

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (CRL.) NO.335 OF 2012

Ram Dhan

... Petitioner

Versus

State of U.P. & Anr.

... Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This petition has been filed against the judgment and order dated 14.11.2011 passed by the High Court of Judicature at Allahabad in Criminal Revision No.4259 of 2011 by which the High Court has rejected the said revision petition against the impugned order dated 3.9.2011 passed by the Chief Judicial Magistrate, Bagpat, rejecting the application under Section 239 of the Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.').

2. Facts and circumstances giving rise to this petition are that present petitioner Ram Dhan lodged an FIR dated 4.6.1995 alleging that

his son Dinesh had disappeared and, subsequently, filed a complaint against Balraj alias Billu and others (respondents) under Section 364 of the Indian Penal Code, 1860 (hereinafter called IPC). The investigating agency concluded the investigation and filed a chargesheet on the basis of which trial commenced against the respondents Balraj etc. and the trial Court vide judgment and order dated 11.5.2005 convicted the respondent No.2 Balraj and others for the offences punishable under Section 364 read with Section 149 IPC and awarded sentence of 9 years rigorous imprisonment and imposed a fine of Rs.5,000/-.

3. Being aggrieved, Balraj, respondent No.2 and others preferred an appeal before the High Court of Allahabad which was admitted and the respondent No.2 and other convicts were granted bail by the High Court. The petitioner's son for whose kidnapping Balraj, respondent No.2 and others had been convicted, came back home and disclosed to the public as well as to the police that he had not been kidnapped rather had voluntarily gone to Punjab, where he worked for several years. Balraj, respondent No.2 realised that he had been wrongly enroped and convicted in the offence by the petitioner. Thus, he filed an FIR on 29.8.2009 under Sections 177, 181, 182, 195 and 420 IPC. After

investigating the case, chargesheet was filed against the petitioner and others under Sections 177, 181, 182 and 195 IPC on 23.11.2009.

4. The petitioner filed an application under Section 239 Cr.P.C. before the Chief Judicial Magistrate contending that the FIR at the behest of the respondent No.2, Balraj was not maintainable in view of the provisions of Section 195 read with Section 340 Cr.P.C. The Chief Judicial Magistrate rejected the said application vide order dated 3.9.2011. The petitioner challenged the said order dated 3.9.2011 by filing a criminal revision before the High Court which has been dismissed vide impugned order dated 14.11.2011. Hence, this petition.

5. Shri Ashok Kumar Sharma, learned counsel appearing for the petitioner, has vehemently contended that the prosecution of the petitioner is illegal and liable to be quashed in view of the provisions of Sections 195 and 340 Cr.P.C, for the reason that as the offence has been committed in the court, such a drastic action can be taken against the petitioner only on a complaint lodged by the court and not by the convict/respondent No.2.

6. We find no merit in the petition. After investigation, chargesheet has been filed against the petitioner and others under

Sections 177, 181, 182 and 195 IPC. The petitioner has suppressed the material fact and has not disclosed anywhere in this petition that he had approached the High Court under Section 482 Cr.P.C. for quashing of the chargesheet, which stood rejected vide order dated 3.2.2010 and the said order attained finality as has not been challenged any further. Thus, he is guilty of suppressing the material fact which makes the petition liable to be dismissed only on this sole ground. We are of the view that it was necessary for the petitioner to disclose such a relevant fact. The learned Chief Judicial Magistrate while deciding the application under Section 239 Cr.P.C. has made reference to the said order of the High Court dated 3.2.2010. We had been deprived of the opportunity to scrutinise the chargesheet as well as the order of the High Court dated 3.2.2010 and to ascertain as to whether the grievance of the petitioner in respect of the application of the provisions of Section 195 read with Section 340 Cr.P.C. had been raised in that petition and as to whether even if such plea has not been taken whether the petitioner can be permitted to raise such plea subsequently.

7. In such a fact-situation, the courts below may be right to the extent that question of discharge under Section 239 Cr.P.C. was totally unwarranted in view of the order passed by the High Court on 3.2.2010.

For the reasons best known to the petitioner, neither the copy of the chargesheet nor of the order dated 3.2.2010 passed by the High Court have been placed on record.

8. Be that as it may, the chargesheet has been filed under Sections 177, 181, 182, 195 and 420 IPC. Section 177 IPC deals with an offence furnishing false information. Section 181 IPC deals with false statement on oath. Section 182 IPC deals with false information with intent to cause public servant to use his lawful power to the injury of another person. Section 195 IPC deals with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

9. At least the provisions of Sections 177 and 182 deal with the cases totally outside the court. Therefore, the question of attracting the provisions of Sections 195 and 340 Cr.P.C. does not arise. Section 195 IPC makes fabrication of false evidence punishable. It is not necessary that fabrication of false evidence takes place only inside the court as it can also be fabricated outside the court though has been used in the court. Therefore, it may also not attract the provisions of Section 195

Cr.P.C. (See: **Sachida Nand Singh & Anr. v. State of Bihar & Anr.** , (1998) 2 SCC 493).

10. Mr. Ashok Kumar Sharma, learned counsel appearing for the petitioner, has placed a very heavy reliance on the judgment of this Court in **Abdul Rehman & Ors. v. K.M. Anees-ul-Haq**, JT (2011) 13 SC 271. However, it is evident from the judgment relied upon that the judgment in **Sachida Nand Singh** (Supra), which is of a larger Bench, has not been brought to the notice of the court. (See also: **Balasubramaniam v. State & Anr.**, (2002) 7 SCC 649).

The petitioner is guilty of suppressing the material fact. Admittedly, filing of successive petition before the court amounts to abuse of the process of the court. Thus, we are not inclined to examine the issue any further.

Considering the composite nature of the offences, we do not see any cogent reason to interfere with the impugned order.

The petition lacks merit and is, accordingly, dismissed.

.....J.
(DR. B.S. CHAUHAN)

.....J.
(JAGDISH SINGH KHEHAR)

**New Delhi;
April 10, 2012**

SUPREME COURT OF INDIA



JUDGMENT