fabricated gift deeds and had made deliberate false, wrong and misleading statement, hence steps be taken against appellants by referring the matter to the Magistrate of First Class having jurisdiction to adjudicate the

matter under Sections 191, 192, 193, 195, 199 and 200 of IPC alongwith all pleadings and take action under Section 340 of Cr.P.C. to initiate criminal proceeding against the appellants. The appellants had filed reply to the interim application on 23rd July 2014. Thereafter the impugned order dated 1/9/2014 accepting the prayer in the interim application was passed by CLB and giving one opportunity to the parties to arrive at a mutual settlement failing which the Bench Officer has been directed to file a complaint in the competent court having jurisdiction over the matter against appellants herein for offence under Sections 191, 192, 193, 195, 199 and 200 of IPC.

5 This court vide order dated 3/11/2015 had admitted appeals formulating the following substantial questions of law:

> "(A) Whether in the facts and circumstances of the case, the finding by the CLB that the appellants have committed offences under Section 199 and 200 of the IPC by making false statements in affidavit in reply dated 11.3.2014 is perverse and unsustainable?
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> (B) Whether the order of the CLB runs counter to the law laid down by the Supreme court in the matter of **Iqbal Singh Marwah and another Vs. Meenakshi and another reported in (2005) 4 SCC 370** and is therefore, unsustainable?
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> (c) Whether in the circumstances of the case, the CLB is justified in directing the Bench Officers to file the complaint in the competent court against the appellants for offences committed under Sections 191, 192, 193, 199 and 200 of the IPC?"

6 Since all these questions are inter-related therefore, they are being decided together.

7 Learned counsel for appellants submits that no forgery was done when court was custodia legis of the documents and even otherwise there was no Evidence led by the parties and there was no basis before the CLB for giving the finding of forgery and that donor and donee of the gift deeds are not disputing the deeds and the only dispute is about date of stamp paper which would not be a cause for holding the gift deed as forged document and that information under RTI is not conclusive.

8 As against this learned counsel for respondents submits that not only the fabricated documents were submitted but in the reply affidavit false declaration was made about execution of gift deed and the reply affidavit is in the nature of evidence, hence the CLB has rightly directed for prosecuting the appellants for alleged offence and that once the CLB has exercised the discretion this Court may not interfere.

9 Having heard the learned counsel for the parties and on perusal of the impugned order of CLB, it is noticed that CLB after examining the gift deed dated 4/10/2010, which was filed by appellants alongwith affidavit in reply to the company petition dated 11th March 2014, has found that the stamp paper of serial number on which the gift deed was executed was not sold by the concerned stamp vendor to the appellants but to some other person and has taken note of the information supplied under the RTI by Sub Registrar of Stamp Indore that on the given dates, the said stamp paper numbers were not found. After examining the material in detail the CLB has found that appellants had produced the forged gift deeds on record. The CLB has found that appellants knowing and intentionally had produced the false and fabricated evidence and had made a

false declaration receivable as evidence and used the same as true knowing it to be false, hence it has directed for filing a complaint to prosecute the appellants for the offences mentioned above.

10 So far as the direction of CLB for prosecuting the appellants on the ground of filing fabricated gift deed is concerned, the said direction cannot be sustained because as per the allegations and finding of CLB those gift deeds were fabricated prior to filing of the same before the CLB and there is no allegation that the same have been fabricated or manipulated after their filing.

11 The Constitution Bench of Supreme court in the matter of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another reported in (2005) 4 SCC 370** considering this precise issue has held that:

> 10. The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X of the IPC and the heading of the Chapter is-'Of Contempts Of The Lawful Authority Of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as-'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which

have a direct co-relation with the proceedings in a Court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.

11. Section 195(1) mandates a complaint in writing to the Court for taking cognizance of the offences enumerated in clauses (b) (i) and (b)(ii) thereof. Sections 340 and 341 Cr.P.C. which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is --'Provisions As To Offences Affecting The Administration Of Justice'. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the Section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the Sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the Sections which follow them than

> might be afforded by a mere preamble.(See Craies on Statute Law, 7th Ed. Pages 207, 209). The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

12 It has been held above that the situation where offence was committed earlier and later on document is produced or is given in evidence in the court is not contemplated in relevant clause of 195 of Cr.P.C. That apart in the aforesaid judgment it has also been made clear that under Section 340 of Cr.P.C. the court is not bound to make a complaint but such a course is to be adopted only if the interest of justice requires and not in every case and before filing the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that the enquiry should be made into the offence under Section 195 (1)(b) Cr.P.C. In this regard it has been held that:

> 23. In view of the language used in Section 340 Cr.P.C. 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 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, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

13 The Supreme Court in the matter of **Pritish Vs. State of Maharashtra and others reported in (2002) 1 SCC 253** while considering the scope of Section 340 of the Cr.P.C. has held as under:-

> "Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court

> decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct 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."

14 Similarly in the matter of **Amarsang Nathaji as himself and as karta and manager Vs. Hardik Harshadbhai Patel and others reported in (2017) 1 SCC 113** the Supreme court has held that mere fact that a contradictory statement was made in judicial proceeding is not by itself sufficient to justify the prosecution for perjury but it must be established that such an act was committed intentionally. Explaining the procedure to be followed by the courts in forming opinion and lodging complaint, it has been held that:

> 6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice

and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. v. Union of India). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7 In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 of the CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See Pritish v. State of Maharashtra).

9 Having heard the learned counsel appearing on both sides and having gone through the impugned order and also having regard to the subsequent development whereby the parties have decided to amicably settle some of the disputes, we are of the view that the matter needs fresh consideration. We are also constrained to form such an opinion since it is fairly clear on a reading of the order that the court has not followed all the requirements under Section 340 of the CrPC as settled by this Court in the decisions referred to above regarding the formation of the opinion on the expediency to initiate an inquiry into any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of the IPC, when such an offence is alleged to have been committed in relation to any proceedings before the court. On forming such an opinion in respect of such an offence which appears to have been committed, the court has to take a further decision as to whether any complaint should be made or not.

> 10 No doubt, such an opinion can be formed even without conducting a preliminary inquiry, if the formation of opinion is otherwise possible. And even after forming the opinion also, the court has to take a decision as to whether it is required, in the facts and circumstances of the case, to file the complaint. Only if the decision is in the affirmative, the court needs to make a complaint in writing and the complaint thus made in writing is then to be sent to a Magistrate of competent jurisdiction.

15 This court also in the matter of **Ritwik Garg Vs. Smt. Radhika Garg** passed in **WP No. 1848/17** and connected writ petition vide order dated 6/12/2017, considering the scope of Section 340 of Cr.P.C. has held that :

> 10/ The core of the aforesaid provision is forming of opinion by the court "that it is expedient in the interest of justice" to make an enquiry for the referred offence and such an offence must appear to have been committed in or in relation to the proceedings of that court or as the case may be, that too in respect of a document produced or given in evidence in the proceedings of that court. The preliminary enquriy is optional. Hence the making of complaint under this provision is not a matter of routine but the aforesaid conditions are required to be satisfied beforehand. In the process of examining an application under Section 340 the court is also required to see the effect or impact of such commission of offence upon administration of justice, therefore, such a discretion is to be exercised only in the interest of the administration of justice and therefore, this power is to be exercised with utmost care and caution.

16 The Division Bench of this Court in the matter of **Jagdish Vs. Ashok Kumar Gureja reported in 2007(4) MPLJ 229** has taken note of the earlier judgment on the point and has held as under:-

> "5. In the case of Chajoo Ram v. Radhey Shyam and Anr., reported in AIR 1971 SC 1367, the

Supreme Court has held that indiscriminate prosecutions under Section 193, Indian Penal Code resulting in failure are likely to defeat the very object of such prosecution. It has been laid down that 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 reasonable 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 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.

"6. In the case of K. Karunakaran v. T.V. Eachara Warrier and Anr., reported in (1978) 1 SCC 18, the Supreme Court has considered two questions for taking action under section 340. The two preconditions 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. It was further held that when the complaint is filed it will be for the prosecution to establish all the ingredients of the offence under Section 193, Indian Penal Code against the appellant and the decision will be based only on the evidence and the materials produced before the criminal court during the trial and the conclusion of the Court will be independent of opinions formed by the High Court in the habeas corpus proceeding and also in the enquiry under section 340(1), Criminal Procedure Code. It was further held that the fact that a prima facie case has been made out for laying a complaint does not mean that the charge has been established against

a person beyond reasonable doubt. That Section contemplates that making out of a false statement is not enough and that it is to be made intentionally.

7. In the case of Chandrapal Singh and Ors. v. Maharaj Singh and Anr, reported in AIR 1982 SC 1238 the Court has considered this aspect of the matter that when it is alleged in the affidavit that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person, and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under section 199, Indian Penal Code. It was further considered that acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under section 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. Though in this case Division Bench held that affidavit sworn was false to his knowledge.

8. In the case of K.T.M.S. Mohd. and Anr. v. Union of India, reported in AIR 1992 SC 1831 the Apex Court has also held that it is incumbent that the power given by section 340 of the Code should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice.

9. In the case of M. S. Ahlawat v. State of Haryana and Anr., reported in (2000) 1 SCC 278, the Apex Court has held that it is settled law that every

incorrect or false statement does not make it incumbent upon the Court to order prosecution, but requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of the justice.

10. In case of Suo Motu Proceedings against R. Karuppan, reported in (2001) 5 SCC 289, Supreme Court has observed that unscrupulous litigants are found daily resorting to utter blatant falsehood in the Courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, concededly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal code. If the system is to survive, effective action is the need of the time.

12. In the light of the aforesaid observations of the Supreme Court in the various decisions, we have considered the facts of the case in hand. In fact, it would have been expedient in the interest of justice to the learned Division Bench when the Division Bench was passing the order in L.P.A.No.1/93 on 28.2.2002. On that day the Court was not of the opinion that any order should be passed for perjury but Court has dismissed not only all pending I.A.s but the M.C.P. as well as the appeal. We have also found that the applicant, who has filed this application after belated delay of four and a half years, has also not taken care to protect his rights. He has not assigned any reason in the application as to why he has not filed such an application during last four and a half years. Though there is no limitation for prosecuting a person for perjury, but certainly, while forming an opinion by the Court, the Court has to consider the dictum of the law and the

> wisdom of the legislature that it is expedient in the interest of justice that an inquiry should be made into any offence."
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> 14/ Having regard to the aforesaid provision of law, it is clear that when an application under Section 340 Cr.P.C. is filed, the trial Court is required to examine if on the basis of the available material a prima facie case for making a complaint is made out and is also required to see if in its opinion it is expedient in the interest of justice that inquiry should be made into an offence referred to in Section 195(1)(b). The necessity of action will arise if the offence appears to have been committed in or in relation to the proceedings of that court and that too in respect of a document produced or given in evidence in a proceedings in that court."

17 As against this learned counsel for respondents has placed reliance upon judgment of the Supreme court in the matter of **K. Karunakaran Vs. T.V. Eachara Warrier and another reported in AIR 1978 SC 290** but in that case also it has been held that in an enquiry 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 He has also placed reliance upon judgment of Delhi High court in the matter of **M/s A-One Industries Vs. D.P. Garg reported in 1999 Cri.L.J. 2743** in support of his submission that it is the discretion of the court concerned to decide if action is to be taken under Section 195 Cr.P.C and such discretion should not be likely interfered. In this judgment the interference is not barred absolutely and in case if it is found that decision of the court below was not in consonance with the requirement of

law the same can always be interfered with.

19 Considering the facts of the present case in the light of aforesaid position in law it is found that the gift deeds were not fabricated before the CLB but the allegation is that after fabrication they were filed alongwith the reply therefore, in view of the law laid down by the Constitution Bench in case of Iqbal Singh Marwah (supra) the CLB could not have directed for prosecution of appellants for offence under Sections 191, 192, 193, 199 & 200 of IPC by directing the Bench Officer to file a complaint under Section 340 of Cr.P.C.

20 So far as the declaration made by the appellants in the reply dated 11th March 2014 is concerned learned counsel for the respondent has referred to para 5 of the reply of the appellants before CLB but the averments made therein are limited to the extent of execution of gift deeds and filing their copies as Ex.3-1 & 3-2, therefore, these averments independent of nature of documents Ex.3-1 and 3-2, cannot be held to be false specially when donor and donee are not disputing the gift. Mere averment of execution of gift deeds and filing copy thereof alongwith the reply may not constitute furnishing a false declaration unless both the allegations of fabrication and filing are examined together.

21 That apart in the impugned order the CLB has not recorded any satisfaction if such an enquiry is required in the interest of justice and is appropriate in the facts of the case. The CLB has not formed any opinion that it is expedient in the interest of justice to initiate an enquiry into the offence of false evidence and offence against public justice having regard to overall factual matrix as well as its impact on administration of justice.

22 In view of the aforesaid analysis I am of the opinion that the questions of law formulated by this court are required to be answered in favour of appellants and are accordingly answered by holding that prosecution as directed by CLB for alleged commission of offence is unsustainable and counter to the law settled by the Supreme court in the matter of Iqbal Singh Marwah (supra) and subsequent judgments. Hence the CLB was not justified in directing the Bench Officer to file the complaint in the competent court against the appellants for alleged offence.

Thus the appeals are allowed and the impugned order of CLB is set aside.

C.C. as per rules.

(Prakash Shrivastava)
Judge

BDJ