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Court : Mumbai Nagpur

Decided On : Aug-14-2012

Judge : A.P. Bhangale

Appeal No. : Criminal Appeal No. 125 of 2006

Appellant : Prabhakar Yeshwant Masram and Another

Respondent : Honand#8217;ble 7th Adhoc Additional District Judge and Others

Judgement :

1. Respondents no. 2 and 3 herein (original plaintiffs) filed application under Order 39, rule 2A of the Code of Civil Procedure before 5th Jt Civil Judge, JD, Nagpur in Regular CS No. 21 of 2001 against present appellant no. 1 (who was added as defendant no. 7) for breach of injunction order dated 28.8.2001 passed by 8th Additional District Judge, Nagpur whereby defendants were directed not to erect any permanent structure in the common space around their flats and to maintain status-quo as on that date till decision of suit and they were also directed to allow the plaintiff and his agents to approach the plaintiff's water meter for repairing it if and when necessary. Present appellant no. 1 being subsequent purchaser of the property was added as defendant no. 7 to the suit on 16.1.2003. He was thus aware of the order passed by the said appellate Court. In spite of that, according to plaintiffs, taking advantage of summer vacations, appellant no. 1 demolished

chamber and drainage as also caused diversion of water course and thereby committed breach of injunction order.

2. Appellant no.1/defendant no. 7 filed reply and averred that the order of injunction was not passed in his presence and it was passed when he was not party to the suit. He further averred that the order of injunction was never communicated to him. He submitted that after purchasing the suit flat, he carried out certain repairs and white-wash to suit his need. He claimed that plaintiff cannot have better title to his property and prayed for dismissal of the application.

3. Learned trial Judge held that the order of injunction was equally binding on defendant no. 7/appellant and he became aware of the said order on being added as party-defendant to the suit. Considering the admissions on the part of defendant no. 7, learned trial Judge allowed application vide order dated 13.10.2003 and thereby directed appellant no.1 to restore chamber and drainage in the same condition as they were formerly existing. At the same time, learned trial Judge issued notice to defendant no. 7/ appellant no.1 to show cause as to why he should not be sent to civil prison for breach of injunction.

4. The said order dated 13.10.2003 was carried in appeal by present appellant no.1 before 15th Adhoc Additional District Judge, Nagpur vide MCA No. 28 of 2004. Effect and operation of the order dated 13.10.2003 was initially stayed by the appellate Court vide order dated 17.1.2004. In the supporting affidavit, defendant no. 7 and his counsel made false and distorted statements about the order passed by the High Court in Writ Petition No. 77 of 2003. Writ Petition No. 77 of 2003 was not in fact dismissed, but a statement was made by appellant/defendant no. 7 and his counsel that the same was dismissed. As a matter of fact, Writ Petition No. 77 of 2003 was disposed of by this Court vide order dated 17th February 2003 with some modifications, as directed. Thus, according to original plaintiffs regarding order passed by 8th Adhoc ADJ on 17.1.2004, the defendant no. 7 and his counsel had made false statements. Plaintiffs further pointed out to the Appellate Court that statement made in paragraph 3 by appellant (defendant no. 7) in his application for stay to the effect that “..... substituted the order that permanent structure shall be erected....” was

also false. Plaintiffs filed application (MCA No. 104 of 2004) for review of the order dated 17.1.2004. Even then defendant no. 7 and his counsel is not correct those statements and reiterated the same stand. Respondents, therefore, filed application before the Appellate Court for making reference to the High Court for taking action against present appellants for contempt of Court punishable under Sections 12 and 15 of the Contempt of Courts Act on 19.3.2003. The Division Bench of this Court while disposing of Criminal Contempt Petition No. 10 of 2004 on 12th October 2004 granted liberty to present respondents no. 2 and 3 to initiate proceedings against present appellants before the Appellate Court under Section 340 Cr. P. C. for filing a false affidavit.

5. Consequent upon the said order, respondents no. 2 and 3/ plaintiffs filed application for lodging complaint against appellants for the offences punishable under Sections 193, 199 and 200 read with Section 120B of the Indian Penal Code. Learned 7th Additional District Judge, Nagpur on the basis of facts and circumstances borne out from record, ordered that complaint for the offences punishable under Sections 193, 199 and 200 of the Indian Penal Code be lodged against the appellants before the Chief Judicial Magistrate, Nagpur. It is this order dated 19.1.2006 which is the subject-matter of challenge in this appeal.

6. Learned counsel for the appellants submits that the Additional District Judge was influenced by the order passed by the Division Bench of this Court in contempt proceedings. He submits that learned Appellate Court should have appreciated that application for correcting typographical mistakes was moved by the appellants on 20.9.2004 which was allowed by the Court by order dated 21.10.2005 and, therefore, application of respondents no. 2 and 3 (exhibit 24) did not survive. He further contends that no say of the appellants was called for by the Court on application (exhibit 24) and without obtaining say of the appellants, application has been decided and allowed. Learned counsel for the appellants placed reliance on the ruling of the Apex Court in *Chajoo Ram v. Radhey Shyam* and anr reported in AIR 1971 SC 1347 to contends that before sanctioning prosecution for perjury, Court must be satisfied that there is prima facie case of deliberate falsehood on a matter of substance and that there is reasonable foundation for the charge. Learned counsel for the appellants also relied on the

decision of the Supreme Court in *Dr S. P. Kohli v. HC of Punjab And Haryana* reported in (1979) 1 SCC 212 wherein it is held that prosecution for perjury should be sanctioned by courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely.

7. Learned counsel for the appellants also invited my attention to meaning of term “False” given in P. Ramanatha Aiyar’s *Advanced Law Lexicon*. The meaning given is :

“False. Erroneous, untrue; the opposite of correct, or true. The term does not necessarily involve turpitude of mind. In the more important uses in jurisprudence the word implies something more than a mere untruth; it is an untruth coupled with a lying intent or an intent to deceive or to perpetrate some treachery or fraud. The true meaning of the term must, as in other instances, often be determined by the context. When used with reference to the testimony is untrue, and implies that it is intentionally untrue, but the word is also sometimes used in the sense of mistakenly or erroneously.”

He, therefore, submitted that the appeal be allowed.

8. Learned counsel for the respondents submits that the purpose of Section 340 Cr. P. C. is to protect persons from being unnecessarily harassed by private persons by filing complaint for their private grudge. He submits that appellants have made blatantly false statements, as discussed above and, therefore, impugned order needs no interference.

9. It is well settled that the prosecution for perjury should be sanctioned by Courts only in those cases where the perjury appears to be deliberate and conscious and conviction is reasonably probable or likely. It is no doubt true that 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 interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial.

10. In the present case, it is prima facie seen that the appellants had filed false affidavit in support of the stay application. No doubt, giving of false evidence and filing false affidavit is an evil which must be effectively curbed with a strong hand. In my considered opinion, there is prima facie case of deliberate falsehood on a matter of substance and I am further satisfied that there is reasonable foundation for the charge. The material brought to my notice is sufficiently adequate to justify the conclusion that it is expedient in the interest of justice to file a complaint. I find that the two basic ingredients : (1) the offences appear to have been committed, and (2) it is expedient to act under this section, are present to initiate a proceeding under Section 340 Cr. P. C. The Court concerned shall act according to law without being influenced by observations made prima facie by this Court.

11. In the result, no interference is called for in the impugned order. Appeal fails and is accordingly dismissed. The fees of Mr D.I. Jain, Advocate appointed as amicus curiae for respondents no. 2 and 3 payable by the High Court Legal Services, Sub-committee at Nagpur, is quantified at Rs. 2500/-.

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