
(2018) 07 UK CK 0158

In the Uttarakhand High Court

Case No : Criminal Misc. Appl. (C482) No. 53 of 2018

Vijay Singh Gosain

APPELLANT

Vs

State of Uttarakhand & another

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 191, 193, 376, 420
Constitution of India, 1950 — Article 217

Citation : (2018) 07 UK CK 0158

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Abhishek Verma, Shiwani Gangwar, Kartikey Hari Gupta

Final Decision : Dismissed

Judgement

LOK PAL SINGH, J.

1. Present petition, under section 482 of Cr.P.C., has been filed for quashing of the charge sheet as well as summoning order dated 09.03.2017 passed

by the Chief Judicial Magistrate, Dehradun in criminal case no. 956 of 2017 (case crime no. 308 of 2016) under section 376, 420 and 120B IPC.

2. Second respondent lodged the FIR against the petitioner with the allegation that during her treatment at Ayurvedic Unani Govt. Hospital, Rishikesh,

she met with a person who introduced himself as Dr. Vijay Bhatt (petitioner). After said meeting, Dr. Vijay Bhatt continuously offered her to marry

with him and succeeded to convince the second respondent/ complainant. Thereafter, they got married on 21.05.2016 in a temple; in the meantime she

came to know that petitioner transferred to Ranikhet. After marriage, he took respondent no. 2/complainant at several places and makes physical

relation with her. Thereafter, the petitioner got registered the marriage at Registrar Office Ghaziabad, there second respondent/complainant came to

know that real name of the petitioner is Vijay Singh Gosain. It is also stated that for 3-4 days accused person sexually exploited the second

respondent/complainant and left her by stating that after some days he will met her but when he did not contact the second respondent/complainant for

4-5 days then she went to the office of the accused petitioner where she came to know that accused petitioner is not a Doctor but is a pharmacist and

on further inquiry she came to know that accused petitioner is already married and is also having a son.

3. The factum of marriage has been denied by the petitioner in paragraph 7 of the petition. Paragraph 7 is extracted hereunder:-

â??7. That the applicant neither sexually exploited the victim nor married with her and there in no documentary evidence regarding the alleged marriage.â??

4. Counter affidavit along with stay vacation application has been filed on behalf of the second respondent/complainant, denying the averments made

in the petition. In support of her case, she filed copy of marriage certificate, issued by Registrar Hindu Marriages, Ghaziabad, which is Annexure no. 1

to the affidavit and also photographs which shows that marriage is being performed with the accused petitioner and second respondent.

5. Three weeksâ?? time was granted to the petitioner to file rejoinder affidavit to rebut the averments made in the counter affidavit but no rejoinder affidavit has been filed.

6. Perusal of the FIR, charge sheet, evidence collected by the Investigating Officer as well as marriage certificate would reveal that accused

petitioner got married with the second respondent on false assurance. The factum of marriage as asserted in the counter affidavit and marriage

certificate annexed in the counter affidavit has not been denied by the petitioner.

7. Perusal of the contents of paragraph no. 7 of the petition would reveal that false averments have been made on oath by the petitioner that neither

he married with the second respondent nor there is any documentary evidence regarding the alleged marriage.

8. Now a days, it has become practice to make a false and misleading statement on affidavit. The statement made in paragraph no. 7 of the petition by

the petitioner is apparently false and misleading, has been made just to mislead the Court.

9. The Honâ??ble Apex Court in the case Re-Suo Motu proceedings against R. Karuppan, Advocate reported in (2001) 5SCC 289 has held as

follows:-

â??17. In India, law relating to the offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal Code,

incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based

upon recognition of the decline of moral values and erosion of sanctity of oath. 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 lose 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 service, effective action is the

need of the time. The present case is no exception to the general practice being followed by many of the litigants in the country.

18. Keeping in view the facts and circumstances of this case, the record of proceedings in Suo Motu Contempt Petition (Criminal) No.5 of 2000 and

Writ Petition No.77 of 2001, we are prima facie satisfied that the respondent herein, in his affidavit filed in support of the writ petition (for the

purposes of being used in the judicial proceedings, i.e. writ petition), has wrongly made a statement that the age of Dr. Justice A.S. Anand has not

been determined by the President of India in terms of-Article 217 of the constitution. We are satisfied that such a statement supported by an

affirmative of the respondent was known to him to be false which he believed to be false and/or atleast did not believe to be true. It is not disputed that

an affidavit is evidence within the meaning of Section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury

punishable under Section 193 IPC. The respondent herein, being legally bound by an oath to state the truth in his affidavit accompanying the petition is

prima facie held to have made a false statement which constitutes an offence of giving false evidence as defined under Section 191 IPC, punishable

under Section 193 IPC.â??

10. The Honâ??ble Apex Court in the case of Sciemed Overseas Inc. vs. BOC India Limited and others report in (2016) 3SCC 70 has held that

filing of false/misleading affidavits is serious matter and peoples are filing the false affidavits for obtaining interim order or just to mislead the Court.

The Honâ??ble Apex Court in the judgment (supra) also imposed exemplary cost of Rs. 10 lac on the petitioner. The relevant paragraphs are

extracted hereunder:-

â??27. In the first instance, the work order was issued to Sciemed on 25th July, 2007 but this was not disclosed to the High Court when it disposed of

W.P.(C) No.4203 of 2007 on 31st July, 2007. Had the factual position been disclosed to the High Court, perhaps the outcome of the writ petition filed

by BOC would have been different and the issue might not have even travelled up to this Court. Furthermore, apparently to ensure that work order

goes through, a false or misleading statement was made before this Court on affidavit when the matter was taken up on 14th March, 2008 to the

effect that the work was nearing completion. It is not possible to accept the view canvassed by learned counsel that the false or misleading statement

had no impact on the decision rendered by this Court on 14th March, 2008. We cannot hypothesize on what transpired in the proceedings before this

Court nor can we imagine what could or could not have weighed with this Court when it rendered its decision on 14th March, 2008. The fact of the

matter is that a false or misleading statement was made before this Court and that by itself is enough to invite an adverse reaction.

28. In the case of Suo Moto Proceedings Against R. Karuppan, Advocate[2] 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: â??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.â??

29. Similarly, in *Muthu Karuppan v. Parithi Ilamvazhuthi*[3] 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:

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

30. On the material before us and the material considered by the High Court, we are satisfied that the imposition of costs by the High Court was justified. We find no reason to interfere with the impugned judgment and order. The petition is dismissed.

31. However, we grant six weeks to the petitioner to make the deposit of costs as directed by the High Court with the Jharkhand Legal Services Authority (JHALSA). On the deposit being made, the JHALSA should forward the amount to BOC India. The matter should be listed in the High Court after eight weeks for compliance.

11. A perusal of the affidavit, filed in support of the criminal miscellaneous application/petition, it is abundantly clear that the petitioner has made false and misleading statement and has obtained interim order dated 12.01.2018 by making false and misleading statement which amounts perjury with the Court.

12. Petitioner, who has made false/misleading affidavit, just to mislead this Court and to obtain favourable order, is liable to be tackled with iron hands.

In the similar situation, the Honâ??ble Apex Court on the false statement imposed cost of Rs.10 lac.

13. In the present case, firstly, the false statement has been made by the petitioner; secondly, there is no merit in the criminal miscellaneous

application/ petition. The petitioner failed to show any miscarriage of justice with him. The Investigating Officer has submitted the charge sheet after

collecting material evidence against the petitioner for the offences punishable under section 376, 420Â Â and 120B IPC.

14. It is settled position of law that fraud vitiates all solemn acts.

15. Since, petitioner has committed fraud upon this Court by filing false affidavit and there is no merit in the petition, the criminal miscellaneous

application, filed under section 482 Cr.P.C., is liable to be dismissed with exemplary cost. The cost of Rs. 2 lacs is saddled on the petitioner in the

facts and circumstances of the case.

16. The petitioner shall deposit the amount of Rs.2 lacs within two months from today before the Registrar General, High Court of Uttarakhand failing

which the Registrar General shall recover the amount of the cost from the accused petitioner as arrears of land revenue through District Magistrate,

Dehradun.