

(2018) 02 DEL CK 0341

In the Delhi High Court

Case No : Civil Miscellaneous Application No. 41529 Of 2016 In Letter Patent Appeal No. 67 Of 2016

Ashwini Shourie

APPELLANT

Vs

Directorate Of Estates And Anr

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 191, 340, 340(3)
Indian Penal Code, 1860 — Section 191, 195

Citation : (2018) 02 DEL CK 0341

Hon'ble Judges : S. Ravindra Bhat, J;A.K. Chawla, J

Bench : Division Bench

Advocate : Siddhartha Nanwal, Inder Chand, Dayan Krishnan, Jaimon Andrews, Rajesh Gogna, Akhilesh Kumar, Vipra Bhardwaj

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J

Facts:

1. This order will dispose of an application under Section 340, Code of Criminal Procedure preferred by the respondent (C.M. Appl.41529/2016).
2. The brief facts are that an appeal was preferred by the non-applicant (Ashwini Shourie, hereafter "Shourie") impugning an order dated 18.12.2015 of a learned Single Judge dismissing his writ petition [W.P.(C) 3420/2012]. A shop, i.e. No, 184, INA (Mohan Singh Market, New Delhi), was allotted on the basis of tender dated 31.05.1961, in the name of Sh. Kanta Prasad and Sh. Satish Kumar. On 20.02.1971, the appellant applied for transfer of the shop to his own name. A notice, dated 05.04.1974 was issued to show cause why the allotment of the said shop should not be

cancelled. The allotment was cancelled by letter, dated 24.05.1974. Thereafter, Shourie approached the respondents (Directorate of Estates and

others, hereafter "the respondents") with some documents claiming "no objection" of the original allottee in his favour. However, the

allotment was not to be regularized in favour of the appellant and subsequently, eviction order was passed by the Estate Officer on 22.05.1975.

3. The Appellant filed W.P.(C) 1070/1975, in which this Court initially granted an interim stay of the eviction order. During the pendency of the said

petition, in or about the year 1989, the Central Government, as a matter of policy decided to grant ownership rights to the occupants of the subject

shops, but provided they fulfilled certain criteria. The decision of the year 1989 to grant ownership rights was superseded by the decision dated

31.08.2000 and fresh notices were issued asking the occupants desirous of ownership rights to comply with the conditions. The appellant, however, did

not apply despite repeated opportunities. In the meanwhile, W.P.(C) 1070/1975 filed by Shourie was dismissed for non-prosecution/being in default on

11.01.2001. Though Shourie had not applied in terms of the decision dated 31.08.2000, one Smt. Charanjit Kaur, w/o Sh. Inderjit Singh and Sh.

Harinder Singh applied for grant of ownership rights in the shop along with the requisite documents. That application was not considered.

4. Shourie filed a writ petition subsequently (W.P.(C) 3420/2012) in this Court, and by order dated 07.05.2015, the respondents were asked to inspect

the shop in question and to file an affidavit within 10 days. An inspection team went to the site on 13.05.2015 and reported that the shop was sub-let.

The telephone numbers installed in the shop were verified from MTNL and it was found that they were installed in the name of one Mr. Manuvel

Mezhukanal, and the appellant was asked why the telephone numbers were installed in the name of Mr. Manuvel Mezhukanal by letter dated

07.09.2015. By letter-dated 17.09.2015, Shourie stated that Mr. Manuvel Mezhukanal was one of the partners of the firm.

5. The learned Single Judge, after considering the totality of the circumstances of the case, by order dated 18.12.2015 dismissed the petition stating

that it was devoid of merit. In the light of this development, the litigation section of the respondents was directed to get the unauthorized occupants of

Shop No. 184, INA Market evicted with immediate effect. The appellant appealed to this court by filing LPA 67/2016. The appeal was dismissed as

withdrawn. This Court, however, issued notice to the appellant on that date, when notice was also issued to other individuals, asking them to show

cause why action should not be initiated under Section 340, Criminal Procedure Code (Cr. PC). The order, issuing show cause notice, stated as

follows:

â??CM APPL.41529/2016

The Court notices that the appellant has relied upon a partnership deed dated 02.02.1999 which is part of Annexure A (collectively).

Learned counsel appearing on behalf of the appellant Mr. Ashwini Shourie contended that this document is unknown to him and that he did not ever file it.

The Court notices that Mr. Shourie had affirmed the affidavit dated 27.01.2016 affirming to the contents of the appeal, therefore, prima

facie he was aware of Annexure A-7 (collectively). In the circumstances, issue show cause notice to the appellant as to why the proceedings

under Section 340 read with Section 191 Cr.P.C., 1963 should not be initiated for further prosecution.

Likewise, similar notice shall be issued to Mr. M.C. Dominic, F-167, Nauroji Nagar, New Delhi, Mr. Baiji M.S., A2/11, Safdarjung Enclave,

New Delhi, and Mr. Manuvel Mezhukanal, K. 212, Sarojini Nagar New Delhi 110023 returnable on 16 October, 2017.

The said individuals shall be present in the Court on the next date of hearing. Interim order stands vacated.â??

6. The notice was issued because at the time of filing the W.P.(C) 3420/2012 Shourie had not relied on any partnership or contended about the

existence of any relationship with anyone else. However one partnership deed dated 02.02.1999 was filed along with the appeal for the first time and

was annexed along with the appeal as Annexure A-7 at page No. 236. Shourie never submitted this partnership deed dated 02.02.1999 with the

respondent department. On 23.10.2015 he submitted a representation to the Minister of Urban Development requesting for the grant of ownership

rights. Along with that letter an email sent by Mr. Manuvel Mezhukanal on 19.09.2016 from his email id manuvel007@gmail.com addressed to A.K.B

Nair at his email address akbnairS5@rediffmail.com was attached detailing the list of dates and events of the matter in dispute. In this mail dated

19.09.2015, Mr. Manuvel after giving the background of the case has stated as follows:-

â??a. That Sh. Ashwini Shourie has given the shop to him (Mr. Manuvel Mezhukanal) as the former is 72 years old and is not able to sit in the shop.

b. The shop has been given to Mr. Manuvel Mezhukanal on partnership basis.

c. The partnership deed is not made or registered.

d. Mr. Manuvel Mezhukanal would do it (making and registration of partnership deed) immediately.â??

7. The respondents/ applicants argued that from the email sent by Mr. Manuvel Mezhukanal, it was evident that there was no partnership deed in

existence prior to 19.09.2015 and it was clearly forged and fabricated some time between 19.09.2015 and 27.01.2016 when the appeal was filed along

with this partnership deed. It was also submitted that the appellant knowingly and intentionally swore on false affidavit along with the appeal to the

effect that the partnership was duly signed and executed between the parties on 02.02.1999. It was further averred that Shourie was fully aware of

the fact that the partnership was not in existence prior to 19.09.2015 and it was forged and fabricated in connivance with Mr. Manuvel Mezhukanal

after 19.09.2015. Thus, it is submitted that the Court should take cognizance of the act of filing of the false affidavit(s)/statements/forged and

fabricated partnership deed by the appellant.

8. Shourieâ??s reply resists the applicant, by stating that, inter alia, he neither signed the alleged partnership deed dated 02.02.1999 creating

partnership with Mr. Manuvel Mezhukanal nor handed over a copy of the alleged partnership deed to his partner or to his previous counsel or to any

other person to rely upon in the present appeal or in any other judicial proceeding, whatsoever. As such, counsel for Shourie urged the Court to dismiss

the application.

9. Mr. Dayan Krishnan, learned senior counsel appearing for Manuvel Mezhukanal submits that he is not a party to the litigation and cannot be made

liable or responsible in any manner, for the alleged omissions of the appellant. He, however argues that the parties had entered into a partnership at the

relevant time; the partnership deeds dated 02.02.1999 and 19.08.2015 reflected the truth, i.e. that the parties were carrying on business together. It is

stated that the appellant Shourie, is now trying to resile from the fact that the parties had continued to transact business from 1999. Learned senior counsel urged the Court not to issue any direction under Section 340. He urged that such orders are made in unusual cases, where the record reveals that the alleged act or omission has resulted or is likely to result in substantial injury. Furthermore, the learned senior counsel argued that the Court should in any case desist from issuing directions under Section 340 when proceedings are pending, i.e that the offence alleged is committed (punishable under Section 195 Indian Penal Code) after the document is in the custody of Court. Reliance was placed on the decision in Sachida Nand Singh v. State of Bihar 1998 (2) SCC 493 and Iqbal Singh Marwah v Meenakshi Marwah 2005 (4) SCC 370.

10. The record would reveal that Shourie had nowhere mentioned that he was partner in a firm of which Manuvel Mezhukanal was the other partner.

No pleading to that effect can be found, in the record of the writ petition. There is no such plea in the letters written to the Directorate of Estates at

the relevant time, from 1975 onwards. The partnership deed filed was ex facie signed on 1999, and the same had not been submitted when sought for

by the respondents after the inspection of the shop that took place on 13.05.2015. There was apparently ample time for Shourie to file additional

documents. However, he filed the partnership deed in an unduly belated manner, with a seeming effort to fill lacunae. Even the applications written to

the Directorate of Estates (copies of which were produced and placed on the record) nowhere mention about any partnership or firm with Manuvel

Mezhukanal.

11. From the pleadings in application - C.M. Appl. No. 41529/2016 (filed along with the appeal) what is apparent is that at the time of filing W.P.(C)

3420/2012 Shourie did not file any partnership deed. However, one partnership deed dated 02.02.1999 was filed along with the appeal for the first

time. This deed or document does not find mention in any previous proceeding, between the appellant and the official respondents. The respondents

state that the appellant never submitted this document with them; nor did he allude to any such business relationship with Manuvel Mezhukanal. The

appellant had submitted a representation to the Minister of Urban Development requesting for the grant of ownership right and along with the said

letter an email sent by Mr. Manuvel Mezhukanal on 19.09.2015 addressed to A.K.B Nair, was attached detailing the list of dates and events of the

matter in dispute. This email, inter alia, stated that the partnership deed was not made or registered and that Mr. Manuvel Mezhukanal would do it

(making and registration of partnership deed) immediately.

12. Thus, prima facie, there was no deed in existence prior to 19.09.2015, as was confirmed by Mr. Manuvel's email. This document appears to

have been created or forged some time between 19.09.2015 and 27.01.2016 when the present appeal was filed along with this partnership deed. The

appellant, in the prima facie opinion of this Court, knowingly and intentionally swore on false affidavit, to the effect that the partnership deed was duly

signed and executed between the parties on 02.02.1999. In reply to this, the appellant merely stated that, inter alia, he neither signed the alleged

partnership deed dated 02.02.1999 creating partnership with Mr. Manuvel Mezhukanal nor handed over a copy of the alleged partnership deed to his

partner or to his previous counsel or to any other person to rely upon in the present appeal. It can be, however, seen from the photocopy of the letter

enclosed with the C.M. Appl. 41529/2016 (placed at page 357) purporting to be bearing the signatures of Ashwini Shourie and the copy of the

partnership deed dated 02.02.1999 (at page 236) also bearing signatures of Ashwini Shourie, that the signatures of the Appellant on the two

documents are absolutely different from each other.

13. In reply to the C.M. Appl.41529/2016, the appellant attached a partnership deed executed on 19.08.2015 (between him and Mr. Manuvel

Mezhukanal) to substantiate that no partnership deed dated 02.02.1999 was attached to the letter, dated 17.09.2015 nor was it submitted to the

respondent department. This submission of the appellant, however, appears to be incongruous to the email sent by Mr. Manuvel Mezhukanal on

19.09.2015 which, inter alia, stated that the partnership deed was not made or registered and that Mr. Manuvel Mezhukanal was yet to do the same.

Thus, not only has there been fabrication of evidence by the Appellant to fix lacuna in their evidence, but also submission of false evidence and

swearing on false affidavit.

14. Filing of false affidavit or attempt in order to mislead the Court can amount to perjury and ought to be strictly dealt with, as held in R. S. Sujatha v.

State of Karnataka 2011 (5) SCC 689 as follows:

15. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining

the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and

impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are

not imposed upon the litigants, who attempt to mislead the court by filing and relying upon the false evidence particularly in cases, the

adjudication of which is depended upon the statement of facts. If the result of the proceedings are to be respected, these issues before the

courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be

sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or

revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of

irresponsible statements, without any regard to accuracy.

15. Likewise, in *Sciemed Overseas Inc. v. BOC India Ltd.* 2016 (3) SCC 70 the role of the Court when faced with litigants filing false evidence was

stated to be as below:

30. In the case of *Suo Moto Proceedings Against R. Karuppan, Advocate* (2001) 5 SCC 289 this Court had observed that the sanctity of

affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to

accuracy has to be discouraged. It was observed by this Court as follows: Courts are entrusted with the powers of dispensation and

adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed

against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations.

Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by

filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result

of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth.

The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying

upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits

has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.

31. Similarly, in *Muthu Karuppan v. Parithi Ilamvazhuthi* (2011) 5 SCC 496 this Court expressed the view that the filing of a false affidavit

should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of Court proceedings,

but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said:

Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered

when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate

falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.â??

16. After the policy of 1989 another decision was taken by the Cabinet dated 31.08.2000 to grant ownership rights to the shopkeepers of 12 markets,

and it was further decided by the Central Government that its earlier decision (dated 20.10.1989) should cease to operate. The respondent had

therefore, on repeated occasions, called for applications from left-out allottees/ occupants of the previous 14 markets who had not been given

ownership rights. However, the appellant did not apply for grant of ownership rights on any of these occasions. Furthermore, various discrepancies

arose in the application seeking regularization of the impugned shop, in multiple instances (for instance, in the documents submitted by Smt. Charanjit

and Shri Harinder Singh, the non-established relationship between Ashwini Shourie and Manuvel Mezhukanal), and several requirements of the policy

were unmet (Smt. Charanjit and Shri Harinder Singh came into the shop on 20th August, 2002 which is after the crucial date, i.e. 31st August, 2000,

therefore, not fulfilling the basic requirement of the policy decision for allotment of shops, existence of unauthorized construction/encroachment in the

premises in violation of the terms of the policy etc.). Keeping these in mind and also that the appellant had not availed any of the opportunities for

regular allotment (of the shop) and because no stay now operated against the eviction order dated 22.05.1975 the respondents intimidated him on

26.04.2012 and directed him to vacate the premises in compliance of the order dated 22.05.1975.

17. Ex facie, the partnership deed dated 02.02.1999 appears to be a fabricated document as observed from the above analysis, and with an attempt to

mislead a court of law. It does not find place in any previous relevant correspondence, nor in any pleading at the relevant time; it appears to have been

created after the inspection of the premises took place in May, 2015, when the shop owned by Manuvel Mezhukanal was found to be operating from

the premises. After the inspection, notices and letters were addressed to the appellant Shourie, stating that the telephone connection in the premises

were in the name of Manuvel Mezhukanal, whose business was operating from there. The document (partnership deed dated 02.02.1999) appears to

have been created after that date; Shourie and Manuvel Mezhukanal seem to have conspired or collaborated in that enterprise. It was clearly used

along with the appeal, with the object of creating a false plea that the appellant was carrying on business in the premises and was, therefore, entitled to

regularization of ownership.

18. In the opinion of the Court, prime facie, the use of such document, amounts to an offence punishable under Section 191, Indian Penal Code, which

appears to have been committed in or in relation to a proceeding in this Court in respect of a document produced or given in evidence in a proceeding

in this Court. In the circumstances, the Registrar General of this Court is directed to take steps to make a complaint in writing, regarding the

commission of the offence, in accordance with Section 340 (3) of the Code of Criminal Procedure, 1973 to the concerned Magistrate in the New

Delhi courts, of competent jurisdiction, within six weeks from today. It is clarified that the observations made in the course of this order, are only prima

facie and recorded for the purpose of satisfying itself as to the expedience and interests of justice of inquiring into the matter; it shall not be considered

as an expression of the merits of the complaint, which shall be proceeded with in accordance with law. All rights and contentions of the parties are

reserved. The application under Section 340 is allowed in the above terms.