A

RE: SUO MOTO PROCEEDINGS AGAINST MR. R. KARUPPAN, ADVOCATE

MAY 12, 2001

[K.T. THOMAS, R.P. SETHI AND B.N. AGRAWAL, JJ.]

B

Indian Penal Code, 1860: Chapter XI—Sections 191 & 193.

Perjury—Public justice-offences relating to giving false evidence—Duty of court to curb.

C

Writ—Quo warranto—Raising dispute of age of Hon'ble the Chief Justice of India—Affidavit in support of Writ Petition—Making false statement in it knowing that it is wrong—Held constitutes offence of giving false evidence under Section 191—Direction for lodging complaint against the petitioner issued.

D

Affidavit—It is evidence within the meaning of Section 191 IPC—Swearing in a false affidavit—Held constitutes offence of perjury.

The Respondent filed a Petition before this Court praying for issuance of writ of Quo warranto against the Hon'ble Chief Justice of India. In this E **petition he had raised the question of the alleged disputed age of the Hon'ble Chief Justice of India. Though he fully knew that the age of Hon'ble the Chief Justice of India had been determined by the President of India under Article 217 of the Constitution yet in his affidavit filed in support of the averments made in the Writ Petition he made a false statement that the age of Hon'ble** F **the Chief Justice of India has not been so determined by the President.**

Disposing of the suo motu proceedings initiated against the respondent, the Court

HELD : 1. The Respondent is *prima facie* guilty of offence of perjury. Justice dispensation system would be wrecked if statutory restrictions are G **not imposed upon the litigants, who attempt to mislead the court by filing and relying upon the false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court** H **cannot be permitted to be sullied by a party on frivolous, vexatious or**

insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy. [756-B-D] A

2. The offences incorporated under Chapter XI of I.P.C. are based upon recognition of the decline of moral values and erosion of sanctity of oath. Unscrupulous litigants are found daily reporting to utter Blatant falsehood in the courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming to the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, concededly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal Code. If the system is to survive, effective action is the need of the time. The present case is no exception to the general practice being followed by many of the litigants in the country. [758-A-C] B C D

3. The respondent herein, in his affidavit filed in support of the writ petition (for the purposes of being used in the judicial proceedings, i.e. writ petition), has wrongly made a statement that the age of Hon'ble the Chief Justice of India has not been determined by the President of India in terms of Article 217 of the Constitution. Such a statement supported by an affidavit of the respondent was known to him to be false which he believed to be false and/or atleast did not believe to be true. It is not disputed that an affidavit is evidence within the meaning of section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury punishable under section 193 IPC. The respondent herein being legally bound by an oath to state the truth in his affidavit accompanying the petition is *prima facie* held to have made a false statement which constitutes an offence of giving false evidence as defined under Section 191 IPC, punishable under Section 193 IPC. The Registrar General of this Court is empowered 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. [758-D-G] E F G H

A *Standford H. Kadish in "Enchclopedia of Crime and Justice"*, **(Vol. 3), referred to.**

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 77 of 2001.

(Under Article 32 of the Constitution of India).

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Mr. R. Karuppan petitioner in person.

The Judgment of the Court was delivered by

SETHI, J. Proclaiming to be its President, the respondent Sh. R. Karuppan C filed a Write Petition in the name of Madras High Court Advocate Association praying for issuance of writ of Quo Warranto against the Hon'ble Chief Justice of India. He also prayed this Court to determine the age of the first respondent in the writ petition as 1.11.1934 and further that the first respondent had attained the age of superannuation on 31st October, 1999 and had ceased to hold the office since then. In support of the averments made in the writ D petition Shri R. Karuppan (hereinafter referred to as "the respondent") also filed an affidavit.

Before the matter was taken up for admission, the Registry of this Court received a petition signed by a number of advocates claiming to be the members of the said Association and alleging that the Association had not E authorised the respondent to file any writ petition in the name of the Association. Ignoring the disputes stated to be existing amongst the members of the Advocates Association, we proceeded to consider the writ petition on the assumption that the petition was either filed on behalf of the Association or by the respondent on his own in his individual capacity as well, particularly F when the prayer made was for the issuance of a writ of quo warranto. In the said petition, the respondent had raised the question of the alleged disputed age of the Hon'ble Chief Justice of India.

The writ petition was dismissed *in limine* observing :

G "Now Mr. Karuppan made averments in the present writ petition that 'the petitioner submits that the dispute which has arisen as early as in 1991, undetermined by the President and the operation of Article 217 is still operative and within the jurisdiction of the President.' He further averred that the 'the petitioner submits that the conduct of the President of India, ever since the controversy arose till date only H proves that the dispute has never been determined by him or his

predecessor'. He further averred that the press note released by the Government of India to the Press Information Bureau on 23rd October, 2000, reached he notice of the petitioner only after 23.11.2000. In the context of this statement he concealed the fact that copy of the said press note was included in the files of the contempt proceedings initiated against S.K. Sundaram as early as 7.11.2000. Mr. Karuppan admitted before us that he himself appeared in this Court as Advocate for S.K. Sundaram on 20.11.2000." A B

Notice was issued to the respondent requiring him to show cause why prosecution proceedings shall not be initiated against him for offence under Section 193 of the Indian Penal Code. C

During the pendency of these proceedings 600 and odd persons, claiming to be the members of the Advocates Association submitted in writing that the Association had not passed any Resolution regarding the age of the CJI and that Mr. Karuppan was not authorised to file any case representing the Association. As the notice was issued against the respondent in his individual capacity, we granted him time to file reply to the notice, if he so desired. In reply, the respondent has reiterated the submissions made earlier in the writ petition filed by him. It is submitted that he believed *bonafide* that the President of India had not determined the age of the Chief Justice of India and even if any determination has been made under Article 217 of the Constitution, the same is not conclusive for all times. It is contended that the respondent came to know of the Press Information Bureau release, informing that the age of the Chief Justice of India stood determined by the President of India as early as on 16.5.1991 only in December, 2000. The respondent has submitted that he is not guilty of offence of perjury. D E F

We have heard the respondent who has appeared in person and examined the whole record.

Proved or admitted facts of the case are that one S.K. Sundaram, Advocate sent a telegraphic communication to Dr. Justice A.S. Anand, the Hon'ble Chief Justice of India on 3.11.2000 which read as under : G

"I call upon Shriman Dr. A.S. Anand Hon'ble Chief Justice of India to step down from the Constitutional Office of Chief Justice of India *forthwith*, failing which I will be constrained to move the criminal court for offences under Sections 429, 406, 471 Indian Penal Code for falsification of your age, without prejudice to the right to file a writ H

A of quo-warranto against you and for a direction to deposit a sum of Rs. 3 crores for usurping to the office of Chief Justice of India even after attaining the age of superannuation."

The said S.K. Sundaram also filed a criminal complaint before the Chief Judicial Magistrate, Chennai against the CJI. On a note put up by the Registrar B General regarding the said telegraphic communication, this Court vide order dated 7.11.2000 found that *prima facie* the said S.K. Sundaram was guilty of contempt of court. A notice was issued to him in reply to which he filed his objections. He was represented by the respondent herein. During the pendency of the contempt proceedings this Court was informed that the President of C India, in consultation with the Chief Justice of India, decided the question relating to the age of Dr. Justice A.S. Anand as early as on 16.5.1991 holding that the date of birth of Dr. Anand was 1.11.1936. The Court was further informed that for arriving at the conclusion of Dr. Justice Anand's age being 1.11.1936, the President had considered the following documents :

D "(1) The certificate of matriculate examination dated 1.9.1951 issued by the University of J&K in respect of Adarsh Sein Anand (the present CJI) which showed explicitly that his date of birth was 1.11.1936. (2) The passport issued to Adrash Sein Anand (the present CJI) on 3.8.1960, also explicitly showed that his date of birth was 1.11.1936. (3) the report prepared by the then CJI in respect of the age of Dr. Justice E A.S. Anand, who was then a Judge of the High Court."

The President's Secretariat issued an order way back on 16.5.1991 which read as under :

"The petition from Shri S.K. Sundaram, advocate, Madras, to the F President on behalf of his client Shrimati Kasturi Radhakrishnana, Chairperson, Madras Citizens Progressive Council, Madras and the records have been perused and the matter considered by the President, in concultation with the Chief Justice of India. The President has come to the conclusion that the petitions of Shri S.K. Sundaram, Advocate, Madras, in respect of the age of Dr. Justice A.S. Anand of G the Madras High Court, be rejected and that no inquiry as stipulated under Article 217(3) of the Constitution need be undertaken."

While disposing of the contempt petition this Court held :

"We have absolutely no doubt that when the President of India H resolved the question of age of Dr. Justice A.S. Anand in 1991 when

> he was the Judge of the High Court, that too pursuant to the contemner himself raking up the question then, he should have, as a dutiful citizen of India, realised that the said decision attained finality so far as the question of the age of Dr. Justice A.S. Anand is concerned. Such decision was based on very weighty and formidable materials available to the President of India then."

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The Court found that the contemnor was guilty of gross criminal contempt of court and accordingly convicted him. He was sentenced to undergo imprisonment for six months, the operation of which was suspended for a period of one month which was later extended upon furnishing of an undertaking by the contemner. All along during the contempt proceedings, the respondent herein was present in the Court and fully knew that the age of Dr. Justice A.S. Anand had been determined by the President of India on 16.5.1991 in exercise of his powers under Article 217 of the Constitution.

C

Despite the knowledge of the determination of the age of Dr. Justice A.S. Anand by the President of India and the finding of this Court, the respondent herein filed the present writ petition accompanied by his personal affidavit wherein he stated :

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> "The petitioner submits that after the passing of the above said resolution, it came to its notice that on October 23, 2000 the Government of India had released a press note to the Press Information Bureau. Therein it had been stated that on 16.5.1991 the President had determined the age of the 1st respondent and that Sundaram's attempt to reopen the said issue in 1991 was rejected. Significantly this press report was not published in the dailies in Tamil Nadu. This renders the statement dubious and no credence could be attached to this communication."

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He further submitted :

> "The petitioner submits that the dispute which had arisen as early as in 1991, undetermined by the President and the operation of Article 217 is still operative and within the jurisdiction of the President."

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The respondent submitted before us that the averments made by him in his writ petition were correct and that he was not guilty of perjury. Alternatively he submitted that he had no knowledge of the *passing of the* order by the President of India in 1991, prior to 2nd December, 2000.

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A Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who B attempt to mislead the court by filing and relying upon the false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be C sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.

D At common law courts took action against a person who was shown to have made a statement, material in the proceedings, which he knew to be false or did not believe to be true. The offence committed by him is known as perjury. Dealing with the history of the offence, Standford H. Kadish in "Encyclopedia of Crime and Justice" (Vol. 3) observed :

E "History of the offence

Before witnesses had any formal role in trials, there was no need for a perjury law. In the Middle Age, when the English common law was developing, trial by battle was used to test a sworn accusation. Similarly, for the sworn denial of a serious charge based on mere F suspicion, an ordeal administered by a priest was the predominant mode of trial until it was abolished in 1215 as superstitious. Finally, at least until the Assize of Clarendon (1166), less serious accusations could be successfully answered by "compurgation", that is, by obtaining a sufficient number of "oath helpers" to support the G defendant's credibility.

Trials in the modern sense began to develop only in the thirteenth century. Little is reliably known about the conduct of jury trials prior to the sixteenth century, but in civil cases, it seems that genuine witnesses were permitted to give their accounts, although they could H not be compelled to appear. In early criminal cases, the jury seems

always to have included some who, aware of the commission of a crime in their community brought the suspect before a judge. Those witnesses who did attend these early trials were perceived as part of the jury and retired with them to deliberate, often to make their disclosures in secret. It was the verdict, not the testimony, that was perceived as either true or false; the only remedy for falsehood remotely akin to a perjury prosecution was a seldom-invoked procedure called "the writ of attaint," created in 1202 and not abolished formally until 1825. Though attaint, the jury would be punished for a 'false' verdict and the verdict itself overturned.

Witness first testified under oath in criminal cases on behalf of the Crown in the sixteenth century. No witnesses for the defense were permitted until the mid-seventeenth century, since they would have been witnesses against the Crown, and not until 1702 were defense witnesses permitted to be sworn (1 Anne, St. 2, c.9, s.3 (1701) (England) (repealed)). By the late seventeenth century the jury had lost all its testimonial functions, and witnesses thus became the sole means of bringing facts to the judge's and jury's attention.

Since the early common law had no established mechanism for dealing with false swearing by witnesses, the Court of Start Chamber assumed for itself the power to punish perjury. This authority was confirmed by statute in 1487 (Star Chamber Act, 3 Hen. 5, c. 1 (1487) (England) (repealed). The first detailed statute against false swearing was enacted in 1562 (5 Eliz. 1, c. 9 (1562) (England) (Repealed)). When the Star Chamber was abolished in 1640, its judicially defined offense of perjury passed into English common law, reaching any cases of false testimony not covered by the terms of the statute.

Edward Coke, whose views strongly influenced early American law, wrote in his Third Institute, published in 1641, that perjury was committed when, after a 'lawful oath' was administered in a 'judicial proceeding', a person swore 'absolutely and falsely' concerned a point 'material' to the issue in question (*164). In this form, the law remained unchanged into the twentieth century."

In India, law relating to the offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal Code, incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based upon

A recognition of the decline of moral values and erosion of sanctity of oath. Unscrupulous litigants are found daily resorting to utter blatant falsehood in the courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is
B required to be taken for preventing the evil of perjury, conceitedly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal Code. If the system is
C to survive, effective action is the need of the time. The present case is no exception to the general practice being followed by many of the litigants in the country.

Keeping in view the facts and circumstances of this case, the record of proceedings in Suo Motu Contempt Petition (Criminal) No. 5 of 2000 and Writ
D Petition No. 77 of 2001, we are *prima facie* satisfied that the respondent herein, in his affidavit filed in support of the writ petition (for the purposes of being used in the judicial proceedings, i.e. writ petition), has wrongly made a statement that the age of Dr. Justice A.S. Anand has not been determined by the President of India in terms of Article 217 of the constitution. We are
E satisfied that such a statement supported by an affidavit of the respondent was known to whom to be false which he believed to be false and/or atleast did not believe to be true. It is not disputed that an affidavit is evidence within the meaning of Section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury punishable under Section 193 IPC. The respondent herein, being legally bound by an oath to state the truth
F in his affidavit accompanying the petition is *prima facie* held to have made a false statement which constitutes an offence of giving false evidence as defined under Section 191 IPC, punishable under Section 193 IPC.

With the object of eradicating the evil of perjury, we empower the
G 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.

H T.N.A. Suo Motu Petition disposed of.