

RAM DHAN

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v.

STATE OF U.P. AND ANR.

(Special Leave Petition (Crl.) No. 335 of 2012)

APRIL 10, 2012

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**[DR. B.S. CHAUHAN & JAGDISH SINGH KHEHAR, JJ.]**

*Code of Criminal Procedure, 1973 – ss. 239, 195, 340, 482 – Petitioner had filed complaint against respondent No.2 and other accused alleging that they had kidnapped the petitioner's son – Respondent No.2 stood convicted u/s. 364 r/w s.149 of IPC – Petitioner's son came back home and disclosed that he had not been kidnapped rather he had gone out voluntarily – Respondent No.2 alleging that he was wrongly enroped and convicted, lodged FIR against the petitioner, whereupon chargesheet was filed against the petitioner u/ss. 177, 181, 182, 195 of IPC – Petitioner filed application u/s.239 Cr.P.C. contending that FIR at the behest of respondent No.2 was not maintainable in view of the provisions of s.195 r/w s.340 Cr.P.C – Application rejected by Magistrate – Order upheld by High Court in revision – Held: The petitioner did not disclose anywhere in the instant SLP that he had approached the High Court u/s.482 Cr.P.C. for quashing of the charge-sheet, which stood rejected and the said order attained finality having not been challenged any further – Thus, he was guilty of suppressing the material fact which makes the petition liable to be dismissed only on this sole ground – Filing of successive petition before the court amounts to abuse of the process of the court – Considering the composite nature of the offences, no cogent reason for interference by Supreme Court – Penal Code, 1860 – ss. 364, 149, 177, 181, 182, 195.*

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**The petitioner filed complaint against respondent No.2 and other accused alleging that they had kidnapped**

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A the petitioner's son. Charge-sheet was filed and  
 respondent No.2 and other accused were convicted u/s.  
 364 r/w s.149 of IPC and sentenced accordingly. The  
 petitioner's son came back home and disclosed to the  
 public as well as to the police that he had not been  
 B kidnapped rather he had gone out voluntarily.

Respondent No.2 alleging that he had wrongly been  
 enroped, convicted, and sentenced lodged FIR against  
 the petitioner, whereupon chargesheet was filed against  
 the petitioner u/ss. 177, 181, 182, 195 of IPC. The  
 C petitioner filed application under Section 239 Cr.P.C.  
 contending that the FIR at the behest of the respondent  
 No.2 was not maintainable in view of the provisions of  
 Section 195 read with Section 340 Cr.P.C. The Magistrate  
 D rejected the application. The petitioner filed revision  
 before the High Court which was dismissed.

In the present petition, it was contended on behalf of  
 the petitioner that the prosecution of the petitioner was  
 illegal and liable to be quashed in view of the provisions  
 E of Sections 195 and 340 Cr.P.C, for the reason that as the  
 offence has been committed in the court, such a drastic  
 action can be taken against the petitioner only on a  
 complaint lodged by the court and not by the convict/  
 respondent No.2.

F Dismissing the petition, the Court

HELD:1.1. The petitioner had suppressed the material  
 fact and has not disclosed anywhere in this petition that  
 he had approached the High Court under Section 482  
 G Cr.P.C. for quashing of the chargesheet, which stood  
 rejected vide order dated 3.2.2010 and the said order  
 attained finality having not been challenged any further.  
 Thus, he is guilty of suppressing the material fact which  
 makes the petition liable to be dismissed only on this sole  
 H ground. It was necessary for the petitioner to disclose

such a relevant fact. The Magistrate while deciding the application under Section 239 Cr.P.C. has made reference to the said order of the High Court dated 3.2.2010. [Para 6] [1064-C-D]

1.2. The courts below may be right to the extent that question of discharge under Section 239 Cr.P.C. was totally unwarranted in view of the order passed by the High Court on 3.2.2010. For the reasons best known to the petitioner, neither the copy of the chargesheet nor of the order dated 3.2.2010 passed by the High Court have been placed on record. [Para 7] [1064-G]

1.3. The charge-sheet has been filed under Sections 177, 181, 182, 195 and 420 IPC. Section 177 IPC deals with an offence furnishing false information. Section 181 IPC deals with false statement on oath. Section 182 IPC deals with false information with intent to cause public servant to use his lawful power to the injury of another person. Section 195 IPC deals with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards. At least the provisions of Sections 177 and 182 deal with the cases totally outside the court. Therefore, the question of attracting the provisions of Sections 195 and 340 Cr.P.C. does not arise. Section 195 IPC makes fabrication of false evidence punishable. It is not necessary that fabrication of false evidence takes place only inside the court as it can also be fabricated outside the court though has been used in the court. Therefore, it may also not attract the provisions of Section 195 Cr.P.C. [Paras 8, 9] [1064-H; 1065-A-D]

1.4. The petitioner is guilty of suppressing the material fact. Admittedly, filing of successive petition before the court amounts to abuse of the process of the court. Thus, this Court is not inclined to examine the issue any further. Considering the composite nature of

A the offences, there is no cogent reason to interfere with the impugned order. [Para 10] [1065-F-G]

*Sachida Nand Singh and Anr. v. State of Bihar and Anr.* (1998) 2 SCC 493: 1998 (1) SCR 492 – relied on.

B *Abdul Rehman and Ors. v. K.M.Anees-ul-Haq JT* (2011) 13 SC 271 and *Balasubramaniam v. State of Anr.* (2002) 7 SCC 649 – referred to.

**Case Law Reference:**

C	1998 (1) SCR 492	relied on	Para 9
	JT (2011) 13 SC 271	referred to	Para 10
	(2002) 7 SCC 649	referred to	Para 10

D CRIMINAL APPELLATE JURISDICTION : SLP (Crl.) No. 335 of 2012.

From the Judgment & Order dated 14.11.2011 of the High Court of Judicature at Allahabad in Criminal Revision No. 4259 of 2011.

E Ashok Kumar Sharma, Avnish Kumar Jain for the Petitioner.

The Judgment of the Court was delivered by

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

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H 2. Facts and circumstances giving rise to this petition are that present petitioner Ram Dhan lodged an FIR dated 4.6.1995 alleging that his son Dinesh had disappeared and,

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

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3. Being aggrieved, Balraj, respondent No.2 and others preferred an appeal before the High Court of Allahabad which was admitted and the respondent No.2 and other convicts were granted bail by the High Court. The petitioner's son for whose kidnapping Balraj, respondent No.2 and others had been convicted, came back home and disclosed to the public as well as to the police that he had not been kidnapped rather had voluntarily gone to Punjab, where he worked for several years. Balraj, respondent No.2 realised that he had been wrongly enroped and convicted in the offence by the petitioner. Thus, he filed an FIR on 29.8.2009 under Sections 177, 181, 182, 195 and 420 IPC. After investigating the case, chargesheet was filed against the petitioner and others under Sections 177, 181, 182 and 195 IPC on 23.11.2009.

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

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5. Shri Ashok Kumar Sharma, learned counsel appearing for the petitioner, has vehemently contended that the prosecution of the petitioner is illegal and liable to be quashed

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A in view of the provisions of Sections 195 and 340 Cr.P.C, for the reason that as the offence has been committed in the court, such a drastic action can be taken against the petitioner only on a complaint lodged by the court and not by the convict/ respondent No.2.

B 6. We find no merit in the petition. After investigation, chargesheet has been filed against the petitioner and others under Sections 177, 181, 182 and 195 IPC. The petitioner has suppressed the material fact and has not disclosed anywhere in this petition that he had approached the High Court under  
 C Section 482 Cr.P.C. for quashing of the chargesheet, which stood rejected vide order dated 3.2.2010 and the said order attained finality as has not been challenged any further. Thus, he is guilty of suppressing the material fact which makes the petition liable to be dismissed only on this sole ground. We are  
 D of the view that it was necessary for the petitioner to disclose such a relevant fact. The learned Chief Judicial Magistrate while deciding the application under Section 239 Cr.P.C. has made reference to the said order of the High Court dated 3.2.2010. We had been deprived of the opportunity to scrutinise the  
 E chargesheet as well as the order of the High Court dated 3.2.2010 and to ascertain as to whether the grievance of the petitioner in respect of the application of the provisions of Section 195 read with Section 340 Cr.P.C. had been raised in that petition and as to whether even if such plea has not been  
 F taken whether the petitioner can be permitted to raise such plea subsequently.

7. In such a fact-situation, the courts below may be right to the extent that question of discharge under Section 239 Cr.P.C. was totally unwarranted in view of the order passed by  
 G the High Court on 3.2.2010. For the reasons best known to the petitioner, neither the copy of the chargesheet nor of the order dated 3.2.2010 passed by the High Court have been placed on record.

H 8. Be that as it may, the chargesheet has been filed under

Sections 177, 181, 182, 195 and 420 IPC. Section 177 IPC deals with an offence furnishing false information. Section 181 IPC deals with false statement on oath. Section 182 IPC deals with false information with intent to cause public servant to use his lawful power to the injury of another person. Section 195 IPC deals with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment. A  
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9. At least the provisions of Sections 177 and 182 deal with the cases totally outside the court. Therefore, the question of attracting the provisions of Sections 195 and 340 Cr.P.C. does not arise. Section 195 IPC makes fabrication of false evidence punishable. It is not necessary that fabrication of false evidence takes place only inside the court as it can also be fabricated outside the court though has been used in the court. Therefore, it may also not attract the provisions of Section 195 Cr.P.C. (See: *Sachida Nand Singh & Anr. v. State of Bihar & Anr.*, (1998) 2 SCC 493). C  
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10. Mr. Ashok Kumar Sharma, learned counsel appearing for the petitioner, has placed a very heavy reliance on the judgment of this Court in *Abdul Rehman & Ors. v. K.M. Anees-ul-Haq*, JT (2011) 13 SC 271. However, it is evident from the judgment relied upon that the judgment in *Sachida Nand Singh* (Supra), which is of a larger Bench, has not been brought to the notice of the court. (See also: *Balasubramaniam v. State & Anr.*, (2002) 7 SCC 649). E  
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The petitioner is guilty of suppressing the material fact. Admittedly, filing of successive petition before the court amounts to abuse of the process of the court. Thus, we are not inclined to examine the issue any further. G

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

The petition lacks merit and is, accordingly, dismissed.

B.B.B. Special Leave Petition dismissed. H