

Karnataka High Court

Arun Kumar Agarwal vs Radha Arun on 15 March, 2001

Equivalent citations: 2001 CriLJ 3561

Author: M Anwar

Bench: M Anwar

JUDGMENT

Mohammed Anwar, J.

1. By the above appeal, the appellant herein intends to challenge the Interim Order dated 30-1-2001 of the Family Court, Bangalore city made in G & WC No. 3/2000, rejecting appellant's application i.e., I.A. No. 13 that was made therein by him praying that the learned Judge of the Family Court may be pleased to take action against respondent herein for her prosecution for the offences under Sections 191 and 193 of IPC for the reasons stated in his accompanying affidavit.

2. The facts appearing from record in this appeal may be stated as under :-

The parties hereto are husband and wife. They are hereinafter referred to as such. Their marriage was stated to have taken place somewhere in 1983. It was a love marriage. At that point of time both parties were appeared to be in a some what well off situation. Both are graduates. Husband is a graduate of Bihar University. Whereas, the wife prosecuted her studies from Delhi University. She has done her post-graduation from that University. After her studies she was employed as an IRS Officer in Customs Department. Presently, she is working as Joint Commissioner of Customs at Bangalore. After marriage, two children were begotten to them. They are Kum. Chinmayi, aged about 15 years and Master Chidanand, aged about 13 years. The wife's parents are from Bangalore. Respondent hails from Bihar State. Husband was appointed in a Public Sector Bank and he has been terminated from service by the said Bank. Thereafter, he was engaged in investing money in shares and other investments. Presently, he is not shown to have been employed in any regular job or service in any concern or sector.

3. In December, 1999, the wife filed a petition under Sections 7 and 8 of the Guardians and Wards Act (the "Act" for short) in G & WC No. 1/1999 in the Family Court at Bangalore praying for a decree against her husband; declaring that, her husband is unfit to be a natural guardian of their said minor children and further declaring that, the wife is the fit and proper person to be their guardian and to appoint her as the guardian of said minor children. After furnishing necessary details of their marriage and the required information at paragraphs Nos. 1 to 7 of the petition, it is averred by the wife at paragraph 8 thereof that her marriage with her husband became a non-starter from the beginning. Two days prior to their wedding it was discovered by her that her husband was living with another woman named Sita Tiwari and she was about to give up the idea of marrying him. But she was assured by him that he would correct himself and she did not bother about his affair with the said Sita Tiwari; After marriage their marital life was normal for a couple of years, although there had been many ups and downs in their married life on account of respondent's attitude and behaviour,

4. At para 11 of the petition it was averred that her husband was a man of suspicious nature and he is an emotional person. He had no true love for her and affection for her children. In para 11 of the petition it is further stated that her husband having been removed from the said job in the said Public Sector Bank in the year 1989-90, he is unemployed since then. He keeps himself preoccupied by filing public interest litigations and he is in the habit of blackmailing people. He had obtained his wife's signature in blank papers by force and coercion with some ulterior motive. He is an eccentric person with an unsound mind and in fact a streak of insanity runs in his family. It is further averred at para 12 of the petition that the petitioner-wife herself has been running the household from the very beginning and maintaining her children. She does not have the correct idea of the financial status of her husband. At paragraphs 13 and 14 of the petition it is stated that the petitioner-wife has been posted in Bangalore since 1989. Her said minor daughter is studying in 11th standard and the said minor son is in 8th standard at the Frank Anthony Public School, Bangalore. They are doing well

in their education and other extra-curricular activities. She has taken house near her parents' home in Bangalore, so that her said children would be looked after well. Last year, it was found by the petitioner-wife that respondent has revived his relationship with the said girl Sita Tiwari, whom he had divorced and for which divorce, the petitioner herself had contributed to provide the dowry amount. Although, the said Sita Tiwari is now a divorcee, her husband has developed illicit affair with her and he is now residing in Delhi for the last one year and probably living with the said woman Sita Tiwari in Mayur Vihar flat at Delhi.

5. Further, the petition allegations are that the petitioner's husband is demanding the custody of her said minor children with a view to blackmail her. She is not willing to part with her children. Nor the children have any desire or willing to live with him. But, he is bent upon taking them to his custody by fair or foul means. The wife being well placed in life with a high official position in Customs Department, she is quite capable and in a far better position to cater to the educational and other requirements of her children in the best possible manner and for their healthy upbringing and development. On the contrary, the respondent is not in a position to look after the said children and take care of their healthy development.

6. The wife had also made an interim application i.e., LA. No. 3, under Section 12 of the Act read with OR. 39, Rules 1 and 2 of C.P.C. for temporary injunction against her husband restraining him from removing the said children from her custody during pendency of her petition. On I.A. No. 3, the Court below passed an ex parte order of temporary injunction dated 27-12-1999 against him.

7. After the husband put in his appearance in the said G & WC No. 1/1999, through his counsel, his separate Statements of Objections against the petition and said LA. No. 3 were filed, specifically denying the allegations made against him therein. The substance of the case pleaded in the petition was reiterated by the wife in her affidavit filed in support of the said LA. No. 3.

8. It was husband's case he is in an eminently better position to maintain the children and is entitled to their custody. Therefore, he made an application to vacate the said ex parte order contending that, that order had been obtained by the wife on the basis of baseless averments and false allegations made against him. At the same time, an application i.e., LA. No. 13, styled as filed under Sections 191 and 193 of IPC was also made by him praying that the Court below may be pleased to initiate perjury proceedings against the wife for tendering intentionally false evidence on LA. No. 3 by way of her affidavit.

9. LA. No. 13, as well, was resisted by the wife by filing the statements of objections thereto.

10. The Court below by its considered order dated 30-1-2001 rejected the husband's application which was made praying to vacate the said ex parte order of temporary injunction dated 27-12-1999 and confirmed the same.

11. As regards husband's LA. No. 13, the learned Judge of Family Court rejected the same by his impugned order dated 30-1-2000 observing to the fact that it is a premature one and that at the present stage of the proceeding he cannot jump to the conclusion that husband has made out a case against his wife to hold that she has given false evidence in the case. It is further observed by the learned trial Judge that if LA. 13 is allowed at this stage, it is as good as giving final verdict on the merits of the petition.

12. Mr. Kumar, learned Counsel for appellant, instead of proceeding with the argument in the matter of admission of appeal, he filed a memo of retirement for the appellant, submitting that appellant himself intends to appear in person and submit his argument. Accordingly, the appellant was permitted to address the Court who argued at length fairly well assailing the impugned order dated 30-1-2001 of the Court below. Proposing to place reliance on several decisions, he maintained that the Court below was not legally justified in rejecting his LA. No. 13 and that it has committed a grave error in not allowing the same and lodging a complaint under Section 340, Cr.P.C. for perjury under Section 193 of I.P.C. against his wife.

13. In his attempt to substantiate his contention, appellant took the Court through I.A. No. 13 and his affidavit filed in support thereof, which are produced at pages 59 to 69 herein and his list of documents filed on 3-3-2001. Particularly, Court's attention was drawn by him to para 8 of his affidavit, where he has categorically referred to the so-called false statements of his wife made in her petition and affidavit filed in support of LA. No. 3, on the basis of which, she obtained the said ex parte order of temporary injunction dated 27-12-1999. Whole of this paragraph 8 is extracted below :-

I submit that the following averments of the petitioner need to be specifically brought to the notice of the Hon'ble Court as being false and which were made to obtain ex parte order from the Hon'ble Court. There is documentary evidence (as well as witnesses) to prove that the petitioner's statement was knowingly false as I could not be living in Delhi while residing at the marital home in Bangalore. These are :

Para 5 of the IAI. "The respondent has now been demanding that I should give him divorce as he wants to marry his girl friend one Sita Tiwari. He is already living with her from the past several months.

It was this statement of the petition that the Court believed in while passing the interim order granting the petitioner the custody of the children, as can be seen from the marking in the margin of the I.A. 1 made by the Hon'ble Court.

Para 8 of IA III the petitioner states "Added to this, he has an affair with this other woman

Para 14 of the petition the petitioner states "Last year the petitioner discovered that the respondent had revived his relationship with his girl friend....

In para 15 of the petition the petitioner states "The respondent has now been residing in Delhi from the past one year on a regular basis. The petitioner believe's that the respondent has been living with this woman in Mayur Vihar Flat, but has been maintaining a separate address for mailing purpose only.

In para 18 of the petition the petitioner has stated "The respondent is staying in Delhi and has been living with his girl friend and the house lacks an atmosphere, congenial for the children and the values and attitudes are detrimental to the welfare of the children....

14. It was vehemently argued by the appellant that he is a person of high standing in the society, he having filed even 2 or 3 public interest litigations in the High Courts of Karnataka and Delhi expousing the public cause involving the burning issues of the "Kick backs" in the Cogentrix Project in Karnataka and the appointment of the Chairman of "SEBI". As such he is more conscious of his responsibility as an affectionate father towards his children. In that view of the matter, the serious allegations made by his wife, which are listed at para 8 of his affidavit, casting serious aspersion on his character and conduct are totally false allegations and they amount to offence of perjury. Therefore, the material on Court makes out a strong prima facie case at this juncture itself of the proceeding and in that view of the matter, the learned trial Judge ought to Cave straightway proceeded to hold an enquiry under Section 340, Cr.P.C. and to file a complaint for the offence under Section 193, IPC against his wife.

15. In support of this contention, reliance was sought to be drawn by him from the following decisions :

1. Jagat Bandhu Chakravarthy v. The State AIR 1955 NUC (Cal) 2906.

2. Emperor v. Padam Singh AIR 1930 All 490.

3. Baban Singh v. Jagdish Singh .

4. K. Karunakaran v. T. V. Eachara Warriar .

5. Kailashnath v. Harishchandra AIR 1953 MadhyaBharat 13.

6. Ma Pu Mai v. Ko Sit Tin AIR 1924 Rangoon 375.

7. Dhananjay Sharma v. State of Haryana .

16. It is necessary to bear in view, the relevant provisions under Sections 340, Cr.P.C. and 191 and 193 of IPC, for just and proper appreciation of the husband's prayer made in his LA. No. 13 and of the impugned order of the Court below passed thereon. The material portion of Section 340, Cr.P.C. is extracted below:-

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) xxxxxx; e) xxxxxx; (2) xxxxxxxx; (3) xxxxxxxx; (4) xxxxxxxx.

17. The relevant portion of Section 195 of Cr.P.C. deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

18. The relevant portion of Sub-clause (b) of Section 195(1) thereof reads as under :-

(1) No Court shall take cognizance;

a) xxxxxxxxxxxx

b) (i) Of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) xxxxxxxxxxxx

(iii) xxxxxxxxxxxx

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

19. The prosecution for the offence under Section 193, IPC is also covered by Sub-clause (b)(i) of Section 195(1) of Cr. P.C. Section 193, IPC is a penal provision which provides for "Punishment for false evidence", "Giving false evidence" is dealt with and is explained by Section 193, IPC.

20. The material portion of Section 193 is reproduced below :-

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of

either description for a term which may extend to seven years and shall also be liable to fine.

And, whoever, intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

21. A combined reading of the aforequoted provisions of Cr.P.C. and IPC as also Sub-section (3) of Section 195, Cr.P.C. makes this legal position quite clear that they are applicable to any legal proceeding before a Civil Court or a Criminal Court, including a Tribunal constituted by a Central, Provincial or State Acts, if declared by that particular Act to be a Court for the purpose of Section 195, Cr.P.C.

Therefore, if the Family Court finds that any party to the proceeding or a witness therein has intentionally given false evidence at any stage of a judicial proceeding or fabricated false evidence for the purpose of being used in any stage of the proceeding and the Family Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any evidence referred to in Clause (b) of Sub-section (1) of Section 195, Cr.P.C. which appears to have been committed respecting that particular legal proceeding or in respect of a particular document produced therein are given in evidence it may hold a preliminary enquiry and if it thinks necessary then it may record a finding to that effect and then proceed to make a complaint in respect of the particular offence/offences stipulated in Clause (b) of Section 195, Cr.P.C. to the concerned Magistrate having jurisdiction against the said person.

The judicial exercise involved in this process on the part of the Presiding Officer of the trial Court calls for prima facie determination of the fact if any such false evidence or fabricated document bearing on the point and issues had been given or produced by a party to the proceeding or a witness therein.

If the particular judicial or legal proceeding relates to trial of civil proceeding or the contentious issues in a legal proceeding, raised therein by respective pleadings of the parties, to which require final adjudication of the trial Court on the merits of the evidence to be let in on record by the parties in support of their respective case, then it goes without saying that the most appropriate stage for the trial Judge in such a trial proceeding is to formulate his opinion on filing or non-filing of complaint contemplated under Section 340 of Cr.P.C., would be at the final stage of disposal of the main matter on merits as has been rightly observed by the learned trial Judge of the Court below.

Otherwise, if the Presiding Officer of a trial Court is to take a decision relating to alleged perjury or false statement at the initial stage of the proceeding, then in all probability, it will prejudicially affect the fair disposal of the main matter on its merit and therefore it would certainly deflect the course of justice.

22. I am taken through all the aforestated decisions cited by learned Counsel for appellant. In none of these decisions it is laid down and held that in a trial proceeding pending before a trial Court involving contentious issues for its determination on the basis of merit of evidence let in record, is bound to first deal with and dispose of an application made by a party to the proceeding under Section 340, Cr.P.C., even at a preliminary stage of the proceeding itself, formulating his definite opinion as to the falsity of perjury or otherwise of certain material facts alleged by one party and denied by the other in such a proceeding. Therefore, all these decisions are of little avail and help to the appellant's case.

23. For these reasons, I find that the trial Court is perfectly justified in passing its impugned order rejecting the appellant's LA. No. 13 as not maintainable at the present stage of the proceeding on its file, it being a pre-mature application.

24. Hence, the appeal is dismissed.