

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS...../2017
(@ Special Leave Petition Nos. 8232-8234/2016)

SHRI KAILASH VIJAYVARGIYA

APPELLANT(S)

VERSUS

ANTAR SINGH DARBAR AND ORS.

RESPONDENT(S)

J U D G M E N TKURIAN J.

1. Leave granted.
2. The appellant is aggrieved by the directions issued by learned Single Judge to initiate an inquiry under section 340 of Cr. P.C. which reads as follows:

"After going through the averments made in the application and the reply to the application, I find that admittedly, there is a mistake in description of respondent No. 1 and also respondent No. 1 did not appear before the notary public to sign the register. Counsel for the petitioner further submits that signatures on the affidavit are also forged, as respondent was not available in the State of MP at the relevant time.

Looking to the allegations made in the application, it is apparent that brief enquiry is necessary as provided by section 195 of Cr.P.C., therefore, this application is disposed of with the direction that office should separate the application, reply thereof and the affidavit in question from the record of this election petition by placing photocopy of the same in the record and register a separate MCC for conduct of brief enquiry. The original affidavit should be kept in a sealed envelop and placed in custody of Principal Registrar of this Court."

3. We are afraid, there is no satisfaction as warranted under section 340 of Cr.P.C. to initiate a preliminary inquiry. This court in a recent judgment in the case of Amarsang Nathaji as Himself and as Karta and Manager Vs. Hardik Harshadbhai Patel and others, (2017) 1 SCC 113 has dealt with this aspect in detail.

"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. And Another vs. Union of India), (1992) 3 SCC 178. The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."

(Emphasis supplied)

4. Since, such a satisfaction is completely lacking in this case, the impugned order in I.A No. 7192 of 2015 in EP No. 15/2014 has to be set aside and we do so. The matter is remanded to the High Court for fresh consideration in accordance with law.

5. We make it clear that we have not expressed any opinion on merits of the matter.

6. Accordingly, the appeals stand disposed of.

JUDGMENT

.....J.
(KURIAN JOSEPH)

.....J.
(A.M. KHANWILKAR)

NEW DELHI
JANUARY 12, 2017