*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ TEST.CAS.No.19/2004

Reserved on : 1st June, 2010
Date of Decision : 18th November, 2010

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SANJEEV KUMAR MITTAL ..... Petitioner
Through : None.

versus

THE STATE ..... Respondents
Through : Mr. Sanjeev Mahajan, Adv. for R-2.
Dr. Arun Mohan, Sr. Adv. as *amicus curiae.*

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT

Cr.M(M)No.6721/2010

1. Respondent No.2 has filed this application under Section 340 of the Code of Criminal procedure for holding an inquiry and to make a complaint to the concerned Magistrate against the petitioner under Sections 193, 196, 199 and 200 of the Indian Penal Code. This case demonstrates the extent and type of malaise which clogs the wheels of the justice delivery system. It is an instance of how litigants make false averments of facts in the pleadings and raise untenable contentions with impunity. Thereafter litigation, on controversies supposedly arising out of these false averments are dragged on for years in

the hope that the other side will succumb to buy peace. If the other side does not so 'settle', in the end, he is hardly compensated and remains a loser. There is little fear of law in the minds of the unscrupulous.

2. Background Facts

2.1 The background facts of this case as stated herein (except where they relate to the record of this suit) are based on the objections and submissions of respondent No.2 and investigations by the police in relation to an earlier FIR, and are therefore not to be taken as final findings of this Court.

2.2 Ram Pyari, widow of Late Shiv Shankar was issueless. She had a brother, Rajinder Nath and a nephew (brother's son), named, Dr. (Col.) Kotu Kumar Phull who is respondent No.2 in these proceedings. It appears that she treated respondent No.2 as her own son.

2.3. Ram Pyari owned property bearing No.D-50, Greater Kailash Enclave-II, New Delhi measuring 300 sq.yrds. where she lived.

2.4. Ram Pyari expired on 31st August, 2002 leaving behind duly registered Will dated 3rd May, 1999 registered with Sub Registrar, Hauz Khas, New Delhi as document 582 in Additional Book No.-III, Volume No.9 on pages 185 and 186 on 3rd May, 1999, whereby she bequeathed the aforesaid property to her nephew Dr. (Col.) Kotu Kumar Phull, respondent No.2. This Will bears the photograph

and thumb impression of the deceased in addition to her signatures.

2.5. On 31st October, 2003, respondent No.2 applied for mutation of the aforesaid property to DDA on the basis of the Will dated 3rd May, 1999 in pursuance to which DDA carried out the mutation on 12th December, 2003. Thereafter, on 27th January, 2004, respondent No.2 applied for conversion of the said property from leasehold to freehold. At this stage, DDA received a letter dated 20th February, 2004 from the petitioner stating that he had purchased the subject property from Late Ram Pyari in 1998 through Agreement to Sell, Will and GPA. The contents of the said letter are reproduced hereunder:-

> "I like to inform you that I had been purchased above said property from Smt. Ram Pyari w/o late Shri Shiv Kumar r/o D-50, Greater Kailash Enclave-II in 1998 through Agreement to Sell and also after some time the allottee had given all document, include her Will, G.P.A. and DDA documents in my name through sub-registrar office."

2.6. On 12th March, 2004, the petitioner also published a public notice in the newspaper to the effect that Late Ram Pyari has executed a Memorandum of Understanding and a Will in favour of the petitioner with respect to the subject property. Respondent No.2 was in US at that time and he received a phone call from India intimating him about the aforesaid public notice whereupon he sent a

complaint to Delhi Police through e-mail on 21st March, 2004.

2.7. Apprehending registration of FIR, on 12th April, 2004, i.e., three weeks after the complaint to the police, the petitioner filed the petition for probate before this Court on the basis of the Will and Memorandum of Understanding (MOU), both dated 11th May, 1999.

2.8. On 19th April, 2004, the police registered FIR No.95/2004, PS Chitranjan Park, New Delhi against the petitioner. The petitioner applied for anticipatory bail on the ground that he has already filed the probate petition before this Court and vide order dated 12th January, 2004, the petitioner was granted anticipatory bail by this Court.

2.9. The Will dated 11th May, 1999 set up by the petitioner as well as the registered Will dated 3rd May, 1999 in favour of respondent No.2 was sent by the police to FSL. Vide report dated 27th December, 2005, FSL opined that the Will and MOU set up by the petitioner were forged and the Will dated 3rd May, 1999 in favour of respondent No.2 was genuine. The FSL report is Annexure-B (Colly.) along with I.A.No.7298/2007.

2.10. The police filed a chargesheet against the petitioner on 15th May, 2007. The supplementary chargesheet was filed by the police on 29th March, 2008 and the case is now pending before the concerned Metropolitan Magistrate, New Delhi. Copy of the chargesheet is

Annexure-B (Colly.) along with I.A.No.7298/2007 whereas the supplementary chargesheet is Annexure-R2 to this application.

2.11. The chargesheet filed by the Economic Offences Wing records that the petitioner was a habitual cheat who had been implicated in two other criminal cases of cheating pending trial bearing No.FIR No.253/2001 and FIR No.518/2000, PS Vasant Kunj in which Non Resident Indians (NRIs) were the victims. It is further recorded that the petitioner did not cooperate with the investigation. According to police, the petitioner's address mentioned in the petition is fake. The addresses of the witnesses on the Will dated 11th May, 1999 are also incorrect.

3. The Petition, its Pendency and dismissal

3.1. The petition for grant of probate filed by the petitioner, Sanjeev Kumar Mittal in respect of the estate of Late Ram Pyari filed in this Court on 12th April, 2004 was registered as Testamentary Case No.19/2004.

3.2. The aforesaid petition was based on an unregistered Will dated 11th May, 1999 propounded by Sanjeev Kumar Mittal purporting to be of Late Ram Pyari. The petition was duly signed and verified by Sanjeev Kumar Mittal and was supported by his affidavit. The petition was accompanied by the affidavit of Rajat Kumar who deposed that the Will was executed in his presence.

3.3. The petition was also accompanied by the list of properties and the affidavit of the value of the assets. The alleged original Will and original MOU, both dated 11th May, 1999 were filed along with the petition.

3.4. On 29th April, 2004, the petition was adjourned to 23rd July, 2004. On 30th April, 2004, the petitioner filed I.A.No.2934/2004 to prepone the date (possibly because police investigation was in progress). By order dated 7th May, 2004, the preponement was allowed and the case was taken up on the same day and an ex-parte order was passed restraining respondent No.2 (nephew and legatee in the prior Will) from dealing with the subject property.

3.5. Respondent No.2 filed the objections dated 23rd September, 2004 to the probate petition on various grounds inter alia:-

3.5.1. The alleged Will and MOU are forged and fabricated.

3.5.2. The petitioner was an absolute stranger to the testator's family.

3.5.3. The petitioner did not even attend the cremation of Late Ram Pyari and never tried to contact respondent No.2 when he was in India after the death of Ram Pyari.

3.5.4. No member of the family or neighbours of Late Ram Pyari had ever seen the petitioner or even remotely heard about him. It is highly improbable that Late Ram Pyari would execute the Will in favour of the petitioner whom she had never met.

3.5.5. The police has registered FIR No.95/2004 against the petitioner who has obtained bail from this Court on the ground of the pendency of the probate petition.

3.5.6. The petitioner is a habitual criminal having 40-50 criminal cases pending against him and few cases are exactly of the same nature wherein the petitioner has tried to misappropriate the properties on the basis of fake and fictitious Wills. The petitioner keeps an eye on valuable properties which are bequeathed to NRIs by way of Wills and attempts are made to misappropriate such properties.

3.5.7. FIR Nos.518/2000 and 253/2001, P.S. Vasant Kunj have been registered against the petitioner on similar charges on embezzlement of properties located in Vasant Kunj based on fabricated and fictitious Wills.

3.5.8. The petitioner was a resident of Hapur, UP and the address mentioned in the Will and the probate petition, namely, 1219, Katra Satya Narain, Chandini Chowk, Delihi was false.

3.5.9. The statements made in the alleged Will and MOU, both dated 11th May, 1999 are false. It was stated that Late Ram Pyari had no relatives except respondent No.2 whereas she had many relatives including her real brother, Rajinder Nath Phull residing at East Patel Nagar, Delhi whom she frequently visited.

3.5.10. Late Ram Pyari had no issue and therefore, she had been treating respondent No.2 (brother's son) as her own son since his birth.

3.5.11. Respondent No.2 was a NRI and he worked with United States Army as Colonel prior to taking early retirement in April, 2003. Respondent No.2 had been visiting India from time to time to take care of Late Ram Pyari. Rajinder Nath Phull (father of respondent No.2 and brother of Late Ram Pyari) was staying at East Patel Nagar, Delhi and was also taking care and providing all sort of help to Late Ram Pyari who used to regularly visit her brother and stay there.

3.5.12. All the bank accounts of Late Ram Pyari were in joint names of respondent No.2, his wife and son. Late Ram Pyari also nominated respondent No.2, his wife and son in the records of the cooperative society in respect of the suit property. The alleged Will dated 11th May, 1999 was executed within one week of the prior registered Will dated 3rd May, 1999.

3.5.13. Respondent No.2 took retirement from United States Army in April, 2003 and returned back to India and stayed here from August, 2003 to February, 2004 and got the suit property mutated in his name in December, 2003 and also discussed the potential sale of the suit property for which he shared the title documents including copy of the registered Will with the potential buyers. It appears that the petitioner obtained the copy of the registered Will bearing the signatures of Late Ram Pyari and forged the Will dated 11th May, 1999.

3.5.14. The statement made in the alleged Will dated 11th May, 1999 that Late Ram Pyari had not been keeping good health and was at the fag end of her life was also false as she was keeping good health at that time and she went to Japan in the month of June, 1999 to stay with respondent No.2 who was serving with United States Army and was posted at Japan at that time. Late Ram Pyari stayed with respondent No.2 in Japan for nearly nine months from June, 1999 till March, 2000 and again joined respondent No.2 in United States from March, 2001 to October, 2001. In March, 2001, Late Ram Pyari had injured her back before traveling to United States of America but despite that she undertook twenty hour journey primarily because of the love and affection for respondent No.2 and her faith that respondent No.2 would get her better treatment. Between May, 1985 and October, 2001, Late Ram Pyari spent nearly 40 months with respondent No.2 in United States, Japan and Germany.

3.5.15. The petitioner was a dreaded criminal and targeted the properties of NRIs with the same modus operandi.

3.5.16. Along with the aforesaid objections, respondent No.2 placed on record the following documents:-

(i) Copy of the registered Will dated 3rd May, 1999.

(ii) Copy of the mutation dated 12th December, 2003 by DDA.

(iii) Copy of the passport of Late Ram Pyari indicating the journeys undertaken by her.

(iv) Copy of the FIR Nos.95/2004 by the police against the petitioner.

3.6. The petitioner did not file the rejoinder to the objections filed by respondent No.2 despite number of opportunities granted on 3rd November, 2004, 8th February, 2005 and 9th May, 2005.

3.7. On 18th January, 2005, respondent No.2 placed on record the original registered Will dated 3rd May, 1999.

3.8. On 4th December, 2007, respondent No.2 placed on record the chargesheets filed against the petitioner in FIR Nos.253/2001 and 518/2000.

3.9. The Economic Offences Wing, Crime Branch, Delhi Police filed two applications bearing I.A.Nos.7564/2004 and 4670/2005 seeking permission of this Court to take the photographs of the original Will dated 3rd May, 1999, MOU dated 11th May, 1999 and the Will dated 11th May, 1999 and to take certified copies of the said documents for seeking an expert opinion. Both these applications were allowed by this Court vide orders dated 10th November, 2004 and 1st August, 2005 and the Investigating Officer of the Police was permitted to take the photographs of the said documents.

3.10. On 27th December, 2005, the Forensic Science Laboratory (FSL) submitted a report to the Economic Offences Wing, Crime Branch, Delhi Police in which they opined that the Will and MOU, both dated 11th May, 1999, propounded by the petitioner does not bear the signature of Late Ram Pyari and were forged. It was further opined that the

registered Will dated 3rd May, 1999 of Late Ram Pyari in favour of respondent No.2 is a genuine document. The copy of the report of the FSL was placed on record by respondent No.2 on 2nd July, 2007 along with I.A.No.7298/2007.

3.11. On 15th May, 2007, the Economic Offences Wing, Crime Branch, Delhi Police filed the chargesheet against the petitioner under Sections 420, 467, 468 and 471 of the Indian Penal Code. It was observed in the chargesheet that the petitioner was a habitual/professional cheat involved in two other cases bearing FIR Nos.253/2001 and 518/2000 in which also NRIs were victims like the present case.

3.12. On 29th March, 2008, the police filed the supplementary chargesheet in which it was stated that the address of the petitioner given in the alleged Will, namely, 1219, Katra Satya Narayan, Chandini Chowk, Delhi was fake. It was further stated that the address of the witness Rajat Kumar mentioned in the Will was also fake. The copy of the supplementary chargesheet was filed by respondent No.2 along with Cr(M)No.6721/2010.

3.13. On 25th March, 2009, the issues were framed and the petitioner was directed to file list of witnesses within two weeks and evidence by way of affidavit within four weeks and the case was listed for fixing the date of cross-

examination of the petitioner's witnesses on 5th May, 2009.

3.14. On 5th May, 2009, the petitioner sought further time to file the evidence by way of affidavit whereupon last opportunity was granted to the petitioner. The petitioner did not file the affidavit and further opportunity was granted on 10th September, 2009 and 11th January, 2010. The petitioner filed the list of witnesses on 11th January, 2010 but no evidence by way of affidavit was filed. The names of six witnesses in the list are petitioner himself, Rajat Kumar, Ashok, Jagmeet Singh Virk, Rajesh Goel and Rajiv Suri

3.15. On 5th April, 2010, the petitioner was directed to file his affidavit as well as affidavits of the witnesses of the Will within one week and produce the petitioner and the two witnesses of the Will for cross-examination on 27th April, 2010. However, the needful was not done whereupon one more opportunity was granted to the petitioner on 27th April, 2010 subject to the cost of ₹25,000/- and the case was fixed for 11th May, 2010.

3.16. The petitioner stopped appearing on 11th May, 2010 and there was no appearance on behalf of the petitioner on 14th May, 2010, 17th May, 2010 and 18th May, 2010.

3.17. On 18th May, 2010, respondent No.2 filed an application in Court under Section 340 of the Code of Criminal Procedure for prosecution of the petitioner under Sections

193, 196, 199 and 200 of the Indian Penal Code. Considering the non-appearance of the petitioner to be deliberate and intentional, the Testamentary Case No.19/2004 was dismissed on 18th May, 2010 for non-prosecution of evidence as well as for default of appearance with cost of ₹2,00,000/- and the injunction orders dated 7th May, 2004 and 25th March, 2009 were vacated and the application under Section 340 of the Code of Criminal Procedure was kept for consideration.

3.18. Considering the serious offenses against administration of justice, Dr. Arun Mohan, Senior Advocate was appointed as amicus curiae. The learned amicus curiae and the learned counsel for respondent No.2 were heard at length on 26th May, 2010 and 1st June, 2010 when the matter was reserved for order.

3.19. On 3rd July, 2010, the counsel for the petitioner inspected the Court record.

4. Application under Section 340 of the Code of Criminal Procedure

4.1. Respondent No.2 has filed this application for prosecution of the petitioner under Sections 193, 196, 199 and 200 of the Indian Penal Code on the ground that the petitioner has deliberately and willfully made absolutely false statements on oath in the petition as well as the affidavit to deprive respondent No.2 of the title of the property in question and has sought probate of a forged Will.

4.2. It is submitted that the petitioner has forged the Will and MOU, both dated 11th May, 1999, and has filed the present petition on the basis of forged Will and MOU. It is submitted that the petitioner has played fraud upon the Court and if the action is not taken against him, such persons would be encouraged to file false cases in the Court.

4.3. The learned amicus curiae submits that the offences against administration of justice and criminal contempt of Court are made out and the complaint be filed before the concerned Magistrate for having filed the petition containing false averments and based on forged documents. The learned amicus curiae, Dr. Arun Mohan has also made detailed submissions on the procedure for conducting the inquiry and has also cited several decisions.

5. Facts which lead to the conclusion

5.1. This court is of the prima facie view on the basis of the following facts that the propounded Will is not genuine and false averments have been made in the petition for grant of probate:-

5.1.1. The petitioner was not related to the deceased Late Ram Pyari. The petitioner was not seen by any relative of the deceased in her lifetime. The petitioner was not even present at the time of cremation of the deceased. There was also no communication by the petitioner for a period of two years after the death of Late Ram Pyari and no claim to the property was made during the said period.

5.1.2. The addresses of the petitioner as well as that of the witnesses to the Will are fake as per the investigation by the police. The identity of the witnesses of the Will is also not established nor are they traceable by the police.

5.1.3. The signatures of the deceased on the Will have been found to be forged by the Central Forensic Science Laboratory.

5.1.4. The petitioner is involved in two other cases of cheating in which also NRIs are the victims like in the present case. The details of the two cases are given in the chargesheet filed by the police.

5.1.5. In the petition for probate, the petitioner has concealed the letter dated 20th February, 2004 (reproduced in para 2.5.) written to Delhi Development Authority in which he claimed the ownership over the subject property on the basis of Agreement to Sell, GPA, Will, etc.

5.1.6. In the Will propounded by the petitioner, it is stated that the petitioner took care of the deceased during the fag end of her life. However, no material or evidence was placed on record by the petitioner in this regard despite number of opportunities granted.

5.1.7. The propounded Will does not specifically acknowledge the existence of the prior registered Will.

5.1.8. The deceased remained alive for three years after the propounded Will but did not register the alleged Will.

5.1.9. As per the propounded Will, 50% of the property had to be donated to different religious trusts which have not been specified.

5.1.10. The petitioner pursued the petition for six long years and then vanished. No reply was filed to the objections of respondent No.2 and no evidence was placed on record despite number of opportunities granted. The petitioner is still following up these proceedings having inspected the Court record as late as on 3rd July, 2010.

5.2. On these facts and events, this Court is of the prima facie view that the petitioner is liable for being prosecuted for

the offenses committed by him. However, learned amicus curiae submits that an inquiry be conducted through the police before final orders are passed. The learned amicus curiae has made detailed submissions in this regard which are recorded in the succeeding paras.

6. Litigation in our courts

6.1. Inasmuch as the facts of this case are demonstrative and this Court cannot be oblivious to the problems afflicting the judicial system, I shall now examine certain general issues on how litigation with false claims is filed, or false defences are put forward, and then continues to remain pending, consuming the Court's time and resources. The result is that courts are overloaded and there is delay in disposal.

6.2. In **Dalip Singh v. State of U.P., (2010) 2 SCC 114**, the Hon'ble Supreme Court noted:

> "For many centuries, Indian society cherished two basic values of life i.e. 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and

unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

6.3. In **Padmawati and Ors v. Harijan Sewak Sangh, 154 (2008) DLT 411**, the learned Single Judge of this Court (S.N. Dhingra, J.) noted as under:

"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

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"9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in

> judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

The Court imposed costs of ₹15.1 lakhs. Against this, Special Leave to Appeal (Civil) No 29197/2008 was preferred to the Supreme Court. On 19.03.2010, the Hon'ble Supreme Court passed the following order:

> "We have heard learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The Special Leave Petition is, accordingly, dismissed."

6.4. I agree with the findings by the learned Judge in **Padmawati's case** (supra) and I would wish to add a few words. There is another feature which has been observed and it is of unscrupulous persons filing false claims or defences with a view that the other person would get tired and would then agree to compromise with him by giving up some right or paying some money. If the other party is not able to continue contesting the case or the Court by reason of falsehood falls into an error, the wrong

succeeds. Many times, the other party compromises, or at other times, he may continue to fight it out. But as far as the party in the wrong is concerned, as this Court noted in **Padmawati's case** (supra), even if these litigants ultimately lose the lis, they become the real victors and have the last laugh.

6.5. **Padmawati's case** (supra) was one where the wrongdoer was holding up delivery of possession. The present case, another species of the same genus, is where a party puts forward a false claim in order to entangle someone else's property in the hope that he can, with court delays and the needs of the other, one day, extract money for withdrawing the claim. The manner in which the case has been presented, and proceeded with, gives a clear impression that it is of this type.

6.6. If there is falsehood in the pleadings (plaint, written statement or replication), the task of the Court is also multiplied and a lis that could be decided in a short time, then takes several years. It is the legal duty of every party to state in the pleadings the true facts and if they do not, they must suffer the consequences and the Court should not hold back from taking action.

6.7. A similar sentiment had been expressed by the Karnataka High Court in **A. Hiriyanna Gowda v. State of Karnataka, 1998 Cri.L.J. 4756**:

> "1. The present application is filed under Section 340, Cr. P.C. and undoubtedly involves a power that the Courts have been seldom exercising. It has unfortunately become the order of the day, for false statements to be made in the course of judicial proceedings even on oath and attempts made to substantiate these false statements through affidavits or fabricated documents. It is very sad when this happens because the real backbone of the working of the judicial system is based on the element of trust and confidence and the purpose of obtaining a statement on oath from the parties or written pleadings in order to arrive at a correct decision after evaluating the respective positions. In all matters of fact therefore, it is not only a question of ethics, but an inflexible requirement of law that every statement made must be true to the extent that it must be verified and correct to the knowledge of the person making it. When a client instructs his learned Advocate to draft the pleadings, the basic responsibility lies on the clients because the Advocate being an Officer of the Court acts entirely on the instructions given to him, though the lawyer will not be immune from even a prosecution. If the situation is uncertain it is for his client to inform his learned Advocate and consequently if false statements are made in the pleadings the responsibility will devolve wholly and completely on the party on whose behalf those statements are made.
>
> 2. It has unfortunately become common place for the pleadings to be taken very lightly and for nothing but false and incorrect statements to be made in the course of judicial proceedings, for fabricated documents to be produced and even in cases where this comes to the light of the Court the party seems to get away because the Courts do not take necessary counter-action. The disastrous result of such leniency or indulgence is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result. To my mind,

therefore, the fact that the petitioner has pressed in this application requires to be commended because it is a matter of propriety and it is very necessary at least in a few glaring cases that an example be made of persons who are indulging in such malpractices which undermine the very administration of justice dispensation system and the working of the Courts. This will at least have a deterrent effect on others."

"5. It is true that the power that is now being exercised is seldom exercised, but I am firmly of the view that in the interest of the purity of the working the Courts that it is absolutely essential to take such corrective action whenever an instance of the present type arises."

6.8. A Division Bench of this court over two decades back in **Rajendra Jaina Towers (P) Ltd. v. Delhi Development Authority 33 (1987) DLT 216** held as under:

"27. All the statements in paragraph 11, to which I have referred, were material for the purpose of taking a decision in the case. As I have tried to show, they were deliberately made and carefully worded. Their object was to mislead and overreach the court. The perjury was daring and atrocious. Probably, Mr. Rajender Jain thought it was worth taking the risk because the courts are so reluctant to prosecute for perjury. That is the general impression which has caused perjury to become so rampant in our courts and resulted in vexatious litigation. It is clearly expedient in the interests of justice, that Mr. Rajender Jain be prosecuted for the statements made in paragraph 11 of the petition, which he has incorporated by reference in his affidavit."

The Court ordered the Registrar of this court to make a complaint in writing against Mr. Rajender Jain, for having committed offences under Sections 191, 192 and 193 of the Indian Penal Code to the Magistrate having jurisdiction.

6.9. If this Court were to go by a general impression, the position has not improved but only worsened. It is time to take appropriate action so that parties, when they file their pleadings, do so with a sense of responsibility and if averments therein, or any evidence in support, is found to be false, the wrongdoer is not able to escape the punishment prescribed by law.

6.10. The present case is a striking example of how the petitioner could file the petition without any fear, keep it pending, and disappear when he found the respondent did not succumb and exposed the petitioner. The non-appearance by the petitioner at this stage (27th April, 2010) appeared to be intentional and therefore a number of opportunities were given (11th May, 2010, 14th May, 2010, 17th May, 2010 and 18th May, 2010), yet the petitioner or his advocate did not appear. To have simply dismissed the petition for default and not taken action would be allowing them to escape. It has also been the experience that when falsehood has stood exposed, the party tenders an apology and the courts tend to let off and take no action. Such an approach emboldens others to do likewise.

6.11. On a related issue, in **South Eastern Coalfields Ltd. v. State of M.P. (2003) 8 SCC 648 : AIR 2003 SC 4482**, the Hon'ble Supreme Court said:

> "26 ... In law, the term 'restitution' is used in three senses; (i) return or restoration of some specific thing to its rightful owner or status; (ii)

compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another."

6.12. In fact, restitution, which includes compensation, and levy of costs, is not sufficient where there is, in the pleadings before the Court, falsehood, concealment or reliance upon forged documents. There it also calls for triggering into motion the penal laws, i.e., making of a complaint under Section 340 Cr.P.C. The more important part is of punishment to prevent, in the first instance, litigants from making false averments before a court of law. While the punishment prescribed by law is deterrent, the probability of prosecution, and thereafter conviction, should also be sufficient to deter such conduct.

6.13. A party, whether he is a petitioner or a respondent, or a witness, has to respect the solemnity of the proceedings in the court and he cannot play with the courts and pollute the stream of justice. It is cases like this, with false claims (or false defences) which load the courts, cause delays, consume judicial time and bring a bad name to the judicial system. This case is a sample where the facts are glaring. Even if they were not so glaring, once falsehood is apparent, to not take action would be improper.

6.14. The judicial system has a right and a duty to protect itself from such conduct by the litigants and to ensure that where such conduct has taken place, the matter is

investigated and reaches its logical conclusion and depending on the finding which is returned in such proceedings, appropriate punishment is meted out.

6.15. It is perhaps the general reluctance, as also noticed by the Hon'ble Supreme Court in **Swaran Singh v. State of Punjab, (2000) 5 SCC 668**:

> "36. ..... Perjury has also become a way of life in the law courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint....."

that has made the situation reach such levels where pleadings contain false averments and parties make false averments with impunity in the hope that in all probability the opposite party will cough up something, and even if he does not, in the end he will have the last laugh, for a prosecution of perjury, although consciously committed and persisted in, will have a probability of punishment as good as nil. The gain far exceeds the risk.

6.16. In an effort to redeem the situation, not only realistic costs and full compensation in favour of the winning party against the wrongdoer are required, but, depending on the gravity of the wrong, penal action against the wrongdoers is also called for. Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens. Litigation caused by false claims and

defences will come to be placed before the courts, load the dockets and delay delivery of justice to those who are genuinely in need of it. Let us then examine the procedures in this regard.

7. Of false evidence and offences against public justice

7.1. Chapter XI of the Indian Penal Code is titled “Of false evidence and offences against public justice system”. Section 191 defines giving of false evidence as an offence while Section 193 prescribes the punishment. There are also other provisions with regard to false evidence, but at this stage, I need not go into details except that these provisions are there to enable the Court to punish those who make false averments in the pleadings or file forged documents and thus serve to protect the stream of justice from being soiled.

7.2. Section 340 Cr.P.C. provides the procedure which reads as under:

> “Section 340 - Procedure in cases mentioned in section 195.—(1) When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—
>
> (a) record a finding to that effect;

(b) make a complaint thereof in writing;
(c) send it to a Magistrate of the first class having jurisdiction;
(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under subsection (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195."

8. False averments in pleadings are sufficient to attract Chapter XI of the Indian Penal Code

8.1. In the present case, the petitioner has filed a petition containing false averments but he has not entered into the witness box. The question arises whether a person who has made false averments in pleadings but does not appear in the witness box, has committed any offence.

8.2. Pleadings which are the foundation of the case, on the basis of which the issues arise and the trial is held and are required to be signed and verified. Order 6 Rule 15 of the Code of Civil Procedure reads as under:

"Rule 15. Verification of pleadings. – (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."

8.3. Section 282 of the Indian Succession Act [39 of 1925] also provides for punishment for false averment in petition or declaration. It reads as under:

"Section 282 - If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under Section 193 of the Indian Penal Code, 1860 (45 of 1860)."

8.4. The Code of Civil Procedure commentary by V.R. Manohar and W.W. Chitaley, (Tenth Edition) Volume 3 at pp117 notes that the object of verifying a pleading is to fix, on the party verifying, responsibility for the statements that it contains. Further at pp 121, it notes that pleadings, far from being mere formalities, are required by law to be true. Verifications being made under the sanction of a solemn declaration, a false verification will render the

party verifying liable to a prosecution for an offence under Sections 191 and 193, Indian Penal Code.

8.5. Similarly, in Code of Civil Procedure commentary by Justice C.K. Thakker, at pp428 of Volume 3, it is stated:

> Verification of pleading is a matter of great importance as possessing security of being made under the sanction of a solemn declaration. A person making false verification will, hence, render himself liable to prosecution for an offence punishable under the Indian Penal Code.

8.6. The learned amicus curiae cited the following decisions:-

8.6.1. **State of Punjab v. I.M. Lall, ILR 1975 Delhi 332**-

> "That the statutory provision for verification is to fix responsibility on the party or person for statements made in the pleadings and to prevent false pleadings being recklessly filed or false allegations being recklessly made."

8.6.2. **Sapna Singh Pathania v. Jagdish Chander Mehta, 75 (1998) DLT 725**-

> "21. The object of this Rule is to fix responsibility for allegations made in the plaint on the persons who verify and this is to ensure that false allegations are not made freely and recklessly. ..."

8.6.3. **Sri Shamrao Rukamanna Talwar v. Smt. Suvarna, ILR 2008 Karnataka 1493**-

> "23. ....The object of signature and verification is to fix upon the party the responsibility for the statements and to affirm the guarantee of good faith. ..."

8.6.4. **Emperor v. Padam Singh, AIR 1930 Allahabad 490**-

> "12. It is contended by counsel for the opposite party that a defendant is not legally bound either by any express provision of law or in any other way to file a written statement at all. That of course must at once be conceded. But if he does desire to file a written answer to the plaint, he is by express provision of law bound to do something

further. He is bound to attach the verification which is called for by Order 6, Rule 15, and his written statement is not, until that verification is attached, a written statement in law at all and could not be received for any purpose whatever. When, therefore, filing a written statement he is bound by express provision of law to verify the facts alleged in that written statement as being true either to his own knowledge or to the best of his belief. It is contended that when the law requires a defendant to verify his written statement it does not necessarily require him to tell the truth. This contention, in our view, is manifestly untenable. Words have a certain meaning and we have only to give them their plain and ordinary meaning, in the absence of any circumstances indicating that meaning is not permissible. The ordinary dictionary meaning of the word 'verify' used in the present circumstances is: "to confirm the truth or truthfulness of". It was further contended on behalf of the opposite party that the mere fact that in cases under the Income-tax Act and possibly other such Acts a false verification was expressly to be declared to be punishable under Section 177, I.P.C., or some other such section and the absence of any such enactment in connexion with Order 6, Rule 15, was sufficient to show that a false verification in accordance with Order 6, Rule 15 could be made with impunity.

13. In other words, we were asked to hold that the legislature orders a defendant to declare that his statements are true and, since it is further emphasised that the same legislature passed all the Acts, in the same breath says that it does not care whether the statements are true or not and that no penalty shall follow the making of a false verification. It is manifest that such an argument would be extremely dangerous. It is not possible for one moment to know what was in the minds of particular individuals when they were considering whether it was necessary or whether it was merely desirable or whether it was undesirable to add a clause declaring under what section of the penal law a person infringing the law should be punishable. We confine ourselves, therefore, to the simple question whether the facts of the case come within Section 191. Here we find that there

is an express provision of law requiring the defendant to confirm the truth of the statements made by him in the preceding clauses of his written statement, and if he does so, knowing that verification is false, he is declared by the legislature in Section 191 itself to be giving false evidence. Whatever may or may not be connoted by the word 'evidence' in other sections, there can be no doubt about the meaning in Section 191 and there can equally be no doubt that the words 'gives false evidence' in Section 193 are used in the same sense as the same words in Section 191, and it has not of course been contended that if Section 191 is applicable to the present case, Section 193 is not applicable. We are, therefore, of opinion that so far as the legal point is concerned the trial Court was right in holding that an offence had been committed under Section 193, I.P.C."

8.6.5. **Raj Kumar Dhar v. Colonel A. Stuart Lewis, AIR 1958 Calcutta 104**-

"3. ...Verification of pleadings is an important matter which may have very serious consequences, as in case of false verification, the person verifying may be liable to criminal prosecution. The object of verification, as it has been pointed out in decisions of courts, is to fix responsibility on the party verifying and to prevent false pleadings, being recklessly filed or false allegations being recklessly made. It must have some sanctity ..."

8.6.6. **In re an attorney, AIR 1914 Calcutta 1924**-

"... A verification is a matter of great importance: Girdhari v. Kanhaiya Lal ILR [1892] 15 All 59 = (1892) A.W.N. 235, and has been described by a Full Bench of this Court as possessing the security of being made under the sanction of a solemn declaration for which the person making it would be liable to the penalties attaching to the crime of giving false evidence if the declaration were false to his knowledge."

8.6.7. **Dr. (Smt.) Shipra v. Shri Shanti Lal, AIR 1995 Rajasthan 50**-

"7. Section 83 of the Act deals with the contents of the election petition and states that an election petition shall be signed by the petitioner and

> verified in a manner laid down in the Code of Civil Procedure for the verification of the plaint. Order 6, Rule 15, C.P.C. deals with the verification of pleadings and states that the person verifying it shall specify, by reference to numbered paragraphs of the pleadings, what he/she verifies of his/her own knowledge and what is verified upon the information received and believed to be true. The object of verification is to test the genuineness and authenticity of the averments made in the election petition and to fix responsibility for the allegations made on the person who verifies it and to ensure that false allegations are not made recklessly. A false verification has, therefore, been made punishable under Sections 191 and 193 of the Indian Penal Code. ...”

8.7. Making false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated as an offence.

8.8. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. But it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the courts and thus produce mischievous consequences to the administration of justice. A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law.

8.9. Consequently, there cannot be any doubt that if a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 of the Code

(and other provisions). It is not necessary that a person should have appeared in the witness box. The offence stands committed and completed by the filing of such pleading. There is need for the justice system to protect itself from such wrongdoing so that it can do its task of justice dispensation.

9. What constitutes the offence?

9.1. Inasmuch as on a complaint of Respondent No.2, a prosecution of the Petitioner is pending before the Metropolitan Magistrate, the question also arises as to what constitutes the offence because it may be said that since prosecution is pending, why should a second inquiry or prosecution be called for. On the face, such a contention appears attractive, but there are more compelling reasons why the Court must take cognizance and proceed as per law.

9.2. The learned amicus curiae, Dr. Arun Mohan has submitted that the two offences are separate and are to be prosecuted and tried separately. According to him, the first offence was of forging the document and then using it before the DDA in order to cause injury to the Respondent No.2. It was carried out by and before 12th March, 2004 when public notice was also published by Sanjeev Kumar Mittal.

9.3. The complaint of 21st March, 2004 by Respondent No.2 was in relation to that offence. If the matter had rested

there, it would have been one thing, but on 12th April, 2004, when the present petition containing false averments and relying on forged documents (which were also filed) was filed, a second offence stood committed. That second offence was of: (1) making a false averment in the petition duly verified and filing the same in court; and (2) asking the Court for a judgment on the basis of false averments and forged documents.

9.4. The learned amicus curiae submits that if a person prepares a petition containing false averments, relying on forged documents, and signs and verifies it, and then comes to the Court, but on seeing the building, develops cold feet and returns home, the second offence would not have been committed. But when he presents these papers at the filing counter, it is filing in court. The moment they cross the window at the filing counter is precisely the point of time when the second offence stands committed.

9.5. In **Iqbal Singh Marwah v. Meenakshi Marwah (2005) 4 SCC 370**, the question before the Supreme Court was when would the bar of Section 195(1)(b)(ii) CrPC be attracted. Their Lordships held that the bar would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court. Finding that the Will had

been produced in the Court subsequently, they held that the bar of Section 195(1)(b)(ii) CrPC does not apply.

9.6. The rationale will equally apply to a situation where, as here, the complaint will be in respect of subsequent and independent offences, i.e., filing before a court of law, pleadings containing false averments and also filing of documents that were forged as distinct from forgery at home. It will also be contempt of Court.

10. Expedient in the interests of justice under Section 340 Cr. P.C.

10.1. When an inquiry for having committed an offence as listed in Section 195 Cr.P.C. is proposed to be launched, Section 340 Cr.P.C. provides for the procedure. One of the requirements in sub-section (1) is that the "**court is of opinion that it is expedient in the interests of justice that …**" When is it expedient in the interests of justice? On this question, the following decisions were cited by the learned amicus curiae:-

10.1.1. **Mohd. Amjad Khan v. Jamia Millia Islamia, 55 (1994) DLT 463**-

> "6. Now coming to the show cause notice issued by us to the petitioner as to why a complaint be not filed against him as it appeared to us that he committed an offence punishable under section 193 Indian Penal Code. In reply to this, the petitioner begs to tender an unconditional apology for stating on 8 July 1994 that he did not receive any communication. He says this wrong statement was made unintentionally and without any desire to obtain a favourable order by making such a statement. He said that the letter dated 8 July 1994 was collected by him in the

University around lunch time and he did not go through the same because he was in the midst of preparation for examination and went to the library. We are unable to accept this submission. This again does not appear to us to be true when on the communication dated 8 July 1994 itself he has even noted the time of his receipt by hand, and there was no question, at that time, for the petitioner to prepare for the examination as he had been debarred from taking the examination. We would reject his Explanation. We are of the opinion that it is necessary in the interests of justice that a complaint be filed against the petitioner as mentioned aforesaid. We, therefore, direct the Joint Registrar (Appellate) of this Court to file a complaint in writing against the petitioner for an offence under section 193 IPC in the court of the Additional Chief Metropolitan Magistrate, New Delhi."

10.1.2. **Mohan Singh v. Amar Singh, (1998) 6 SCC 686**-

"36. But the matter does not end there. We have found that the records of the A.R.C. and the Rent Tribunal have been tampered. We have also drawn an inference that the visa alleged to have been issued by the German Embassy on 26.06.1981 to the tenant and the Immigration Stamp found thereon are not genuine. Prima facie, the circumstances indicate that the tenant had committed the aforesaid offences. The tenant has also made an attempt to hoodwink this Court and succeed in his appeal. He was successful in getting the Special Leave and an order staying dispossession. Tampering with the record of judicial proceedings and filing of false affidavit, in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity. Since, we are prima facie satisfied that the tenant has filed false affidavits and tampered with judicial record, with a view to eradicate the evil of perjury, we consider it appropriate to direct the Registrar of this Court to file a complaint before the appropriate court and set the criminal law in

motion against the tenant, the appellant in this case namely, Mohan Singh."

10.1.3. **Re: Suo Moto Proceedings against Mr. R. Karuppan, Advocate, (2001) 5 SCC 289**-

"17. With the object of eradicating the evil of perjury, we empower the Registrar General of this Court to depute an officer of the rank of Deputy Registrar or above of the Court to file a complaint under Section 193 of the Indian Penal Code against the respondent herein, before a Magistrate of competent jurisdiction at Delhi. Such officer is directed to file such complaint and take all steps necessary for prosecuting the complaint."

10.1.4. **IRCON International Limited v. Union of India, 108 (2003) DLT 656**-

"19. In view of the foregoing discussions I am satisfied that the documents and affidavit filed by respondent No. 5 in this Court demonstrate that his plea regarding his not being in India since 1983 is prima facie not correct. A Court is thus required to ensure that the free flow of the unsoiled stream of justice is not obstructed. Of late litigants have tended to utter falsehoods with impunity as on several occasions they have managed to get away with such false statements owing to the unnecessary indulgence and misplaced generosity. False averments on oath not only vitiate the probity of judicial proceedings but considerable time is spent and expenses incurred for truth to be unravelled. Thus if a dishonest plaintiff secures and continues an interim order on a false averment and a dishonest defendant delays the proceedings by pleading a false defense, then unless and until wilful lies are viewed sternly and dealt with effectively, the judicial system will suffer thereby harming the honest litigant. Contumacious falsehoods by unscrupulous litigants have been eating into the vitals of our judicial system and ought to be put down firmly. In the present case the respondent No. 5 has continued to stand by his statements and has in fact sought to justify his questioned averments. ..."

"20 Considering all the facts and circumstances discussed above, I am of the view that in the present case it will be appropriate and the ends of justice will be fully met upon a direction to the Registrar General of this Court to file a complaint

before the appropriate Court and set the criminal law in motion against respondent No. 5 ...”

10.1.5. **Goswamy Brij Kumar Jee v. Union of India (UOI) 2007 (97) DRJ 223**-

“32. ... It appears to us that forged, interpolated and fabricated copies have been filed in this Court to obtain interim relief and then proceeded on to get the final relief inter alias on the basis of the said and other documents. Respondents were restrained from altering the nature of the property vide order dated 26.5.2000. At that time, the said property was a plain ground after demolition of the old structures. It appears that the Mr. Kailash Nath Chaturvedi has committed offences narrated in Clause 'b' Sub-section 1 of Section 195 of Cr.P.C., and prima facie, offences under Sections 196, 199, 463, 471 and other related Sections have been committed by filing the said documents on the court record.

33. We are of the opinion that it is expedient in the interests of justice that an inquiry should be made into the said offences (Section 340 Cr.P.C.) and the criminal prosecution should proceed in accordance with law. For this purpose we direct the Registrar General to send the complaint with the copies of the above mentioned four documents (2 prima facie forged, interpolated and fabricated copies + 2 correct copies) to the Sessions Judge, Delhi, for further proceedings in accordance with law. ...”

10.1.6. **Lakshmi Singa Reddy v. Secretary, A.P. Public Service Commission, 2001 (6) Andhra Law Digest 1**-

“22. We are, prima facie, of considered opinion that by not producing entire file / all records inspite of receiving “Rule Nisi” and inspite of direction to learned Standing Counsel for APPSC the respondent committed contempt. We therefore direct the Registry to initiate necessary action for contempt against Secretary of APPSC.

23. After perusing the few papers produced before us “as file” and the counter-affidavit filed by the respondents we are convinced that there are attempts on the part of the respondents to plead falsehood which is against public justice. In India, offence of perjury is not enforced often. This practice needs to be rectified as pointed out by

> the Supreme Court in Suo Motu Proceedings against Mr. R. Kamppan. ..."
>
> "25. We are bound by the observations made by the Supreme Court in the above case. Effective action for perjury is need of time. Therefore, we direct the Registrar (Judicial) of High Court of Judicature of Andhra Pradesh, Hyderabad to file a complaint under Section 193 of Indian Penal Code against the deponent who filed affidavit on behalf of the APPSC, before the Magistrate competent to take cognizance of the offence in Hyderabad."

10.2. A common thread that can be culled out from these decisions is that perjury, which includes false averments in pleadings, is an evil to eradicate which every effort must be made. The reluctance of the courts to order prosecution encourage parties to make false averments in pleadings before the Court and produce forged documents.

10.3. While restitution and costs as calculated, and ordered by this court in ***Padmawati's case*** (supra) (₹15.10 lakhs) will suffice for such wrongdoing as does not fall within the definition of offences under Chapter XI (particularly Sections 191, 192 and 193), where it (the wrongdoing) does fall, it is the duty of the Court, except when it is not expedient to do so in the interests of justice, to order an inquiry under Section 340 Cr.P.C.

10.4 The gravity of the offence, the substantiality of the offenders, the calculated manner in which the offence appears to have been committed and pernicious influence such conduct will have in the working of the Courts and the very faith of the common man in Courts and the

system of the administration of justice, all have been reckoned in arriving at a conclusion that action under Section 340 is fully justified.

10.5 In the present case, a deliberate and calculated fabrication of documents has been prima facie made out. It was not a case of inaction. Considerable time and strain of brain had been involved in drafting and forging the will with such meticulous hints and advice on fabrication and the petition containing false statement on oath and forged documents have been filed in this Court. The petitioner has ventured to stab truth, so recklessly and so seriously, that it should not go unnoticed by a Court of law which works under the constitutional symbol proclaiming to the world that Truth, and truth alone, ultimately flourishes.

10.6 I have carefully considered the material on record and am of the opinion that it is expedient in the interest of justice that an inquiry be made into the offences alleged to have been committed by the petitioner and others in relation to the proceedings before this Court.

11. Preliminary Inquiry under Section 340 Cr.P.C.

11.1. Another question, one of procedure, is about a preliminary inquiry. Section 340(1) Cr.P.C. uses the word "**such court may, after such preliminary inquiry, if any, as it thinks necessary**".

11.2. The learned amicus curiae, Dr. Arun Mohan has cited **Pritish v. State of Maharashtra, (2002) 1 SCC 253** where it was held:

> "9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interests of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court shod make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interests of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interests of justice to inquire into the offence which appears to have been committed."

On the question whether notice to and hearing the person against whom prosecution is sought to be launched, their Lordships held:

> "13. The scheme delineated above would clearly show that there is no statutory requirement

to afford an opportunity of hearing to the persons against whom that court might file a complaint before the magistrate for initiating prosecution proceedings. …"

"14. … But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. …"

"15. Once the prosecution proceedings commence the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not."

11.3. The preliminary inquiry in the second part of Section 340 is not mandatory. The use of the words 'if any' is clearly indicative. This is so because situations can be such where there is strong suspicion, but there is not sufficient evidence to return a finding (although still prima facie) that it appears to have been committed. And there can be cases where there is sufficient material on record to return such a finding. In the former case, preliminary inquiry is necessary, in the latter case, it is not.

11.4. Further, the facts may be such that other evidence needs to be reached and made available to the Court. Then, other documents may be there which prove existence or non-existence and there may also be other persons who are involved. It is something which has to be seen from the facts of a particular case.

11.5. If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 Cr.P.C., the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to gather.

11.6. Ordering of the preliminary inquiry also includes investigation by a State agency where the nature is such that a private party in civil proceedings could not possibly gather and place before the Court those facts, documents, etc. Many times, there can be suspicion, strong suspicion, or even suspicion that borders on conviction, and it is expedient in the interests of justice to proceed to lodge a complaint, but there may be no sufficient legal evidence on the record at that time to so proceed.

11.7. This is not a case where it is mere forgery of the Will and ought to be disposed of on a report by the expert evidence of the document examiner. In order to reach to the others involved and unearth more evidence, this Court deems it necessary to order investigation by the police as a part of preliminary inquiry.

12. Case law on ordering investigation by the Police

12.1. The next question is whether as part of the Preliminary Inquiry under Section 340 Cr.P.C., an investigation by the Police or any other State Agency can be ordered. On this aspect too, the learned amicus curiae, Dr. Arun Mohan, made detailed submissions and cited following judgments:-

12.1.1. In **Pushpa Devi Jatia v. M.L. Wadhavan, Additional Secretary, Government of India, AIR 1987 SC 1156**, the Hon'ble Supreme Court while dismissing SLP and Writ Petition on 19.12.1986 held:

> "3. We have also heard learned Counsel for the parties on the application made by the Union Government under Section 340 of the Cr.P.C., 1973 for prosecution of the persons responsible for forging the documents purporting to be the alleged representation made by the detenu under Section 8(b) of the COFEPOSA on April 15, 1985 as, in fact, no such representation was ever made, and for making alleged interpolations in the relevant records. We reserve our orders thereon.
>
> 4. Accordingly, the Special Leave Petition and the Writ Petition are dismissed. The detailed reasons for the Judgment and the consequential directions, if any, shall follow."

12.1.2. In the same case, **Pushpadevi M. Jatia v. M.L. Wadhavan** later on 29th April, 1987 and reported as **(1987) 3 SCC 367,'400 : AIR 1987 SC 1748**, the Hon'ble Supreme Court observed:

> "35. We feel fully persuaded to hold that this is a fit case in which the detenu, his wife (petitioner herein), Ashok Jain and all other persons responsible for the

> fabrication of false evidence should be prosecuted for the offence committed by them. Nevertheless we wish to defer the passing of the final order on the application made under S.340 of the Code of Criminal Procedure, 1973 by the Union of India at this stage because of the fact the Central Bureau of Investigation is said to be engaged in making a through investigation of the matter so that suitable action could be taken against all the perpetrators of the fraudulent acts and the offences. As such the launching of any prosecution against the detenue and his set of people at this stage forthwith may lead to a permanent closure of the investigation resulting in the Central Bureau of Investigation being unable to unearth the full extent of the conspiracy. Such a situation should not come to pass because the manipulations of the detenue and his agents on the one hand and the connivance of staff in the President's Secretariat on the other cannot be treated as innocuous features or mere coincidence and cannot, therefore, be taken lightly or viewed leniently. On the contrary they are matters which have to be taken serious note of and dealt with a high degree of vigilance, care and concern. Consequently, while making known our opinion of the matter for action being taken under S.340 of the Code of Criminal Procedure we defer the passing of final orders on the application under S.340 till the investigation by the Central Bureau of Investigation is completed. The respondents are permitted to move the Court for final orders in accordance with our directions."

The order passed by Supreme Court three days later, i.e., on 1st May, 1987 (unreported), reads as under:

> "We direct the Director the Central Bureau of Investigation to take up the investigation into the matter. If during the course of such investigation,

the C.B.I requires inspection of the records of the Supreme Court, the Registrar (Judicial) shall permit such inspection as and when required.

The director of the investigation shall submit his report to the Government of India, Ministry of Home Affairs, New Delhi for necessary action."

Thereafter, on 20.07.1994, the Hon'ble Supreme Court in **Criminal Miscellaneous Petition No.464 of 1986 in WP (Criminal) 363 / 1986** ordered:

" ... We thus order the Registrar General of this court to prepare a complaint as expeditiously as possible in the light of all concerned orders in terms of Section 195 read with Section 340 of the Criminal Procedure Code and file it before a competent criminal court against the aforesaid six persons. ..."

The Complaint was filed and registered as "**Supreme Court of India v. Milap Chand Jagotra**" **Complaint No. 58/1 of 1998**.

12.1.3. **Shabbir Hasan v. Emperor, AIR 1928 Allahabad 21**-

"2. ...Under S.476 {of the earlier Cr.P.C.} an inquiry has to be made by the Civil Court. If the civil Court so desires, an inquiry may be ordered by the police, but in that case when the police papers arrive the civil Court has to determine whether it is necessary to take action against particular persons under S.476. A finding has to be recorded to the effect against each individual person specifically. ..."

12.1.4. **Gita Ram Kalsy v. Mathura Dass, AIR 1951 Punjab 369**-

"3. ... In the present case the matter has not been referred to the Police with the object of the Police instituting a prosecution if an offence is found to have been committed by a certain person or persons, but merely with the object of finding out whether an offence has been committed and by whom, with a view to

the Magistrate taking further proceedings under Section 476. In fact even if the Police did discover that an offence had been committed and established the identity of the culprit, they could not take any further action, which could only be taken by the learned Magistrate in whose Court the case was pending. To my mind, it would be absurd if the learned Magistrate in this case were simply to record a finding that prima facie a document in the custody of the Court in connection with a case had been tampered with and to forward a complaint to some other Court and leave that Court to make the investigation and discover the identity of the culprit, and in fact the section clearly only contemplates the forwarding of a complaint against one or more definite accused, who are either to he bound down to appear in the other Court or else sent in custody and obviously the Police are the best persons to assist the learned Magistrate in the preliminary enquiry in discovering when and by whom the offence, if any, was committed. ... "

12.1.5. **Manjit Kaur v. J.P. Sharma,** order dated 8.12.1994 passed by a Division Bench of this Court in FAO(OS)No.152/1994 arising out of Suit No.3174/90 at (internal page 13)-

"If really the facts mentioned by the appellant in the memorandum of appeal coupled with the other circumstances are true, it appears to us that a prima facie case of fraud not only on the appellant, but also fraud on this Court has been played by the plaintiff / respondent in this behalf. We have, therefore, decided to order an effective investigation into this issue. We do not consider it fit to refer the inquiry to any other body except to Director of Central Bureau of Investigation, who should either conduct the inquiry himself or have it conducted by a Senior Officer of the CBI. The said authority will go into the entire matter and submit a report in the case within three months from today."

12.1.6. In **Shoba Samat v. Madan Lal Dua**, order dated 25.05.1995 passed by a Division Bench of this Court (D.P. Wadhwa and Dr.M.K. Sharma, JJ.) in Writ 4649 of 1994, court held that-

"We have heard learned counsel for the parties. To some extent, we are of the view that various offences have been committed and the matter needs through investigation by the police. We accordingly direct the D.C.P (Crime) to have the matter investigated. Copies of our proceedings dated 10th March 1995 and that of 18th April 1995 be sent to him and so also copy of the writ petition giving the names of the parties. Liberty is granted to the police to take photo copies of the documents from this file as well as from the file of the Commercial Sub Judge which is lying in sealed cover in the registry of this Court."

12.1.7. In **Davendar Singh v. Subroto Ghosh**, Order dated 5.02.1996 passed by a Division Bench of this Court (M.J. Rao, C.J and Dalveer Bhandari, J.) in FAO(OS)No.52/1996, court held that–

"In view of the prima facie evidence arrived at by the learned Judge, (which we shall examine later), it has been felt necessary by us that there should be an independent enquiry into the question whether there is a person known as Ashok Kumar Gupta son of Shri Ghasita Ram Gupta R/O 5, Ring Road, Kirlokari, Opposite Maharani Bagh, New Delhi, and whether he was the person who had executed the documents dated 9.10.1990 in favour of defendants 2 and 3 and whether he was also the person who executed the general power of attorney dated 6.3.90, (whose photographs are attached thereto) and the person who applied to Municipal Corporation of Delhi for mutation and obtained the same on 16.10.89 in respect of the suit property. And if so, his whereabouts. The original power of attorney in court custody contains thumb impression of the executant."

"There are various other facts and circumstances which are material for deciding the appeal but before we do so, we are of the view that the abovesaid investigation should be conducted by the CBI and a proper report should be placed before us. The Director, CBI is directed to appoint a Senior officer of the CBI to go into the above facts and submit a report to this court on the aspects referred to above."

12.1.8. **Girdhari Lal Tewari v. Union of India, 2003 (70) Delhi Reported Judgment 415**-

> "29. We also feel that this is an appropriate case where the Central Bureau of Investigation should be directed to make an enquiry with regard to the entire transactions including the forgery and fabrication of documents which are proved and established. The CBI shall make Investigation and those who are found responsible for such manipulations and misdeeds of tempering, falsifying and interpolation of official record, shall be proceeded with the accordance with law. In terms of the aforesaid directions and observations both the writ petitions stand allowed to the aforesaid extent."

12.1.9. **Vishesh Jain v. Arun Mehra, IA No.5596/06** in CS (OS) No.1136 / 05 decided by this Court on 4.04.2008-

> "All efforts to trace the plaintiff failed. This suit has been filed on the basis of forged documents. Even bailable warrants could not be served on the plaintiff as he is evading service. This application under Section 340 of the Code of Criminal Procedure has been made on behalf of the applicants/defendants No.1, 2 and 3 wherein it is alleged that the present suit was filed by one Vishesh Jain on the basis of forged and frivolous documents. The suit filed by the plaintiff was dismissed by this Court on 12th December 2005 with cost of ₹10,000/-. This Court issued notice to Mr. R.K. Nanda and Mrs. Promila Nanda, Directors of Durga Builders and recorded statement of Mr. R.K. Nanda. His statement prima facie showed a collusion between them and Mr. Vishesh Jain. He stated that he had no knowledge about the suit being listed on 16th August 2005. He had not met Mr. Vishesh Jain. However, he had executed power of attorney in favour of Mr. Sharad Kumar Aggarwal and Ms. Purnima Aggarwal, Adv and admitted his signatures. The record of other suit No.987 of 2006 was summoned. The suit was shown disposed of having been amicably settled outside the

Court between plaintiff and defendants. It was stated by the plaintiff that he had received a sum of ₹30,000/- as full and final settlement. It seems that there was a conspiracy and collusion between the plaintiff Vishesh Kumar Jain and defendant No.4. The matter needs through investigation.

Registrar General of this Court is directed to send the matter for investigation to Crime Branch of Delhi Police to find out who was this Vishesh Jain, his business and his present whereabouts. Report be sent to this Court by Crime Branch within 90 days. Crime Branch shall investigate the conspiracy between defendant No.4 and Vishesh Jain and how the documents filed in this case came into existence, whether they were forged documents or genuine. Registrar General of this Court shall also send all documents filed by the plaintiff in the suit along with copy of the suit to the Crime Branch as well as photocopy of the record of suit No.981 of 2006."

12.1.10. **Mahant Surinder Nath v. Union of India, 146 (2008) Delhi Law Times 438**-

"41. I, thus, deem it appropriate to direct that the Registrar General should appoint a Registrar/Joint Registrar of this Court to take necessary action for initiation of proceedings under Section 340(1) Cr.P.C. keeping in mind the aforesaid provisions of the IPC.

42. It also cannot be lost sight of that the execution of the sale deeds prima facie appears to be a collusive act not only of the plaintiffs but of three other persons, Mr.Mahender Pal, Smt.Anita Yogi and Mr.Akhilesh Singh, who are closely related to the plaintiff, being the natural brother, the wife of the brother and the brother of such a wife. These vendees are not before the Court. A further inquiry into the execution of sale deeds is necessary. I, thus, deem it appropriate to

direct that the Economic Offence Wing of the Delhi Police shall register an FIR against all the five persons and carry out investigation in accordance with law and if offences are made out, to take suitable action thereafter. This direction is necessary as the sale deeds are documents in rem and would give authority to the vandees to mislead the public of the prospect of purchase of land which could never have been sold."

"44. The suit is accordingly dismissed with the aforesaid directions with the hope that the authorities concerned would follow-up the matter in a proper perspective to see that the ends of justice are met."

12.1.11. **Nitin Seth v. Rohit Kumar**, CM(M) No. 459/2004 decided by this Court on 22.08.2008-

" ... Aggrieved by the said order, the petitioner herein filed an appeal before the Delhi High Court being FAO No. 96/2000 {sic 96/2001}. Delhi High Court vide order dated 3.4.2002 confirmed the status quo order however, during pendency of this FAO, the High Court in order to come at a right conclusion had made detailed enquiry into the facts. The High Court vide order dated 17.4.2001 had directed the petitioner herein to produce the original title deeds of the said property on the basis of claim of ownership was staked and directed an investigation to be done by the Crime Branch of Delhi Police regarding genuineness of the said documents. The Crime Branch made an enquiry and got the documents examined from forensic lab and submitted its enquiry report dated 22.1.2002 to the High Court. The enquiry report revealed that sale deed dated 4.3.1971 in favour of Ms. Kum Kum Jain and the sale deed dated 31.8.2000 in favour of the petitioner, both were forged and fabricated documents and even the stamps of Sub-Registrar were forged. ..."

12.1.12. **Oil and Natural Gas Corporation Ltd. v. Phula Bala Paul, 2007 (4) GLT 680**-

"9. A bare reading of the two sets of sale deeds pertaining to the same Sub-Registrar office with identical numbers disclose that the exhibited sale deeds, the value have been shown to be fabulously higher and inflated than what is disclosed in the sale deeds so produced by Mr. Dutta as referred to above. Apart from the consideration of amount, the parties to the transaction also do not tally.

10. The aforesaid exhibits have been accepted by the learned District Judge in a judicial proceeding in the Reference cases, as produced by the respondents/claimants. The decision to enhance the market value of the acquired land is also based on the aforesaid exhibits so produced by the claimants. The picture that emerges from the aforesaid fact it is apparent prima facie that the claimants appear to have practice fraud to get compensation at inflated rate going to the extent of manufacturing such sale deeds. In such a situation, the decision rendered by the learned District Judge enhancing the compensation based on fraud is not sustainable in law. ..."

"12. On perusal of the exhibited documents as well as documents submitted by Mr. Dutta (copies of which are kept on records), there appears a genuine doubt about the genuineness of the aforesaid exhibits, namely Exts.-1, 3, 4, 6, 7 and 8, as exhibited before the Reference Court. ..."

"13. In view of the aforesaid discussions and grave doubt about the genuineness of the exhibited documents on the basis of which Awards have been passed, ..."

"14. The Registry of this Court is directed to forward a copy of this judgment along with the Ext.-1, 3, 4, 6, 7 and 8 and the documents produced by Mr. Dutta, to the Superintendent of Police, Cachar, Silchar and on receipt of the same, the Superintendent of Police, Cachar, Silchar shall cause registering criminal case under appropriate sections of law and

necessary investigation be caused regarding genuineness/fraudulent manufacturing of the aforesaid documents and investigate the matter under his strict supervision to unearth and identify the culprits, if any, and to deal with as per law. The learned District Judge, Cachar, Silchar shall render all assistance from his end whatever is necessary for the purpose of the aforesaid investigation.

The Registry shall register a Misc Case and shall appraise the Court regarding the stage of investigation as directed to be conducted as aforesaid. The Superintendent of Police, Cachar, Silchar, and the Officer-in-Charge, Silchar Police Station are also directed to report back to this Court from time to time about the progress of the investigation so that this Court can well monitor the matter."

12.1.13. **Shanthamma v. Sub-Inspector of Police, Malur Police Station, 2007 (3) Kar L J 330**-

"7. We also deem it proper to direct the Commissioner of Police to get hold of the entire records including the reports and the affidavit filed in this Court and hold appropriate enquiry in accordance with law against Sri. Zahoor Ali Baig, Sub-Inspector, Sri. Mallegowda, PC and Sri. Balanaik, PC for creating false records thereby violating their duty in a manner known to law and in accordance with law departmentally. Further liberty is reserved to the Commissioner of Police to proceed against any other police officers, if they are involved directly or indirectly, departmentally in accordance with law."

12.2. Thus, the law is settled that the Court has a power to direct the police to investigate and report, which power has been readily exercised by the Courts whenever they felt that the facts of the case so warranted.

12.3. Often, the facts are such on which a private party cannot be expected to itself investigate, gather the evidence and

place it before the Court. It needs a State agency exercising its statutory powers and with the State machinery at its command to investigate the matter, gather the evidence, and then place a report before the Court along with the evidence that they have been able to gather. Moreover, the offence(s) may be a stand-alone or as a carefully devised scheme. It may be by a single individual or it may be in conspiracy with others. There may be conspirators, abettors and aiders or those who assisted, who are not before the Court, or even their identity is not known.

12.4. Where the facts are such on which the Court (or a subordinate officer) can conduct the inquiry, it will be so conducted, but where the facts are such which call for tracing out other persons involved, or collection of other material, or simply investigation, it is best carried out by a State agency. The Court has not only the power but also a duty in such cases to exercise this power. However, it may be clarified that a party cannot ask for such direction as a matter of routine. It is only when the Court is prima facie satisfied that there seems to have been wrongdoing and it needs investigation by the State agency that such a direction would be given.

12.5. The present is a fit case where the investigation by the Police (Crime Branch) is necessary, otherwise many facts

will remain hidden and the others involved will escape punishment.

13. Does it constitute criminal contempt?

13.1. The filing of the petition containing false averments also constitutes criminal contempt of court under Section 2(c) of the Contempt of Courts Act 1971 which reads as under:

> "Section 2(c) - criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
>
> (i) scandalises, or tends to scandalise, or lowers or tends to lower the authority of, any court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
>
> (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

13.2. There is additionally the power with the High Court under Article 215 of the Constitution to punish for contempt.

13.3. Dr. Arun Mohan, learned amicus curiae has referred to the following decisions:-

13.3.1. In **Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757**, the Court found tampering of court records and production of false documents. The Court observed:

> "38 ... any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency

to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. ...”

Filing a false / wrong affidavit was thus treated as contempt of court.

13.3.2. In **Afzal v. State of Haryana (1996) 7 SCC 397**, the Hon’ble Supreme Court held as under:

“32 ... Section 2(b) defines “contempt of court” to mean any civil or criminal contempt. “Criminal contempt” defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. ... ... He first used fabricated counter-affidavit, forged by Krishan Kumar in the proceedings to obtain a favourable order. But when he perceived atmosphere adverse to him, he fabricated

further false evidence and sought to use an affidavit evidence to show that Krishan Kumar had forged his signature without his knowledge and filed the fabricated document. Thereby he further committed contempt of the judicial process. He has no regard for truth. From stage to stage, he committed contempt of court by making false statements. Being a responsible officer, he is required to make truthful statements before the Court, but he made obviously false statements. Thereby, he committed criminal contempt of judicial proceedings of this Court."

13.3.3. In **Rita Markandey v. Surjit Singh Arora (1996) 6 SCC 14**, it was observed:

"14 ... by filing false affidavits the respondent had not only made deliberate attempts to impede the administration of justice but succeeded in his attempts in delaying the delivery of possession. We, therefore, hold the respondent guilty of criminal contempt of court."

13.3.4. In **Murray & Co. v. Ashok Kumar Newatia (2000) 2 SCC 367**, it was held as under:-

"24 ... but there is no dispute as such on the factum of a false and fabricated statement finding its place in the affidavit. The statement cannot be termed to be a mere denial though reflected in the affidavit as such. Positive assertion of a fact in an affidavit known to be false cannot just be ignored. It is a deliberate act. The learned Advocate appearing for the respondent made a frantic bid to contend that the statement has been made without releasing the purport of the same. We are, however, not impressed with the submission and thus unable to record our concurrence therewith. It is not a mere denial of fact but a positive assertion and as such made with definite intent to pass off a falsity and if possible to gain advantage. This practice of having a false statement incorporated in an affidavit filed before a Court should always be deprecated and we do hereby record the

same. The fact that the deponent has in fact affirmed a false affidavit before this Court is rather serious in nature and thereby rendered himself guilty of contempt of this Court as noticed hereinbefore. This Court in our view, would be failing in its duties, if the matter in question is not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Law Courts would lose its efficacy to the litigant public. …"

13.3.5. In **Re: Bineet Kumar Singh (2001) 5 SCC 501**, the Hon'ble Supreme Court held as under:-

"6. …Criminal Contempt has been defined in Section 2(c) to mean interference with the administration of justice in any manner. A false or misleading or a wrong statement deliberately and wilfully made by party to the proceedings to obtain a favourable order would undoubtedly tantamount to interfere with the due course of judicial proceedings. When a person is found to have utilised an order of a Court which he or she knows to be incorrect for conferring benefit on persons who are not entitled to the same, the very utilisation of the fabricated order by the person concerned would be sufficient to hold him/her guilty of contempt, irrespective of the fact whether he or she himself is the author of fabrication..."

13.3.6. In **Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421**, the Hon'ble Supreme Court held:

"2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice..."

"7. There being no decision of this Court (or for that matter of any High Court) to our knowledge on this point, the same is required to be examined as a matter of first principle. Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he

violates court's order, but also to keep the stream of justice clear and pure ... ... so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples. ..."

"8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. ..."

"9. ... The word 'interfere', means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty ... ... obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do."

"14 ... if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. ..."

13.3.7. In **Rajeev Kumar v. State of U.P., 2006 (1) AWC 34**, the Court held:

"45. In view of the above, we are of the considered opinion that as the petitioners filed a forged document purporting to be an agreement reached on behalf of respondent

nos. 6 to 8 (Annex.2), and filed the petition totally on false averments in order to mislead the Court to obtain a favourable order, they are liable to be tried for committing criminal contempt and are further liable to be dealt with heavy hands."

13.3.8. In **Cyril D'souza v. Ponkra Mugera, 1998 (1) Karnataka Law Journal 659**, the Court held:

"6 ... Instead, this petition appears to be an attempt of the petitioner to procure some order from the Court on the basis of an agreement which prima facie appears to be an ante-dated document prepared after that date and it prima facie shows that a false document has been filed with false allegations ... ... Filing a false affidavit and filing forged document, as per law laid down by the Supreme Court is nothing but an act illegal, interfering with the proper administration of justice and it prima facie makes out a case for contempt.

7. In this view of the matter, I think this Court should take necessary steps and issue notice to the petitioner as well as respondent 1, to show-cause why this Court should not take action for contempt and punish them for having committed contempt of this Court."

13.3.9. In **Vijay Enterprises v. Gopinath Mahade Koli, 2006 (4) BOMCR 701**, the Court held:

"6 ... It is needless to state that justice delivery system has to be pure and should be such that the persons who are approaching the Courts and filing the proceedings must be afraid of using fabricated documents and also of making false statements on oath. We are a Court of Law sitting here to ascertain the truth and give justice in accordance the law to establish truth and not being misled by the advocates and the parties in the various directions so as to make it almost impossible to give effective and truthful justice to the litigants at large. In my opinion keeping in mind the aforesaid position it is high time that where the people have blatantly used the

fabricated document for the purpose of achieving the desired result even by misleading the Court and / or by making false statement and by using fabricated documents cannot escape the penalties. This is an unfortunate case before me where the persons who have used the certificate are illiterate. There are people who are behind them are powerful. But they are taking shelter behind the fact that the certificate has been brought to them by those illiterate persons. In spite of the aforesaid it has been established on the record not only the three persons have obtained the fabricated document but the builder and brokers and the lawyer have all conscientiously utilised the said certificate knowing fully well that the said certificate is fabricated. Firstly because all of them knew that there are two certificates produced one bearing No. 15 and another bearing No. 98. The builder, the brokers and the lawyer not being literate and having resources before entering into the agreement and filing the proceedings in the Court ought to have ascertained and verified the veracity of the said document. But admittedly they have not done so before using the said document in the Court proceedings. This is not a mere lapse but the fact is that the fabricated document has been consciously used by the said persons. In that light of the matter, I am of the opinion that each of the aforesaid persons are guilty of using fabricated document in the Court proceedings and are consequently guilty of contempt of court. I am also of the opinion that utilising the fabricated document in the court proceedings amounts to interference with the administration of justice and thus attracts the liability of contempt. In effect, it is the builder and the brokers who have been on investigation found to be the real persons in moving an application through an illiterate person Mahadu Lakhama Kakade to utilise the said certificate. Though the application was in the name of Mahadu Lakhma Kakade, in fact by virtue of the joint development agreement the real beneficiary was Manoj Kumar Devadiga as he was entitled to develop the

said property. I am of the view that this is a fit case where action must be taken …"

13.3.10. In **Gautam Chand Chopada v. Mahendra Kumar Pukhraj Kothari**, Criminal Revision Application Nos. 153 and 154 of 2008 and Criminal Application Nos. 154 and 155 of 2008 decided by the Bombay High Court on 22.07.2008, the Court held:

"34. The reading of the aforesaid letter written by Nandini Hospital under the signature of Dr. D.B. Goyal goes to show that the accused-applicant Mr. Gautam Chopada was never admitted in the said Hospital. This factual matrix goes to show that Mr. Gautam Chopada tried to mislead this Court by producing a false and fabricated document and thereby interfered with administration of justice. He also tried to play fraud on this Court."

"36. In the factual scenario drawn hereinabove, I am of the view that filing of the fabricated, bogus and false document before this Court, prima facie amounts to contempt of this Court since it had interfered with the administration of justice."

13.3.11. In **State of A.P. v. Mandalupu Ramaiah, 2003 (6) Andhra Law Digest 190**, the Court held:

"42. In this case also, the contemnor produced the alleged order of the Government dated 11.10.2002 which was found to be a fabricated one and the very fact itself will amount to Criminal Contempt of Court."

"52. Now coming to the quantum of punishment to be given we have thought over the problem with all the seriousness that is required in the matter and we feel that unless lawlessness which is all pervasive in the society is not put an end with an iron hand the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the contemnor is allowed to go scot free every law breaker violates the law with immunity and tenders apology in the

Court. After leaving the Court he will laugh at the system. Hence, deterrent action requires to uphold the majesty of law. Hence, we are not inclined to take any lenient view in the matter since undue sympathy or inadequate sentence to the accused would undermine public confidence in the efficacy of law and society.

53. Hence, we are of the view that the contemnor shall be given maximum punishment in exercise of the inherent jurisdiction vested in this Court under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act.

54. In the result, we convict the contemnor under Section 12 of the Contempt of Courts Act and sentence him to undergo simple imprisonment for a period of six months and to pay a fine of ₹ 2,000/-(Rupees two thousand only) within two weeks from the date of receipt of the order. ...”

13.3.12. In **Vidyadhar Govind Patwardhan v. Aravind Shreedhar Ghatpande, 1990 (3) Bombay High Court Reports 567**, the Court held:

“4 ... While granting interim, reliefs, Courts have to be careful and no cock and bull story entitles the author of that story to interim relief though in a sense even such stories may require to be listened to. The 1st respondent had committed contempt by the institution of the suit which is based on patently false averments and deserves to be dealt with therefor. ...”

13.4. Coming to the facts of this case, here too, filing a petition based on false averments and carrying it forward for six years prima facie amounts to a criminal contempt of this Court. However, formal issue of notice is deferred till the inquiry is carried out.

14. Directions to the Police

14.1. The material on the record and the facts as they appear are sufficient to return a finding as envisaged by clause (a) of Section 340 Cr.P.C. as also that criminal contempt of Court has been committed, and that it is expedient in the interests of justice to so proceed. However, the final orders are deferred, and as part of a preliminary inquiry, the Delhi Police (Crime Branch or the Economic Offences Wing, as the case may be) is directed to investigate the matter. For the purposes of investigation, the Police may register an appropriate case and then proceed to investigate according to law. The investigation and the report to this Court shall include the identity details and personal particulars of the petitioner; his address given in the Will as '1219, Katra Sat Narain, Chandani Chowk, Delhi-110006', his address(es) during the period 1st April, 1999 to 30th May, 1999, and 1st January, 2004 to 30th April, 2004 and thereafter till 31st December, 2007; the petitioner's contact or association with late Smt. Ram Piyari, resident of D-50, Greater Kailash Enclave-II, New Delhi; the petitioner's work, profession or activities during the period 1st April, 1999 to 30th May, 1999 and 1st January, 2004 to 30th April, 2004; bank accounts operated by the petitioner during the period 1st January, 2004 to 30th April, 2004; mobile telephone numbers being used by the petitioner during the period 1st April, 1999 to 30th

May, 1999, and 1st January, 2004 to 30th April, 2004; handwriting of letter dated 20th February, 2004 by the petitioner to DDA; execution of any: “Agreement to Sell” or “G.P.A.” as referred by the petitioner in the letter dated 20th February, 2004; handwriting of the words ‘11th May 1999’ on the alleged Will and the alleged MoU; who signed the alleged Will dated 11th May, 1999 as (first witness) Rajat Kumar, son of Shri Satya Prakash, resident of BH 23-C, Shalimar Bagh, Delhi 1100052, and also filed affidavit dated 12th April, 2004 in this Court; who appeared before the Notary for attestation of the said affidavit; who signed the alleged Will dated 11th May, 1999 as second witness ‘Ashok son of late Shri J.P. Sharma, resident of C-70 Jawahar Park, New Delhi 110062’; which other persons were involved in the making of the claim (on the basis of the alleged Will dated 11th May, 1999) before this Court; the connection of the witnesses with the petitioner whose names are given in the list of Witnesses dated 11th January, 2010 filed in this case; and generally, all other facts which will go to show the truth or otherwise of the claim placed before this Court by the said petitioner.

14.2. On completion of investigation, the Report shall not be filed before the Magistrate (per Section 173(2) Cr.P.C.) nor will the persons be forwarded to the Magistrate, but the Report shall be filed before this Court to enable it to

continue with the Preliminary Inquiry as contemplated by Section 340 Cr.P.C. and also under the inherent powers of this Court. The Police will also place before this Court copies of the charge-sheet and reports of the experts on the documents. The Police may file any interim Report, if they deem it necessary.

14.3. Upon receipt of the report from the Police, this Court will consider whether the petitioner, or other persons as the Report might indicate, are to be heard and to what extent before the making of the complaint. Initiation of contempt proceedings will also be considered at that stage.

15. A Clarification

15.1. Before closing, I make it clear that nothing stated in this order shall affect the pending proceedings before the Metropolitan Magistrate arising out of FIR No.95/04 dated 19th April, 2004, which shall be decided on its own merits.

15.2. The original documents listed in the order dated 18th May, 2010 shall, after certified photocopies have been prepared, be kept in a sealed cover and in safe custody. The certified copies shall be placed on the record of the main petition at the same place where the originals (now being placed in a sealed cover) were filed, and be also given to the Police. The investigation and the inquiry shall proceed on the basis of the certified copies. The Police will be free to inspect the court file and take photographs

and photocopies. The Joint Registrar may pass orders for opening and closing the sealed cover and allowing inspection to the Police Investigator or any other person from the forensic laboratory, including taking micro photographs.

15.3. The original documents shall be retained by the High Court in safe custody in such a manner so that the envelope can be produced before the trial court when that Court has occasion to record evidence in pursuance of the complaint. Until then, the investigation, the inquiry and even the trial court shall proceed on the basis of the certified photocopies.

15.4. I express appreciation of this Court for the laborious work done by Dr. Arun Mohan, Sr. Advocate, as amicus curiae.

15.5. Cr.Misc.(Main)No.6721/2010 be listed before appropriate Bench for further orders on 21st December, 2010.

15.6 Copy of this order along with certified copies of the documents mentioned in para 15.2 above be sent to the Delhi Police through its Commissioner for compliance. Let the report be filed one week before the next date.

J.R. MIDHA, J

NOVEMBER 18, 2010