

(2009) 09 DEL CK 0132

In the Delhi High Court

Case No : IA No. 1764 of 2002 in CS (OS) No. 470 of 2004

Punjab Tractors Limited

APPELLANT

Vs

International Tractors Ltd. and Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2010) 167 DLT 490 : (2010) 2 ILR Delhi 352 : (2009) 41 PTC 311 : (2010) 6 RCR(Criminal) 2268

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajiv Nayar, M.G. Ramachandra and Atishi Dipankar, in Suit No. 470/0, for the Appellant; Dhruv Mehta, Sai Krishan Raja Gopal Sagar, Yashraj Singh, Deora, Rajiv Nayar M.G. Ramachandra and Atishi Dipankar, in Suit No. 301/03, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—Application of the defendants u/s 340 of the Cr.PC for proceeding against Mr. R.K. Manrao & Mr. G.S. Rihal of the plaintiff is for consideration.

2. The plaintiff instituted this suit on the pleas:

a. That it is engaged in the business of manufacture and sale of agricultural tractors etc.;

b. Tractors manufactured by plaintiff are based on technology and knowhow developed originally by Central Mechanical Engineering Research Institute (CMERI) under the Council for Scientific & Industrial Research (CSIR);

c. In terms of the arrangement between CMERI and the Govt. of India, the patent design, copyright and all other intellectual property rights in the tractor developed by CMERI came to be vested in the National Research & Development Corporation of India (NRDCI);

- d. That NRDCI granted to Punjab State Industrial Development Corporation Ltd. (PSIDCL) licenses to use the aforesaid technology developed by CMERI including the patent rights which CMERI possesses with respect thereto and a license dated 31st July, 1972 was executed;
- e. That PSIDCL assigned its rights under the aforesaid license deed to the plaintiff and the plaintiff came to be authorized to manufacture and sell tractors in accordance with the knowhow technology etc. developed by CMERI and vested with NRDCI;
- f. That the plaintiff company commenced commercial production of tractors in April, 1974;
- g. That the plaintiff continued research on the tractor models, affecting the modifications and changes required from time to time for improved performance of the tractors with Mr. G.S. Rihal & Mr. Manrao of the plaintiff being Incharge of the Research & Development Functions since 1991;
- h. That the plaintiff company has a copyright in the drawings prepared by it of various components of the tractor;
- i. That the defendants are also engaged in the business of manufacture and sale of tractors; in September, 1996 the plaintiff learnt of the attempts of the defendants to take advantage of the specifications and tools of the tractors developed by the plaintiff by getting approval from Central Firm Machinery Training & Testing Institute (CFMTTI); that the defendants have been copying the drawings and specifications of components, parts, assemblies of the tractors developed and prepared by the plaintiff and manufacturing tractors therefrom;
- j. That the plaintiff as Annexure A-1 to A-11 to the plaint filed drawings developed by and belonging to the plaintiff in relation to the tractors components;
- k. That the plaintiff as Annexure B-1 to B-10 to the plaint filed the drawings of the same components used by the defendants and given by the defendants to their vendors for procurement of components and parts;
- l. It is the case of the plaintiff that a comparison of the two sets aforesaid of the drawings will show the systematic copying by the defendants of the plaintiff's drawings;
- m. The plaintiff thus sought the relief, inter-alia of restraining the defendants from infringing the copyright vesting in the drawings of the plaintiff relating to manufacture of tractors and components and parts of the tractors as described in Annexure A-1 to A-11 or otherwise;
3. The defendants contested the suit, inter-alia on the ground that the drawings Annexure A-1 to A-11 to the plaint in which the plaintiff claimed copyright were in fact the drawing authored by CMERI and with respect where to the plaintiff had no right to maintain the action. Per contra, the contention of the plaintiff was that though it had initially commenced manufacture on the basis of the drawings

in which CMERI had a right, the plaintiff had over the years made its own innovation, improvement, research and the drawings Annexure A-1 to A-11 were of the plaintiff and not of CMERI. The plaintiff as Annexures C-1 to C-8 to the replication filed the drawings which the plaintiff claimed were of the CMERI. According to plaintiff, drawings B-1 to B-10 were similar not to drawings C-1 to C-8 but to drawings A-1 to A-11.

4. The plaintiff along with the suit also filed an application for interim relief. The plaintiff in support of its claim for interim relief filed affidavit dated 24th January, 2001 of its Mr. R.K. Manrao. To meet the defence aforesaid of the defendants and with the objective of comparing Annexure A-1 to A-11 with the drawings developed by CMERI in 1970, the plaintiff along with the affidavit of Mr. Manrao filed further drawings demonstrating the differences in the drawings of CMERI and in Annexure A-1 to A-11.

5. The defendants in response to the affidavit dated 24th January, 2001 filed the drawings of CMERI of the year 1982 to contend that most of the improvements which the plaintiff was claiming to be its own or of which the plaintiff was claiming to be the author were in fact as per the drawings of the year 1982 of CMERI. The plaintiff then filed the affidavit of September, 2001 of its Mr. G.S. Rihal to demonstrate the differences between CMERI's drawings of the year 1982 and Annexure A-1 to A-11 to the plaintiff.

6. It is the contention of the defendants that the said Mr. Manrao and Mr. Rihal have committed perjury in stating in their affidavits aforesaid the differences between the drawings of CMERI and of the plaintiff. It is further the contention of the defendants in the application under consideration that the plaintiff has with a view to show the said differences deliberately manipulated and altered and tempered with the drawings filed with the affidavit, of plaintiff itself, of CMERI as well as of the defendants. It is further the case of the defendants that the drawings provided with the affidavit of Mr. Manrao as of the plaintiff are different from the drawings Annexure A-1 to A-11 filed with the plaintiff. The application under consideration lists the manipulations allegedly carried out of the plaintiff in the drawings.

7. Though the application was filed in the year 2002, the same appears not to have been pressed and remained on the file. It was only on 11th January, 2007 that the counsel for the defendants pressed for notice thereof to be issued. However, since the counsel for the plaintiff wanted to oppose even the issuance of notice, the matter was adjourned to 19th March, 2007. By that time, the cross examination of Mr. G.S. Rihal who has also filed his affidavit by way of evidence on behalf of the plaintiff was already underway. However, the order sheet reveals that even on 19th March, 2007 or at any time thereafter notice of this application was not issued. The defendants filed IA No. 10593/2008 in this regard and which came up before this Court on 2nd September, 2008. The counsel for the defendants contended that for the purposes of the said application the defendants do not need to lead any evidence and were willing to argue on the

ingredient of Section 340 of the Cr.PC being satisfied on the basis of the material on record only. However, since the trial was still underway at that stage it was put to the counsel for the defendants that they would be pressing the application at this stage on their own peril and the application would be dismissed and hearing of the application would not be deferred if the court was not satisfied of maintainability of application at this stage. The counsel for the defendants consented to the same and accordingly it was ordered that this application be listed for consideration after the conclusion of the plaintiff's evidence and before recording of the cross examination of the witnesses of the defendants. Though as aforesaid even the notice to the application has not been issued but the plaintiff has in opposition thereto filed a reply dated 26th April, 2008 thereto and a rejoinder dated 23rd August, 2008 has also been filed.

8. The counsels have been heard on the application.

9. The counsel for the defendants/applicants have besides making submissions on the differences in the drawings aforesaid also drawn attention to the cross examination of Mr. G.S. Rihal recorded on 13th February, 2008 and on 14th February, 2008 as well as the affidavit by way of evidence filed in the year 2006 of the said Mr. G.S. Rihal. Mr. G.S. Rihal has therein affirmed as correct the analysis of comparison of drawings by Mr. Manrao in his affidavit dated 24th January, 2001. However, Mr. G.S. Rihal has in his cross examination admitted certain differences in the drawings filed as Annexure A-1 to A-11 to the plaint and in the drawings filed as Annexure to the said affidavit of Mr. Manrao to demonstrate the differences between the drawings of the plaintiff and that of CMERI. Mr. Manrao has of course given the explanation for the said differences but the contention of the counsel for the defendants/applicants is that from the said cross examination, the fabrication of drawings by Mr. Manrao and affirmation thereof by Mr. G.S. Rihal stands admitted.

10. Mr. G.S. Rihal has in his cross examination deposed that the filing of one of the drawings as Annexure to the affidavit of Mr. Manrao was an error but denied that the same was deliberate and has further claimed to have discovered the said error only during his cross examination. Mr. G.S. Rihal in his cross examination on 14th February, 2008 admitted similar error with respect to another drawing also.

11. The counsel for the defendants relied on K. Karunakaran Vs. T.V. Eachara Warriar and Another, to canvass that any enquiry to be held by the court u/s 340 of the Cr.PC is only to the extent whether a prima-facie case is made out, which if urebutted 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. Reliance was also placed on Mahila Vinod Kumari Vs. State of Madhya Pradesh, on the evils of perjury assuming alarming proportion. On inquiry as to offence under which of the provisions of IPC was claimed to have been committed, reliance was placed on In Re: Suo Moto Proceedings against Mr. R. Karuppan, Advocate, laying down that 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. In answer to another query as to what advantage had been derived by the plaintiff by allegedly fabricating the drawings, in as much as no interim relief had been granted to the plaintiff, reliance was placed on Murray and Co. Vs. Ashok Kr. Newatia and Another, in relation to Contempt of Courts Act and not Section 340 of the Cr.PC, laying down that whether a person has by his alleged act obtained any definite advantage or not is not a relevant factor for deciding whether the act constituted contempt of court or not though the same may be relevant for deciding the quantum of punishment. It was urged that the same principle would apply to Section 340 of the Cr.PC also and whether the respondent had benefited in any way whatsoever from fabrication of documents/evidence is not a relevant consideration.

12. Per contra, the senior counsel for the plaintiff/non-applicant has urged that the defendants have not denied using the drawings Annexure B-1 to B-10 to the plaint. It is argued that thus the question for determination in the suit is whether Annexure B-1 to B- 10 to the plaint are copies of Annexure A-1 to A-11 to the plaint. It is further urged that out of 85 items in the comparative chart filed with the affidavit dated 10th September, 2001 of Mr. G.S. Rihal, the correctness of only two entries is challenged.

13. It is also the contention of the senior counsel for the plaintiff/non-applicant that the plaintiff has at various times filed different drawings; that the plaintiff was from time to time filing drawings as improved from time to time. Reference in this regard is also made to the order dated 2nd August, 2007. On that date, during the cross examination of Mr. G.S. Rihal, it was recorded that the plaintiff had along with the suit filed only photocopies of the drawings Annexure A-1 to A-11 to the plaint; that original drawings on tracing paper were filed by the plaintiff in 2006; however, the original drawings were found to be not tallying with the photocopies filed as Annexure A-1 to A-11 to the plaint. The submission of the counsel for the plaintiff on that day was that the component drawings were modified from time to time and what had been filed by the plaintiff in the year 2006 were the drawings of the same component duly upgraded since the year 1999 when the suit was filed and that the original drawings had the same basic features except that there were modifications concerning improvements made by the plaintiff in the design. The contention of the counsel for the defendants was that no copies of the drawings filed in the year 2006 had been supplied to the defendants and the plaintiff had not sought leave of the court before placing the modified drawings on record. This Court on 2nd August, 2007 held that since the drawings filed in 2006 were not new documents but originals of Annexure A-1 to A-11 with slight modifications, the original drawings filed in 2006 shall be considered as part of the record.

14. The defendants preferred an appeal being FAO (OS) No. 321/2007 to the Division Bench against the order aforesaid. The said appeal was disposed of on 21st August, 2007. The counsel for the plaintiff herein contended before the

Division Bench that the suit was and continued to be based entirely on the drawings Annexure A-1 to A-11 to the plaint and that even though the single judge had vide order dated 2nd August, 2007 allowed the original drawings filed in 2006 to be brought on record, the plaintiff would not be relying on the modifications made in the said drawings over and above Annexure A-1 to A-11 to the plaint and the suit would continue as on the basis of Annexure A-1 to A-11 to the plaint. On the basis of the said statement of the counsel for the plaintiff the appeal was disposed of.

15. It was suggested by the senior counsel for the plaintiff that in fact the differences have arisen between the drawings Annexure A-1 to A-11 to the plaint filed in 1999 and the drawings filed along with the affidavit of Mr. Manrao in the year 2001 and which are alleged to be fabricated, also on account of the modifications carried out by the plaintiff from time to time. It is further contended that after the orders aforesaid in the appeal the entire basis of the application is eroded.

16. As far as reference to the cross examination of Mr. G.S. Rihal is concerned, it is contended that the statements relied upon show that he has answered fairly and wherever a mistake had been committed has admitted the same.

17. It is also contended that the defendants/non-applicants have in their rejoinder to the application shied away from giving parawise reply to the specific averments in the reply to the application by the plaintiff. It is contended that in fact the application is preferred to intimidate the witnesses of the plaintiff. Reliance is placed on Chandrapal Singh and Others Vs. Maharaj Singh and Another, holding that merely because the evidence of a witness is not accepted does not tantamount to the offence of perjury; falsity can be alleged when truth stands glaringly and to the knowledge of the person alleged to be making a false statement and further that if in all cases where complaints of perjury were to be filed against the losing party, it would amount to abuse of the process of the court.

18. In my opinion, an application u/s 340 of the Cr.PC ought to be normally considered at the time of final decision of the case only and not at the interim stage as the defendants/applicant have pressed in the present case. It is the settled legal position that the said provision cannot be resorted to, to satisfy a private grudge of the litigant. In fact the very genesis of this provision is to prevent complaints being filed of offences having being committed in relation to the court proceedings; it was felt that if such complaints are permitted to be filed, the same may be used to force the other party into giving up its claim/ defence or to dissuade witnesses from appearing before the courts under threat of criminal prosecution. It was held as far back as in AIR 1940 72 (Nagpur) that proceedings u/s 340 Cr.PC should not be resorted to when the criminal case is calculated to hamper fair trial of issue in the civil court before which the matter would probably go on for longer. This Court also in Jindal Polyester Ltd. v. Rahul Jaura 124 (2005) DLT 613 and in Kuldeep Kapoor Vs. Susanta Sengupta, has

held that applications u/s 340 of the Cr.PC should be dealt with at the final stage only and not at the interim stage. I also find a consistency of view in this regard in the other High Courts. The law is that a prosecution for perjury should not be ordered by the court before the close of the proceedings in the case in which false evidence is given. It is highly wrong for a court to take action under the said provision against a witness or a party for giving false evidence when trial is underway.

19. Section 340 of the Cr.PC cannot be resorted to when genuineness of documents alleged to be forged and false in a case was still subject matter of a pending civil suit. The application is thus liable to be dismissed on this ground alone. The question of deferring the decision on the application does not arise since the counsel for the defendants/applicants had been warned in this regard as noted herein above.

20. Even otherwise I entertain serious doubt as to whether in the aforesaid facts it can be said that any perjury has been committed or documents fabricated. The documents alleged to have been fabricated are drawings showing the differences between various sets of other drawings. Perjury is alleged in the matter of deposition as to the differences or similarity in one set of drawings with the other set of drawings. Such drawings/documents and depositions would fall in the domain of an opinion and no action for fabrication or perjury would lie. It may ultimately be held in the suit that the opinion held by the persons against whom criminal prosecution is sought to be lodged was wrong. But to say that the said opinion found to be wrong by the court was deliberate or intentional is a entirely different thing. Merely because an expert in the subject, as Mr. Manrao and Mr. Rihal are, held an opinion which is found to be wrong by the court or which is dissented from by the defendants is no ground for prosecuting them. I may notice that this Court in *Net Ram Vs. Beant Singh*, in spite of finding a site plan filed by the party to be contrary to the site did not allow an application u/s 340 of the Cr.PC on that ground.

21. Formation of prima facie opinion that a person charged has intentionally given false evidence is a condition precedent for directing lodging of a complaint. The existence of mens rea or criminal intention behind act complained of will have to be looked into and considered before any action u/s 340 of the Cr.PC is recommended. Before setting the criminal law into motion, the court should exercise great care and caution and it must be satisfied that there is reasonable foundation for the charge in respect of which prosecution is directed. No prosecution ought to be ordered unless reasonable probability of conviction is found. Considering the nature of the documents and evidence in relation whereto offences are alleged to have been committed, I find the said ingredients to be lacking in the present case.

22. The affidavits of Mr. Manrao and Mr. Rihal aforesaid were in the nature of pleadings of the plaintiff. The court must be very cautious in its approach in prosecuting a person for making any statement claimed to be false in regard to a

pleading, so that party's right to plead freely is not curtailed and he can take appropriate pleadings throwing the burden on the opponent to prove the case to the contrary.

23. It cannot also be lost sight of that in criminal prosecution there is waste of public funds and time of courts. For this reason also in every case of perjury the court would not mechanically take cognizance or direct prosecution. Prosecution should be ordered only when it is considered expedient and in the interest of justice to punish the delinquent. Every incorrect or false statement does not make it incumbent on the court to order prosecution.

24. There is yet another principle of law though relating to witnesses. A witness is entitled to an opportunity to correct himself. In the present case, Mr. Rihal during the cross examination admitted two mistakes in the drawings alleged to be fabricated. Mr. Rihal having corrected himself, ought not to be prosecuted.

25. This Court in *Rawal Singh Vs. Kwaliti Stores and Another*, in spite of finding a document having been fabricated, yet dismissed the application u/s 340 of the Cr.PC finding it not to be a fit case for recourse to any such action. In my view, the application u/s 340 of the Cr.PC at this stage if allowed would give a handle to the defendants against the plaintiff and would give unfair advantage to the defendants over plaintiff in the suit proceedings. It is still to be investigated and found out by this Court as to whether the plaintiff had devised improvements/modifications over and above the drawings of CMERI and if so whether the defendants have copied/infringed the said drawings of the plaintiff. Allowing the application at this stage would tantamount to this Court returning finding that the drawings of the plaintiff are the same as that of the CMERI. While the proposition in *R. Karuppan (Supra) & Mahila Vinod Kumari (Supra)* cannot be disputed, it cannot also be lost sight of that too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of falsity where conviction is highly likely that the court should direct prosecution.

26. For all the aforesaid reasons, I do not find any case for allowing application to be made out. The same is dismissed.

No order as to costs.